

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

THIRD SECTION

CASE OF HADADE v. ROMANIA

(Application no. 11871/05)

JUDGMENT

STRASBOURG

24 September 2013

FINAL

24/12/2013

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Hadade v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Ján Šikuta,
Nona Tsotsoria,
Kristina Pardalos,
Johannes Silvis, *judges,*

and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 3 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 11871/05) 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 Mircea Hadade ("the applicant"), on 18 February 2005.

2. The applicant was represented by Mr R.V. Doseanu, a lawyer practicing in Oradea. The Romanian Government ("the Government") were initially represented by their Co-Agent, Ms I. Cambrea and subsequently by their Agent Ms C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged that his rights guaranteed by, *inter alia*, Articles 3 and 5 of the Convention had been breached. Relying on Article 3, he complained, in particular, that the material conditions of his detention in Oradea Prison had been inadequate, and that on numerous occasions before being convicted he had been brought before the domestic courts wearing a prison uniform and handcuffs. Relying on Article 5, he complained that his initial detention, and continued detention thereafter, had been without justification and excessively lengthy, and that the Oradea Court of Appeal had failed to examine speedily appeals on points of law lodged by him after 18 August 2004 against interlocutory judgments delivered by the Bihor County Court extending his pre-trial detention.

4. On 1 December 2011 the application was communicated to the Government. It was also 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

5. The applicant was born in 1957 and lives in Oradea.

A. The criminal investigation stage of the proceedings

6. On 11 April 2003 the Bihor Police Border Guard Department informed the Bihor Prosecutor's Office that the applicant, *inter alia*, was investigated in relation to commission of two offences: organising a criminal group and unlawfully trafficking migrants.

7. On the same date the Bihor Prosecutor's Office issued an order to appear on the applicant's name in order for him to be questioned as a suspect in relation to commission of the offences.

8. By a decision of 12 April 2003, the Bihor Prosecutor's Office authorised the Bihor Police Border Guard Department to initiate a criminal investigation in respect of the applicant.

9. On 7 May 2003, in the presence of his chosen legal representative, the applicant was informed of his procedural rights and signed a written statement acknowledging that he had been informed by the authorities that he had been charged with both offences of which he was suspected. On the same date, the applicant was questioned by the Bihor Prosecutor's Office in respect of the charges brought against him. He was detained for thirty days pending trial under Article 148 (c), (e), (f) and (h) of the Romanian Code of Criminal Procedure on the grounds that he had absconded, that there was sufficient evidence to suspect that he might commit other offences or that he would obstruct the investigation, that he was a repeat offender, that the prison sentence prescribed by law for the offences with which he had been charged was in excess of two years, and that his release would pose a danger to public order.

B. The trial stage: proceedings before the first-instance court

10. On 30 May 2003 the Bihor Prosecutor's Office indicted the applicant for organising a criminal group and for unlawfully trafficking migrants and sent his case for trial.

11. On 4 June 2003 at the first hearing before the Bihor County Court, the applicant contested the lawfulness of his pre-trial detention and asked the court to release him. By an interlocutory judgment delivered the same day, the Bihor County Court extended the applicant's pre-trial detention on the grounds that it was lawful and the reasons justifying his initial detention remained valid. The court held that the applicant's release would constitute

a danger to public order, that the offences attracted a severe punishment and that it had been proven that the applicant had absconded, because immediately after he had found out about the investigation initiated into his actions he had left his home and was later found at a different address. In addition, he was a repeat offender and there was evidence in the file suggesting that he had committed the offences. The applicant lodged an appeal on points of law (*recurs*) against the interlocutory judgment.

12. By an unappealable interlocutory judgment of 12 June 2003, the Oradea Court of Appeal dismissed the applicant's appeal on points of law against the interlocutory judgment of 4 June 2003 as inadmissible. It held that, in accordance with the applicable rules of criminal procedure, the interlocutory judgment in question was not amenable to an appeal on points of law.

13. By interlocutory judgments of 23 June, 21 July, 18 and 25 August, 15 September, 13 October, 30 October, 10 November and 15 December 2003; 26 January, 23 March, 18 May, 24 June, 12 August, 9 September, 7 and 29 October, 11 November and 9 December 2004; and 6 January, 9 February and 11 March 2005, the Bihor County Court extended the applicant's pre-trial detention on the grounds that his arrest had been lawful, the reasons justifying his initial detention remained valid, there was evidence in the file suggesting that he had committed the offences, the length of his pre-trial detention was not unreasonable, and that there was evidence suggesting that he was a danger to public order and might re-offend, given the danger he had posed to society shortly after having served a previous prison sentence. The court also dismissed, without providing any additional details, the applicant's request for his pre-trial detention to be replaced with alternative measures, such as a prohibition on leaving town. The applicant lodged appeals on points of law against all the interlocutory judgments of the Bihor County Court, except for those delivered on 18 May 2004 and 6 January, 9 February and 11 March 2005.

14. By unappealable interlocutory judgments of 1 and 25 July, 21 and 28 August, 17 September, 20 October, 10 and 13 November, and 18 December 2003; 23 and 25 March, 6 July, 19 August, 21 September, 12 October, 9 and 18 November, and 21 December 2004, the Oradea Court of Appeal dismissed the applicant's appeals on points of law as inadmissible or as ill-founded. The Court of Appeal relied on the same reasons as the Bihor County Court to dismiss the applicant's appeals on points of law.

15. On 20 April 2004 the applicant sought withdrawal of all the judges attached to the Bihor County Court and the Oradea Court of Appeal.

16. By an interlocutory judgment of 21 April 2004, the Court of Cassation dismissed the applicant's request for withdrawal of the judges attached to the Oradea Court of Appeal as inadmissible on the grounds that the applicant had not provided any reasons for his request. It referred the case back to the Oradea Court of Appeal to examine the request for

withdrawal of the judges attached to the Bihor County Court. By an unappealable interlocutory judgment of 6 May 2005, the Court of Cassation dismissed the applicant's appeal against the decision as ill-founded.

17. By an interlocutory judgment of 21 April 2004, the Oradea Court of Appeal dismissed the applicant's request of 20 April 2004 for withdrawal of all the judges of the Bihor County Court on the grounds that the applicant had not provided reasons for his request in accordance with the applicable rules of criminal procedure. At the same time, the court extended the applicant's pre-trial detention on the grounds that his arrest had been lawful and the reasons justifying his initial detention remained valid. By an unappealable interlocutory judgment of 23 April 2004 the Court of Cassation dismissed the applicant's appeal on points of law against the interlocutory judgment as ill-founded.

18. By unappealable interlocutory judgments of 31 March and 27 April 2005, the Bihor County Court dismissed several pleas of unconstitutionality made by the applicant in respect of various provisions of the Romanian Code of Criminal Procedure on the grounds that either the applicant had not provided reasons for his pleas as required by the applicable rules of criminal procedure, or that they had no relevance to the case. The court refused his request to refer them to the Constitutional Court.

19. By an unappealable interlocutory judgment of 15 April 2005, the Bihor County Court allowed a plea by the applicant as to the unconstitutionality of Article 140 § 2 of the Romanian Code of Criminal Procedure concerning the length of his pre-trial detention, and referred the case to the Constitutional Court.

20. By an interlocutory judgment of 27 May 2005, the Bihor County Court dismissed the applicant's complaint concerning the length of his pre-trial detention on the grounds that his conduct, including repeated pleas of unconstitutionality and requests for withdrawal of the judges, had contributed to the length of the proceedings. The court extended the applicant's pre-trial detention on the grounds that the reasons justifying his initial detention remained valid, that he had been charged with serious offences, and that his release would constitute a danger to public order on account of the seriousness of his actions and his attitude during the proceedings. The applicant lodged an appeal on points of law against the interlocutory judgment.

21. By an unappealable interlocutory judgment of 1 June 2005, the Oradea Court of Appeal dismissed the applicant's appeal and upheld the decision of 27 May 2005. It held that the applicant's pre-trial detention was lawful and that the reasons justifying his initial detention remained valid, that he was charged with serious offences, and that there were no reasons to justify his release. It further held that the dangerousness of the offences, the particular circumstances of the case, the applicant's personal circumstances, the international efforts made to stop similar offences from occurring, the

negative impact on society of a decision to release a person charged with serious offences, and the potential impression it would give that the law had not been enforced if he was to be released, justified his pre-trial detention.

22. By interlocutory judgments of 23 June and 11 July 2005, the Bihor County Court extended the applicant's pre-trial detention on the grounds that the reasons justifying his initial detention remained valid. It reiterated its previous findings that the applicant's detention had been lawful, that it was not unreasonably lengthy, that his conduct contributed to the length of the proceedings, and that the pleas of unconstitutionality made by the applicant were irrelevant to the case. The applicant lodged an appeal on points of law against both interlocutory judgments.

23. By unappealable interlocutory judgments of 8 and 15 July 2005 respectively, the Oradea Court of Appeal dismissed the applicant's appeals on points of law against the interlocutory judgments of 23 June and 11 July 2005 respectively, as ill-founded. It held that the reasons justifying the applicant's initial detention remained valid and that an alternative measure was not justified considering that the circumstances that had led to his detention had not changed.

24. By unappealable interlocutory judgments of 3 and 29 August and 13 September 2005, the Oradea Court of Appeal dismissed the applicant's appeals on points of law against the Bihor County Court's interlocutory judgments of 1 and 19 August and 5 September 2005. It extended the applicant's pre-trial detention on the grounds that the reasons justifying his initial detention remained valid and that he continued to be a danger to public order. In addition, it held that the length of his pre-trial detention was not unreasonable, considering that neither the domestic law nor the European Convention on Human Rights imposed any time-limits on the length of such detention. Moreover, alternative measures were not justified given the above-mentioned considerations.

25. By a judgment of 30 September 2005, the Bihor County Court convicted the applicant of organising a criminal group and of unlawfully trafficking migrants on the basis of documentary and testimonial evidence and sentenced him to five years' imprisonment. At the same time, the court extended the applicant's detention. The applicant appealed against the judgment, arguing that the first-instance court had incorrectly assessed the evidence, had misinterpreted the applicable legal provisions and had unlawfully seized his car.

26. By a final judgment of 13 October 2005, the Constitutional Court dismissed the applicant's plea of unconstitutionality made on 15 April 2005 on the grounds that no provision of the Constitution could be interpreted to limit the length of pre-trial detention during the trial stage of the proceedings to a specific number of days.

C. Proceedings before the appellate courts

27. By a judgment of 17 January 2006, the Oradea Court of Appeal allowed the applicant's appeal in part, acknowledged that the seizure of the applicant's car had been unlawful and ordered the authorities to return it to him. It upheld the remainder of the judgment of 30 September 2005. The applicant lodged an appeal on points of law against the judgment. He argued that the lower court had incorrectly assessed the evidence justifying the applicant's sentence.

28. By a final judgment of 27 March 2006 the Court of Cassation allowed the applicant's appeal on points of law in part and reduced his sentence from five to four years' imprisonment. It dismissed the remainder of the applicant's appeal on points of law and upheld the judgments of the lower court.

D. The applicant's detention

29. On 10 March 2005 the applicant lodged a complaint with the Oradea District Court, relying, *inter alia,* on Emergency Ordinance no. 56/2003 on the serving of prison sentences. He claimed that his right to be presumed innocent had been breached, in so far as the authorities of Oradea Prison had brought him before the domestic courts dressed in a prison uniform and handcuffs, usually worn by convicted individuals. He also claimed that he had been forced to share a cell with such detainees and had been chained to them when he had been brought before the courts. Furthermore, the applicant complained of inhuman and degrading treatment, as he had been detained in a damp and small cell without natural light or fresh air, which had affected his breathing.

30. On 26 May 2005 the applicant set out details of his complaints to the domestic court. He argued that his right to be presumed innocent had been breached, as he had been forced to wear the same prison uniform as persons already convicted by the courts, and had been detained in the same section of the prison as dangerous detainees. In addition, he claimed compensation for non-pecuniary damage of 1,000,000 euros (EUR) on the grounds that his life had been endangered as a result of his human rights having been breached during his detention.

31. On 16 June 2005 the applicant set out details of his complaints for a second time, arguing that the actions of the prison authorities amounted to an abuse of power and inhuman and degrading treatment and motioned the court to have a criminal investigation initiated against them for the said offences.

32. On the same date the Bihor District Court referred the case to the Bihor Prosecutor's Office in order for an investigation to be conducted into

the applicant's allegations of abuse of power and inhuman and degrading treatment.

33. By a decision of 18 August 2005, the Bihor Prosecutor's Office referred the case back to the Bihor District Court on the grounds that the applicant specified his action arguing that he did not lodge criminal proceeding against the employees of the prison, but he asked the court to examine and decide on the lawfulness of the rules concerning detainees.

34. By a judgment of 13 October 2005, the Oradea District Court dismissed the applicant's complaint on the grounds that it was inadmissible. It noted that the complaint had in fact concerned the lawfulness of the rules concerning the internal organisation of the prison system, in so far as he had alleged that his right to be presumed innocent had been breached during his presence in the said detention facility as a pre-trial detainee as a result of him being forced to wear the same prison uniforms as convicted individuals and by being incarcerated in the prison section reserved for dangerous detainees without him lodging a criminal complaint against any of the prison employees allegedly responsible for such actions. Consequently, the court was not competent to examine his claims.

35. On 25 April 2012 the Government informed the Court that the applicant had been detained in Oradea Prison from 3 June 2003 to 16 January 2007. Between 2 February and 16 March 2004 and 27 February and 11 April 2006, he had been detained in Jilava Prison in order to be brought before the courts that had summoned him. During his detention in Oradea Prison the applicant had been held in dormitories 87, 88, 99, 143, 144, 145, 146 and 148. Dormitories 87 and 88 were located in Section 6 of the prison, which was fully refurbished in 2000. Both of the dormitories had twenty beds and measured 38.24 and 41.47 sq. m. respectively. They were also fitted with two windows each: one facing the hallway of the section (measuring 0.49 and 0.51 sq. m. respectively), and a second facing outside (measuring 0.99 and 0.94 sq. m. respectively). Dormitory 99 was located in Section 7 of the prison, which was also fully refurbished in 2000. It had twenty beds, measured 29.29 sq. m. and was fitted with two windows, one facing the hallway of the section (measuring 0.46 sq. m.), and a second facing outside (measuring 0.94 sq. m.). Dormitories 143, 144, 145, 146 and 148 were located in Section 9 of the prison, which had been newly built in 2004. Each of the dormitories had eight beds, measured 16.60 sq. m. and were fitted with a window measuring 1.21 sq. m. that ensured natural light and ventilation.

36. On the same date the Government informed the Court that all the dormitories were also equipped with adequate electric lighting and were heated by radiators. Furthermore, during the applicant's detention the number of detainees living in those particular dormitories had never exceeded the number of available beds.

37. On 26 April 2012 the Government informed the Court that between 21 May 2003 and 23 June 2004, the national legislation concerning the outfits of detainees when brought before courts had changed repeatedly. That legislation was complemented by the rules adopted by the National Administration of Prisons. They also submitted documents confirming that on 10 November 2003, 15 May, 21 and 30 November, 15 October and 8 December 2005, and 24 February and 16 May 2006, the applicant had been allowed to receive clothes from his relatives. In respect of the applicant's alleged handcuffing, they informed the Court that the authorities of Oradea Prison had obeyed the applicable legal provisions concerning restraint when they had brought the applicant before the domestic courts.

38. On the same date the Government informed the Court that the applicant's appeal on points of law against the judgment of 13 October 2005 of the Oradea District Court had been dismissed as ill-founded by the Bihor County Court on 17 May 2006. They provided documentary evidence but did not provide a full copy of the judgment of 13 October 2005.

II. RELEVANT DOMESTIC LAW AS WELL AS INTERNATIONAL DOCUMENTS

39. Articles 998 and 999 of the former Civil Code provide that any person who has suffered damage can seek redress by bringing a civil action against the person who has intentionally or negligently caused that damage.

40. The relevant provisions of Law no. 23/1969 concerning the serving of prison sentences, in so far as they concern the material conditions of detention, are described in *Năstase-Silivestru v. Romania*, (no. 74785/01, §§ 23-25, 4 October 2007).

41. Article 40 § 4 of Law no. 23/1969 provided that detainees under criminal investigation or undergoing trial were to wear their own clothes, unless there were valid reasons for them to wear the outfit provided by the detention facility.

42. The Constitutional Court, in Decision no. 99 of 1 November 1994 (published in Official Gazette no. 348 of 15 December 1994), provided that Article 40 § 4 of Law no. 23/1969 was constitutional only in so far as the expression "valid reasons" was understood to mean that the clothes of the detainees under criminal investigation or undergoing trial were dirty or unusable and that the outfit provided by the detention centre was different from the outfit provided to convicted individuals.

43. On 9 July 2001 the General Directorate for Prisons attached to the Ministry of Justice issued Order no. 113 prohibiting the prison authorities, with immediate effect, from dressing detainees in prison uniforms with a stripy pattern. The order was not published in the Official Gazette, but was distributed through hierarchical channels to the national prison authorities.

44. On 21 May 2003 the General Directorate for Prisons issued Order no. 3151 concerning measures to be taken in respect of the dress codes of detainees. The order was not published in the Official Gazette, but was distributed through hierarchical channels to the national prison authorities.

According to the order:

> "In order to observe the national legislation concerning the serving of prison sentences, the recommendations of non-governmental organisations ... and the current international practice in the field, individuals in custody shall wear, as a rule, their own clothes ... Detainees belonging to that category, who do not possess the required clothing, shall wear the outfit provided by the prison administration...
>
> ...
>
> Detainees shall be informed of the provisions of the present Order..."

45. Article 1 of Government Emergency Ordinance no. 56 of 25 June 2003 concerning the rights of detainees prohibited, as a general rule, the subjection of any person serving a prison sentence to torture, inhuman and degrading treatment or any other type of ill-treatment. Article 3 provided prisoners with the right to bring legal proceedings concerning measures taken by prison authorities in connection with their rights. That ordinance was repealed and replaced by Law no. 275 of 20 July 2006 concerning the execution of sentences, which in its Article 38 provides for a similar remedy as the above-mentioned Article 3, in that a judge would have jurisdiction over complaints by prisoners against measures taken by prison authorities (see also *Petrea v. Romania*, no. 4792/03, §§ 21-23, 29 April 2008; *Gagiu v. Romania*, no. 63258/00, § 42, 24 February 2009; and *Măciucă v. Romania*, no. 25763/03, § 14, 26 May 2009).

46. The relevant provisions regulating the transportation of detainees in force at the time are described in *Ali v. Romania*, (no. 20307/02, § 46, 9 November 2010). In particular, the Ministry of the Interior's Instruction no. 901/1999 on the organisation and functioning of preventive detention facilities under the control of the Ministry of the Interior provided that handcuffs were to be used on all detainees during transportation. The instruction was not published in the Official Gazette.

47. On 22 July 2003 the General Directorate for Prisons issued Order no. 3996 concerning the way detainees were brought before the courts. The order was not published in the Official Gazette, but was distributed through hierarchical channels to the national prison authorities.

According to the order, as a general rule:

> "Detainees escorted to courts or to other public places (State buildings, hospitals, clinics, forensic medical laboratories etc.) shall be dressed in special civilian clothing, specifically designed (for use in court), which shall not bear any distinctive branding. Detainees and persons detained pending trial who the State or courts have expressly asked to be brought before them in their own civilian clothes are exempted from this rule ...

> Methods of restraint shall be used when the detainee is transferred from the vehicle in which he is transported to the holding room and from the holding room to the witness-box in the courtroom. The methods of restraint shall be removed for the hearings ..."

48. On 19 April 2004 the General Directorate for Prisons issued Order no. 2846 concerning the outfits to be provided to detainees in order to be brought before the courts. The order was not published in the Official Gazette, but was distributed through hierarchical channels to the national prison authorities.

According to the order, as a general rule:

> "...
>
> The "blue-jeans" outfit shall be used exclusively for dressing detainees still under criminal investigation or undergoing trial, if they are to be brought before the courts ..."

49. On 23 June 2004 the General Directorate for Prisons issued Order no. 3609 concerning, *inter alia*, rules for dressing detainees in order to be brought before the courts. The order was not published in the Official Gazette, but was distributed through hierarchical channels to the national prison authorities.

According to the order, as a general rule:

> "...Detainees not yet convicted shall be brought before the courts or other public authorities wearing their own clothes if they are decent, appropriate, clean and adequate for that time of year.
>
> Detainees not yet convicted by the courts and who do not have their own clothes, or whose clothes are not decent, appropriate, clean or adequate for that time of year, shall be brought before the courts or other public authorities in a "blue-jeans" outfit.
>
> ...
>
> The provisions of the present Order enter force on 19 July 2004..."

50. The relevant findings and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") are described in *Bragadireanu v. Romania* (no. 22088/04, §§ 73-76, 6 December 2007) and *Artimenco v. Romania* (no. 12535/04, §§ 22-23, 30 June 2009).

51. Article 141 § 1 and 2 of the Romanian Code of Criminal Procedure provide that interlocutory judgments extending pre-trial detention are amenable to an appeal on points of law. The time-limit for the appeal on points of law is twenty-four hours from the moment the interlocutory judgment was delivered to those present, or from the moment of communication to those absent. The file shall be referred to the appellate court within twenty-four hours, and the appeal on points of law shall be examined within three days.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

52. Relying on Article 3 of the Convention, the applicant complained that he had been subjected to inhuman and degrading treatment because in Oradea Prison he had been detained in cells which were small, damp and without enough natural light or fresh air, which had affected his breathing. Relying on Articles 3 and 6 of the Convention, the applicant also complained that he had been subjected to degrading treatment and that his right to be presumed innocent had been breached because he had been made to wear handcuffs and a prison uniform on several occasions when being taken before the courts during the hearings held in the criminal proceedings opened against him.

53. The Court reiterates that since it is master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by an applicant or a government. By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by those appearing before it. A complaint is characterised by the matters alleged in it, and not merely by the legal grounds or arguments relied on (see, *mutatis mutandis, Powell and Rayner v. the United Kingdom*, 21 February 1990, § 29, Series A no. 172; *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I; *Berktay v. Turkey*, no. 22493/93, § 167, 1 March 2001; and *Eugenia Lazăr v. Romania*, no. 32146/05, § 60, 16 February 2010).

54. Having regard to the facts of the present application, the Court considers that the part of the applicant's complaints concerning the wearing of handcuffs and a prison uniform before the domestic courts, communicated to the respondent Government under Article 3 of the Convention, must be examined exclusively under that Article. The relevant provisions of the Article read as follows:

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

A. Complaint concerning the material conditions of the applicant's detention

1. Admissibility

(a) Non-exhaustion of domestic remedies

(i) Submissions of the parties

55. The Government raised a preliminary objection of non-exhaustion of domestic remedies, in so far as the applicant had not complained to the authorities about the conditions of his detention either under Emergency Ordinance no. 56/2003 or Law no. 275/2006 enacted later. In addition, they pointed out that the applicant could have brought a civil claim under Articles 998 and 999 of the former Romanian Civil Code for compensation for the alleged damage. They argued that the remedies referred to were effective, having regard to the case-law already sent by them in previous cases such as, *inter alia*, *Leontiuc v. Romania* (no. 44302/10, 4 December 2012).

56. They further submitted that the Court had implicitly recognised that a civil claim represented an effective remedy in its decision in *Stan v. Romania* ((dec.), no. 6936/03, 20 May 2008).

57. The applicant did not submit observations on this point.

(ii) The Court's assessment

58. The Court notes that the applicant's complaint concerns the material conditions of his detention, in particular, cells which were small, damp and which lacked natural light and fresh air. In this connection, it notes that in recent applications lodged against Romania and concerning similar complaints, it has already found, given the specific nature of this type of complaint, that the legal actions suggested by the Government, including bringing a civil claim, do not constitute effective remedies (see *Eugen Gabriel Radu v. Romania*, no. 3036/04, § 23, 13 October 2009; *Iamandi v. Romania*, no. 25867/03, § 49, 1 June 2010; *Lăutaru v. Romania,* no. 13099/04, § 84, 18 October 2011; and *Leontiuc*, cited above, § 49).

59. The Court therefore concludes that the domestic case-law referred to by the Government does not indicate how the legal action proposed by them could have afforded the applicant immediate and effective redress for the purposes of his complaint (see, *mutatis mutandis*, *Marian Stoicescu v. Romania*, no. 12934/02, § 19, 16 July 2009).

60. It therefore rejects the Government's objection of non-exhaustion of domestic remedies in respect of the applicant's complaint concerning the material conditions of detention in Oradea Prison.

(b) Six-month

(i) Submissions of the parties

61. The Government informed the Court that from 2 February to 16 March 2004 and from 27 February to 11 April 2006 the applicant had been moved from Oradea Prison to Jilava Prison in order to be brought before the courts that had summoned him.

62. The applicant did not contradict the Government's submissions.

(ii) The Court's assessment

63. The Court notes, in so far as the information submitted by the Government could be considered to amount to a preliminary objection of being outside the six-month time-limit or to a claim that his circumstances did not amount to a continuous situation, that it has already examined the issue in similar cases (see *Seleznev v. Russia*, no. 15591/03, § 35, 26 June 2008). By relying on relevant case-law, it established that it would not consider detention conditions a continuous situation in circumstances where the complaint concerned a specific event, treatment or particular detention regime attached to an established period of detention. On the other hand, the situation would be considered continuous where the complaint concerned general issues and detention conditions which remained similar despite the detainee having been transferred (ibid., § 36).

64. The Court notes in the present case that the applicant complained about the detention conditions in Oradea Prison. It also notes that on 2 February 2004 and 27 February 2006 he was transferred to Jilava Prison, where he spent approximately one month and two weeks on each occasion (until 16 March 2004 and 11 April 2006 respectively). He did not complain about the material conditions of detention in Jilava Prison. However, having regard to the length of the applicant's detention in Oradea Prison, the relatively short duration of the applicant's detention in Jilava Prison and the fact that he returned to Oradea Prison after each occasion, the Court cannot conclude that his transfers on 2 February 2004 and 27 February 2006 brought significant changes to his detention conditions or that there was therefore no continuous situation (see, *mutatis mutandis*, *Eugen Gabriel Radu*, cited above, § 24).

65. It therefore rejects the Government's preliminary objection and claim.

66. Lastly, the Court notes that the applicant's complaint concerning the material conditions of detention in Oradea Prison 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.

2. Merits

(a) Submissions of the parties

67. The applicant contended that the conditions of his detention had been inadequate.

68. The Government submitted that all the cells the applicant had been detained in were fitted with windows, and consequently he had had access to natural light and fresh air. Moreover, the number of detainees incarcerated in the cells had never exceeded the number of available beds, namely eight beds for the cells measuring 16.60 sq. m., and twenty beds for the cells measuring between 29.29 and 41.47 sq. m.

(b) The Court's assessment

(i) Relevant principles

69. The Court reiterates that under Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII, and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

70. A serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purposes of establishing whether the detention conditions described are "degrading" for the purposes of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, 7 April 2005).

71. In previous cases the Court has found that the overcrowding was so severe as to justify in itself a finding of a violation of Article 3 of the Convention (see, among many other authorities, *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; *Ciorap v. Moldova*, no. 12066/02, § 70, 19 June 2007; *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Brânduşe v. Romania*, no. 6586/03, § 50, 7 April 2009; *Petrea*, cited above, §§ 49-50; *Răcăreanu v. Romania,* no. 14262/03, §§ 49-52, 1 June 2010; and *Ali, cited above*, § 83).

72. The Court observes that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), because in certain instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. A failure on a government's part to submit such information without a satisfactory explanation may give rise to the drawing

of inferences as to the well-foundedness of the applicant's allegations (see *Kokoshkina v. Russia*, no. 2052/08, § 59, 28 May 2009, and *Lăutaru*, cited above, § 96).

(ii) Application of the above principles to the present case

73. The Court has frequently found a violation of Article 3 of the Convention mainly on account of the lack of personal space afforded to detainees (see, among other authorities, *Coman v. Romania*, no. 34619/04, § 59, 26 October 2010; *Lăutaru*, cited above, § 102; and *Onaca v. Romania*, no. 22661/06, § 41, 13 March 2012).

74. In the case at hand, the Government failed to put forward any argument that would allow the Court to reach a different conclusion.

75. Even if the Court accepted that the occupancy rate put forward by the Government was accurate, it notes that the applicant's living space for the time he spent in Oradea Prison was between 1,5 and 2,1 sq. m, and therefore consistently below the minimum surface of 4 sq. m. recommended by the CPT for cells occupied by groups of detainees.

76. The Court further notes that the applicant's description of the cramped conditions of his detention corresponds to the findings made by the CPT report in respect of Romanian prisons (see paragraph 50 above).

77. Even though in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court concludes that the cramped conditions of his detention caused him suffering that exceeded the unavoidable level of suffering inherent in detention, and that it attained the threshold of degrading treatment prescribed by Article 3.

There has accordingly been a violation of Article 3 of the Convention in respect of the material conditions of the applicant's detention in Oradea Prison.

78. Taking these findings into account, the Court does not consider it necessary to examine the remaining parts of his complaint concerning the material conditions of the applicant's detention.

B. Complaint concerning the wearing of handcuffs and a prison uniform before the domestic courts

Admissibility

(a) Submissions of the parties

79. In their submissions concerning the preliminary objections in respect of the material conditions of the applicant's detention, the Government contended, *inter alia*, that the applicant had failed to bring a civil claim against the Oradea Prison authorities under Articles 998 and 999 of the former Romanian Civil Code for compensation for the inappropriate way he was transported between the prisons. They argued that the competent

judicial bodies, in particular the domestic courts, could have examined his claims and awarded him damages.

80. Moreover, in respect of the applicant's complaint concerning the wearing of handcuffs while being brought before the domestic courts, they contended that the domestic legislation in force at the relevant time provided that restraints were to be used only during the detainees' transport to the court room. Those restraints were to be removed for the hearings. The fact that the applicant had failed to raise this issue before the domestic courts is proof that the prison authorities had diligently observed the rules concerning restraints in his case.

81. Furthermore, the Government submitted that the relevant domestic legislation concerning the wearing of prison uniforms had changed repeatedly during the applicant's detention, and that detainees were escorted to public places either wearing their own clothes or outfits provided by the prison authorities which did not bear any distinctive signs. Furthermore, the applicant had received on several occasions items of his own clothing sent in by his relatives.

82. The applicant did not submit any observations on this point.

(b) The Court's assessment

(i) Relevant principles

83. Even assuming that the Government's submissions concerning the civil claim for compensation available to the applicant in respect of his complaint concerning the wearing of handcuffs and a prison uniform before the domestic courts could be qualified as amounting to a preliminary objection of non-exhaustion of domestic remedies, the Court finds it unnecessary to examine the objection because it considers the applicant's complaint in any event inadmissible for the following reasons.

84. The Court observes that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct. In order to fall within the scope of Article 3, the ill-treatment must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, for example, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

85. Furthermore, in considering whether a punishment or treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see *Albert and Le Compte v. Belgium*, 10 February 1983, § 22, Series A no. 58). In this connection, the public nature of the punishment or treatment may be a

relevant factor. At the same time, it should be noted that the absence of publicity will not necessarily prevent a given punishment from falling into that category: it may well suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others (see *Tyrer v. the United Kingdom*, 25 April 1978, § 32, Series A no. 26).

86. The Court reiterates that the use of handcuffs or other methods of restraint does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful detention and does not entail the use of force or public exposure exceeding what is reasonably considered necessary. In this regard, it is important to consider, for instance, the risk of the person' absconding or causing injury or damage (see *Raninen v. Finland*, 16 December 1997, § 56, *Reports* 1997-VIII, and *Mathew v. the Netherlands*, no. 24919/03, § 180, ECHR 2005 IX). However, the manner in which the applicant is subjected to these measures should not go beyond the threshold of a minimum level of severity as envisaged by the Court's case-law under Article 3 of the Convention (see, *mutatis mutandis*, *Nevmerzhitsky v. Ukraine*, no. 54825/00, § 94, ECHR 2005–II).

(ii) Application of the above principles to the present case

87. In respect of the part of the applicant's complaint concerning the use of handcuffs, the Court notes from the outset that the legal basis allowing the restraint of detainees during transportation was the Ministry of the Interior's Instruction no. 901 and the other orders issued by the General Directorate for Prisons (see paragraphs 43-45 and 47-49 above). In accordance with those rules, the restraint of detainees during transportation was automatic and no assessment of the circumstances of each detainee was allowed before deciding whether the measure should be applied. As the proportionality of the measure in question could not be examined under the domestic legislation, it is for the Court to examine the treatment complained of by the applicant. Consequently, it has to assess the circumstances which lead to the application of that measure and the consequences it had on the applicant.

88. The Court can accept that security measures such as the handcuffing of detainees could be necessary to ensure their safety during transportation (see *Raninen*, cited above, § 55). However, that does not mean that in certain instances, the personal circumstances of a detainee could not be taken into consideration when deciding on the necessity of applying the measure in question.

89. In the instant case, the Court notes that the applicant lodged a complaint before the domestic courts (see paragraph 29 above) because, *inter alia*, he had been brought before those courts in handcuffs. At the same time, however, it notes that the applicant set out the details of his complaint on several occasions and that it does not appear from the

available evidence that he pursued it any further. In addition, there is no evidence in the file suggesting that the domestic authorities failed to take all the necessary steps in order to ensure that the applicant was not photographed or filmed by the media. Furthermore, in spite of the numerous hearings he attended, neither he nor his legal representatives asked the domestic courts to order the removal of the handcuffs during the hearings (see *Pop Blaga v. Romania* (dec.), no. 37379/02, § 101, 10 April 2012).

90. In respect of the effects that the impugned treatment had on the applicant, the Court notes that he did not submit any medical expert report or any other evidence showing that it had adversely affected his mental state or that a casual link existed between his mental state and the treatment in question (see *Daniliuc v. Romania*, (dec.), no. 7262/06, § 62, 2 October 2012). Lastly, it does not appear from the available evidence that the handcuffing had affected the applicant physically or that it was aimed at debasing or humiliating him (see *Raninen*, cited above, § 58).

91. In respect of the part of the applicant's complaint concerning the wearing of a prison uniform before the domestic courts, the Court notes that the domestic legislation in force at the relevant time (see paragraphs 41-44 and 47-49 above) provided that the applicant could appear before domestic courts either dressed in his own civilian clothes if they were appropriate, or a plain outfit with no distinctive signs supplied by the prison authorities to detainees who had not yet been convicted.

92. The Court also notes that, while the applicant lodged a complaint before the domestic courts about being forced to wear the same prison uniforms as convicted individuals, it is unclear whether his complaint, despite him having set out details on several occasions, concerned the times he was presented before the domestic courts or his time within the detention facility. In any event, the Court observes that in spite of the numerous hearings he attended during the criminal proceedings against him, it does not appear that either he or his legal representatives applied to the courts for an order that he be brought before them wearing his own civilian clothes or that he be able to change from the outfit he was provided by the prison authorities into his own clothes.

93. Moreover, there is no conclusive evidence in the file that the applicant's mental or physical state was affected by the outfit he allegedly had to wear *in lieu* of his civilian clothes or that the treatment was aimed at debasing or humiliating him.

94. Having regard to the above, the Court is not convinced that the treatment in issue attained the minimum level of severity required by Article 3 of the Convention.

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

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

96. The applicant complained about the lack of valid reasons for placing and maintaining him in pre-trial detention for an excessively long time and the failure of the Oradea Court of Appeal after 18 August 2004 to examine speedily the appeals lodged by him against the interlocutory judgments delivered by the Bihor County Court extending his pre-trial detention. He relied on Article 5 §§ 3 and 4 of the Convention, which, in so far as relevant, reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial ...
>
> Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court ... "

A. Complaint concerning the lack of reasons for the applicant's pre-trial detention and its excessive length

1. Admissibility

97. 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.

2. Merits

(a) Submissions of the parties

98. The applicant argued that the domestic courts had extended his pre-trial detention so that he had been held for an excessively long time, and that they had failed to take into account his personal situation in spite of his repeated requests for release.

99. The Government submitted that the applicant's pre-trial detention could not be considered excessive because of the complexity of the case. They argued that the domestic authorities had taken all the necessary steps for the proper administration of justice and that there had been no distinguishable period of unexplained activity on their part in examining the case. Moreover, the domestic courts had repeatedly examined and extended the applicant's detention, taking into consideration his arguments and providing relevant and sufficient reasons, such as the reasonable suspicion that he had committed the offences, the seriousness of the offences, that he was a danger to society, that he was preparing to abscond or that he needed to be prevented from intimidating other witnesses.

(b) The Court's assessment

(i) Relevant principles

100. The Court will examine the applicant's complaint in the light of the general principles emerging from its case-law concerning the reasonableness of detention within the meaning of Article 5 § 3 of the Convention (see *Calmanovici v. Romania*, no 42250/02, §§ 90-94, 1 July 2008, and *Tiron v. Romania*, no. 17689/03, § 36, 7 July 2009).

101. The Court reiterates that its case-law has developed four basic acceptable reasons for placing a person suspected of having committed an offence in pre-trial detention: the risk that the accused would fail to appear for trial (see *Stögmüller v. Austria*, 10 November 1969, § 15, Series A no. 9); would, if released, take action to prejudice the administration of justice (see *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7); would commit further offences (see *Matznetter v. Austria*, 10 November 1969, § 9, Series A no. 10); or would cause public disorder (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207, and *Hendriks v. the Netherlands* (dec.), no. 43701/04, 5 July 2007).

102. The issue of whether a period of detention is reasonable cannot be assessed *in abstracto* (see *Patsuria v. Georgia*, no. 30779/04, § 62, 6 November 2007) and must be assessed in each case according to its specific features. Continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 61, ECHR 2003-IX).

(ii) Application of the above principles to the present case

103. The Court notes from the outset that the applicant was taken into custody on 7 May 2003 and was sentenced by the first-instance court on 30 September 2005. Consequently, the total duration of his detention amounted to two years and four months.

104. The Court notes in the present case that the domestic courts regularly and repeatedly extended the applicant's pre-trial detention. It also notes the abstract and brief reasoning of the domestic courts' judgments, which were limited to mentioning certain grounds provided for by the CCP, but failed to explain how this criteria came into play in the applicant's case (see *Calmanovici*, cited above, §§ 97-98). Moreover, the court orders extending detention nearly always used identical, even stereotyped, wording and relied repeatedly on the same criteria, a practice which cannot be considered to comply with the requirements of Article 5 § 3 of the Convention (see *Mansur v. Turkey*, 8 June 1995, § 55, Series A no. 319-B; *Svipsta v. Latvia*, no. 66820/01, § 109, ECHR 2006-III; and *Tiron*, cited above, § 39).

105. The Court accepts that the applicant's detention may initially have been warranted by a reasonable suspicion that he had committed serious offences. However, with the passage of time those grounds inevitably became less and less relevant. Accordingly, the domestic authorities were under an obligation to examine the applicant's personal situation in greater detail and to give specific reasons for holding him in custody (see *I.A. v. France*, 23 September 1998, §§ 104-105, *Reports* 1998-VII, and *Tiron*, cited above, § 40).

106. The Court notes that in the instant case, although the domestic courts repeatedly relied on the validity of the initial grounds justifying the applicant's detention – the fact that he was a danger to public order, the severity of the sentence if convicted, the fact that he was a repeat offender and the danger of his absconding – they failed, with the passage of time, to give specific reasons why terminating the applicant's pre-trial detention would have had a negative impact on society or on the investigation.

107. The fact that the domestic courts briefly referred to the seriousness of the offences, the potential that the applicant might obstruct the investigation, the circumstances in which the offences were committed, the applicant's personal circumstances and the severity of the potential sentence cannot replace the failure to provide specific reasons for the applicant's continued detention, because the nature of the elements relied on raises more questions than answers with regard to the existence of an alleged danger to public order (see *Calmanovici*, cited above, § 99, and *Tiron*, cited above, § 42). In this connection, the Court has already held that it is for the domestic courts to provide sufficient reasons, based on relevant facts, capable of showing that the release of the accused would actually disturb public order. In addition, detention will continue to be legitimate only if public order remains actually threatened (see, *mutatis mutandis*, *Letellier*, cited above, § 51).

108. With regard to the danger of absconding, the Court points out that such a danger cannot be gauged solely on the basis of the severity of the potential sentence. It must be assessed with reference to a number of other relevant factors, which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see, *mutatis mutandis*, *Neumeister v. Austria*, 27 June 1968, § 10, Series A no. 8). In the present case, the decisions of the domestic courts did not give reasons why, notwithstanding the arguments put forward by the applicant in support of his requests for release, they considered the risk of his absconding to be decisive.

109. The Court further emphasises the fact that under Article 5 § 3, when deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures provided for by the domestic legislation for ensuring his appearance at trial (see *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000, and *Patsuria*, cited

above, §§ 75-76). In the instant case, although the applicant expressly asked the domestic courts repeatedly to consider alternative measures, they did not explain why their use would not have ensured the presence of the applicant before them.

110. Having regard to the above considerations, the Court finds that the authorities extended the applicant's detention on grounds which cannot be regarded as "relevant and sufficient". The authorities thus failed to justify the applicant's detention.

111. In these circumstances it is unnecessary to examine whether the proceedings were conducted with "special diligence" (see *Dolgova v. Russia*, no. 11886/05, § 50, 2 March 2006, and *Tiron*, cited above, § 46).

There has therefore been a violation of Article 5 § 3 of the Convention.

B. Complaint concerning the Oradea Court of Appeal's failure to examine speedily the applicant's appeals on points of law lodged after 18 August 2004 against the interlocutory judgments extending his pre-trial detention

Admissibility

(a) Submissions of the parties

112. The Government contended that the applicant had failed to raise his complaint before the domestic courts and had raised it directly before the Court. In addition, they submitted that the domestic courts had examined the applicant's appeals on points of law speedily.

113. The applicant did not submit observations on this point.

(b) The Court's assessment

(i) Relevant principles

114. Even assuming that the Government's submissions concerning the failure of the applicant to raise this complaint before the domestic courts amounted to a preliminary objection of non-exhaustion of domestic remedies, the Court finds it unnecessary to examine the said objection because it considers that the applicant's complaint is in any event inadmissible for the following reasons.

115. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing detained persons a right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Baranowski v. Poland* [GC], no. 28358/95, ECHR 2000).

116. Where domestic law provides for a system of appeal, the appellate court must also comply with the requirements of Article 5 § 4, in particular,

as concerns the speediness of the review by the appellate court of a detention order imposed by a lower court. At the same time, the standard of "speediness" is less stringent when it comes to proceedings before the appellate court. The Court reiterates in this connection that the right of judicial review guaranteed by Article 5 § 4 is primarily intended to avoid arbitrary deprivation of liberty. However, if the detention is authorised by a court, it must be considered to be lawful and not arbitrary, even where an appeal is available. Subsequent proceedings are less concerned with arbitrariness, but provide additional guarantees aimed primarily at an evaluation of the appropriateness of continuing the detention (see *Tjin-a-Kwi and Van Den Heuvel v. the Netherlands*, no. 17297/90, Commission decision of 31 March 1993). Therefore, the Court would be less concerned with the speediness of the proceedings before the appellate court if the detention order under review was imposed by a court and on condition that the procedure followed by that court had a judicial character and gave to the detainee the appropriate procedural guarantees (see, *mutatis mutandis*, *Vodeničarov v. Slovakia*, no. 24530/94, § 33, 21 December 2000).

(ii) Application of the above principles to the present case

117. The Court notes in the instant case that the Bihor County Court examined and extended the applicant's pre-trial detention on 9 September, 7 October, 29 October, 11 November and 9 December 2004; 6 January, 9 February, 11 March, 27 May, 23 June, 11 July, 1 and 19 August, and 5 September 2005. The applicant lodged appeals on points of law against all the interlocutory judgments delivered by the first-instance court except for those delivered on 6 January, 9 February and 11 March 2005. The Oradea Court of Appeal examined and dismissed the applicant's appeals on points of law on 21 September, 12 October, 9 November, 18 November and 21 December 2004 and 1 June, 8 July, 15 July, 3 August, 29 August and 13 September 2005 respectively.

118. Accordingly, the proceedings lasted between approximately two and fifteen days. Consequently, the Court considers that their length does not appear excessive (contrast, among other authorities, *Rehbock v. Slovenia*, no. 29462/95, §§ 82-88, ECHR 2000-XII; *Jablonski v. Poland*, no. 33492/96, §§ 91-94, 21 December 2000; *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006; and *Lebedev v Russia*, no. 4493/04, § 102, 25 October 2007).

119. It follows that this part of the applicant's complaints is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

120. The applicant raised several other complaints under Articles 5 §§ 3 and 4 as well as 6 §§ 1, 2, 3 (c) and (d) of the Convention concerning his detention pending trial, the fairness of the criminal proceedings brought against him, the length of the said proceedings, his defence rights and the presumption of innocence.

121. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as they fall within its jurisdiction, the Court finds that these complaints 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 part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

122. 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

123. The applicant did not claim an exact amount in respect of pecuniary damage. He argued that he had suffered financial losses of between EUR 150,330 and 550,330 because he had had to sell his home and land at an undervalue, had to pay for parcels that had been sent to him during his time in prison, had been unable to lodge a request for the return of his land under the domestic restitution laws, and had had his car returned to him by the authorities in poor condition.

124. The applicant also claimed EUR 50,000 in respect of non-pecuniary damage.

125. The Government contested the existence of a causal link between the alleged violations and the pecuniary damage claimed by the applicant and argued, *inter alia*, that in spite of the documents submitted by him, the applicant had not substantiated his claims. They also considered that the applicant's claims in respect of non-pecuniary damage were excessive.

126. The Court shares the Government's view that there is no causal link between the violations found and the pecuniary damage claimed by the applicant. Consequently, it finds no reason to award the applicant any sum under this head.

127. However, the Court takes the view that, as a result of the violations found, the applicant undeniably suffered non-pecuniary damage, which cannot be made good merely by the finding of a violation.

128. Consequently, regard being had to the seriousness of the violations of the Convention of which the applicant was a victim and ruling on an equitable basis, the Court awards EUR 10,000 to him in respect of non-pecuniary damage, plus any amount that may be chargeable in tax.

B. Costs and expenses

129. The applicant did not submit quantified claims for costs and expenses, but argued that he had to retain the services of legal representatives. He informed the Court that he could prove that he had paid part of the fees for legal representation by submitting an invoice of 500 Romanian lei (RON) (approximately EUR 110), but he failed to submit a copy.

130. The Government contested that the applicant had not submitted any proof concerning the payment of costs and expenses.

131. According to 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 also reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

132. The Court notes that the applicant did not provide any proof of having incurred any expenses in respect of lawyer's fees. Consequently, the Court makes no award under this head.

C. Default interest

133. 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 the material conditions of the applicant's detention in Oradea Prison and the lack of valid reasons for his detention pending trial for an excessively long time 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 § 3 of the Convention;

4. *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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent Sate at a 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;

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

Done in English, and notified in writing on 24 September 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President