

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

THIRD SECTION

CASE OF GHIURĂU v. ROMANIA

(Application no. 55421/10)

JUDGMENT

STRASBOURG

20 November 2012

FINAL

29/04/2013

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



In the case of Ghiurău v. Romania,

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

Josep Casadevall, *President,*
Egbert Myjer,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 23 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 55421/10) 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 Gheorghe Ghiurău ("the applicant"), on 13 September 2010.

2. The applicant was represented by Mrs D. O. Hatneanu, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Ms I. Cambrea.

3. As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mrs Kristina Pardalos to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

4. The applicant alleged, among other matters, that he had been subjected to ill-treatment in violation of Article 3 of the Convention and that the authorities had not carried out a prompt and effective investigation of that incident. Relying on Article 5 § 1 of the Convention, he claimed that he had been unlawfully held in police custody between 4 p.m. on 27 November 2006 and 2 a.m. on 28 November 2006. Relying on Article 5 § 2 of the Convention, he complained that he had not been promptly informed of the reasons for his deprivation of liberty.

5. On 19 May 2011 the above complaints were communicated to the Government. It was decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1963 and lives in Oradea.

A. The incident of 27 November 2006

1. The applicant's version

7. According to the applicant, at about 4 p.m. on 27 November 2006, police officers belonging to the special intervention forces of Bihor Police Inspectorate took the applicant into custody in order to transport him from his home in Borş to Cluj, about 200 km away. They had not presented any warrant or other legal document justifying his arrest, nor informed him of the reason for his arrest or where they intended to transport him.

8. The applicant contended that while in custody he had been beaten by police officers so severely that he had lost consciousness. As a result, he needed urgent medical assistance and was admitted to the emergency ward of Huedin Hospital. While he was on a drip at the hospital, he was hit again and handcuffed by police officers. This occurred in the presence of his lawyer.

9. The Cluj Police immediately transferred him from Huedin Hospital to the emergency ward of Cluj Hospital, where he remained for about three hours from 9.15 p.m. until midnight.

10. At about 0.45 a.m., although unable to speak because he had been given sedatives in hospital, he was transported from the hospital directly to the Cluj Police Headquarters in order to be interviewed. There, he was informed for the first time of the reason for his arrest, namely that he was suspected of making repeated phone calls threatening to kill someone. He was interviewed until 1.52 a.m.

2. The Government's version

11. A preliminary criminal investigation was initiated in connection with allegations that the applicant had made threatening telephone calls against a resident of Cluj-Napoca. On 27 November 2006, the prosecutor attached to the Cluj-Napoca District Court therefore issued an order for the applicant to be brought before him for questioning.

12. At 4 p.m. on the same day, having been informed by police officers about the order, the applicant agreed to accompany the police officers to the Prosecutor's Office in Cluj. On their way to Cluj, near Huedin, the applicant

informed them that he was feeling sick and became physically agitated, presenting the symptoms of an epileptic seizure.

13. The police officers took the applicant to the nearest hospital in Huedin, where he was examined and received immediate medical treatment. While in the consulting room, the applicant had a panic attack and started hitting his legs and hands against the bed. Two police officers had to intervene and immobilise the applicant's hands so that he could be disconnected from the medical devices.

14. The applicant was transported in an ambulance from Huedin Hospital to the emergency ward of Cluj-Napoca Hospital for further medical examinations, which took place from 9 p.m. until midnight. The diagnosis was abdominal trauma and abrasions.

15. As no traumatic injuries or clinical indications requiring an immediate operation were diagnosed, the applicant was discharged from the hospital and presented himself at the police station for questioning.

16. After questioning, the applicant gave a written statement, which according to the prosecutor was barely legible. He was assisted by his lawyer during the questioning.

B. Further developments

17. On 28 November 2006 the Bihor Forensic Institute examined the applicant and issued a report that stated that his injuries could have been caused the previous day by being hit with a hard object. It noted the existence of bruising and abrasions on the upper abdomen and on both hips, and estimated that the applicant would need four to five days to recover.

18. A medical certificate issued by Cluj-Napoca Hospital on 19 December 2006 showed that the applicant had been hospitalised on 27 November 2006 for about three hours. The certificate stated that the applicant had been diagnosed with a minor cranial trauma, abdominal trauma and abrasions, and concluded with the expression "Affirmative assault" ("*Afirmativ agresiune*").

19. The applicant contended that although on 29 November 2006 he had submitted a request with the Bihor Police Inspectorate to be provided with a copy of the order to which the police officers had referred in order to justify the deprivation of his liberty, he had not received a copy.

20. On 22 June 2009 the Prosecutor's Office attached to Cluj County Court decided to discontinue the criminal proceedings against the applicant for making threatening phone calls on the grounds that his guilt could not be proved.

C. Criminal investigation into the incident

21. On 7 December 2006 the applicant lodged a criminal complaint against ten police officers alleging unlawful arrest, abuse of authority, abuse of the officers' powers of investigation and deprivation of liberty.

22. On 4 January 2007 the applicant's lawyer, B.V., made a written statement concerning the events that had occurred on 27 November 2006. She submitted that the manager of the applicant's company had called her at about 4 p.m. informing her that two police patrols had taken the applicant into custody. She had called the applicant, who had confirmed that he was in police custody. She also submitted that she could hear police officers insulting and hitting the applicant. As she had understood from their phone conversation that the applicant did not feel well, she had decided to accompany him. She had called the ambulance service and discovered that the applicant had been taken to the Huedin Hospital emergency ward. When she found him there, he had been connected to medical devices but supervised by three police officers from the Cluj Police Department. She alleged that she had seen the police officers punch the applicant because he refused to remain in bed. She had accompanied the applicant to Cluj-Napoca Hospital and then to the police headquarters, assisting him during questioning.

23. On 12 March 2007 the applicant's criminal complaint was registered with the Prosecutor's Office attached to the Cluj Court of Appeal.

24. On 6 February 2008 four of the police officers against whom the applicant had lodged a criminal complaint were heard by the prosecutor. Their written statements were all identical.

25. On 12 February 2008 the Prosecutor's Office attached to the Cluj Court of Appeal decided not to prosecute on the grounds of lack of evidence that the offences in question had been committed. The decision stated that criminal proceedings had been initiated against the applicant on 27 November 2006. His deprivation of liberty had been justified by the necessity to interview him immediately, even before summoning him on the basis of an order to appear before the investigating body (*mandat de aducere*) issued by a prosecutor. The decision further stated that the applicant had agreed to accompany the police officers and that, in any event, the applicant's allegation that he had not been given a copy of the warrant could not lead to the conclusion that the police officers had abused their position, as his legal interests had not been infringed. In addition, the prosecutor held that the applicant had been provided with the order on the way from Huedin Hospital to Cluj-Napoca Hospital. In respect of the applicant's allegation that he was subjected to physical violence by the police officers, he concluded that the injuries noted by the forensic doctor had been self-inflicted. The police officers had accompanied him to Huedin Hospital because he had mentioned that he did not feel well. While he was

being examined by a doctor, he had had a panic attack and had started to hit the hospital's bed with his body, hands and feet. The police officers' intervention had therefore been necessary; they had immobilised him in order to disconnect him from the various medical devices.

26. On 1 August 2008 the head of the Prosecutor's Office dismissed the applicant's appeal against the aforesaid decision on the grounds that it had been lodged outside the time-limit set by the law. He stated, *inter alia*, that the order to appear before the investigating body had been issued because the applicant, although legally summoned, had refused to go to the police station to be interviewed. He added that the decision of 12 February 2008 had been communicated to the applicant on 14 February 2008 by registered letter and kept at the local post office until 26 February 2008. As the applicant had not collected the letter, it had been returned to the sender.

27. On 23 September 2008 the applicant appealed to the Cluj Court of Appeal against the prosecutor's decisions.

28. On 15 January 2009 the Cluj Court of Appeal dismissed the appeal on the grounds that it had been lodged outside the time-limit. It stated that the decision of 1 August 2008 had been communicated to the applicant by registered letter on 5 August 2008, but had not been collected by him from the post office. It concluded that the legal term of twenty days for lodging an appeal against the prosecutor's decision had begun on 5 August 2008 and not on 16 September 2008, the date on which the applicant had allegedly found out about the decision.

29. The applicant appealed again, claiming that the decision of 1 August 2008 had never been communicated to him and, therefore, that the term for submitting his complaint against it had not started to run.

30. On 18 May 2009 the High Court of Cassation and Justice allowed the appeal on points of law lodged by the applicant on the grounds that the appeal had been lodged within the time-limit set by law, quashed the judgment of 15 January 2009 and referred the file back to the Cluj Court of Appeal.

31. The applicant lodged an application with the High Court of Cassation and Justice for the removal of the file to another court on the grounds that the Cluj Court of Appeal was not impartial. His application was granted on 2 November 2009 and the file was transferred to the Ploieşti Court of Appeal.

32. On 19 January 2010, the Ploiesti Court of Appeal allowed the applicant's appeal against the prosecutors' decision not to prosecute. It sent the file back to the Prosecutor's Office attached to the Cluj Court of Appeal for further investigation on the grounds that the investigation proceedings had not been properly conducted. It noted, *inter alia*, that the investigation of the allegations against the police officers had not been thoroughly investigated on the basis of the evidence against each of them. It added that despite the fact that the file contained 236 pages, the procedural acts carried

out by the criminal investigation body were mentioned only at pages 217-32 and consisted of four identical statements made by four of the police officers involved in the incident, and the statements of the applicant (pages 50-54) and the applicant's lawyer (pages 12-14). The rest of the file contained copies of documents submitted by the applicant and copies of documents not related to the case. It also noted that the prosecutor, in deciding not to prosecute, had provided no explanation as to why only four police officers out of ten had been interviewed, why their statements were identical and why he had not taken into account the documents submitted by the applicant attesting that the applicant had suffered injuries. It made particular reference to the medical certificate issued by the Bihor Institute of Forensic Medicine on 28 November 2006, as well as the medical certificate issued by Cluj Hospital on 19 December 2006. It concluded that in the light of such medical certificates, a competent court could not decide that there was a lack of evidence that the offences in question had been committed.

33. On 14 April 2010 the High Court of Cassation and Justice dismissed an appeal on points of law lodged by the Prosecutor's Office attached to the Ploieşti Court of Appeal. Consequently, the decision to continue the investigation was upheld.

34. On 18 January 2011 the prosecutor questioned for the first time the six other police officers involved in the events of 27 November 2006.

35. On 21 April 2011 the applicant's lawyer made a written statement that she had not only heard during her phone conversation with the applicant but had also seen how the latter had been subjected to ill-treatment by the police officers on 27 November 2006. She added that despite the fact that she had repeatedly asked to see the order to appear before the investigating authority on the day of the events, she had only seen it two years later in the case file.

36. On 22 August 2011 the prosecutor heard two of the police officers who had already made statements on 6 February 2008.

37. On 25 August 2011 the Prosecutor's Office attached to the Cluj Court of Appeal again decided not to prosecute the police officers. It found that the applicant had not been subjected to ill-treatment by the police officers and had been deprived of his liberty pursuant to a warrant that had been issued in compliance with the law.

38. The applicant lodged an appeal against this decision with the chief prosecutor, claiming that the prosecutor in charge had not observed the instructions of the High Court of Cassation and Justice in respect of the evidence to be re-administered. He also claimed that despite the fact that he had been summoned to appear before the prosecutor on 18 July 2011, he had not been heard because the prosecutor had been absent from his office for the whole day. The applicant also submitted that not all of the police officers against whom he had lodged the criminal complaint had been heard

by the prosecutor; he made the same claim with respect to other individuals who had witnessed the events of 27 November 2006 but had never been heard by the investigating body.

39. On 21 September 2011 the chief prosecutor dismissed the applicant's appeal on the grounds that the injuries mentioned in the forensic certificate had been self-inflicted while he was simulating an epileptic seizure. He held *inter alia* that the order to appear before the investigating body had been issued because the applicant had failed to appear before the prosecutor, despite the fact that he had been summoned.

40. By a decision of 11 November 2011, the Ploiesti Court of Appeal allowed the applicant's appeal. It held that the prosecutor had not complied with its decision of 19 January 2010 and again remitted the case to the Prosecutor's Office, ordering it to commence criminal proceedings against the ten police officers mentioned in the initial criminal complaint.

41. The criminal proceedings are still pending and no judgment on the merits has been rendered.

II. RELEVANT DOMESTIC LAW

A. Romanian Criminal Code

42. Excerpts from the relevant provisions of the Romanian Criminal Code with regard to ill-treatment can be found in *Iambor v. Romania* (no. 64536/01, § 130, 24 June 2008).

43. Article 180 of the Romanian Criminal Code deals with bodily harm and provides, *inter alia,* that the harm caused to the physical integrity or health of a person requiring up to twenty days of medical care is punishable by one to three months' imprisonment or a fine.

44. Article 250 deals with abusive behaviour and provides that a public servant on duty who uses insulting language while physically harming someone shall be punished by six months to five years' imprisonment.

B. Code of Criminal Procedure

45. The order to appear before the courts (*mandatul de aducere*) was, at the material time, provided for by Articles 183-184 of the Code of Criminal Procedure, which read as follows:

Article 183

"(1) A person may be brought before [a] criminal-investigation body or [a] court on the basis of an order to appear, drawn up in accordance with the provisions of Article 176, if, having been previously summoned, he or she has not appeared, and his or her hearing or presence is necessary.

(2) An offender or a defendant may be brought [before the authorities] on the basis of an order to appear even before being summoned, if the criminal-investigation body or the court considers that, and provides reasons why, this measure is necessary for the determination of the case."

Article 184

"(1) [An] order to appear is enforced by the police.

(2) If the person specified in the order cannot be brought [before the authorities] because of an illness or for any other reason, the police officer appointed to enforce the order shall mention this situation in an official report, which shall immediately be handed to the criminal-investigation body or the court.

(3) If the police officer appointed to enforce the order to appear does not find the person specified in the order at the specified address, he shall investigate and, if unsuccessful [in locating the individual], shall draw up an official report including mention of the investigative activities undertaken.

(3^1) If the offender or the defendant refuses to accompany a police officer or tries to escape, he or she may be forced to obey the order."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

46. The applicant complained under Article 3 of the Convention that he had been beaten by police officers on 27 November 2006 and that the authorities had not carried out a prompt and effective investigation of that incident. In his written submission of 5 January 2012, namely after the communication of the present application to the respondent Government, the applicant also raised a complaint under Article 13 in connection with his grievances under Article 3. However, as it has decided in previous cases, the Court need not to rule on complaints raised after the communication of an application to the Government (see *Vigovskyy v. Ukraine*, no. 42318/02, § 14, 20 December 2005). Moreover, the Court notes that the applicant complained under Article 6 § 1 of the Convention that the criminal proceedings initiated by him have lasted too long, without any result. The Court, which is the master of the characterisation to be given in law to the facts of the case, finds that the above complaints fall to be examined solely under 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

47. The Court notes that those complaints 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. The parties' submissions

48. The applicant submitted that the injuries inflicted on him while in police custody had been caused by police officers. He further claimed that the Government's submissions that he had harmed himself were based solely on the police officers' statements and totally disregarded his lawyer's and his own statements.

49. The applicant contended that there were long lapses of time in the investigation conducted by the authorities when no procedural steps were taken. Although he had lodged his criminal complaint on 7 December 2006, it was registered several months later on 12 March 2007. He added that essential evidence had not been gathered by the prosecutor despite clear instructions in this respect from the courts, which had twice remitted the case to the prosecutor, first in January 2010 and again in November 2011.

50. The Government contested the applicant's allegation that he had been beaten by police officers. They maintained that the injuries sustained by the applicant had not been inflicted by the police officers, but had been self-inflicted during a panic attack in Huedin Hospital. They further alleged that the applicant's aggressive attitude towards the police officers had forced them to intervene and immobilise him with hand-cuffs so that he could be disconnected from medical devices. They contended that the expression "affirmative assault" used by the doctor who had prepared the medical certificate of 19 December 2006 referred not to the doctor's findings but to the applicant's allegation that he had been assaulted.

51. The Government further contended that the judicial authorities had conducted a proper investigation into the applicant's allegations of ill-treatment and that no deficiencies could be identified in that respect.

2. The Court's assessment

52. The Court reiterates that according to its well-established case-law, 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 sex,

age and state of health of the victim (see, *inter alia*, *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII; *Mouisel v. France*, no. 67263/01, § 37, ECHR 2002-IX; *Naumenko v. Ukraine*, no. 42023/98, § 108, 10 February 2004; and *Gäfgen v. Germany* [GC], no. 22978/05, § 88, ECHR 2010).

53. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV).

54. Having regard to all the above-mentioned principles and the particular circumstances of the present case, it has to be determined whether the applicant, in the course of his detention, was subjected to inhuman and/or degrading treatment within the meaning of Article 3 of the Convention.

55. The Court notes at the outset that the applicant was in good health when he was taken into custody by the police, but was reported to have bruises and abrasions on the upper abdomen and on both hips when he was released. In addition, according to the medical certificate issued by the Bihor Forensic Institute on 28 November 2006, he needed four to five days to recover.

56. The Court considers that given the nature and severity of the injuries suffered by the applicant and the circumstances in which they were sustained, an arguable claim has been raised under the substantive limb of Article 3 of the Convention.

57. The Court 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 unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

58. 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 *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007).

59. The Court notes that the applicant is in possession of two medical certificates attesting that he had sustained injuries while in police custody. He lodged a criminal complaint against the police officers whom he accused of subjecting him to degrading and ill-treatment, but the complaint was twice dismissed by the prosecutor on the grounds that there was a lack of evidence that the offences in question had been committed.

60. As the applicant was injured while in police custody, it was incumbent on the Government to produce evidence casting doubt on the account given by the victim and his chosen lawyer, and on the medical evidence submitted.

61. The Court is particularly concerned about the way the criminal investigation was conducted.

62. It notes that although the applicant had lodged his complaint on 7 December 2006, it took several months until it was registered as a criminal complaint on 12 March 2007. The first statements of four (out of ten) police officers involved in the events and of the applicant's lawyer were taken only on 6 February 2008. On the basis of that evidence, the Prosecutor's Office attached to the Cluj Court of Appeal decided on 12 February 2008 not to open an investigation against the police officers.

63. On 19 January 2010, almost four years after the applicant had submitted his criminal complaint, the Ploiesti Court of Appeal, noting the shortcomings of the prosecutor's investigation, sent the file back to the Prosecutor's Office. It held, *inter alia*, that the investigation against the police officers had not been conducted thoroughly on the basis of the evidence of each crime having taken place or targeted against each of the offenders. It also noted that the prosecutor, in deciding not to prosecute, had provided no explanation of why only four police officers out of ten had been interviewed, why the four statements were identical and why he had not taken into account the documents submitted by the applicant attesting that that applicant had suffered injuries.

64. On 18 January 2011, more than four years after the events, the prosecutor took statements from the six other police officers involved in the events. After re-hearing the applicant's lawyer on 21 April 2011 and two of the police officers on 22 August 2011, the prosecutor again decided not to start criminal proceedings. On the grounds that the prosecutor did not follow the court's instructions to open an investigation and to supplement the evidence, on 11 November 2011 the Ploiesti Court of Appeal sent the file back to the Prosecutor's Office attached to the Cluj Court of Appeal.

65. Thus, the Court observes that essential evidence was not gathered or was gathered with delay by the prosecutor, despite clear instructions in this respect from the Ploiesti Court of Appeal, which had twice remitted the case to the Prosecutor's Office.

66. In particular, the Court notes that the prosecutor questioned the police officers and the applicant's lawyer who had been present at the scene

of the incident, but no other witnesses. There is no explanation as to why the medical staff and/or patients of the two hospitals where the applicant was hospitalised, the driver of the ambulance, or the nurse who accompanied him from Huedin to Cluj, had not testified before the domestic authorities.

67. The Court is also concerned about the way the prosecutor disregarded the statements made by the applicant's lawyer, S.B., who was present when the events of 27 November 2006 occurred. The Court notices that the prosecutors did not explain why her statements would be less credible than those of the police officers.

68. The Court further considers that the medical records made by the doctors who examined the applicant were not adequately examined by the authorities.

69. Having regard to the above-mentioned deficiencies identified in the investigation and to the fact that after more than five years since the applicant had lodged his criminal complaint not a single final judicial decision had been taken on the merits of the case, the Court concludes that the State authorities failed to conduct an effective investigation into the applicant's allegations of ill-treatment.

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

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

71. The applicant complained that he had been unlawfully held in police custody between 4 p.m. on 27 November 2006 and 2 a.m. on 28 November 2006. He relied on Article 5 § 1 of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;"

A. Admissibility

72. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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

73. The applicant submitted that on 27 November 2006 he was apprehended by police officers from the Bihor Police Inspectorate without any explanation. He claimed that he was not allowed to leave of his own free will or to phone his family or lawyer. He was guarded by police officers while in the hospitals and the ambulance that transported him from Huedin Hospital to Cluj Hospital, and was handcuffed in Huedin Hospital. He therefore concluded that this treatment amounted to a deprivation of his liberty and not a mere restriction upon his liberty.

74. The applicant further submitted that his deprivation of liberty was not in compliance with Articles 183 and 184 of the Code of Criminal Procedure. He emphasised that he had never been summoned to appear before the Prosecutor's Office attached to the Cluj Court of Appeal before 27 November 2006 and that no reasons had been provided by the Romanian authorities for taking such a measure against him.

75. The Government contended that the enforcement of the order to appear before the criminal-investigation authority issued in the applicant's name could not be considered a deprivation of liberty within the meaning of Article 5 § 1. They claimed that the applicant had willingly accompanied the police officers from the Bihor Police Inspectorate. They maintained that although the questioning of the applicant had lasted one and a half hours (between 0.30 a.m. and 1.52 a.m.), enforcement of the measure had taken longer because of the applicant's problematic medical condition. The Government further submitted that the order to appear before the criminal-investigation authority had been issued in compliance with the national law and had been justified by the investigators' doubt that the applicant would present himself for questioning at the police headquarters.

2. The Court's assessment

(a) General principles

76. The Court reiterates that Article 5 of the Convention enshrines a fundamental right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. In proclaiming the "right to liberty", paragraph 1 of Article 5 contemplates the physical liberty of the person; its aim is to ensure that no one should be deprived of that liberty in an arbitrary fashion. Sub-paragraphs (a) to (f) of Article 5 § 1

contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty, and no deprivation of liberty will be lawful unless it falls within one of those grounds.

77. The Court also reiterates that in order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5, the starting point must be his concrete situation, and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation of and restriction upon liberty is merely one of degree or intensity, and not one of nature or substance (see *Austin and Others v. the United Kingdom* [GC], nos. 39692/09, 40713/09 and 41008/09, § 57, 15 March 2012). Admittedly, in determining whether or not there has been a violation of Convention rights it is often necessary to look beyond the appearances and the language used, and concentrate on the realities of the situation (see *Van Droogenbroeck v. Belgium*, 24 June 1982, § 38, Series A no. 50).

78. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law (see *Medvedyev and Others v. France* [GC], no. 3394/03, § 79, ECHR 2010).

(b) Application in the instant case

79. Firstly, the Court considers it necessary to establish the period to be taken into consideration. It notes that it is not disputed that at about 4 p.m. on 27 November 2006 the applicant was taken by three police officers from his home in Borş and transported to Cluj in connection with a criminal investigation. The parties also agreed that the applicant had been released at 1.52 a.m. the next day. In this connection, the Court concludes that the measure complained of started at about 4 p.m. on 27 November 2006 and lasted until 1.52 a.m. the following day.

80. The Court further notes that while the applicant claimed that he was forced to accompany the police officers, the Government contended that the applicant agreed to accompany them. In this connection, the Court notes that the applicant was guarded by police officers continuously and that at no point during the journey from Borş to Cluj was the applicant allowed to leave of his own free will. It also notes that the applicant was guarded by the police officers also while in hospital and in the ambulance transporting him from Huedin to Cluj Hospital. The Court therefore considers that the applicant was under the authorities' control throughout the entire period, and concludes that he was deprived of his liberty within the meaning of Article 5 § 1 of the Convention.

81. The Court must now determine whether the applicant was deprived of his liberty "in accordance with a procedure prescribed by law" within the meaning of Article 5 § 1 of the Convention. The words "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. While it is normally in the first place for the national authorities, notably the courts, to interpret and apply domestic law, the position is different in relation to cases where failure to comply with the law entails a breach of the Convention. This applies, in particular, to cases in which Article 5 § 1 of the Convention is at stake and the Court must then exercise a certain power to review whether national law has been observed (see *Baranowski v. Poland*, no. 28358/95, § 50, ECHR 2000-III). In particular, it is essential, in matters of deprivation of liberty, that the domestic law define clearly the conditions for detention and that the law be foreseeable in its application (see *Zervudacki v. France*, no. 73947/01, § 43, 27 July 2006, *Creangă v. Romania* [GC], no. 29226/03, § 101, 23 February 2012).

82. The Court notes that in the present case, the legal basis for depriving the applicant of his liberty was Articles 183 and 184 of the Romanian Code of Criminal Procedure in force at the time.

83. According to Article 183 § 1, an individual could be brought before a criminal-investigation body or a court on the basis of an order to appear, if, being previously summoned, he or she had not appeared and his or her hearing or presence was necessary. In this connection, the Court notes that while the applicant contended that he had never been summoned to appear before the Cluj authorities in connection with criminal proceedings against him, the Government failed to submit any evidence to the contrary, as for example a copy of the summons.

84. The Court further notes that, pursuant to Article 183 § 2 of the same code, an offender or a defendant could be exceptionally brought before the courts on the basis of an order to appear even before being summoned, if the criminal-investigation body or the court considered that this measure was necessary for the determination of the case, and provided reasons why.

85. In this respect the Court observes that the prosecutor's order of 27 November 2006 issued on the basis of Article 183 § 2 of the Romanian Code of Criminal Procedure did not contain any reason justifying the measure. The Court therefore concludes that by omitting to specify the reasons on which it was based, the prosecutor's order failed to conform to the rules applicable to domestic criminal procedure.

86. The Court also notes that the subsequent prosecutor's decisions in connection with the criminal proceedings initiated by the applicant against the police officers contain discrepancies concerning the reasons for issuing an order to appear. According to the decision delivered by the Prosecutor's Office attached to the Cluj Court of Appeal on 12 February 2008, criminal

proceedings had been initiated against the applicant on 27 November 2006 and his deprivation of liberty had been justified by the necessity to interview him immediately, even before summoning him. However, in his decision of 1 August 2008 the head of the Prosecutor's Office attached to the Cluj Court of Appeal argued that the prosecutor issued an order to appear because the applicant, although legally summoned, had refused to go to the police station to make a statement.

87. Furthermore, the Court doubts whether the applicant's deprivation of liberty and his transport to a city located 200 km from his home, escorted by ten police officers, was necessary to ensure that he gave a statement. In addition, the Court notes that the prosecution dropped the charges against the applicant because his guilt could not be proved.

88. The Court considers that the above circumstances disclose that the applicant was not deprived of his liberty in accordance with a procedure prescribed by domestic law, which renders the deprivation of the applicant's liberty between 4 p.m. on 27 November 2006 and 2 a.m. on 28 November 2006 incompatible with the requirements of Article 5 § 1 of the Convention.

89. There has therefore been a violation of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

90. The applicant complained that he had not been promptly informed of the reasons for his deprivation of liberty. He relied on Article 5 § 2 of the Convention, which reads as follows:

> "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

A. Admissibility

91. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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

92. The applicant submitted that he had complained that he had not been informed immediately about the reasons for the deprivation of his liberty at

the time he was apprehended on 27 November 2006. He further claimed that he had never been informed about the reasons for his deprivation of liberty and had never been presented with a copy of the order to appear before an investigating body. He admitted that he had been briefly informed about the charges against him approximately eight hours after being apprehended by police officers.

93. The Government submitted that the provisions of Article 5 § 2 of the Convention were not applicable, as the applicant had not been taken into custody by the police but had been escorted by police officers to the Prosecutor's Office attached to the Cluj-Napoca District Court for interrogation pursuant to an order to appear before the criminal-investigation authority. They further contended that the police officers had informed the applicant verbally about the accusations against him when he was first arrested, and had then informed him *in extenso* of the accusations within eight hours of his arrest.

94. The Government concluded that the applicant had waived his right under Article 5 § 2 because he had refused to take part in the investigation after the case had been remitted to the prosecutor the second time.

2. The Court's assessment

95. The Court reiterates that paragraph 2 of Article 5 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its particular features (see, *mutatis mutandis*, *Murray v. the United Kingdom*, 28 October 1994, § 72, Series A no. 300-A).

96. The Court notes that there are discrepancies between the applicant's and the Government's accounts of the circumstances. Thus, while the Government contended that the applicant had been informed immediately of the reasons for his detention and that he agreed to accompany the police officers to Cluj, the applicant maintained that he had not been informed at the time of his taking into custody about the reasons for depriving him of his liberty. However, the Court notes that the parties agreed that the applicant was informed of the charges against him on arrival at Cluj Police Station almost eight hours later.

97. The Court reiterates that a person must be informed at or soon after the time of arrest, or be able to deduce the reasons of arrest from the

questioning or the circumstances within a few hours of arrest. Having regard to its case-law (see in particular *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, §§ 41-43, Series A no. 182, where an interval of up to seven hours between the arrests and the giving of all the information were found to meet the requirement of promptness and *Čonka v. Belgium*, no. 51564/99, §§ 51-53, ECHR 2002-I where no violation was found when broad reasons for detention were given upon detention and written reasons supplied two days later) the Court considers that in the context of the present case an interval of eight hours cannot be regarded as falling outside the time constraints imposed by the notion of promptness in Article 5 § 2. Moreover, the Court considers that the reasons for the applicant's deprivation of liberty were sufficiently brought to his attention during his interview.

98. In conclusion, Article 5 § 2 of the Convention has not been breached.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

99. Lastly, the applicant complained under Article 6 § 1 of the Convention, about the lack of impartiality on the part of the domestic courts.

However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

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 35,000 euros (EUR) in respect of non-pecuniary damage, in compensation for the physical and emotional harm caused to him by the domestic authorities. He did not claim any amount in respect of pecuniary damage.

102. The Government contended that the amount claimed by the applicant in respect of non-pecuniary damage was excessive and that the mere acknowledgement of a violation of the Convention would represent in itself a just satisfaction.

103. The Court awards the applicant EUR 9,750 in respect of non-pecuniary damage.

B. Costs and expenses

104. The applicant also claimed EUR 415 for the costs and expenses incurred before the domestic courts. For the expenses and costs incurred before the Court he claimed EUR 4,398.5, of which EUR 5.93 were for the costs of correspondence with the Court and EUR 4,391.6 for lawyer's fees. In this respect, the applicant presented a legal fees agreement with his representatives and an approved timesheet of the legal work performed before the Court. In addition, he presented receipts for the costs related to his correspondence with the Court and invoices for the fuel he allegedly bought for his transport to the domestic courts.

105. The Government maintained that the applicant's claim concerning his travel costs for allegedly participating in the domestic proceedings was unsubstantiated, as the applicant did not submit evidence that the costs had been incurred in connection with the judicial proceedings. They further claimed that the amount representing the lawyer's fees was excessive given the financial crisis and the real contribution of the lawyer to the proceedings.

106. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court reiterates that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing, together with the relevant supporting documents and within the time-limit fixed for the submission of the applicant's observations on the merits, "failing which the Chamber may reject the claim in whole or in part". In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 4,398 for the proceedings before the Court.

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. *Declares* the complaints concerning Articles 3, 5 §§ 1 and 2 of the Convention admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

4. *Holds* that there has been no violation of Article 5 § 2 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, the following amounts, which are to be to be converted into the respondent State's national currency at the rate applicable on the date of settlement:
      (i) EUR 9,750 (nine thousand seven hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,398 (four thousand three hundred and ninety-eight euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

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

Done in English, and notified in writing on 20 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President