

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

FOURTH SECTION

CASE OF DRĂGAN v. ROMANIA

(Application no. 65158/09)

JUDGMENT

STRASBOURG

2 February 2016

FINAL

02/05/2016

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



In the case of Drăgan v. Romania,

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

András Sajó, *President,*
Vincent A. De Gaetano,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Iulia Antoanella Motoc,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 12 January 2016,

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

PROCEDURE

1. The case originated in an application (no. 65158/09) 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 stateless person, Mr Adrian Drăgan ("the applicant"), on 25 November 2009.

2. The applicant, who had been granted legal aid, was represented by Ms N.T. Popescu, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the conditions of his detention in Galaţi, Rahova and Jilava Prisons were inhuman. He also alleged a lack of adequate medical treatment, ill-treatment by a prison guard, and an ineffective investigation into these events, all in breach of Article 3 of the Convention.

4. On 4 March 2014 the complaints concerning the inhuman conditions of detention, the lack of medical treatment and the ill-treatment by a prison guard 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

5. The applicant was born in 1956 and is currently detained in Giurgiu Prison.

6. For the last nine years the applicant had been convicted several times and he had been detained in various prisons. For certain periods of time he had been held in the Jilava and Rahova prison hospitals.

7. On 1 November 2007 the applicant was convicted by the Arad County Court on two counts of robbery and theft and was sentenced to seven years' imprisonment. The court also ordered the applicant's committal to the psychiatric section of the Bucharest Jilava Prison Hospital until his recovery.

A. Conditions of detention

1. The applicant's account

8. In his application forms and letters sent to the Court since 2009, the applicant complained of the severe overcrowding he had had to endure in Galaţi Prison, where thirteen to fifteen detainees were held in a cell of between 20 and 24 sq. m, as well as in Rahova and Jilava Prisons.

9. The applicant also alleged that the quality of food and drinking water had been very poor in these prisons, that he had not always been served a diet in accordance with his Muslim religious beliefs and that most of the time he had been starving as the portions had not been sufficient.

10. In all three prisons hot water had only been provided for short periods of time in which there had not been enough time to brush his teeth. Furthermore, in Jilava Prison there had not been enough cold water provided.

11. The applicant further alleged that, although he had no financial resources and had had no family to help him, the prison authorities in all three prisons had failed to provide him with the necessary clothes, toilet paper, soap or toiletries to brush his teeth.

2. The Government's account

(a) Galaţi Prison

12. In Galaţi Prison the applicant was held for almost eight months in six different cells including in the infirmary and the "hunger strike" (*refuz de hrană*) cell. The cells in this prison are approximately 24 sq. m with a maximum of fifteen beds. The applicant shared the cells with a maximum of

eleven other prisoners (2.1 sq. m of space per person, including the space occupied by beds and other furniture).

13. Cold water was available at various intervals for a total of seven hours per day and was not available between 9 p.m. and 6:30 a.m. The quality of the drinking water was certified by the Galaţi Public Health Authority.

14. The applicant received a diet in accordance with his religious beliefs and the composition of the daily menu was in line with the regulations.

15. Toiletries were provided as the budget allowed. During the period of almost eight months that the applicant spent in Galaţi Prison he received the following: two tubes of toothpaste, six razors, four tubes of shaving cream, nine bars of poor quality soap, six rolls of toilet paper, two toothbrushes and washing powder.

16. Throughout his detention in Galaţi Prison the applicant received no visits and was considered unfit for work. He did not have any income.

(b) Rahova Prison

17. The applicant was held in Rahova Prison for six months and four days. He was placed in cells measuring 21 sq. m which he shared with nine other prisoners (2.1 sq. m of space per person including beds and other furniture). The cells had bathrooms equipped with two sinks, a shower and a toilet. Cold water was constantly available and hot water was twice per week following a schedule.

18. Food was prepared in accordance with the standards and regulations. Renovation of the food preparation and storage areas were under way when the Government's observations were being submitted.

19. The Government submitted that upon their placement in a detention facility, prisoners received one set of bed linen.

20. Throughout his detention in Rahova Prison the applicant received no visits, was considered unfit for work and did not have any income.

(c) Jilava Prison

21. The applicant was detained in Jilava Prison for twenty-two days. For a few days he shared a cell measuring 40.28 sq. m with twenty-seven prisoners; there were thirty beds as well as other items of furniture (1.43 sq. m of space per person including beds and other furniture). This cell was equipped with two toilets and two sinks where cold water was constantly available. The rest of the time he was held in the infirmary where he had approximately 6 sq. m of personal space.

22. Hot water was provided in common shower facilities according to a pre-established schedule for two hours on Mondays and Fridays for half of the prison and Tuesdays and Saturdays for the other half. In one of the infirmary wards, where the applicant spent fourteen days, two showers with

hot water were available for up to seven prisoners, for the same periods as the general schedule (two hours per week).

23. During the twenty-two days he spent in this prison, the applicant received one roll of toilet paper, a razor and one tube of shaving cream.

24. The Government alleged that on 17 May 2013 the applicant also received clothing that he could use during his stay in this prison but they submitted no documents in support of this claim.

25. The applicant received the "Muslim menu" in accordance with the internal regulations.

26. The applicant had access to the exercise yard for six hours per day.

27. Throughout his detention in Jilava Prison the applicant received no visits and did not have any income.

28. On 11 June 2013 the applicant was transferred to Giurgiu Prison.

3. The applicant's complaints about the conditions of detention

29. The applicant lodged numerous complaints with the prison authorities or the post-sentencing judge outlining his dissatisfaction with the overcrowding, the poor quality of the drinking water or the quality and quantity of the food he received. He asked on several occasions to be placed in a single occupancy cell and to be given certain foods such as fried eggs or fried potatoes.

30. These complaints were always rejected as being ill-founded.

31. On 30 September 2009, the Bucharest District Court rejected with final effect the applicant's complaint concerning the lack of adequate provision of drinking water in Jilava Prison, reasoning that this situation was a result of budgetary constraints. Another complaint lodged with the delegate judge while the applicant was being held in Rahova Prison has on its reverse side the note "Transferred".

32. The complaints about overcrowding were always solved with the conclusion that the assignment of detainees to sections and cells was a function of the prison's administration and placement in individual cells was not possible and was not allowed by law.

33. On several occasions the applicant complained to the post-sentencing judge that the food served in prison was of very poor quality and the portions were not adequate. All his complaints were rejected as ill-founded as the post-sentencing judge considered that the applicant's allegations had been contradicted by the information submitted by the authorities of the prisons concerned.

34. On 7 March 2013 while he was held in Rahova Prison the applicant requested one pair of shoes, two pairs of socks and one tracksuit. A note on the request says that it shall be examined depending on stocks, but there is no subsequent mention of whether the applicant received any of the items requested.

B. Medical treatment

1. The applicant's medical condition and treatment

35. On July 2009, following a dental examination in Rahova Prison Hospital, the applicant was diagnosed with periodontitis (I and II degree) and frontal, lateral and terminal edentulism. The doctor prescribed specific periodontitis treatment, a mobile prosthesis and a liquid or semi-liquid diet until the installation of the prosthesis.

36. Since then, the applicant had been taken to see a dentist on numerous occasions upon his requests following bouts of inflammation of the gums or pain. He was consistently prescribed symptomatic treatment with antibiotic or anti-inflammatory drugs. On these occasions the doctors would repeat the prescription for a liquid or semi-liquid diet.

37. In November 2009 the applicant was diagnosed with chronic generalised marginal periodontitis and was prescribed antibiotics, anti-inflammatory drugs and hygienisation of the oral cavity by a dentist within the prison system. On the same occasion he was also diagnosed with inflammation of the salivary glands and surgery was prescribed, which was performed on 28 March 2013.

38. On 11 May 2010 the applicant was diagnosed with a duodenal ulcer and on 11 August 2011 with chronic gastroduodenitis.

39. On 21 July 2011 during a medical examination in Galaţi Prison the applicant, who had been previously diagnosed with several personality disorders, was diagnosed as showing symptoms of paranoia; it was recommended that he be committed to the psychiatric section of the Poarta Albă Prison Hospital.

40. Between 15 and 19 October 2012 the applicant was hospitalised for an acute inflammation of the salivary glands and generalised stomatitis. He was released with a prescription to eat liquid and semi-liquid food, to brush his teeth three times per day, to take antibiotics and to use mouthwash.

41. The applicant had one tooth extracted on 29 November 2012.

42. On 24 February 2014 the applicant was taken to the prison hospital with congestion and swelling of the gums. He was diagnosed with, among other conditions, chronic acute otitis, generalised stomatitis, chronic apical periodontitis, neurovegetative disorders, conjunctivitis and spondylosis.

43. On several occasions the applicant was taken to prison hospitals or to the emergency unit of public hospitals with a broken nose or ribs after having been assaulted by other prisoners.

44. Throughout his detention the applicant refused treatment with drugs or, on a few occasions, to be transported to Rahova Prison Hospital for conditions not related to his dental problems. In November 2011 the applicant, who was in a nervous state, refused to be seen by the prison dentist. On 3 February 2014 the applicant refused to have a tooth extracted.

2. Complaints lodged by the applicant concerning his dental problems

45. On 15 October 2009 the applicant complained before the prison authorities and the post-sentencing judge that he was not receiving the liquid and semi-liquid diet prescribed by the doctor. On 3 November 2009 the post-sentencing judge in Rahova Prison rejected the complaint, agreeing with the prison authorities that there was no prescription from a doctor for such a diet in the applicant's medical file. Another similar complaint lodged by the applicant in January 2013 had been rejected by the post-sentencing judge for the same reason.

46. On 21 May 2012, in August 2012 and on 10 September 2012 the applicant complained to the prison administration that he had toothache and that he could not eat as he had not been given a liquid diet, as requested. No replies to these complaints could be found in the applicant's prison file submitted by the Government.

47. In January 2013 the applicant complained before the post-sentencing judge of the poor quality of the food served in prison; the vegetables were undercooked; he received bones without meat. He further complained that he had not been given the liquid diet prescribed by the doctors and that he had thus constantly received food that he could not chew and eat. The prison administration averred before the judge that no special diet had been prescribed to the applicant by a doctor and that the food served in prison was in accordance with the regulations and within the limits of the budget of 4.06 Romanian lei per prisoner per day (approximately 1 euro). On 8 January 2013 the post-sentencing judge rejected the applicant's complaint as ill-founded, considering that the food received by the applicant had been in accordance with the regulations and the budget.

48. In March 2013 the applicant complained again before the post-sentencing judge. He alleged that, due to his dental problems, he could not eat the food served in prison. He mentioned that the meat was not cooked through and very often during transport he had received raw, unsliced bacon and biscuits that he could not eat. On 21 March 2013 the post-sentencing judge rejected the applicant's complaint because the facts described by him had been refuted by the prison authorities. At that time, no doctor had prescribed that the applicant be given a liquid or semi-liquid diet. On 14 May 2013 the Bucharest District Court rejected this complaint with final effect holding that the prison menus were prepared and administered in accordance with the internal regulations and within the limits of the budget.

49. On 16 and 25 June, 23 December 2013 and 12 and 24 March 2014 the applicant complained to the prison administration of toothache and requested treatment for his periodontitis. The authorities replied to these complaints that the doctor was on holiday and that an appointment would be scheduled in the future.

C. Alleged ill-treatment by a prison guard

50. According to the applicant, on 14 February 2013 when he was being transported to an infirmary outside the prison, he was ill-treated by a prison guard escorting him.

51. Immediately after the incident the applicant lodged a criminal complaint against the prison guard for ill-treatment and abusive behaviour.

52. On 27 November 2013 the Prosecutor's Office of the Bucharest District Court issued a decision not to commence criminal proceedings in the case. According to a copy of the prison's correspondence logbook, as submitted by the Government, the applicant received a copy of the decision on 12 December 2013.

53. The applicant did not contest this decision before the superior prosecutor as provided for by the Criminal Procedure Code.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL STANDARDS

54. Law no. 275/2006 on the execution of sentences provides in Article 38 that prisoners have the right to lodge complaints concerning measures taken by prison authorities in connection with their rights provided for by law with a post-sentencing judge delegated by the court of appeal to supervise the observance of these rights. The post-sentencing judge's decisions can be appealed against to a court. The post-sentencing judge and the court can either cancel the impugned measure or reject the complaint.

Law no. 275/2006 also stipulates that sentences must be executed in conditions compatible with respect for human dignity, and that, among other provisions, detainees must wear civilian clothes when serving their sentences, and that if they do not have any, these should be provided free of charge by the prison authorities.

55. Order no. 433/C of the Minister of Justice of 5 February 2010, concerning compulsory minimum standards in prison facilities, entered into force on 15 February 2010. According to this order, the minimum living space was set at 6 cubic meters per person (about 2 m sq.) for prisoners assigned to an open or semi-open prison regime, and 4 m sq. per person for other categories of prisoners, including minors and remand prisoners.

56. Joint Order no. 1361/C/1016/2007 of the Ministers of Justice and Health, of 6 July 2007, concerning health insurance for detained persons provided that, *inter alia*, only detainees who lacked financial resources and had lost more than 50 % of their chewing ability while in detention were entitled to a free dental prosthesis. In other cases, detainees had to bear part of the cost of such a prosthesis.

57. Government Ordinance no. 1113 of 3 November 2010 for the amendment of the rules for the application of Law no. 275/2006 provides in paragraph 6 of Article 14 as follows:

> "At the request of a prisoner whose chewing ability has been severely affected during his detention, with effects on his/her digestive functions – as diagnosed by a specialist doctor within the prison system – and when the prisoner does not have the necessary financial means, the prisoner's personal contribution to the costs [of the prosthesis] shall be covered from the prison's budget, within the limits of the budget granted for this purpose, or from other sources in accordance with the law."

58. On 7 February 2012 the Ministers of Justice and Health issued a new Joint Order no. 429/125/2012. This Order provides that the costs of dental prostheses incurred by prisoners are covered partly by the state social security scheme and partly by the prisoner. The portion contributed by the state social security is to be recalculated every year in accordance with various factors. In addition, Article 39 of this Order provides as follows:

Article 39

> "(5) When a prisoner has lost his chewing ability during detention and when the digestive functions are also affected, if he/she does not have the necessary financial means to pay the personal contribution, the cost shall be covered from the budget of the detention centre, within the limits of the funds allocated for this purpose, or from other sources in accordance with the law."

59. In a letter addressed to the Government's Agent on 8 May 2013, the National Administration of Prisons stated that between 7 February 2012 and 8 May 2013 two prisoners had benefited from the provisions of Article 39 of the new Joint Order. The letter also mentioned that there was no special budget allocated to prisons to meet these requirements and the possible costs generated by purchase of dental prostheses must be deducted from the general medical supplies budget.

60. The relevant parts of the reports issued by the Romanian Helsinki Committee following their visits to Rahova and Jilava Prisons are quoted in *Iacov Stanciu v. Romania* (no. 35972/05, §§ 146-58, 24 July 2012). Their findings in respect of Galaţi Prison are quoted in *Porumb v. Romania* (no. 19832/04, § 48, 7 December 2010).

61. Excerpts from the relevant parts of the General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT"), as well as their reports concerning Romanian prisons, are also quoted in *Iacov Stanciu* (cited above, §§ 121-27).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

62. The applicant complained of the inhuman conditions of his detention, the lack of medical treatment and a suitable diet for his dental problems and of ill-treatment by a prison guard. He 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."

A. Admissibility

63. The Government objected that the applicant had not exhausted the domestic remedies in respect of his complaint concerning the alleged ill-treatment by a prison guard. They contended that the applicant had not appealed against the prosecutor's decision of 27 November 2013 before the superior prosecutor and subsequently before the courts as provided for by the Code of Criminal Procedure.

64. The applicant submitted that he had never received this prosecutor's decision.

65. The Court observes that the decision in question was sent to the applicant on 12 December 2013 and that the applicant did not contest it before the superior prosecutor and the courts (see paragraphs 52 and 53 above).

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

66. As regards the complaints concerning the conditions of detention, the lack of medical treatment and the diet provided, the Court notes that they are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Complaint concerning the material conditions of detention

(a) The parties' submissions

67. The applicant complained of severe overcrowding, the poor quality of the food and drinking water, the inadequate provision of hot water and no provision of clothing or toiletries. He alleged that his numerous complaints concerning these detention conditions remained unresolved by the prison

authorities. Referring to the reports of the Romanian Helsinki Committee quoted in the case of *Iacov Stanciu* (cited above, §§ 146-63) the applicant contended that the conditions he described had also been confirmed by the above-mentioned organisation after its visits to the prisons of Galaţi, Rahova and Jilava.

68. Referring to the information submitted on the general conditions of detention (see paragraphs 12-26 above), the Government stressed that the domestic authorities had taken all necessary measures in order to ensure that the applicant's conditions of detention had been adequate.

(b) The Court's assessment

69. The Court reiterates that under Article 3 of the Convention the State must ensure that a person is detained in conditions which are compatible with respect for human dignity; that the manner and method of execution of the measure of detention do not subject him/her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention; and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI, and *Enăşoaie v. Romania*, no. 36513/12, § 46, 4 November 2014).

70. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II, and *Todireasa v. Romania (No.2)*, no. 18616/13, § 54, 21 April 2015).

71. A serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are "degrading" from the point of view of Article 3 (see *Enăşoaie*, cited above, § 47, and *Karalevičius v. Lithuania*, no. 53254/99, § 39, 7 April 2005).

72. The Court also notes that, in addition to overcrowding, other aspects of the physical conditions of detention are relevant for its assessment of compliance with Article 3 (see *Babushkin v. Russia*, no. 67253/01, §§ 44 and 48, 18 October 2007, and *Iacov Stanciu,* cited above, § 169). The Court has found that the following conditions of detention raise an issue under Article 3 of the Convention: lack of appropriate furniture in the cells; poor sanitary facilities, such as a limited number of toilets and sinks for a large number of detainees; sinks in cells providing only cold water for a wide range of needs (personal hygiene, washing clothing and personal objects, cleaning the toilets); limited access to hot showers; poor sanitary conditions in general; and poor quality food (see *Iacov Stanciu*, cited above, § 175).

73. Turning to the present case, the Court notes that the applicant complained of the inhuman conditions in which he had been detained for a period of one year and three months in Galaţi, Rahova and Jilava Prisons.

74. The Government acknowledged that there had been overcrowding in all of the detention facilities in which the applicant had been held. More specifically, the statistics provided by the Government in reply to the applicant's allegations of overcrowding show that most of the time the applicant's personal space was significantly less than that required by the Court's case-law. The Court points out that those figures were even lower in reality, given that the cells also contained beds and other items of furniture. This state of affairs in itself raises an issue under Article 3 of the Convention (see *Iacov Stanciu*, cited above, § 173; *Cotleţ v. Romania (No 2)*, no. 49549/11, § 34, 1 October 2013; and *Todireasa*, cited above, § 57).

75. The applicant also complained of the poor quality of food and drinking water and the inadequate provision of hot and cold water. These allegations were not refuted by the Government, who merely declared that the quality and quantity of food and water had been in accordance with the regulations and budgetary constraints, and that hot and cold water had been provided in accordance with a schedule established by the prison administration. Moreover, the Court notes that the applicant's allegations concerning the poor quality of drinking water in Jilava Prison were confirmed by the domestic courts (see paragraph 31 above). As for the provision of hot and cold water, no details were given by the Government on whether the schedules set by the prison administration had actually been adapted to the number of prisoners.

76. As regards the applicant's complaint concerning the provision of toiletries and clothes, it is evident from the Government's submissions that the applicant had not been provided with enough of these items so as to be able to maintain adequate personal hygiene. For example, during the period spent in Galaţi Prison the applicant received one tube of toothpaste in four months and one bar of soap per month, which he was supposed to use for daily hand washing as well as for showering (see paragraph 15 above). No information was submitted by the Government with respect to the other two prisons of which the applicant complained. As far as clothing is concerned the Government merely quoted the text of the regulation governing the provision of clothing to prisoners but did not submit any document to show whether the applicant had actually received the necessary clothing (see paragraphs 24 and 34 above).

77. Furthermore, the applicant's allegations concerning the conditions of detention in Galaţi, Rahova and Jilava Prisons correspond to the specific findings of the Romanian Helsinki Committee on their visits to these prisons, as well as to the general findings of the CPT in respect of Romanian prisons (see paragraphs 60 and 61 above).

78. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to prisoners, unsatisfactory sanitary conditions and the poor quality of food in Galaţi,

Rahova and Jilava Prisons (see *Toma Barbu v. Romania*, no. 19730/10, 30 July 2013; *Iacov Stanciu*, cited above; and *Porumb,* cited above). In the case at hand the Government failed to put forward any argument or information that would allow the Court to reach a different conclusion. Not only do the above conditions not satisfy the European standards established by the CPT, but, as the Court has already stated, the cumulative effect of overcrowding in large-capacity – and sometimes also insalubrious – dormitories, poor quality food and poor hygiene conditions can prove detrimental to prisoners (see *Todireasa*, cited above, § 61).

79. The foregoing considerations are sufficient to enable the Court to conclude that, cumulatively, all the above-mentioned conditions of the applicant's detention caused him harm that exceeded the unavoidable level of suffering inherent in detention and thus reached the minimum level of severity necessary to constitute degrading treatment within the meaning of Article 3 of the Convention.

There has accordingly been a violation of Article 3 of the Convention.

2. Complaint concerning medical treatment

(a) The parties' submissions

80. The applicant submitted that the prison authorities had failed to provide him with adequate medical treatment for his periodontitis. More specifically, his doctor's recommendation in 2009 that he be given a dental prosthesis and moved to a semi-liquid or liquid diet had never been acted on by the authorities. As a result, he had had to endure constant pain and hunger, he had lost almost 70 % of his teeth and had developed an ulcer and gastroduodenitis. He had brought this situation to the attention of the competent authorities on numerous occasions but to no effect. The applicant contended that the regulations which provided that the cost of dental prostheses for prisoners who do not have any income shall be supported jointly by the social security scheme and the prison's budget were ineffective since there was no special budget allocated for prosthetic work for prisoners and, according to the information submitted by the national authorities, only two prisoners had benefited from this system of payment between 2012 and 2013. The applicant concluded that the suffering he had endured because of the authorities' inaction for a period of more than five years had gone beyond the threshold necessary to constitute degrading treatment under Article 3 of the Convention.

81. The Government stressed that the applicant had received a special diet for sick prisoners made up of easily chewable food. As regards medical treatment, the applicant had been adequately treated for his dental problems. In addition, on several occasions the applicant had refused to be transported to prison hospitals in order to receive medical treatment and, for example, on one occasion he had refused to be transported for treatment to another

prison equipped with a dental facility. Moreover, he had never specifically requested a dental prosthesis and had failed to inform the authorities about his financial situation in order to be able to benefit from the provisions of Order no. 429/C/125 of 7 February 2012.

The Government concluded that the national law and the domestic system had offered the applicant effective access to adequate dental treatment.

(b) The Court's assessment

82. The Court has emphasised on a number of occasions that a lack of appropriate medical treatment in prison may by itself raise an issue under Article 3, even if the applicant's state of health does not require his/her immediate release. The State must ensure that given the practical demands of imprisonment, the health and well-being of a detainee are adequately secured by, among other things, providing him/her with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, §§ 93-94, ECHR 2000-XI; *Sarban v. Moldova*, no. 3456/05 § 90, 4 October 2005; and *Cirillo v. Italy*, no. 36276/10, § 35, 29 January 2013).

83. The Court further reiterates that medical treatment within prison facilities must be appropriate and comparable to the quality of treatment which the State authorities have committed themselves to providing for the entirety of the population. Nevertheless, this does not mean that each detainee must be guaranteed the same medical treatment that is available in the best health establishments outside prison facilities (see *Cara-Damiani v. Italy*, no. 2447/05, § 66, 7 February 2012).

84. The mere fact that a detainee is seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007). The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention (see, for example, *Khudobin v. Russia*, no. 59696/00, § 83, ECHR 2006‑XII), that diagnosis and care are prompt and accurate (see *Hummatov*, cited above, § 115, and *Melnik v. Ukraine*, no. 72286/01, §§ 104-106, 28 March 2006), and that, where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at curing the detainee's illnesses or preventing their aggravation, rather than addressing them on a symptomatic basis (see *Hummatov*, cited above, §§ 109 and 114; *Sarban*, cited above, § 79; and *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006). The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually carried out (see *Visloguzov v. Ukraine*, no. 32362/02, § 69, 20 May 2010).

85. Lastly, the mere fact of a deterioration of the applicant's state of health, albeit capable of raising, at an initial stage, certain doubts concerning the adequacy of the treatment in prison, does not suffice as such for a finding of a violation of the State's positive obligations under Article 3 of the Convention, if, on the other hand, it can be established that the relevant domestic authorities have in timely fashion resorted to all reasonably possible medical measures in a conscientious effort to hinder development of the disease in question. Indeed, the State's obligation to cure a seriously ill detainee is one of means, not of result (see, among other authorities, *Goloshvili v. Georgia*, no. 45566/08, § 38, 20 November 2012 and *Cirillo*, cited above, § 37).

86. In the present case, the Court notes that in July 2009 the applicant was diagnosed with periodontitis (I and II degree), and frontal, lateral and terminal edentulism and was prescribed a dental prosthesis. Four years and seven months later, on 24 February 2014 when the applicant had been taken to the hospital for congestion and swelling of the gums, his condition had developed into chronic apical periodontitis and generalised stomatitis.

87. Despite his initial diagnosis and its development, the Court notes that the applicant was constantly treated on a symptomatic basis, with antibiotics and anti-inflammatory drugs. No comprehensive record was kept of the progression of the disease and the percentage of teeth lost by the applicant. In addition, no therapeutic strategy was set up, aimed at, to the extent possible, curing the applicant's periodontitis or preventing its aggravation along with the loss of additional teeth and the generalised inflammation of his gums.

88. The Court observes, following the Government's submission, that the applicant refused medical treatment on several occasions. Nevertheless, it is not evident from the file that the applicant was offered prosthetic treatment for his periodontitis which he refused (see paragraph 44 above). It also is not evident that the applicant contributed in any way to the worsening of his condition (contrast *Epners-Gefners v. Latvia*, no. 37862/02, § 44, 29 May 2012, and *V.D. v. Romania*, no. 7078/02, § 100, 16 February 2010).

89. The Government also stressed that the doctor's prescription for a prosthesis had not been implemented because the applicant had not requested either the device or the payment of his contribution to the treatment from the prison budget. In this regard the Court observes that the applicant alerted the authorities with respect to his situation on numerous occasions. More specifically, on five occasions the applicant complained of unbearable toothache and requested a treatment for this condition without receiving any relevant response from the prison authorities (see paragraph 49 above). In addition, the applicant lodged complaints before the post-sentencing judge on three other occasions drawing the authorities' attention to the fact that his dental problems were so severe as to prevent him from

eating the food served in prison. All these requests had been rejected as being ill-founded (see paragraphs 45-48 above). Moreover, it is evident from the file that the prison authorities were well aware of the applicant's lack of financial means (see paragraphs 15, 20 and 26 above).

90. With regard to an eventual request by the applicant for a co-payment from the prison budget of the cost of the prosthetic treatment, the Court notes that the regulations in place until 2012 had already been analysed and declared ineffective in the case *V.D.* (cited above, § 96) where the Court found a systemic problem caused by the flaws of the medical insurance system for ensuring dental care for detainees deprived of any financial means. On 7 February 2012 a new regulation entered into force providing that in cases where prisoners did not have the necessary financial means, their part of the costs was to be covered by the prison administration from a special budget. However, on this point the Government submitted that there was no special budget allocated for this type of expense and within a period of one year only two prisoners in the whole of the Romanian penal system actually benefited from this financial aid (see paragraph 59 above). In view of the above the Court considers that the Government has yet to prove the effectiveness of the new system put in place in 2012.

91. In addition, having in mind the applicant's psychiatric pathology (see paragraph 39 above), the Court recalls that it has previously held in cases involving people with mental disabilities that consideration has to be given to their vulnerability, in particular their inability in some cases to plead their case coherently (see *V.D.*, cited above, § 87, and *B. v. Romania (no.2)*, no. 1285/03, § 78, 19 February 2013). On this point, the Court notes that the applicant should have never been placed in prison but rather committed to a psychiatric hospital as ordered by the domestic courts at the time of his criminal conviction in 2007 and as restated by his doctor in 2011.

92. In conclusion, in view of the above and having in mind the particular circumstances of the case, the Court considers that the applicant cannot be reproached for not having lodged yet another more specific request as suggested by the Government.

93. As regards the applicant's complaint concerning the authorities' failure to provide the prescribed liquid or semi-liquid diet, the Court observes that in July 2009 the applicant was prescribed a diet of liquid or semi-liquid food until the prosthesis was in place. This initial recommendation was entirely overlooked by the prison authorities who only gave the applicant this type of diet for limited periods of time (see paragraphs 14, 18 and 25 above). Moreover, the applicant's complaints in this respect lodged with the post-sentencing judge and subsequently with the courts were rejected without having been thoroughly analysed for reasons including budgetary constraints or even because the prison

authorities had stated that there had been no prescription for such a diet in the applicant's medical file (see paragraphs 45-48 above).

94. The foregoing considerations are sufficient to enable the Court to conclude that the applicant was not provided with adequate medical care and a suitable diet for his periodontitis, which in itself, having regard to the long period concerned and to the consequences for the applicant's health, caused the applicant suffering attaining the threshold of inhuman and degrading treatment proscribed by Article 3 of the Convention.

There has accordingly been a violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage for the suffering he had endured due to the inhuman conditions of his detention, the lack of adequate treatment and a suitable diet for his periodontitis and his ill-treatment by a prison guard.

97. The Government submitted that the applicant's claims were excessive.

98. The Court notes that in the current case it has found a violation of Article 3 of the Convention on two separate counts due to the inhuman living conditions in the prisons where the applicant was detained and the lack of adequate medical care and a suitable diet for his periodontitis. Consequently, having regard to the circumstances of the case seen as a whole and deciding on an equitable basis, the Court awards the applicant EUR 11,000 in respect of non-pecuniary damage.

B. Costs and expenses

99. The applicant also claimed EUR 5,192.5 for the costs and expenses incurred before the Court. More specifically, EUR 4,892.5 in lawyer's fees, to be paid directly to the lawyer's account, and EUR 300 for technical support and various correspondence costs incurred by the Romanian Helsinki Committee to be paid directly to that organisation's account. The applicant submitted a contract signed by his representative and a detailed document indicating the number of hours worked in preparing the case. He also submitted an agreement signed with the Helsinki Committee by which

the latter committed to offer technical support and to pay the correspondence fees incurred before the Court.

100. The Government submitted that the number of hours worked in connection with the case indicated by the lawyer had been, to a certain extent, excessive. They considered that given the subject matter of the case a diligent lawyer would have needed less time to work on it. They further submitted that the EUR 300 requested by the Helsinki Committee was not supported by any proof.

101. The Court reiterates that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway [GC]*, no. 23118/93, § 62, ECHR 1999-VIII, and *Cobzaru v. Romania*, no. 48254/99, § 110, 26 July 2007). In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Chamber may reject the claim in whole or in part.

102. In the present case, having regard to the above criteria and to the itemised list submitted by the applicant, the Court considers it reasonable to award the applicant the sum of EUR 3,000 in respect of lawyer's fees, less the sum already received under this head in legal aid (EUR 850), making a total of EUR 2,150, to be paid directly into the bank account indicated by the applicant's representative.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 3 concerning the conditions of detention and the lack of adequate dental treatment and a suitable diet admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention due to the applicant's conditions of detention and the lack of adequate dental treatment and a suitable diet;

3. *Holds*

   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2

of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 11,000 (eleven thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;

(ii) EUR 2,150 (two thousand one hundred and fifty euros) to be paid directly to Ms Nicoleta Tatiana Popescu;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 2 February 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	András Sajó
Deputy Registrar	President