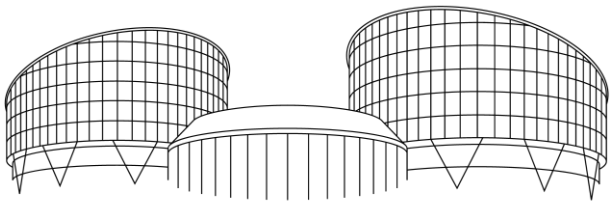

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF RĂDUCANU v. ROMANIA

(Application no. 17187/05)

JUDGMENT

STRASBOURG

12 June 2012

FINAL

12/09/2012

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

In the case of Răducanu v. Romania**,**

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 22 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 17187/05) 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 Nicolae Răducanu ("the applicant"), on 29 April 2005.

2. The applicant was represented by Ms Nicoleta Tatiana Popescu, a lawyer practising in Bucharest and by APADOR-CH (the Association for the Defence of Human Rights in Romania – the Helsinki Committee), an association based in Bucharest. The Romanian Government ("the Government") were represented successively by their Agent, Mr Răzvan-Horaţiu Radu and their co-Agent, Ms I. Cambrea, from the Ministry of Foreign Affairs.

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 As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mrs Kristina Pardalos to sit as *ad hoc* judge (Article 26 § 4 of the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

4. The applicant alleged, in particular, that the material conditions of detention in Ploieşti Prison and the lack of adequate medical care for the venous thromboses in his legs had breached his rights guaranteed by Article 3 of the Convention.

5. On 15 June 2010 the President of the Third Section decided to give notice of the application 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

6. The applicant was born in 1958 and lives in Ploieşti, Romania.

1. Criminal proceedings opened against the applicant

7. On 27 February 1997 the Prahova Prosecutor's Office brought criminal proceedings against the applicant for first degree murder following the death of a third party whom the applicant had stabbed.

8. On 4 March 1997 the applicant was detained pending trial at the Prahova Police Department.

9. On 6 June 1997 the Prahova Prosecutor's Office committed the applicant for trial before the Prahova County Court on charges of first degree murder.

10. By a judgment of 7 October 1997 the Prahova County Court convicted the applicant and sentenced him to twenty-two years' imprisonment on the basis of documentary, testimonial, expert and forensic evidence. The applicant appealed against the decision.

11. By a judgment of 13 January 1998 the Ploieşti Court of Appeal dismissed the applicant's appeal on the merits and upheld the judgment of 7 October 1997. The applicant allegedly appealed on points of law (*recurs*) against the judgment to the Court of Cassation.

12. On 11 February 1998 the Registry of the Court of Cassation informed the applicant, following his enquiry, that there was no file concerning him pending before the said court. The judgment of 13 January 1998 was final.

2. Conditions of detention in Ploieşti Prison and medical treatment

13. On 19 March 1997 the applicant was detained in Ploieşti Prison. The applicant served his prison sentence in that prison until 2 December 2008 when he was transferred to other prison facilities in Romania; he did not return to Ploieşti Prison.

14. Between 19 March 1997 and 2 December 2008 the applicant was transferred repeatedly from Ploieşti Prison to other prison facilities for medical examinations and treatment or in order to appear before domestic courts. For example, he spent time in Colibaşi Prison Hospital (from 19 May to 4 June 2004), Jilava Prison Hospital (from 10 to 20 November 2000; 26 January to 13 February 2001; 18 October to 21 November 2005; 6 to 17 July, 21 to 31 August, 7 September to 13 November, and 14 to 20 December 2007; and from 4 to 17 March 2008) and Rahova Prison Hospital (from 29 March to 6 April, 14 to 20 June, and

11 to 17 October 2005; 22 to 28 August 2006; and from 19 to 22 February 2008).

15. According to his medical file, between 4 March 1997 and 1 October 2010 the applicant was examined and was provided treatment and a special diet for various medical conditions including venous thromboses in civilian hospitals and in Ploieşti, Jilava, Rahova, Dej, Colibaşi and Mărgineni Prison Hospitals.

16. According to a record made on 10 November 2000 in the applicant's medical file by the examining doctor, he had been suffering from venous thromboses for four years and had received treatment for the condition.

17. Forensic medical reports produced by the Mina Minovici Forensic Institute and by the Prahova County Forensic Medical Service on 14 May 2001 and 17 July 2003 respectively stated that the applicant was suffering from venous thromboses in his legs, an acute ulcer for which no surgery was recommended, and antisocial personality disorder. They concluded that these conditions could be treated in prison hospitals.

18. The forensic medical reports produced by the Târgovişte County Forensic Medical Service and by the Mina Minovici Forensic Institute on 3 November 2004 and 30 November 2005 respectively noted that the applicant was suffering *inter alia* from peripheral vascular disease and chronic venous thromboses. They concluded that he could be treated in prison hospitals, and consequently, his temporary release from prison on medical grounds was unjustified. The report of 3 November 2004 recommended that the peripheral vascular disease be monitored in a cardiovascular clinic if the applicant's medical condition so required.

19. In a letter of 12 June 2006 to the Court the applicant stated, *inter alia*, that he was in danger of losing his legs. He argued that he had become ill after he was detained because of the poor food and inappropriate detention conditions in Ploieşti Prison. In addition, he contended that the conditions of detention in Prahova Police Department were inhuman, but he failed to provide any additional information.

20. In a letter of 18 September 2006 to the Court the applicant stated that on an unspecified date in 1999 he had developed thromboses in his legs. The applicant alleged that he had developed the condition on account of the detention conditions in Ploieşti Prison, in particular the lack of physical exercise, overcrowding, lack of water and poor nutrition. He also informed the Court that the lack of medication had aggravated his condition and that although he had been transferred several times from Ploieşti Prison to civilian and prison hospitals across the country for treatment and surgery, the lack of medicines and budget to pay for the medical expenses had made it impossible for him to be treated.

21. In the same letter of 18 September 2006 the applicant contended that his condition had reached the final stage of development and that his legs might have to be amputated.

22. The forensic medical reports produced by the Prahova County Forensic Medical Service and by the Mina Minovici Forensic Institute on 24 May and 9 August 2007, respectively, stated that the applicant was suffering from *inter alia* chronic venous thromboses in his legs. The reports concluded that he could be treated both in prison and civilian hospitals and that his medical condition could not justify his temporary release from prison.

23. On 14 September 2011 the Government informed the Court that on 6 September 2011 there were a total of 578 beds in Ploieşti Prison for 619 detainees, resulting in an occupancy rate of 107.09%.

3. Proceedings seeking temporary release from prison

24. On an unspecified date the applicant brought proceedings against the Ploieşti Prison authorities seeking temporary release from prison on account of his family situation.

25. By a judgment of 20 January 1999 the Prahova County Court dismissed the applicant's action on the ground that he could not provide for his family in the short period of time allowed by law for staying the execution of a sentence and the State could provide support for his family if needed. The applicant's appeal and appeal on points of law against the judgment were dismissed as ill-founded by the Ploieşti Court of Appeal on 1 March 1999 and by the Court of Cassation on 30 June 1999 respectively.

26. On an unspecified date in 2003 the applicant brought proceedings against the Ploieşti Prison authorities seeking temporary release from prison on medical grounds.

27. By a judgment of 17 December 2003 the Ploieşti Court of Appeal dismissed the applicant's action on the ground that according to the forensic medical reports available in the file his medical problems could be treated in prison hospitals. It does not appear from the evidence available in the file that the applicant appealed on points of law (*recurs*) against the judgment.

28. On 30 August 2004 the applicant brought proceedings against the Mărgineni Prison authorities seeking temporary release from prison on medical grounds.

29. By a judgment of 11 February 2005 the Ploieşti Court of Appeal dismissed the applicant's action against the Mărgineni Prison authorities seeking temporary release from prison on the ground that according to the forensic reports available in the file his medical condition could be treated in prison hospitals. Moreover, although the problems with his legs required check-ups in civilian cardiovascular clinics, the Mărgineni Prison authorities could take the applicant to those check-ups whenever his state of health required it. It does not appear from the evidence available in the file that the applicant appealed on points of law against the judgment.

30. On an unspecified date in 2005 the applicant brought proceedings against the Ploieşti Prison authorities seeking temporary release from prison on medical grounds.

31. By a judgment of 5 September 2005 the Ploieşti Court of Appeal dismissed the applicant's action against the Ploieşti Prison authorities seeking temporary release from prison for medical reasons on the ground that the applicant had withdrawn his request after he had been notified of the conclusion of the medical forensic report produced in his case. It does not appear from the evidence available in the file that the applicant appealed on points of law against the judgment.

32. On an unspecified date in 2005 the applicant brought proceedings against the Ploieşti Prison authorities seeking temporary release from prison on medical grounds.

33. By a judgment of 27 March 2006 the Ploieşti Court of Appeal dismissed the applicant's action on the ground that the detailed medical examinations he had undergone between 19 October and 30 November 2005 at Bucharest Prison Hospital and at the C.C. Iliescu Institute for Cardiovascular Diseases, as well as the forensic report produced by the Mina Minovici Forensic Institute, had established that his medical condition could be treated in prison hospitals. The applicant did not lodge an appeal on points of law against the judgment.

34. On an unspecified date in 2006 the applicant brought proceedings against the Ploieşti Prison authorities seeking temporary release from prison on account of his family situation.

35. By a final judgment of 11 May 2006 the Prahova County Court dismissed the applicant's action on the ground that his allegation that his family lacked any income was contradicted by the social services' report available in the file.

36. On unspecified dates in 2007 and 2008 the applicant brought two more sets of proceedings against the Ploieşti Prison authorities seeking temporary release from prison on medical grounds. He argued, *inter alia*, that his medical problems could not be treated in prison hospitals and that he needed to be released so he could have access to adequate treatment in civilian hospitals.

37. By a final judgment of 18 February and a judgment of 27 November 2008 respectively, the Ploieşti Court of Appeal and the Prahova County Court dismissed the applicant's actions on the ground that according to the forensic medical reports produced on 24 May 2007 by the Prahova County Forensic Medical Service and on 9 August 2007 by the Mina Minovici Forensic Institute the applicant could be treated in prison hospitals. It does not appear from the evidence available in the file that the applicant appealed against the judgment of 27 November 2008.

4. Other proceedings

38. On unspecified dates in 2003, 2004 and 2008 the applicant contested the enforcement of the judgment of 13 January 1998 on the grounds that the domestic authorities had influenced the witnesses against him, that he had committed the offence of which he had been convicted under special attenuating circumstances, and that the sentence he had received was disproportionately high in relation to the seriousness of the offence.

39. The applicant's actions were dismissed by final judgments of the Prahova County Court on 13 January 2003 and 27 March 2008 and of the Ploieşti Court of Appeal on 23 February 2004 on the ground that the reasons raised by him were not among those recognised by law for contesting the enforcement of a judgment.

40. On an unspecified date in 2004 the applicant brought proceedings against the governor of Ploieşti Prison contesting the ten days he was made to spend in isolation as a disciplinary measure.

41. By a final judgment of 8 April 2004 the Prahova County Court allowed on the merits the applicant's action against the governor of Ploieşti Prison and reduced his punishment to seven days in isolation.

42. By final judgments of 6 and 20 April 2004 the Ploieşti District Court dismissed the criminal proceedings brought by the applicant against third parties for abuse of trust on the ground that the parties had reconciled.

43. On an unspecified date in 2005 the applicant brought proceedings seeking conditional release on account of the fact that he had served the amount of his sentence lawfully required to qualify for conditional release and that his medical condition did not allow him to continue serving his sentence.

44. By a judgment of 19 July 2005 the Ploieşti District Court dismissed the applicant's action for conditional release on the ground that he had not served the amount of his sentence lawfully required to quality for conditional release. The applicant appealed on points of law against the judgment.

45. By a final judgment of 24 August 2005 the Prahova County Court dismissed the applicant's appeal on points of law against the judgment of 19 July 2005 on the ground that he had expressly withdrawn his appeal.

46. By an interlocutory judgment of 26 January 2009 the judge responsible for the execution of prison sentences attached to Mărgineni Prison dismissed on the merits the applicant's action contesting the decisions of the Ploieşti and Mărgineni Prison Commissions on the Execution of Prison Sentences, delivered on 17 June and 19 December 2008 respectively, not to change the applicant's detention regime from a closed one to a semi-open one. The applicant's appeal against the interlocutory judgment was dismissed as ill-founded by a final judgment of the Dâmboviţa District Court on 19 March 2009.

II. RELEVANT DOMESTIC LAW AND PRACTICE

47. The relevant provisions of Law no. 23/1969 on the execution of sentences are described in *Năstase-Silivestru v. Romania*, (no. 74785/01, §§ 23-25, 4 October 2007).

48. Government Emergency Ordinance no. 56 of 25 June 2003 regarding the rights of prisoners stated, in section 3, that prisoners had the right to bring legal proceedings before a court concerning measures taken by prison authorities in connection with their rights. Emergency Ordinance no. 56/2003 was repealed and replaced by Law no. 275 of 20 July 2006 on the execution of sentences. It restates the content of section 3 mentioned above in its Article 38, which provides that a judge shall have jurisdiction over complaints by convicted 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).

Civil Code

49. Articles 998 and 999 of the 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.

Case-law of the domestic courts

50. The Government submitted approximately one hundred and fourteen judgments delivered by the domestic courts across the country in respect of proceedings brought by detainees against various prison facilities on the basis of Emergency Ordinance no. 56/2003 and Law no. 275/2006 seeking adequate medical treatment, better treatment during transfer to courts, non-smoking accommodation, confidentiality of correspondence, stamps and envelopes, the discontinuance of disciplinary actions taken against them, visiting rights, conjugal visits, dental treatment, religious rights, adequate hygiene conditions, appropriate diets, a prohibition on welding beds to the floor, extended exercise rights, washing, working rights, access to a personal computer and telephone conversations.

51. Approximately one hundred and four of the judgments submitted by the Government were final and approximately twenty of them allowed in full or in part the actions lodged by the detainees by relying on the provisions of the domestic legislation concerning the execution of prison sentences and the evidence available in the files. The actions allowed by the domestic courts mainly concerned disciplinary proceedings opened against detainees, access to adequate medical treatment, visiting rights, the right to petition, the right to confidentiality of correspondence, the right to daily physical exercise (final judgment of 19 June 2007 of the Arad District Court), the right to wash twice a week (final judgment of 7 October 2008 of

the Arad District Court), the organisation of properly ventilated designated smoking areas (final judgment of 27 June 2008 of the Piteşti District Court) and the right to dental treatment.

52. Six of the judgments submitted by the Government addressed the issue of overcrowding. All six judgments dismissed the detainees' complaints in respect of overcrowding for the following reasons: they were detained in cells of five and six people measuring 18.8 sq. m and 21.76 sq. m respectively (final judgments of 10 March 2009 and 3 March 2008 of the Bucharest and Giurgiu District Courts respectively); the cell met the minimum legal requirement of 6 cubic metres per person (final judgment of 2 October 2007 of the Bucharest District Court); the courts could not hold the prison administration liable in respect of overcrowding taking into account the size of the prison and the large number of detainees housed there (final judgment of 12 May 2010 of the Bucharest District Court); the detainee was sharing a cell with twelve other inmates and the domestic legislation did not provide for a minimum number of square metres that had to be ensured for a group of detainees (final judgment of 17 September 2010 of the Bistriţa District Court); and the detainee was subject to the prison's internal rules harmonised with the decision of 11 January 2006 of the Committee of Ministers of the Council of Europe (final judgment of 4 September 2007 of the Bucharest District Court).

III. REPORTS ON THE CONDITIONS OF DETENTION IN ROMANIAN PRISONS

53. 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).

54. The CPT report published on 11 December 2008, following a visit to different police detention facilities and prisons in Romania, including Ploieşti, conducted from 8 to 19 June 2006, indicated overcrowding as a persistent problem. The same report concluded that in the light of the deplorable material conditions of detention in some of the cells of the establishments visited, the conditions of detention could be qualified as inhuman and degrading. In respect of Ploieşti Prison the report stated that detainees' living space was restricted to 1.5 sq. m per person and that some of them had to share a bed. The cells were poorly ventilated and measures had to be taken to remedy the low standards of kitchen hygiene and detainees' complaints concerning poor nutrition. Detainees had access to thirty minutes of physical exercise per day, half the recommended one hour, and the shower facilities were unacceptable.

55. In the same report, the CPT declared itself gravely concerned by the fact that a lack of beds remained a constant problem, not only in the establishments visited but at national level, and that this had remained the case since its first visit to Romania in 1999. The CPT welcomed the changes introduced in domestic legislation providing for personal space of 4 sq. m (8 cubic meters) for each prisoner. The CPT therefore recommended that the Romanian authorities take the necessary measures to ensure compliance with this requirement, as well as to ensure that each detainee had his or her own bed.

THE LAW

I. PRELIMINARY OBSERVATION

56. The Government submitted that in the applicant's letters of 12 June 2006 (received by the Court on 14 June 2006) he had briefly mentioned his poor state of health and given further details only in his letter of 18 September 2006 (received by the Court on 22 September 2006). On both occasions, however, he had failed to complain of a violation of Article 3 of the Convention and had not informed the Court that he wanted to raise such a complaint. In any event, the Government contended that if the Court considered that the applicant had lodged a complaint under Article 3 of the Convention, the date that complaint had been lodged before the Court was 12 June 2006 and not 29 April 2005.

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

58. 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; and *Eugenia Lazăr v. Romania*, no. 32146/05, § 60, 16 February 2010).

59. In the present case, the Court notes that in his letter of 12 June 2006 the applicant, for the first time, referred expressly to his poor state of health and considered the inappropriate detention conditions responsible for his condition (see paragraph 19 above). Moreover, in his letter of 18 September 2006 he reiterated his statement and provided additional details about the conditions of detention in Ploieşti Prison and the general

lack of adequate medical treatment for the venous thromboses in his legs (see paragraph 20 above). In these circumstances and having regard to the wording of the applicant's letters, the Court considers that, although he did not expressly state it, the applicant lodged a complaint concerning the material conditions of detention in Ploieşti Prison and the general lack of adequate medical treatment for the venous thrombosis in his legs and that he relied in substance on Article 3 of the Convention.

60. However, the Court shares the Government's view that the date of introduction of the said complaint before it was 12 June 2006.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

61. The applicant complained about the physical conditions of his detention in Ploieşti Prison and of the general lack of adequate medical treatment for the venous thromboses in his legs. He alleged, in particular, overcrowding, a lack of water, a lack of physical exercise and poor nutrition. Moreover, he complained that during detention he had been diagnosed with venous thrombosis in his legs and that he had not been treated adequately because of a lack of medicines and budget to pay for the medical expenses. He relied in substance 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. Complaint concerning the material conditions of detention in Ploieşti Prison

1. Admissibility

a) Non-exhaustion of domestic remedies

(i) Submissions of the parties

62. 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 on the basis of Emergency Ordinance no. 56/2003 and subsequently on the basis of Law no. 275/2006. In addition, they pointed out that the applicant could have lodged a general tort law action on the basis of Articles 998-999 of the Romanian Civil Code seeking compensation for the alleged damage. The Government considered both remedies to be effective, sufficient and accessible.

63. The Government submitted a set of domestic decisions in support of their observations (see paragraphs 50-52 above). They further submitted that the Court had implicitly recognised that a general tort law action

represented an effective remedy in its decision in *Stan v. Romania* ((dec.), no. 6936/03, 20 May 2008).

64. The applicant disagreed.

(ii) The Court's assessment

65. The Court notes that the applicant's complaint concerns the material conditions of his detention, in particular, overcrowding and poor nutrition. In this respect, it notes that in recent applications lodged against Romania and concerning similar complaints it has already found that, given the specific nature of this type of complaint, the legal actions suggested by the Government, including a general tort law action, do not constitute effective remedies (see *Petrea*, cited above, § 37; *Eugen Gabriel Radu v. Romania*, no. 3036/04, § 23, 13 October 2009; *Iamandi v. Romania*, no. 25867/03, § 49, 1 June 2010; and *Lăutaru v. Romania*, no. 13099/04, § 84, 18 October 2011).

66. The Court further notes that the final domestic decisions submitted by the Government in support of their plea of non-exhaustion relate mainly to specific rights of prisoners, such as the right to medical assistance or the right to receive visits. Among the domestic decisions submitted by the Government only six of them relate to structural issues such as overcrowding and they were all dismissed without additional consideration of the point the detainees relied upon concerning the lack of individual space.

67. The Court also notes that although two of the judgments submitted by the Government allowed actions brought by detainees in respect of physical exercise and washing rights, they remain isolated examples and fail to prove with any certainty the existence of an effective remedy in this respect (see *mutatis mutandis Melnitis v. Latvia*, no. 30779/05, § 53, 28 February 2012).

68. The Court therefore concludes that the judgments submitted by the Government do not indicate how the legal actions 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, and *Ogică v. Romania*, cited above, § 35).

69. It therefore rejects the Government's plea of non-exhaustion of domestic remedies in respect of the applicant's complaint concerning the material conditions of detention in Ploieşti Prison.

b) Six months

(i) Submissions of the parties

70. The Government submitted that the applicant's complaint about the material conditions of detention in Ploieşti Prison in respect of the period prior to 11 October 2005, when the applicant was transferred to Rahova

Prison Hospital, had been introduced too late. They therefore proposed that this part of the application be declared inadmissible.

71. The applicant disagreed.

(ii) The Court's assessment

72. The Court notes that it has already examined the application of the six-month rule 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 as a continuous situation in circumstances where the complaint concerned an episode, treatment or a 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 that remained similar in spite of the detainee's transfer (see *Seleznev*, cited above, § 36).

73. The Court notes in the present case that the applicant complained about the detention conditions in Ploieşti Prison. In particular, he complained of overcrowding, a lack of water and poor nutrition. It also notes that on 11 October 2005 the applicant was transferred to prison hospitals, where he spent approximately one month and two weeks (until 30 November 2005). He did not complain about the material conditions of detention in those hospitals. However, having regard to the length of the applicant's detention in Ploieşti Prison, the relative short duration of the applicant's transfer to prison hospitals and the fact that he returned to Ploieşti Prison after his transfer, the Court cannot conclude that his transfer on 11 October 2005 brought significant changes to his detention conditions and that there was therefore no continuous situation (see *mutatis mutandis Eugen Gabriel Radu*, cited above, § 24).

74. It therefore rejects the Government's preliminary objection that the applicant's complaint about the material conditions of detention in Ploieşti Prison in respect of the period prior to 11 October 2005 was introduced too late.

75. Lastly, the Court notes that the applicant's complaint concerning the material conditions of detention in Ploieşti 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

76. The applicant, by relying on the CPT's findings and recommendations following its visit to Ploieşti Prison in 2006, argued that the material conditions of detention, in particular overcrowding, poor

nutrition, lack of water and lack of physical exercise, amounted to inhuman and degrading treatment.

77. The Government submitted that the records concerning the cells in which a person was imprisoned are preserved only for two years. Moreover, the cells of Ploieşti Prison had been renumbered and the entire prison had been reorganised. Consequently they could provide only general information in respect of the applicant's conditions of detention.

78. They argued that in Ploieşti Prison the applicant had been detained in cells measuring 33.22 sq. m. Each cell had at least one window, two sinks with running cold water, and a toilet and shower separated by walls and a door. The cells also had a storage area for food. Detainees could wash once a week and from 2006 this increased to twice a week. Warm water was available based on a set schedule. Physical exercise was organised in accordance with the law, taking into account the detainees' detention regimes. Detainees had access to social and educational activities, and psychological counselling. The food was prepared in accordance with the legally approved quality norms and the quality of the food was assessed daily by the prison's doctor, the duty officer and a representative of the detainees. Lastly, they contended that the prison had not been overcrowded for the period the applicant was detained there.

(b) The Court's assessment

(i) Relevant principles

79. 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).

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

81. In previous cases where applicants had at their disposal less than 3 sq. m of personal space, the Court has found that the overcrowding was so severe as to justify of itself a finding of a violation of Article 3 of the Convention (see, among many others, *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 v. Romania*, no. 20307/02, § 83, 9 November 2010).

82. 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

83. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees, as well on account of the lack of physical exercise and poor nutrition (see, among others, *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).

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

85. The Court further notes that the applicant's description of the overcrowding, lack of physical exercise and poor nutrition corresponds to the findings made by the CPT report in respect of Ploieşti Prison (see paragraph 54 above).

86. 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 conditions of his detention caused him suffering that exceeded the unavoidable level of suffering inherent in detention and that attained the threshold of degrading treatment proscribed 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 Ploieşti Prison.

87. Taking this finding into account, the Court does not consider it necessary to examine the remaining issues of his complaint concerning the material conditions of detention.

B. Complaint concerning the alleged lack of medical treatment for venous thromboses

Admissibility

88. The Government raised a preliminary objection of non-exhaustion of domestic remedies, in so far as the applicant had not complained before domestic courts in respect of the lack of adequate medical treatment for the venous thromboses in his legs on the basis of Emergency Ordinance no. 56/2003 and subsequently on the basis of Law no. 275/2006.

89. The applicant disagreed and argued that the remedies indicated by the Government were ineffective.

90. The Court has already had the opportunity to examine a similar objection raised by the Government in the case of *Petrea*, cited above. It concluded that before the entry into force of Emergency Ordinance no. 56/2003, on 25 June 2003, there had been no effective remedy for the situation complained about by the applicant. However, after that date, others in the applicant's situation had had an effective remedy in respect of their complaints of a lack of medical treatment, even if their applications were already pending with the Court at the relevant time (see *Petrea*, cited above, §§ 35-36).

91. The Court sees no reason to depart in the present case from the conclusions it reached in *Petrea*.

92. In respect of the period prior to the entry into force of Emergency Ordinance no. 56/2003 the Court notes that, in spite of the applicant's allegations, the available material does not indicate that the applicant was denied medication necessary for his condition or that there was a lack of budget to pay for the medical expenses. Moreover, there is no indication in the file that the venous thromboses in his legs became more serious between March 1997 and June 2003. Furthermore, according to the applicant's medical file, he was examined regularly by prison and civilian doctors, his condition was monitored and he was regularly prescribed and administered medication during his detention.

93. Consequently, the Court finds no evidence in the file of a potential breach of the applicant's right to receive medical treatment during detention for the period before the entry into force of Emergency Ordinance no. 56/2003.

94. In respect of the period after the entry into force of Emergency Ordinance no. 56/2003 and subsequently of Law no. 275/2006, the applicant should have lodged complaints of a lack of medical treatment with the domestic courts. His repeated requests for temporary release do not satisfy these conditions (see *Răcăreanu v. Romania*, no. 14262/03, § 41, 1 June 2010).

95. It follows that the applicant's complaint concerning a lack of adequate medical treatment is manifestly ill-founded for the detention

period prior to the entry into force of Emergency Ordinance no. 56/2003 and of Law no. 275/2006, and is inadmissible for non-exhaustion of domestic remedies for the detention period after the entry into force of the above-mentioned domestic legislation. Consequently, it must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

96. The applicant complained under Article 3 of the Convention about the material conditions of detention while he was in the custody of the Prahova Police Department. Moreover, he complained under Articles 6 §§ 1 and 3 (d) of the Convention that the criminal proceedings brought against him for murder had been unfair in so far as the witnesses for the prosecution had mostly been relatives of the victims, the domestic courts had misinterpreted the applicable legal provisions and lacked impartiality, and he had not been able to have witnesses examined in his defence. Lastly, the applicant complained in substance under Article 8 of the Convention that he had been unable to contact his family while he was in the custody of the Prahova Police Department.

97. 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 manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

100. The Government considered the sum claimed by the applicant to be excessive. They submitted that a finding of a violation would constitute sufficient just satisfaction in the case.

101. The Court notes that it has found a violation of Article 3 in the present case. In these circumstances, the Court considers that the applicant's

suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis and having regard to the particular circumstance of the case, the Court awards the applicant EUR 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

102. The applicant also claimed EUR 6,403 for the costs and expenses incurred before the Court by his representatives, to be paid directly to them as follows: (i) the applicant submitted a contract for legal assistance concluded with his lawyer, Ms Nicoleta Tatiana Popescu, and a detailed document indicating that the lawyer worked fifty-four and a half hours in preparing the case, the hourly fee for each type of activity and the precise dates when the work was done. The total fees requested by the lawyer amounted to EUR 6,103; (ii) APADOR-CH (the Association for the Defence of Human Rights in Romania – the Helsinki Committee) also requested EUR 300 for technical support and correspondence.

103. The Government disputed the number of hours spent by the applicant's representatives on the present case and contended that they were excessive given the lawyer's substantial experience and the reduced complexity of the case. They further submitted that the applicant had not submitted any proof in support of the correspondence fees he claimed and that the Helsinki Committee had repeatedly provided support in similar cases.

104. The Court reiterates that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and are reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII, and *Boicenco v. Moldova*, no. 41088/05, § 176, 11 July 2006). In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Chamber may reject the claim in whole or in part.

105. In the present case, having regard to the above criteria, the itemised list submitted by the applicant, the familiar nature of the issue dealt with, and the work of the lawyer from 29 July 2010 when she took over the case until today, the Court awards the following amounts: EUR 2,000 to Ms Nicoleta Tatiana Popescu and EUR 150 to the Romanian Helsinki Committee, to be paid separately into a bank account indicated by each of the applicant's representatives.

C. Default interest

106. 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 complaint concerning Article 3, in so far as it concerns the material conditions of detention in Ploieşti Prison, admissible and the remainder of the application inadmissible;

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

3. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 9,000 (nine thousand euros) to the applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,150 (two thousand one hundred and fifty euros), plus any tax that may be chargeable, in respect of costs and expenses, into a bank account indicated by each representative as follows:
         (a) EUR 2,000 (two thousand euros) to Ms Nicoleta Tatiana Popescu; and
         (b) EUR 150 (one hundred and fifty euros) to the Romanian Helsinki Committee;

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

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

Done in English, and notified in writing on 12 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President