

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

THIRD SECTION

CASE OF RETUNSCAIA v. ROMANIA

(Application no. 25251/04)

JUDGMENT

STRASBOURG

8 January 2013

FINAL

08/04/2013

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



In the case of Retunscaia v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos,
Johannes Silvis, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 4 December 2012,

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

PROCEDURE

1. The case originated in an application (no. 25251/04) 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 Moldovan national, Ms Alisa Retunscaia ("the applicant"), on 28 May 2004. The applicant was represented by Mr Dan Ioan, a lawyer practising in Bucharest. The Romanian Government ("the Government") were initially represented by their co-Agent, Ms Irina Cambrea, and subsequently by their Agent, Ms Catrinel Brumar.

2. On 9 March 2010 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).

Written observations on its admissibility were filed by both parties. The Moldovan Government did not make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention).

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 As Mr Corneliu Bîrsan, the Judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mrs Kristina Pardalos to sit as *ad hoc* judge (Article 26 § 4 of the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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1979 and lives in Chişinău (Moldova).

A. The applicant's arrest and first criminal trial

5. On 22 November 2002, at Frankfurt Airport, the German customs authorities discovered a box containing 10,000 LSD pills, addressed to M.U., a Romanian national.

6. The German and Romanian police authorities decided to track the box in order to identify who was involved in the transportation of the LSD pills.

7. On 26 November 2002 M.U. and I.M. collected the box from a post office. Later the same day, M.U. and I.M. were arrested.

8. I.M. decided to take advantage of the statutory leniency provisions. At the police station he declared that the box should have been collected by his girlfriend, O.L., and passed on to the applicant.

9. Later the same day a group of armed police broke into the applicant's flat with the intention of searching it. The applicant argued that the policemen did not show a search warrant and no witnesses were present.

The search lasted for four hours. During this time, the applicant was kept immobilised, was not offered water and could not go to the toilet. The applicant alleges that the policemen who broke into her flat kicked her on the head, heels and legs with booted feet and hit her around the face with her passport.

10. A report was issued at the end of the search that included pictures of the drugs found. Two technical reports were drafted as well concerning the identification of the drugs as LSD.

11. On the same day, the applicant was taken to the public prosecutor's office, who remanded her in custody. She was informed that she was accused of illegal drug use and drug trafficking, illegal border crossing and falsification of documents.

12. The applicant was informed that she had the right to a lawyer during the criminal trial.

13. Later the same day the applicant made two statements.

14. In the first declaration, signed by her, the applicant stated that during the search operation performed that day the police had found in her flat several bags containing cannabis, a gas pistol and several documents with her picture. She acknowledged that the passport was false and that she had bought it in the Czech Republic for 200 United States dollars (USD).

The applicant went on to state that her boyfriend had asked her to send some LSD to Romania, for which she was supposed to receive USD 1,000. As she was not in Romania at the time, O.L. agreed to receive the LSD drugs for her. The applicant stated that O.L. had already received 500 LSD pills and that she was supposed to sell them and transfer USD 2,000 to the Netherlands.

The applicant further stated that one month after O.L. had received the drugs she had transferred USD 1,000 to the Netherlands.

The applicant also claimed that she occasionally consumed cannabis herself.

15. The applicant confirmed the above account of events in her second declaration, signed both by the applicant and by her lawyer appointed by the Bar, D.D.

16. According to the applicant, during interrogation by the public prosecutor she was beaten, threatened with a long prison sentence (up to twenty-five years) and forced to sign self-incriminating declarations, which were written in illegible handwriting by a police officer. Owing to the illegible handwriting and the fact that the applicant's mother tongue is Russian, she could barely understand the declarations she was forced to sign. During this time she was allegedly not provided with drinking water and could not go to the toilet.

17. On 10 December 2002 the applicant was interrogated again by the public prosecutor. The barely readable declaration of that date reads that the applicant refused to be assisted by the lawyer appointed by her parents, D. I., "because he was being paid by her boyfriend, who is an international drug dealer".

18. The applicant claimed that the drug transports were initiated by her boyfriend, whom she helped because she loved him and because she was consuming cocaine, ecstasy and marijuana.

The applicant also expressed the wish to cooperate with the investigating authorities to identify other drug dealers and to benefit from this as mitigating circumstances.

The statement given by the applicant was signed by the applicant and by her two chosen lawyers, U.V. and S.M.

19. Later the same day the applicant was informed, in the presence of her chosen lawyer U.V. that the criminal investigation against her had been completed.

20. The content of the criminal file was presented to the applicant, who had allegedly only fifteen minutes to view the content of the criminal file against her. The Government did not contest these allegations.

21. On 11 February 2003 the applicant was handed a copy of the indictment.

22. On the same occasion the applicant made a new statement to the public prosecutor in which she declared that she stood only partly by the declarations made during the investigation stage.

The applicant stated that she had never sent any package of drugs to O.L. and that during the pre-trial investigation she had signed the declarations because of the pressure placed on her. She claimed that all the declarations were dictated to her.

She stated that she had returned from the Netherlands to Romania on 24 November 2002, and that prior to her return her flat was occupied by G.O.

The applicant claimed that the false passport and student card was used by her in her work as a model and to benefit from various reductions.

She also stated that she was not consuming drugs.

1. First-instance proceedings

23. On 8 April 2003 the applicant lodged written observations with the Bucharest Tribunal. The applicant alleged that the prosecution had failed to prove the accusations against her. She highlighted that she was accused of drug trafficking, but the prosecution had failed to prove that she had sent or received the packages at issue. On the contrary, at no point in the criminal investigation was it shown that the applicant was the owner of the packages received on 26 November 2002 by M.U. and I.M. In addition, the Romanian Post confirmed that no other packages had been sent or received by her.

The applicant also highlighted that she was retracting the declarations she had made during the criminal investigation.

24. By a decision of 14 April 2003 the Bucharest Tribunal convicted the applicant of drug trafficking, bringing illegal drugs into Romania, consumption of illegal drugs, falsification of documents, falsification of identity documents and illegal crossing of borders, and sentenced her to six years' imprisonment.

The Bucharest Tribunal based the applicant's conviction on the police and technical reports issued on 26 November 2002 and on the statements made by the applicant, the co-accused and the witnesses.

25. The Bucharest Tribunal held that the prosecution had failed to prove that the applicant had repeatedly brought drugs into Romania. First, the Bucharest Tribunal showed that the applicant had retracted the declarations she had made during the pre-trial stage.

26. Second, the Bucharest Tribunal pointed out that the Romanian Post had confirmed that no packages had been sent or received by the applicant prior to the investigation.

2. Appellate proceedings

27. On 26 June 2003 the public prosecutor lodged an appeal against the decision of 14 April 2003 of the Bucharest Tribunal, alleging that the applicant had acknowledged that she had repeatedly smuggled and consumed drugs in Romania.

The prosecution insisted that the applicant should be found guilty of trafficking in highly dangerous drugs and not of simple drug trafficking.

28. On 28 July 2003 the applicant lodged an appeal against the 14 April 2003 decision of the Bucharest Tribunal.

29. The applicant alleged that the Bucharest Tribunal had convicted her of drug trafficking on the basis of declarations she had made at the pre-trial stage which were later retracted. The applicant highlighted that the

Bucharest Tribunal had rejected parts of the declarations she had made before the investigating authorities and accepted parts of them without offering a justification for this differentiated treatment.

30. The applicant claimed that the declarations made by her at the pre-trial stage should all be rejected, because they had been obtained using illegal methods of investigation. The applicant argued that she and all the other accused had been threatened that if they failed to cooperate they would receive the maximum sentence of twenty-five years. Also, they were incited by the investigating officers to make incriminating statements about their co-accused for the purpose of benefiting from the leniency provisions.

31. The applicant alleged that it was in this context that she had signed the declarations presented to her. She claimed that it was clear from the wording of the declarations that a Russian-speaking Moldovan citizen could not know or use such expressions or formulations as those used in her pre-trial statements.

32. The applicant attached particular importance to the report presented by the Romanian Post that she had never sent or received packages, the package under investigation having been sent in fact from Brazil by B.M.

33. Lastly, the applicant highlighted that on 10 December 2002, when the most important procedural act was performed, namely the presentation of the criminal file, she was forced to sign a declaration refusing the services of the lawyer appointed by her family. As a result, she was not represented on that day.

34. By a decision of 4 September 2003 the Bucharest Court of Appeal admitted the appeal lodged by the public prosecutor and the applicant in part and quashed in part the Bucharest Tribunal decision of 14 April 2003.

35. Upon retrial, the Bucharest Court of Appeal convicted the applicant of trafficking and consumption of highly dangerous drugs, upheld the six-year sentence applied by the Bucharest Tribunal and ordered the confiscation of 810 United States dollars (USD) which had been found in her flat.

36. The Bucharest Court of Appeal held that the adduced evidence showed that the applicant had on various occasions sent drugs to Romania which were later sold on the Romanian market.

3. Further appeal proceedings

37. On 23 November 2003 both the public prosecutor and the applicant lodged further appeals against the decision of the Bucharest Court of Appeal of 4 September 2003.

38. The prosecution argued that the applicant should not benefit from any mitigating circumstances, since she is unemployed and is thus predisposed to criminal activities. The prosecution also requested the expulsion of the applicant because she is not a Romanian citizen.

39. The applicant complained that she was convicted on the basis of evidence which was obtained under duress, which was not supported by any other evidence and which was retracted during the trial.

The applicant also complained about the confiscation of money ordered by the Bucharest Court of Appeal, arguing that it had not been proven that the 810 USD found in her flat had been obtained through illegal operations.

40. By a final decision of 10 February 2004 the High Court of Cassation and Justice rejected the applicant's further appeal as unfounded.

The High Court of Cassation and Justice held that the evidence adduced by the inferior courts had been correctly collected and presented. The High Court of Cassation and Justice attached particular importance to the fact that the applicant acknowledged at the pre-trial stage that she had committed the offences she was accused of.

41. The High Court of Cassation and Justice held that the amount of 810 USD found in the applicant's flat had been obtained by selling drugs and that the confiscation ordered by the Bucharest Court of Appeal was legal.

B. The applicant's second criminal trial

42. On 23 November 2003 the police performed a search of a bag seized from the applicant's flat on 26 November 2002. The expert report concluded that the bag had a double bottom that contained 12,500 LSD pills.

43. On 10 March 2004 the applicant was charged under sections 2 and 3 of Law no. 143/2000 with drug possession and drug trafficking.

44. By a final decision of 22 February 2005, the Bucharest County Court dismissed the charges against the applicant on *res judicata* grounds.

C. Detention and transport conditions during the applicant's first and second criminal trials

1. The applicant's detention at Bucharest Police Station

45. On 26 November 2002 the applicant was placed in pre-trial detention at Bucharest Police Station, where she remained until 19 December 2002.

46. The conditions of the applicant's detention were disputed between the parties.

47. The applicant alleged that during her pre-trial detention she was placed in a room full of cockroaches and other insects. The applicant also alleged that the cell was overcrowded and there were only ten beds for thirty people, who had to take turns to sleep. Furthermore, there was no hot water, no ventilation, no space for physical exercise and no provision of sanitary

supplies. The applicant alleges that the TV and electric light were always on, which made sleeping difficult.

48. The Government provided a certificate issued on 5 July 2010 by the Ministry of the Interior and Administration, which concluded that the Romanian authorities had respected the applicant's rights.

49. The certificate indicates that the applicant was informed about her rights upon arrival, was seen by a doctor and was provided with bed sheets. It also appears from the certificate that the detention facility at the Bucharest Police Station was formed of rooms for four or six people, with separate showers and toilets.

50. The Government further stated that there were windows in the applicant's room.

2. Conditions of the applicant's transport to and from the courthouse

51. The conditions of the applicant's transport to and from the courthouse were disputed between the parties.

52. The applicant alleged that during the second criminal trial she was transported nine times to the Bucharest County Court in an overcrowded patrol van.

53. The Government submitted two certificates issued by the Ministry of Justice on 2 July 2010 describing the applicant's transport conditions during her second trial.

54. The Government alleged in the two certificates that the applicant was transferred to the following prisons during the execution of her sentence:

– on 19 December 2002 the applicant was transferred from Bucharest Police Station to Rahova prison;

– on 1 March 2003 the applicant was transferred from Rahova prison to Târgşor prison;

– on 19 April 2003 the applicant was transferred from Târgşor prison to Rahova prison;

– on 14 October 2006 the applicant was transferred from Rahova prison to Târgşor prison.

55. The Government stated that during 2004-2005, the applicant was transported to the Bucharest Tribunal eight times for hearings:

– on 30 March 2004 the applicant was escorted together with forty-one other detainees in a van with a forty-two-seat capacity;

– on 25 May 2004 the applicant was escorted together with fifty-seven other detainees in two vans with a total capacity of sixty seats;

– on 22 June 2004 the applicant was escorted together with fifty-seven other detainees in two vans with a total capacity of sixty seats;

– on 14 September 2004 the applicant was escorted together with sixty-four other detainees in two vans with a total capacity of sixty-four seats;

– on 12 October 2004 the applicant was escorted together with sixty-four other detainees in two vans with a total capacity of sixty-four seats;
– on 9 November 2004 the applicant was escorted together with sixty-five other detainees in two vans with a total capacity of sixty-eight seats;
– on 7 December 2004 the applicant was escorted together with fifty-three other detainees in two vans with a total capacity of sixty-three seats;
– on 1 February 2005 the applicant was escorted together with forty-six other detainees in two vans with a total capacity of sixty-three seats.

56. The certificates further stated that the applicant was kept in a berth separate from the other detainees she was transported with. This was necessary in order to ensure the separation of the detainees according to their sex.

57. The Government submitted that the vans used for the transportation of the detainees are of the following types:
– ROMAN AB-16230, containing seven seats for officers, four berths and thirty-three other seats. The van is 9.5 m long, 2.49 m wide and 3.25 m high;
– ROMAN AB-16230, containing seven seats for officers, four berths and thirty other seats. The van is 8.71 m long, 2.49 m wide and 3.5 m high;
– ROMAN RD-10215, containing seven seats for officers, four berths and forty other seats. The van is 8.5 m long, 2.5 m wide and 3.56 m high;

3. Conditions of the applicant's detention in the courthouse

58. The applicant alleged that, during the hearings held before the national courts, she was placed in a courthouse cell which was dirty, overcrowded and lacked ventilation. Furthermore, there were only two benches for twenty people in the courthouse cell. Owing to this fact, the applicant had to sit on cold concrete for more than four hours. During the waiting time, the applicant did not receive food or water and had limited access to the toilets.

59. The Government submitted that they had no information on that matter.

II. RELEVANT DOMESTIC LAW

60. The relevant provisions concerning the rights of convicted people are contained in Government Emergency Ordinance 56 of 27 June 2003 ("Ordinance 56/2003") regarding certain rights of convicted people, repealed and replaced by Law no. 275 of 20 July 2006 ("Law no. 275").

61. Neither Ordinance 56/2003 nor Law no. 275 refer to transport conditions or detention conditions in court-house cells in respect of detainees.

62. The provisions of Law no. 143/2000 on the fight against drug trafficking and illegal drug use ("Law no. 143/2000") are described in *Constantin and Stoian v. Romania*, nos. 23782/06 and 46629/06, §§ 33-34, 29 September 2009).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

63. The applicant complained that she had been ill-treated during her pre-trial detention. She also complained about the conditions of detention during her pre-trial detention.

In addition, she complained about the transport conditions and the detention conditions in the courthouse cells.

She relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. The Government's objection under the six-month rule with regard to the alleged ill-treatment and the conditions of detention at the Bucharest police office

64. The applicant submitted that while detained at Bucharest police station she was subjected to ill-treatment. She also complained about the conditions of detention at the Bucharest police station.

65. The Government alleged that the complaints were lodged out of time.

66. The Court notes that whereas the applicant was detained at the Bucharest police station from 26 November to 19 December 2002, the present application was lodged on 28 May 2004, which is more than six months after the date of the relevant events.

67. Therefore the applicant's complaints concerning the alleged ill-treatment and the conditions of detention at the Bucharest police station are out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. The complaint concerning the transport conditions and the detention conditions in the courthouse cell

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

B. Merits

1. The parties' submissions

(a) The Government

69. The Government contended that the applicant's transport conditions were adequate and did not breach Article 3 of the Convention.

70. The Government did not contest the factual allegations concerning the detention in the courthouse cells, but claimed in relation to the courthouse cells of the Bucharest Tribunal that, taking into account its limited duration, the alleged treatment did not attain the threshold of degrading treatment proscribed by Article 3 of the Convention.

(b) The applicant

71. The applicant complained that during her second trial, which lasted from 30 March 2004 to 1 February 2005, she was transported nine times to and from the Bucharest Tribunal in an overcrowded van. The applicant insisted that this unjustifiably added to the physical and psychological suffering encountered during the proceedings.

72. The applicant also complains that during the hearings that took place during the two criminal trials initiated against her, she was detained in degrading conditions in courthouse cells in domestic courts.

She alleges that during the first criminal trial, the courthouse cells were dirty, overcrowded and lacked ventilation. Furthermore, there were only two benches for twenty people. Owing to this, the applicant had to sit on cold concrete, each time for more than four hours. During this time, the applicant did not receive sufficient or wholesome food and drink, and was unable to go to the toilet.

The applicant also alleges that during the second criminal trial she was held in a courthouse cell – a cellar – which was situated in the basement of the Bucharest County Court and lacked ventilation and minimum conditions of hygiene. The applicant alleges that the conditions of the courthouse cells in the Bucharest County Court were degrading and humiliating and unnecessarily intensified her state of anguish.

2. The Court's assessment

(a) General principles

73. The Court refers first of all to the principles established in its case-law regarding the transport of detainees, and highlights that the transport of detainees raises a separate issue under Article 3 of the Convention. In this latter respect, it recalls that the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment has considered individual compartments measuring 0.4, 0.5 or even 0.8 square metres to be unsuitable for transporting a person, no matter how short the duration (see *Yakovenko v. Ukraine*, no. 15825/06, § 108, 25 October 2007).

74. It further points out that it has previously found a violation of Article 3 in a case where an applicant was afforded 0.4 square metres of personal space in the course of his transportation. It considered such travel arrangements impermissible, irrespective of their duration (see *Yakovenko* cited above, §§ 108-113).

75. The Court has also found a violation of Article 3 in a case where an applicant was transported together with another detainee in a single-occupancy cubicle which measured one square metre. Even though the journey time did not exceed one hour, the Court considered such transport arrangements unacceptable (see *Khudoyorov v. Russia*, no. 6847/02, §§ 118-120, 12 April 2006).

76. Lastly, the Court – attaching a particular importance to the fact that the Government were unable to provide any detailed information on the conditions in which the applicant was transported to and from the courthouse – could not find it conceivable that thirty-six persons in ZIL vans or twenty-five persons in GAZ vans were provided with adequate seating and space for transport under humane conditions (*Idalov v. Russia* [GC], no. 5826/03, § 103, 22 May 2012).

77. As to the detention at the courthouse, a violation of Article 3 of the Convention was found where the applicant had remained in cramped conditions for several hours a day, occasionally for as long as eight to ten hours a day. The Court found that the cumulative effect of the applicant's detention in the extremely small cells of the transport facility, without ventilation, food, drink or free access to a toilet, must have been of such intensity as to induce physical suffering and mental weariness (see, for example, *Khudoyorov*, cited above, §§ 118-120; *Starokadomskiy v. Russia*, no. 42239/02, §§ 53-60, 31 July 2008; *Moiseyev v. Russia*, no. 62936/00, §§ 137-43, 9 October 2008; *Idalov*, cited above, §§ 104-108).

(b) Application of these principles to the present case

78. The Court observes that the Government were unable to provide, apart from the description of the vans, any detailed description of the conditions in which the applicant was transported to and from the courthouse. In any event, the Court finds that the information submitted by the Government corroborates the applicant's allegations of insufficient personal space during transportation.

Thus, the Government indicated that the vans used for the applicant's transport could seat forty-one, forty-four and fifty-one people respectively, including each time seven seats for officers. It also appears from the Government's observations that the applicant was transported on each occasion with forty-one to sixty-three other detainees, which not only is more than the maximum of capacity put forward by the Government but also afforded less than 0.5 square metres of personal space (see above paragraphs 55 and 57).

79. As to the applicant's detention at the courthouse, the Government have not provided any official data as to the duration of such detention or any other details on the cells in which the applicant was held. The Court therefore accepts the applicant's account and finds that she was confined in cramped and inhumane conditions during her detention in the courthouse.

80. The above considerations, taken cumulatively, are sufficient to warrant the conclusion that the applicant was subjected to inhuman and degrading treatment in breach of Article 3 of the Convention whilst detained at and during her transfer to and from the courthouse. There has therefore been a violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

81. The applicant complained that she had been convicted on the basis of self-incriminating evidence obtained under physical and psychological pressure during the pre-trial investigation, that she did not have the time to properly prepare her defence, and that she had not received proper legal assistance during the pre-trial investigation.

She relied on Article 6 of the Convention, which provides in its relevant parts:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
>
> (...)
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (b) to have adequate time and facilities for the preparation of his defence;

(...)

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

(...)"

82. The Government urged the Court to dismiss the complaints as inadmissible. They alleged that the proceedings against the applicant were fair, that she was assisted by a lawyer during the proceedings and that she had had the opportunity to adduce evidence. The Government highlighted that the applicant had adopted a consistent position during the criminal trial, acknowledging that she had committed the offence.

83. The applicant alleged that she had been convicted on the basis of confessions obtained by investigators using physical and psychological pressure. She claimed that, in order to force her to sign self-incriminating declarations, the investigators had beaten her, threatened her with severe punishments, and deprived her of water. Furthermore, she alleged that during the criminal investigation she had been obliged to sign documents written in illegible handwriting or which she did not understand.

Also, the applicant alleged that she did not have the time to properly prepare her defence and that she had not received proper legal assistance during the pre-trial investigation.

84. The Court notes that it has already examined situations similar to the one presented in the case at issue. On one occasion, it held that the use of evidence obtained in violation of Article 3 in criminal proceedings may infringe the fairness of those proceedings, even if the admission of evidence was not decisive in securing a conviction (see *Jalloh v. Germany* [GC], no. 54810/00, § 95, 11 July 2006).

Also, it has held that there was a violation of Article 6 §§ 1 and 3 in a case in which no preliminary admissibility test was performed by the national courts concerning evidence obtained under duress, when these statements were used as the main evidence in a judgment convicting the applicant and when these statements were obtained in the absence of his lawyer (see *Söylemez v. Turkey*, no. 46661/99, §§ 123-124, 21 September 2006).

85. Turning to the instant case, the Court notes that it has never been established that the applicant was ill-treated during the criminal investigation. Nor has there been established a nexus between her allegation of ill-treatment and her statements.

More precisely, the Court observes that the applicant gave three self-incriminating declarations during the pre-trial investigation: two statements on 26 November 2002 and one on 10 December 2002. On each occasion she declared that she had previously been involved in drug trafficking operations. Two of these declarations were made in the presence

of her lawyers, on 26 November 2002 a Bar appointed lawyer, and on 10 December 2002 two lawyers chosen by her.

On 11 February 2003 the applicant retracted the declarations made during the pre-trial investigation. She argued that she had made them under duress and the threat of lengthy sentences. She also stated that the lawyers present at the interrogations had advised her to sign the declarations in order to benefit from the leniency provisions.

86. The Court observes that the domestic courts examined in detail all evidence presented in the applicant's case. The applicant's conviction appears to be the result of corroborated evidence that comprised not only her declarations, but also the police report issued after the search which had been carried out on 26 November 2002, the technical reports concerning the identification of the drugs found in the applicant's flat and the statements made by the co-accused and the witnesses.

In the light of the above, the Court concludes that the applicant's trial, when regarded as a whole, cannot be considered to have been conducted in a manner contrary to Article 6 §§ 1 and 3 of the Convention.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

88. Under Articles 5, 6 § 2, 6 § 3 (e), 7, 14 and Article 4 of Protocol No. 7 to the Convention, the applicant complained about various breaches of her rights.

89. Having regard to 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 part of the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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

91. The applicant requested 200,000 euros (EUR) in compensation for pecuniary and non-pecuniary damage.

92. The Government contested these claims.

93. The Court notes that it has found a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the courthouse cells and transport during the criminal trial.

Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

94. The Court observes that the applicant's claim for reimbursement of costs and expenses was made outside the time-limit set to her for this purpose; it therefore rejects this claim.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaints under Article 3 of the Convention concerning the conditions of transport during the criminal trial and the conditions of detention in the courthouse cells, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention concerning the conditions of transport and of detention in the courthouse cells;

3. *Holds*
   (a) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on the applicant;

(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;

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

Done in English, and notified in writing on 8 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President