CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF GEORGESCU v. ROMANIA

(Application no. 25230/03)

JUDGMENT

STRASBOURG

13 May 2008

FINAL

13/08/2008

This judgment may be subject to editorial revision.

In the case of Georgescu v. Romania,

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

Josep Casadevall, *President,*
Elisabet Fura-Sandström,
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Ann Power, *judges,*

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 22 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 25230/03) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Florin Georgescu ("the applicant"), on 4 July 2003.

2. The applicant, who had been granted legal aid, was represented by Mr C. Purcarescu, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Mr Răzvan-Horaţiu Radu, from the Ministry of Foreign Affairs.

3. On 27 March 2007 the Court decided to communicate the complaints concerning Articles 3 (ill-treatment in detention), 6 § 1 (length of criminal proceedings against the applicant), 8 (right to the respect for his correspondence) and 34 of the Convention to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. On 17 September 2007 the Section President rejected the applicant's request for formal priority, made under Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and lives in Bucharest.

6. On 8 December 1995 S.M., a powerful businessman, lodged a criminal complaint against the applicant, who, between March and

October 1995, had asked for 20,000 US dollars (USD) for his sick wife, and instead had used the money to buy a Mercedes and a BMW car. The applicant claimed that he was working for the Protection and Guard Service (*Serviciul de Protecţie şi Pază*), a state body with attributions in the field of national security, but later on the investigation showed that on 5 April 1995 he had been released from duty.

Similar complaints of fraud were made by other alleged victims of the applicant.

A. Applicant's arrest and ill-treatment in pre-trial detention

7. The applicant was arrested on 11 January 1996 and brought to the Bucharest District Police Detention Centre. The next day the prosecutor ordered his pre-trial detention in the same police facility.

In a statement made on 12 February 1996 the applicant informed the prosecutor that he had psychiatric problems that made him unfit for detention and therefore asked to undergo psychiatric tests (see paragraph 23 below).

8. On 4 April 1996 the Bucharest District Court rejected a request by the prosecutor for an extension of the applicant's detention. On 8 April 1996 the applicant was released from custody.

9. On 12 June 1996 the prosecutor ordered the applicant to be remanded in custody. On 14 June 1996 he was arrested again and placed in police detention.

10. On 24 July 1996 the Bucharest County Court quashed the District Court's decision of 4 April and extended the applicant's pre-trial detention.

11. He was released again on 18 December 1997.

12. The parties' submissions concerning the conditions of detention differ significantly.

1. The applicant's submissions

13. According to the applicant, during the first four weeks of his detention he was beaten by masked police officers and by inmates, on the orders of the investigators.

14. He was woken up in the night and interrogated, under threat of death. He was forced to bend over with his hands handcuffed behind his knees. The investigators would then hang him with his head downwards from a truncheon passed between his hands and legs. He was beaten on his feet with his shoes on until he lost consciousness.

15. He was subject to the same treatment every two to four days.

16. He used to be taken to the first-floor offices and beaten over the back and head with 1.5 metre-long metal-reinforced wooden truncheons, while the investigators verbally abused him.

17. On an unspecified date an inmate called "Nelu" raped the applicant, with the help of other inmates and encouraged by the investigator. He also broke the applicant's teeth with his fist when the applicant refused to open his mouth.

18. His inmates urinated on his food and forced him to eat it.

19. The applicant told his wife about the ill-treatment and she informed his lawyer, who managed to have the applicant moved to a different cell but the applicant was again subjected to ill-treatment by his new inmates. He was forced to squat and do push-ups all night long under the supervision of an inmate. If he refused to obey, the next day he would be beaten. He was not allowed to use the toilets but was beaten when he urinated in the cell.

20. According to the applicant, the treatment inflicted by the investigators was far worse than that he suffered at the hands of his inmates. Once he was punched in his liver by the police until he almost lost consciousness.

2. The Government's submissions

21. The Government denied that any ill-treatment had been inflicted on the applicant.

22. They presented a detailed report of the applicant's detention and medical treatment, based on the prison records and medical files. According to that report, from 30 January to 9 February 1996 the applicant had shared a dormitory with twelve other detainees, including M.I.

23. From 9 to 28 February he was kept in Jilava Prison Hospital. On 22 February 1996 the psychiatric doctors from the Mina Minovici Forensic Medicine Institute examined the applicant and diagnosed him with a personality disorder. He was prescribed antidepressants. The diagnosis was confirmed by the same Institute on 8 August 1996, on the prosecutor's request.

24. From 28 February to 1 April 1996 he was held in the Bucharest Police Detention Centre again and placed in a dormitory with ten other inmates: M.I., B.Y., T.G., C.M., G.M., V.G., L.N., P.N., V.C. and R.S.M.

25. On 1 April he was sent to Jilava Prison Hospital where he remained until 8 April. He was diagnosed with depression, anxiety and hemiplegia of the left side of his body.

26. From 14 June to 7 September 1996 he was held in the police facilities again and shared a cell with four other inmates. He spent the rest of his pre-trial detention in Jilava Prison Hospital, where he was treated for depression and a personality disorder.

27. No detainee named "Nelu" was identified by the prison authorities.

28. No complaints by the applicant concerning the conditions of detention were registered with the authorities during his detention.

B. Investigation into the allegations of ill-treatment

29. On 16 February 1996 the applicant's wife lodged a criminal complaint with the Military Prosecutor's Office attached to the Bucharest County Court, claiming that her husband was being subjected to ill-treatment in detention. She claimed that she had noticed marks of violence on her husband's face on 14 February 1996 when she had visited him in the prison hospital. He had told her that he had been beaten.

30. On 15 March 1996 the applicant gave testimony before the prosecutor. The relevant parts of his statement are as follows:

> "I was arrested... and put in a cell with seven other detainees for the first two-three weeks. During that time the prisoner responsible for maintaining order in the cell, a certain "Nelu", tried to sexually abuse me. During the same period I was taken for questioning and kicked in my stomach and face; I received blows to my cheeks and was kneed... by three to four persons wearing civilian clothes and masks ... This treatment is still going on...
>
> I should also mention that in ... 1995 I was treated for spasmophilia; in May 1995 I suffered from depression and received treatment for it ... and I was treated for anxiety."

31. On 21 March 1996 the prosecutor took depositions from M.I. and S.C., two inmates who stated that they had shared a cell with the applicant, the first from 30 January to 1 April 1996 and the second from 7 March 1996 to an unspecified date. They both stated that the applicant had not complained of ill-treatment by investigators and had not been subjected to any violence in the cell.

32. On 4 April 1996 the Mina Minovici Forensic Medicine Institute, which had examined the applicant upon the prosecutor's request, rendered its report, describing the applicant's condition as follows:

> "1) pale yellow ecchymoses of 6/7 cm on the right arm, at 1/3 distance from the palm, with receding contour, hard upon palpation (old haematoma, ...);
>
> 2) pale yellow zone with hyper-pigmented centre, uneven contour, ... isolated on the left arm, at approximately 1/3 distance on the front side (plaque of 5/4 cm);
>
> 3) semicircular ecchymose of 7/5 cm on the right inguinal zone (with pale yellow centre), bluish with greeny yellow margins and visible contour;
>
> 4) complains of pain in the right hypochondrium.
>
> Palpation: liver, approximately 5 cm under the rib cage, very sensitive. Specialist examination recommended (ultrasound scan).
>
> Conclusion: "Georgescu Florin presents injuries caused by hitting with hard objects which could have taken place 15 to 30 days before the medical examination. He would have needed 6 to 7 days' medical treatment for his injuries."

33. On 19 April 1996 the military prosecutor took the following decision:

> 1. Not to open a criminal prosecution ... as the injuries were caused by [the applicant's] actions"...
>
> 3. To communicate the decision to the person concerned."

34. On 24 April 1996 the military prosecutor sent the following letter to the applicant's wife:

> "The investigation showed that the facts complained about had taken place because of the conflicts between [the applicant] and his inmates, caused by [the applicant's] mental illness. They had not been caused by the wardens."

35. Neither the applicant nor his wife received a decision by the prosecutor.

36. On 26 August 2003, on the applicant's request, the Bucharest Military Prosecutor's Office informed the applicant that on 19 April 1996 the prosecutor had decided not to prosecute, as the facts complained about were not prohibited by the criminal law.

C. Criminal proceedings against the applicant

37. On 27 December 1995 the applicant gave the Bucharest Police documents required for the investigation into the allegations against him.

On 28 December 1995 his deposition was taken by the police in connection with the facts under examination. The next day the police decided to open a criminal investigation in respect of the applicant.

38. On 10 January 1996 the Prosecutor's Office attached to the Bucharest County Court opened criminal proceedings against the applicant on various charges of forgery and abuse of official position.

39. The applicant's testimony was heard again either by the police or by the prosecutor on 11, 12 and 30 January, 19 March, 11 June, 9 July and 15 August 1996.

From January to June 1996 several witnesses and alleged victims gave testimony in the case.

The applicant's wife's deposition was heard by the investigators on 27 December 1995, 5 and 31 January, 19 March and 11 June 1996.

40. On 11 January, 16 March and 6 June 1996 searches were conducted at the applicant's home. A Mercedes and a BMW car found in his garage were confiscated and valued by an expert at USD 18,654. On 2 April 1996, with the applicant's wife's agreement, the two cars were given to S.M. in compensation for the damage he had sustained.

41. On 13 September 1996 the prosecutor opened a separate file for the offences allegedly committed between 28 March and 3 April 1995 and

referred the case to the Bucharest Military Prosecutor's Office, as the applicant had been a military officer during that time.

42. On 16 September the same prosecutor indicted the applicant for an act of fraud allegedly committed on 6 June 1996. On 6 October 2000 the applicant was convicted by the Bucharest District Court. This application to the Court does not concern the proceedings referred to in this paragraph.

43. Several witnesses gave testimony before the military prosecutor. On 7 December 1999 the Military Prosecutor's Office decided not to prosecute the applicant for the offences committed before 3 April 1995 and referred the case back to the Prosecutor's Office attached to the Bucharest County Court in respect of the offences allegedly committed between 26 June and 15 October 1995. It also noted that the applicant had tried to abscond during the investigation. On his request, the applicant was informed of this decision on 8 August 2003 but did not receive a copy of it.

44. The prosecutor attached to the Bucharest County Court opened the investigation but could not hear the applicant's testimony before 27 June 2001, as the latter had allegedly absconded.

45. On 9 September 2002 the prosecutor at the Bucharest County Court also decided not to prosecute the applicant and made reference to the military prosecutor's decision of 7 December 1999 concerning the same facts. However, on 23 September 2002 the Prosecutor's Office attached to the Bucharest Court of Appeal annulled the decision and ordered the reopening of criminal proceedings against the applicant.

46. The case was referred back to the prosecutor attached to the Bucharest County Court on 26 September 2002 and from there to the police for further investigation on 6 November 2002.

47. On 10 February 2003 the applicant gave testimony.

48. On 10 March 2003 the police returned the file to the prosecutor attached to the Bucharest County Court with a proposal to indict the applicant. However, on 4 July 2003 the prosecutor closed the investigation as the case had become time-barred.

49. On 5 November 2003 the Prosecutor's Office attached to the Bucharest County Court informed the applicant of its decision.

D. Applicant's access to his criminal file

50. The applicant asked the Bucharest District Court to release a copy of the transcripts made during the hearing of 4 April 1996. This information was requested by the Court.

51. In a letter of 4 September 2003 the president of the District Court informed the applicant that it was impossible to obtain the document as the file was situated in the old archives which were being reorganised.

E. New criminal proceedings against the applicant

52. In 1995 the Romanian Intelligence Service requested the Prosecutor's Office attached to the High Court of Cassation and Justice to start a criminal investigation in respect of the applicant for having allegedly blackmailed senior civil servants and businessmen between February and July 2005, pretending to be an employee of the Intelligence Service.

53. On 11 October 2005 the High Court Prosecutor's Office relinquished competence in favour of the Bucharest County Court Prosecutor's Office. On 24 October 2005 the latter searched the applicant's home and confiscated several documents, including the following:

- a letter of 11 August 2003 from the Court concerning the present application;
- the medical expert report of 4 April 1996;
- the criminal complaint of 16 February 1996;
- the military prosecutor's letter of 24 April 1996;
- copies of a letter addressed by the applicant to the Court and of a letter addressed to the Anti-Corruption National Prosecutor's Office.

54. All these documents were returned to the applicant on 1 and 21 February 2006.

55. The applicant claimed that the investigators and the secret services had tried to intimidate him in order to make him withdraw his application to the Court.

56. The criminal proceedings against the applicant are still pending before the Bucharest District Court.

F. Action for compensation for illegal detention

57. On an unspecified date the applicant lodged an action for compensation for illegal detention under Articles 504 and 505 of the Code of Criminal Procedure. He considered that the prosecutor's decision to terminate the proceedings on the ground that they were time-barred had infringed his right of access to a court and had caused him additional damage in so far as it had not ordered the restitution of the two confiscated cars.

58. In a decision of 27 April 2004 the Bucharest County Court dismissed the action on the grounds that the applicant's detention did not fall within any of the categories provided for in Article 504 of the Code of Criminal Procedure and that he had not proved ownership of the two cars.

II. RELEVANT DOMESTIC LAW

59. The relevant provisions of the Code of Criminal Procedure and of the provisions governing the police and military prosecutor are set out in *Dumitru Popescu v. Romania ((no. 1)*, no. 49234/99, §§ 43-46, 26 April 2007) and *Barbu Anghelescu v. Romania* (no. 46430/99, § 40, 5 October 2004).

60. The relevant provisions of the Criminal and Civil Codes concerning the means of obtaining compensation for alleged ill-treatment are set out in *Kalanyos and Others v. Romania* ((dec.), no. 57884/00, 19 May 2005).

61. In the same decision, as well as in paragraphs 43-45 of the judgment in *Dumitru Popescu (no. 1)*, cited above, there is a description of the development of the law concerning complaints about the prosecutor's decisions (Article 278 of the Code of Criminal Procedure and Article 278[1] introduced by Law no. 281/24 June 2003 applicable from 1 January 2004).

62. For the legislation on complaints against prison staff, see paragraphs 45-48 of the judgment *Vitan v. Romania*, (no. 42084/03, 25 March 2008).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

63. The applicant complained that he had been ill-treated in pre-trial detention and, in substance, that the ensuing investigation had not been effective. He invoked 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

64. The Government considered that the applicant had not exhausted domestic remedies in so far as he had not contested the prosecutor's decision of 19 April 1996 and had not lodged a separate criminal complaint against the inmates. In their view, the applicant's complaint to the prosecutor referred exclusively to injuries allegedly inflicted by investigators and his allegations of ill-treatment by the inmates had been made for the first time in his application to the Court.

Furthermore, the Government pointed out that in lodging his application on 4 July 2003, the applicant had not complied with the six-month time-limit from the date of the prosecutor's decision of 19 April 1996.

65. The applicant contended that he had not had an effective remedy against the prosecutor's decision, which, in any event, had not been communicated to him until 2003.

66. The Court considers that the Government's pleas of inadmissibility raise issues as to the effectiveness of the investigation and of the complaint against the prosecutor's decision as well as of the communication of that decision. They are thus closely linked to the merits of the complaint under examination. Therefore the Court joins the preliminary objections to the merits of the applicant's complaint (see *Kavak v. Turkey*, no. 53489/99, §§ 44-49, 6 July 2006).

67. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

68. The Government reiterated that the applicant had not complained to the domestic authorities (prosecutor, prison administration) of the alleged ill-treatment by his cell-mates and made reference to the findings of the domestic investigation according to which the injuries had not been committed by police officers or investigators. They concluded that the applicant had not proved beyond reasonable doubt that he had sustained injuries as a result of acts by the authorities during his pre-trial detention.

69. The applicant contended that it had taken the authorities a long time to investigate the allegations and pointed out that the forensic examination had been made only one month after the complaint about ill-treatment.

2. The Court's assessment

70. The Court reiterates its case-law on Article 3, in particular concerning the Court's assessment of the minimum level of severity that the ill-treatment has to attain in order for it to fall within the scope of this Article (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93; *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162; *Kudła v. Poland* [GC], no. 30210/96, § 91-92, ECHR 2000-XI; *Peers v. Greece*, no. 28524/95, § 67-74, ECHR 2001-III; and *Raninen v. Finland*, judgment of 16 December 1997, *Reports* 1997-VIII, pp. 2821, § 55).

71. Furthermore, it reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State or under their control, unlawfully and in breach of Article 3, that provision requires that there should be an effective official investigation capable of leading to the identification and punishment of those responsible (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Assenov and Others*, cited above, § 102; and, *mutatis mutandis, Velikova v. Bulgaria*, no. 41488/98, § 70, ECHR 2000-VI).

72. Lastly, notwithstanding its subsidiary role in assessing evidence, the Court reiterates that where allegations are made under Article 3 of the Convention, the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000, and *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007).

73. Turning to the facts of the present case, the Court notes that the conclusions of the medical report (albeit it one month later than the date when the alleged ill-treatment occurred) and those of the military prosecutor clearly indicate that the applicant's injuries, whether caused by the investigators or by someone else, were sufficiently serious to amount to ill-treatment within the scope of Article 3 (see, for example, *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2699, § 21, and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, pp. 9 and 26, §§ 13 and 39).

It remains to be considered whether the State should be held responsible under Article 3 in respect of those injuries.

74. The Court notes that a criminal investigation was carried out in the case. Its effectiveness will now be considered.

75. From the outset, the Court notes that the military prosecutor was called to investigate acts of ill-treatment allegedly committed by police officers, prison guards and private individuals. Concerning the first two categories, the Court has already established that the applicable law at the date of the facts made the hierarchical and institutional independence of the military prosecutor doubtful (see *Barbu Anghelescu,* §§ 40-30 and 70, and *Dumitru Popescu (no. 1),* §§ 74-78, cited above, and *Melinte v. Romania*, no. 43247/02, §§ 23-30, 9 November 2006).

76. These doubts are reflected in the present case by the way the investigation was conducted.

77. Although the applicant had been sharing his dormitory with several other people (the applicant's statements and the official records do not tally as to the exact number, but both point out that there were at least seven other persons in the applicant's cell) when the alleged facts occurred, the prosecutor heard testimony from only two detainees: M.I., who was the applicant's inmate from 30 January to 1 April 1996, and S.C., who does not

appear in the official records as being in the same dormitory as the applicant. No police officers or wardens gave evidence.

78. Another point of concern is the fact that the investigators limited themselves to exonerating the police officers and thus failed to identify those responsible for the applicant's injuries. They also failed to identify and investigate the allegations against the inmates who might have perpetrated the acts of violence.

79. Lastly, the Court points out that both the prison authorities and the military prosecutor were informed of the applicant's psychiatric history from the time of his arrest (see paragraphs 7 and 30 above). Even assuming that the applicant's injuries were inflicted by the inmates because of his behaviour and mental problems, as the prosecutor concluded, the Court cannot but notice that far from exonerating the authorities from any responsibility in the case, this fact shows their negligence and failure to provide the applicant with prison conditions adequate to his medical condition, at least from 16 February 1996, the date when the ill-treatment alleged by the applicant was brought to the authorities' attention (see paragraph 29 above and *Kudła*, cited above, § 94, ECHR 2000-XI, and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX).

80. Turning back to the Government's objection of non-compliance with the six-month time-limit, the Court notes that neither the applicant nor his wife was properly informed of the outcome of the investigation before 2003. The letter that the military prosecutor sent on 24 April 1996 does not constitute, or replace, the communication of the decision. It does not indicate the date of the decision, let alone possible avenues for complaint against it. Moreover, the simple remark of lack of responsibility of the wardens does not clarify the situation of the investigators or of the inmate whom the applicant also accused of ill-treatment.

Therefore the Court considers that the applicant could not have clearly understood from the military prosecutor's letter that the investigation had ended altogether (see, by contrast, *Kinis v. Turkey* (dec.), no. 13635/04, 28 June 2005, and *Kazel Yildiz and Others v. Turkey* (dec.), no. 34542/03, 28 September 2006).

81. It is true that the applicant did little to keep abreast with the course of the investigation.

However, bearing in mind the pace of the criminal proceedings against him (see paragraphs 93-96 below) it is not unreasonable for the applicant to have believed that the investigation into his allegations of ill-treatment was taking a long time and was thus continuing. Therefore the applicant cannot be considered to have been negligent (see *Kavak,* cited above, §§ 84-86).

82. Lastly, the Court considers that it is reasonable to presume that the applicant preferred to wait for the outcome of the domestic proceedings before lodging his complaint with the Court, in particular in so far as the outcome might have had a bearing on the Court's examination of the

allegations of ill-treatment (see *Paul and Audrey Edwards v. United Kingdom* (dec.), no. 46477/99, 7 June 2001).

83. As for the Government's plea of non-exhaustion, the Court notes that the complaint to the courts about the prosecutor's decision became an effective remedy according to the Convention's standards on 1 July 2004, when Law no. 281/2003 amending the right of access to court became applicable (see *Dumitru Popescu v. Romania ((no. 1)*, cited above, §§ 43-45). However, the eight-year lapse of time between the date when the alleged ill-treatment occurred and the date when the appeal became possible renders the remedy ineffective in this particular case (see *Dumitru Popescu (no. 1)*, cited above, § 56).

84. For all these reasons, the Court dismisses the Government's preliminary objections. Furthermore, in the light of the above and on the basis of all the material placed before it, the Court considers that the Government have not satisfactorily established that the applicant's injuries were caused otherwise than by the treatment inflicted on him by the authorities or with their consent or by the inadequacy of the prison conditions, in particular bearing in mind the authorities' failure to prevent the ill-treatment at least from the date when it became foreseeable, and concludes that these injuries were the result of inhuman and degrading treatment (see also *Cobzaru*, cited above, § 74). Accordingly, there has been a violation of Article 3 of the Convention.

85. Having regard to the above-mentioned deficiencies identified in the investigation, the Court also concludes that the State authorities failed to conduct a proper investigation into the applicant's allegations of ill-treatment (see *Cobzaru*, cited above, § 75). Accordingly, there has also been a violation of Article 3 of the Convention under its procedural head.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

86. The applicant complained that the length of the criminal investigation against him had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

87. The Government considered that the applicant had not lodged his complaint within six months from the date of the final decision, in so far as he refers to the military prosecutor's decision of 7 December 1999. Under the applicable law, that decision did not have to be communicated to him.

88. The applicant pointed out that the criminal investigation in his regard had not ended with the prosecutor's decision of 7 December 1999.

89. The Court notes that on 7 December 1999 the criminal proceedings ended only in respect of some of the offences allegedly committed by the applicant. The investigation continued for the remainder of the charges. Moreover, the Court notes that the decision of 7 December 1999 was never communicated to the applicant.

For these reasons, the Court rejects the Government's preliminary objection (see also, *mutatis mutandis, Stoianova and Nedelcu v. Romania*, nos. 77517/01 and 77722/01, §§ 20-21, ECHR 2005-VIII).

90. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

91. The Government contended that the proceedings had been very complex, as the applicant had been the subject of investigations in respect of several criminal acts at the same time.

92. The applicant contested the Government's argument and considered that the investigation had been artificially prolonged so that the proceedings would become time-barred, in order to make it impossible for him to lodge a complaint for compensation for wrongful detention.

93. The period to be taken into consideration began on the latest on 11 January 1996 and ended on 4 July 2003. It thus lasted seven years and six months.

94. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

95. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi* and *Stoianova and Nedelcu,* cited above). Moreover, even assuming that the applicant did try to abscond during the investigation (see paragraphs 42-43 above), the Court notes that the repeated referrals of

the investigation file between the Prosecutor's Office and the military prosecutor contributed significantly to the protraction of the case. This deficiency is imputable to the authorities and not to the applicant (see, *mutatis mutandis*, *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006).

96. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

97. The applicant complained that after his arrest he had not been brought promptly before a judge, in violation of Article 5 § 3 of the Convention. However, the Court notes that the applicant was released from custody on 18 December 1997 and lodged this application on 4 July 2003, therefore more than six month after the situation complained of ended (see *Mujea v. Romania* (dec.), no. 44696/98, 10 September 2002 and *Negoescu v. Romania* (dec.), no. 55450/00, 17 March 2005).

It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

98. Under Article 8 and 34, the applicant complained about the Bucharest District Court's refusal to release copies of his criminal file, and about the fact that the prosecutor had ordered the search of his home and confiscated the letter addressed to him by the Court. In his letter of 5 May 2006 he contended that the prosecutor had tried to intimidate him in order to persuade him to withdraw this application.

However, the Court notes that the applicant did not complain about the prosecutor's action under Article 278[1] of the Code of Criminal Procedure which, had he done so, would have afforded him an effective remedy in the case (see *Dumitru Popescu (no. 1)*, cited above, §§ 43-45).

Moreover, notwithstanding the difficulties that the applicant encountered in obtaining copies of his criminal file, nothing indicates that the authorities aimed to dissuade or discourage the applicant, contrary to Article 34, and no negative consequence resulted for the applicant from this delay (see, *a contrario*, *Petra v. Romania*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, pp. 2854-55, § 43 and *Cotleţ v. Romania*, no. 38565/97, § 71, 3 June 2003).

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

99. Lastly, in his letter of 16 January 2008 the applicant complained under Article 6 § 3 of various infringements of his right of defence in the criminal proceedings that are currently pending against him. However, the Court notes that this complaint is premature and must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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

101. The applicant claimed 1,000,000 euros (EUR) in respect of pecuniary and non-pecuniary damage, including EUR 18,654 for the two cars that had been confiscated during the criminal proceedings.

102. The Government contended that the applicant's claims were inadmissible as the applicant had not signed his letter to the Court in which he had quantified his claims.

Furthermore, they considered that there was no causal link between the alleged violations and the pecuniary damages sought. They also contended that the claims for non-pecuniary damage were exorbitant.

103. The Court notes that Rule 60 of the Rules of Court, of which the applicant was informed in a letter of 31 July 2007, sets out the requirements for just satisfaction claims. The applicant's signature on the letter detailing his claims is not among these requirements. Where the Court attaches significance to the applicant's signature, it expressly regulates it, as is the case for an application made under Articles 33 or 34 of the Convention (see Rule 45 of the Rules of Court). Bearing in mind the severe consequences that the lack of signature could have for the applicant (rejection of his claims), the Court does not consider that such requirement should be implied in the case at hand, in the absence of explicit regulations. The Government's argument of inadmissibility is therefore rejected.

104. As for the applicant's claims, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant on an equitable basis EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

105. The applicant did not make any claims for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

106. Therefore, the Court does not make any award under this head.

C. Default interest

107. The Court considers it appropriate that the default interest 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. *Joins* to the merits and *rejects* the Government's preliminary objections;

2. *Declares* the complaints concerning Articles 3 and 6 § 1 admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention under both its substantive and procedural limbs;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the respondent State's national currency at the rate applicable at the date of settlement;
   (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;

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

Done in English, and notified in writing on 13 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada Registrar	Josep Casadevall President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring separate opinion of Judge Myjer is annexed to this judgment.

J.C.M.
S.Q.

CONCURRING OPINION OF JUDGE MYJER

I agree with the conclusions of the Chamber on all aspects of the case and would only like to add a few remarks of my own.

As to the reasoning in paragraphs 79 and 84: if the applicant had complained only about physical violence inflicted by his interrogators, the very fact that the medical report dated 4 April 1996 (paragraph 32) made it clear that the applicant presented "injuries caused by hitting with hard objects which could have taken place 15 to 30 days before the medical examination" would have reversed the burden of proof. The Government would have had to establish satisfactorily that the applicant's injuries were caused otherwise than – entirely, mainly, or partly – by the treatment he underwent while in custody (*Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 34). The applicant, however, complained about the fact that he had been beaten by his interrogators *and* by inmates. That makes the case a little more complicated, since – as far as violence by inmates is concerned – in my opinion the Government cannot be blamed for all such acts. As regards their responsibility for violence by inmates, it should in my opinion be established that either the authorities were aware of such violence but did nothing to prevent or immediately stop it (or worse, encouraged it) or that the prison conditions and/or the medical condition of the applicant were such that violence by inmates was in the specific circumstances of the case foreseeable, or that the authorities, having been properly warned, did not take the necessary steps to prevent further violence from occurring. In this specific case it is clear that the applicant's wife lodged a complaint on 16 February 1996 (paragraph 29). The injuries indicated in the above-mentioned report must have been sustained after that date. The judgment thus makes it clear that the national authorities cannot hide behind the fact that they investigated the allegations and that the interrogators cannot be blamed. Since they were properly warned as of 16 February 1996, the reversal of the burden of proof remained in place, in respect of the violence inflicted by inmates as well.

I should like to add one other point.

The applicant also complained about the fact that Article 34 had been breached. I agree that the reasoning in paragraph 98 is in line with the existing case-law. I also find that there is a big difference between this case and the case of *Petra v. Romania*, which is quoted in that paragraph, and between this case and the cases mentioned in the important report of Christos Pourgidides, *Member states' duty to co-operate with the European Court of Human Rights* (PACE document 11183 (9 February 2007)). Nevertheless, it worries me that the Prosecutor's Office, after having searched the applicant's house, also confiscated:

– a letter of 11 August 2003 from the Court concerning the present application;

– copies of a letter addressed by the applicant to the Court (paragraph 53).

Although I am aware that the documents were returned to him several months later (paragraph 54), it is in my opinion altogether arguable that the very fact that "untouchable" correspondence with the Court has been confiscated as such does raise an issue under Article 34. After such confiscation, does it really matter that there was a domestic remedy at his disposal which should have been used first? I wonder what the use is of being able to challenge the decision of the Prosecutor's Office under domestic law if in the meantime the authorities have become aware of the contents of correspondence with the Court. Once they have discovered that they confiscated "untouchable" documents, ought the authorities not to be under an obligation to repair *proprio motu* the violation not only by returning the documents but also by at least expressly acknowledging that they had been wrong to confiscate them.