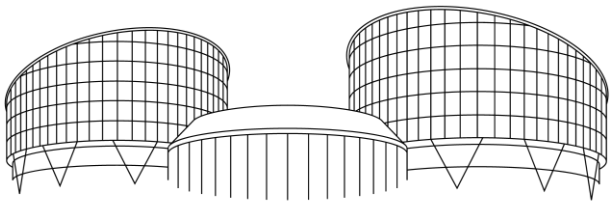

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF IACOV STANCIU v. ROMANIA

(Application no. 35972/05)

JUDGMENT

STRASBOURG

24 July 2012

FINAL

24/10/2012

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

In the case of Iacov Stanciu 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 10 July 2012,

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

PROCEDURE

1. The case originated in an application (no. 35972/05) 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 Iacov Stanciu ("the applicant"), on 14 September 2005.

2. The applicant, who had been granted legal aid, was represented by Ms Mihaela Ghirca and Mr Bogdan Dragoş, lawyers practising in Bucharest. The Romanian Government ("the Government") were represented by Ms Irina Cambrea from the Ministry of Foreign Affairs.

3. The applicant alleged that the conditions of his detention in the various prisons he was detained in amounted to a violation of Article 3 of the Convention.

4. On 12 May 2010 the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (former Article 29 § 3) and to give priority to the application under Rule 41 of the Rules of Court.

The applicant and the Government each filed written observations. In addition, third-party comments were received from the non-governmental organisation Association for the Defence of Human Rights in Romania – the Helsinki Committee (APADOR-CH), which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

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 As Mr Corneliu Bîrsan, the Judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mrs Kristina Pardalos to sit as *ad hoc* judge (Article 26 § 4 of the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

6. The applicant was born in 1977 and lives in Bucharest.

7. On 17 September 2002 the Prahova County Court sentenced the applicant to 12 years and 6 months' imprisonment. The decision became final on 18 February 2004 with the decision of the High Court of Cassation and Justice.

8. The applicant was arrested on 24 January 2002. He remained in prison until his release on probation on 18 May 2011. He served his sentence as follows:

- from 24 January to 1 February 2002 in Ploieşti Prison;
- from 1 to 26 February 2002 in Jilava Prison Hospital;
- from 26 February 2002 to 7 January 2003 in Ploieşti Prison;
- from 7 January 2003 to 20 March 2003 in Mărgineni Prison;
- from 20 March 2003 to 29 February 2004 in Jilava Prison;
- from 29 February 2004 to 11 February 2005 in Ploieşti Prison;
- from 11 February to 21 February 2005 in Jilava Prison;
- from 21 February to 3 March 2005 in Ploieşti Prison;
- from 3 March to 25 April 2005 in Jilava Prison Hospital;
- from 25 April to 8 July 2005 in Jilava Prison;
- from 8 July to 18 July 2005 in Rahova Prison;
- from 18 July to 21 July 2005 in Ploieşti Prison;
- from 21 July to 29 August 2005 in Rahova Prison;
- from 29 August to 27 September 2005 in Ploieşti Prison;
- from 27 September to 3 October 2005 in Rahova Prison;
- from 3 October to 22 November 2005 in Ploieşti Prison;
- from 22 November to 28 November 2005 in Rahova Prison;
- from 28 November 2005 to 7 February 2006 in Ploieşti Prison;
- from 7 February to 13 March 2006 in Jilava Prison Hospital;
- from 13 March to 9 May 2006 in Ploieşti Prison;
- from 9 May to 15 May 2006 in Rahova Prison;
- from 15 May 2006 to 11 January 2007 in Ploieşti Prison;
- from 11 January 2007 to 12 January 2007 in Rahova Prison Hospital;
- from 12 January to 2 March 2007 in Jilava Prison;
- from 2 March to 19 June 2007 in Rahova Prison;
- from 19 June 2007 to 19 July 2007 in Jilava Prison Hospital;
- from 19 July to 27 September 2007 in Rahova Prison;
- from 27 September to 12 October 2007 in Ploieşti Prison;
- from 12 October 2007 to 11 November 2008 in Rahova Prison;
- from 11 November 2008 to 14 November 2008 in Ploieşti Prison;
- from 14 November to 4 December 2008 in Rahova Prison;
- from 4 December 2008 to 11 May 2010 in Jilava Prison;

- from 11 May to 28 May 2010 in Bacău Prison;
- from 28 May to 21 June 2010 in Craiova Prison;
- from 21 June to 5 July 2010 in Colibaşi Prison;
- from 5 July 2010 to 13 July 2010 in Craiova Prison;
- from 13 July 2010 to 18 May 2011 in Jilava and Ploieşti Prison.

A. Conditions of the applicant's detention

9. The exact circumstances of the applicant's detention are in dispute between the parties.

1. The applicant's account

10. In respect of all the establishments in which he had been detained, the applicant alleged that he had been kept in overcrowded cells, in poor conditions of hygiene, that the food had been poor, and that he did not enjoy enough out-of-cell time and appropriate activities.

11. He also referred to the information provided in the CPT and APADOR-CH reports and to the conditions of detention already established by the Court in its previous judgments with respect to each of the detention facilities where he was detained, alleging that he had experienced the same conditions.

(a) Ploieşti Prison

12. The material conditions in Ploieşti Prison throughout the periods when he was detained there between 24 January 2002 and 14 November 2008, were described by the applicant as follows.

13. The cells were overcrowded and he often had to share an 80 cm wide bed with another inmate. He shared cells equipped with 15 to 24 beds with 20 to 45 detainees: in cell no. 15 (formerly no. 9) there were 24 beds for 42 inmates; in cell no. 31 (formerly no. 22) there were 30 beds for 54 inmates; in cell no. 24 (formerly no. 15) there were 24 beds for 38 inmates; and in cell no. 22 (formerly no. 13) there were 21 beds for 37 inmates.

The above information makes it possible to calculate the personal space available to each detainee and is consistent with the information submitted by the Government and the National Prison Administration ("NPA") and with the CPT reports on the surface of cells and the occupancy rate. For instance, in May 2005 there were 774 detainees in Ploieşti Prison, whereas the legal capacity of the prison was 566 places. In terms of the minimum space of 4 square metres per person recommended by the CPT, the prison should have housed no more than 220 inmates. The applicant referred to the CPT's findings that the main problem of Ploieşti Prison was overcrowding, with no more than 2 square metres of personal space per detainee.

14. There were only bunk beds, and the top bed was 2 metres high. There were no tables in the cells and there was no dining room, so detainees had their meals and other activities (writing, playing chess, and so on) in bed. Cells had only one window, which was 180 cm wide and 120 cm high.

15. Cells were infested with insects, and the bed linen was unclean and lice-infested.

16. There were only one or two sinks to a cell, providing cold water only.

17. Access to communal showers with hot water was allowed only once a week.

18. The applicant alleged a lack of activities outside the cell during his stay in Ploieşti Prison. He referred also to the CPT findings that the lack of daily activities in that prison was another major problem.

(b) Mărgineni Prison

19. The applicant alleged that the cells in Mărgineni Prison were overcrowded too, so he had to share a bed with another inmate. In the cell he occupied, no. 56, there were 36 beds for 68 inmates.

The sinks in the cell did not have hot water and there were 2 toilets for all 68 prisoners.

(c) Bucharest-Rahova Prison and its Hospital

20. The material conditions in Rahova Prison and its Hospital throughout his detention there between 2005 and December 2008, were described by the applicant as follows.

21. There was overcrowding in Rahova Prison and detainees had some 2.77 square metres per person.

22. There were no chairs in the cell, and the metal bunk beds were designed so that detainees were not able to sit up straight on the lower bed.

23. Lavatories in the cells had deteriorated ceilings and walls and hot water was available only once a week for one hour.

24. Moreover, during an unspecified period in the summer of 2005 the water was cut off between 9 a.m. and 1 p.m. and between 4 p.m. and 6 p.m., a situation due, according to a statement made by the head of logistics at Rahova Prison, to a general water shortage.

25. As a result of these conditions, the applicant was unable to maintain a proper standard of corporal hygiene.

(d) Bucharest-Jilava Prison and its hospital

26. The material conditions which the applicant experienced during his periods of detention in Jilava Prison and its hospital from 2003 until his release in 2011 were described by the applicant as follows.

27. Overcrowding was general and severe throughout the prison and the personal space per detainee was extremely limited: cells with a surface of

13 square metres were accommodating 8 prisoners, and cells with a surface of 20 to 25 square metres housed 35 to 40 prisoners. There were several rows of bunk beds. The applicant often had to share a bed with another inmate; in cell no. 215, for instance, there were 30 beds for 45 inmates, and in cell no. 206 there were 21 beds for 30 inmates.

28. The above information makes it possible to calculate the personal space available to each detainee and is consistent with the information submitted by the Government and the National Prison Administration ("NPA") on the surface of cells and the occupancy rate. Between 2007 and 2010 the personal space available to detainees, according to the monthly information recorded in the official registers, varied from 1.21 square metres in April 2007 to 2.43 square metres in March 2008 and 2.34 square metres from February to May 2010. During all these years, only in February 2008 did the applicant have personal space exceeding 4 square metres, that is, 4.55 square metres, to be precise.

29. The sanitary facilities were poor, the toilets had no water supply and the sinks in the cells had no hot water.

30. Cells were often dirty and the bed linen was old, worn and often unclean.

31. Sanitary conditions were very poor, there were cockroaches, rats, lice and bedbugs in the prison; the applicant was even bitten by a rat in August 2009, for which he was given a vaccination.

32. There were hardly any out-of-cell activities.

2. The Government's account

33. The Government submitted more than 2,000 pages with general information on the legal framework and conditions of detention in prisons in Romania, and part of the applicant's administrative file in detention.

34. With regard to overcrowding, they submitted that the overcrowding problem had been solved in 2004, save in Ploieşti Prison, where it had been solved only in 2006. The Government provided information submitted by the NPA concerning the number of beds available in each prison and the number of detainees accommodated each year. It shows that in the prisons of Jilava, Rahova and Mărgineni, the number of beds has exceeded the number of prisoners since 2004. In Ploieşti Prison the number of beds has exceeded the number of detainees since 2006.

35. The Government submitted nonetheless that it was not always possible to determine the precise cells where the applicant had been detained, as prison records were regularly destroyed after a certain time.

36. Detainees were responsible for cleaning the cells and were accordingly provided with the necessary cleaning products. The other parts of the prisons were cleaned twice a day or whenever necessary, specialised companies were in charge of disinfesting the premises every four months or whenever necessary and the bed sheets were changed once a week.

37. It was the legal right of detainees to be provided with the necessary products for their personal hygiene.

38. Between 2006 and 2009 substantial investments were made to modernise the prisons. In each prison there was a committee in charge of supervising the condition of the buildings and cells and ordering repairs whenever necessary. These committees functioned or function according to orders nos. 10306/1997, 82957/1998 and 434/2006 of the General Directorate of Prisons (GDP) within the Ministry of Justice, and order no. 328/2010 of the Director General of the Prisons Directorate.

39. As a result of the entry into force of Law no. 275/2006, the domestic legislation concerning detention facilities now complied with CPT recommendations on lighting, heating, ventilation, sanitary installations and furniture in prisons.

40. In all prisons the quality of drinking water was checked regularly, as required by Law no. 458/2002, Government Decision no. 974/2004 and Order no. 3149/2003 of the GDP's Director General. Cut-offs were purely accidental or limited in time. As for the food, the quantity and quality were set according to the categories of detainees, as prescribed by Order no. 2713/C/2001 of the Minister of Justice.

For an ordinary, male, non-working detainee, the standard was set by "Norm no. 17" at 2,855 calories per day, from a diet consisting of starch, pork meat, vegetables of the *Apiaceae* family, biscuits, tinned vegetables, margarine, oil, marmalade, 20 grams of salted cheese, onion and garlic, sugar and various spices. Other kinds of meat, fresh vegetables and dairy products, as well as eggs and fruit, dried or fresh, were reserved for particular categories of detainees, such as pregnant women and their babies and sick detainees during their stay in a hospital.

41. Before the adoption of Law no. 275/2006, prisoners were entitled to at least one shower per week and they could have their bed sheets changed once every fortnight.

Law no. 275/2006 improved this situation, providing for detainees to have a shower at least twice a week and, since all prisons now had a laundry service, bed sheets were changed weekly.

42. All prisons had a central heating system and cells were heated in winter with warmers. The Minister of Justice's Order no. 2874/C/1999 laid down clear rules regulating the heating of prisons according to their geographical location. In summer, according to an order of the GDP's Director General, cell doors had to be kept open and sustained efforts were made to allow detainees to spend as much time outside the cell as possible.

43. The Government made specific submissions in respect of the following detention facilities in which the applicant was detained:

(a) Ploieşti Prison

44. The Government had no information concerning the dimensions of the cells, the number of beds and the available space.

45. There was no refectory room in Ploieşti Prison, so prisoners had their meals in their cells, where tables were part of the furniture.

46. Air circulation was possible through the cell windows.

47. Each cell had two sinks with cold water. Before 2006, prisoners were allowed to shower once a week. After the entry into force of Law no. 275/2006, they were entitled to two showers a week.

48. As to outside activities, before 2006 the applicant was entitled to a daily one-hour walk. Law no. 275/2006 increased the duration of the daily walk, and the new norm depended on the detention regime (open, semi-open and closed).

Moreover, the applicant had taken part in many out-of-cell activities which, before Law no. 275/2006 entered into force, were available every day to detainees in each cell. After 2006, only prisoners with an open or semi-open regime were entitled to daily activities.

49. As regards the severe overcrowding in Ploieşti Prison, the Director of National Prison Administration had taken effective measures in January 2006 to diminish the number of prisoners admitted to prison.

(b) Mărgineni Prison

50. The Government had no information concerning the dimensions of the cells, the number of beds and the available space.

51. Cells contained beds, a table, a bench, a coat hanger, a stand for a TV set and a TV set.

52. A sanitary annex was equipped with sinks, shower, and toilets.

53. Each cell and sanitary annex had windows, which let in air and natural light.

54. Detention cell no. 56, where the applicant alleged that he had been detained, had 18 beds and 16 prisoners.

(c) Bucharest-Rahova Prison

55. The number of detainees did not exceed the number of beds. The cell, with a surface of 21 square metres and a window measuring 1.44 square metres, contained three beds, a table, a bench, a coat hanger and a stand for a TV set. A 1.2 square meters store room with a 0.72 square meters window was attached to the cell.

56. A sanitary annex measuring 6.45 square metres was attached to the cell, equipped with two sinks, one shower, a toilet, and a window measuring 0.72 square metres.

57. In winter, the cells were heated to 18 degrees. Hot and cold water was available permanently. Until 2006, detainees were allowed to use the

shower weekly, and thereafter twice a week. However, in summer, to save money, there were restrictions on the use of cold water.

58. The applicant was involved in many activities outside the cell, such as building wooden ships (from December 2007 to November 2008), writing articles for two prison newspapers, attending religious activities (from April 2007 to November 2008) and a special programme to prevent HIV infection and the consumption of illicit drugs, and he frequently used the prison library.

59. The applicant also received psychological assistance for his problems.

(d) Bucharest-Jilava Prison and its Hospital

60. The prison records indicating the cells occupied by the applicant from 2003 to 2006 had been destroyed.

61. In 2007 and 2008 the applicant had occupied cells no. 206, which measured 32.76 square metres, and no. 618, measuring 36.45 square metres. Between 11 and 30 persons had been held with him at a time.

62. In 2008 and 2009 the applicant had occupied cell no. 514, measuring 43.65 square metres. Between 8 and 22 persons had been held with him at a time, although no exact details were available.

63. The applicant had also occupied the following cells in 2009 and 2010:

- nos. 102 and 104, each measuring 32.90 square metres and shared with 14 other persons;
- no. 214, measuring 40.28 square metres, with 20 other persons;
- no. 302, measuring 29.14 square metres, with 15 to 17 other persons;
- no. 106, measuring 33.18 square metres, with 14 other persons;
- no. 105, measuring 33.84 square metres, with 14 other persons;
- no. 104, measuring 32.76 square metres, with 14 other persons.

64. All the cells had good air circulation and natural light coming from three windows, in the cell, the sanitary group and the store room.

65. Sanitary groups in the cells were disinfected every day, cells were whitewashed whenever necessary, and rat extermination and treatment with insecticide were carried out at least once every three weeks.

66. Detainees were allowed to use the showers twice a week, on Mondays and Fridays.

Cold water was available permanently, and in 2007 a water purification system was introduced for drinking water.

67. As for outside activities, before 2006 the applicant was entitled to a daily 30 minute walk. Law no. 275/2006 increased that to three hours a day.

Moreover, the applicant took part in many out-of-cell activities, such as sanitary, legal, moral and religious activities. He was also free to participate in activities focusing on family life and the prevention of HIV infection,

sports and intellectual competitions, and maintaining a pro-active attitude to social activities.

B. Health-care

68. Both the applicant and the respondent Government relied mainly on documents from the applicant's prison medical file. They each interpreted the information in the documents differently, however.

1. The applicant's account

69. The applicant alleged that while in detention he had developed various diseases as a result of the poor conditions. He alleged a lack of adequate treatment by the prison doctor and a lack of medicines.

70. The applicant's medical record drawn up when he was placed in detention on 25 January 2002 made no reference to any disease save for hepatitis which he had developed six years earlier.

71. The applicant claimed that from 2002 he developed numerous dental problems, which became very serious for lack of proper treatment and monitoring.

72. On 25 October 2002 the applicant was seen by a prison dentist, who diagnosed an abscess.

He claimed that in November-December 2003 he had had several teeth extracted, but this was not recorded in his medical file.

73. From January 2004, while in Ploieşti Prison, the applicant was issued with a series of medical records which referred to his dental health.

In January 2004, for example, he received medical treatment with antibiotics and pain killers for toothache and regular headaches.

On 13 May 2004, in reply to his request to see a dentist, the applicant was informed by the Ploieşti Prison that the prison dentist was on maternity leave. As a consequence, only emergencies were taken to the Ploieşti Hospital Dental Emergency Service. His case was not an emergency.

On 25 August 2004, the Ploieşti Prison informed the NPA that the applicant had personality disorders and problems affecting his nose, but that he did not have any dental problems requiring emergency treatment.

74. On 3 December 2004 he was diagnosed with occipital neuralgia (Arnold's neuralgia), for which treatment was recommended.

75. Between 2004 and 2006 the applicant sent numerous letters to the NPA about his dental problems.

76. On 13 May and 26 August 2004 the NPA informed the applicant by letter that Ploieşti Prison had no dentist and that he would be sent to see the dentist at Târgşor Prison for urgent dental treatment only. The applicant was never sent to Târgşor Prison for dental treatment.

77. On 28 October 2004, the applicant having requested a stay of execution of his sentence on health grounds, an official medical report

issued by Prahova Department of Pathology diagnosed the applicant as having occipital neuralgia which could be treated within the prison system. No treatment was prescribed for his neuralgia and no mention was made of his dental problems.

78. On 25 January 2005 the applicant was informed by the NPA that he had been diagnosed with "partial edentulism" (loss of teeth) and that the dental prosthesis he had been recommended could be manufactured within the prison dentistry system, but only when he could afford to pay for it.

79. On 24 March 2005 the partial edentulism diagnosis was confirmed by the Jilava Bucharest Prison Hospital, which also diagnosed chronic periodontitis and recommended further dental extraction. On 20 April 2005 the applicant was hospitalised because of his frontal and lateral edentulism and a tooth was extracted; further monitoring was recommended.

80. The applicant's medical record indicated chronic periodontitis on the following dates: 22, 25 and 28 November 2005, 19 June, 19 July, 27 September, and 12 October 2007, and 13 November and 4 December 2008, but there is no mention of any treatment prescribed for this ailment.

81. In 2005 the applicant complained on numerous occasions (in June, July, October and December) that he was not receiving appropriate medical treatment. In reply, based on information provided by the Ploieşti Prison, the NPA informed him that he was receiving appropriate treatment.

82. On 19 September and 8 November 2005 the applicant submitted the same complaint to the Ministry of Justice. He provided details of his condition (a swollen neck and clearly visible injuries on his neck, sharp pains in the ears and blood in his saliva), and indicated that he had not been seen by a doctor.

83. The applicant was hospitalised in Jilava Prison Hospital from 7 February to 13 March 2006 and was treated with antibiotics and pain killers. A medical letter of 13 March 2006 indicated that the applicant was suffering from multiple and complicated dental caries, chronic generalised periodontitis requiring treatment, frontal edentulism, neuralgia of the superior laryngeal nerve, nasal septal deviation, chronic rhinitis and occipital neuralgia requiring treatment. Special diet, antibiotics and treatment of the applicant's dental problems were further recommended.

84. On 23 March 2006 the NPA confirmed that the applicant had swollen glands and nodules in the mouth, but denied any link between these symptoms and the applicant's dental problems, alleging that the latter had been treated.

85. The applicant had several teeth extracted between March 2006 and November 2008.

86. A medical report of 14 June 2007 indicated that the applicant was suffering from chronic periodontitis. No treatment was prescribed.

87. On 1 September 2008 the applicant was able to consult a neurologist, who found that his migraine had worsened in terms of intensity and frequency.

88. On 17 October 2008 the applicant was examined at the Rahova Hospital where he was diagnosed with chronic pharyngitis and dental radicular remains.

89. The applicant's medical record in Rahova Prison mentioned migraine on 4 December 2008; no treatment was mentioned.

90. On 13 May 2010 the applicant's medical file indicated that the applicant had lost 12 teeth and that little remained of two other teeth.

91. Between 21 June and 1 July 2010 the applicant was hospitalised at the Colibaşi Prison Hospital, where he was diagnosed with duodenal ulcer, chronic hepatitis, chronic migraine, biliary dyskinesia and urinary tract infection. He was not examined by the dentist, who was on leave.

92. On 2 July 2010 the administration of Rahova Prison indicated in a letter to the Romanian Government that the applicant was not known to have any chronic diseases.

93. On 12 July 2010, while in Craiova Prison, the applicant demanded proper treatment for his dental problems, including dentures, and said that he was ready to bear the cost of the treatment.

94. On 19 July 2010 NPA informed the applicant, in reply to his renewed request for a dental prosthesis that he had to pay 40 % of its price.

95. In August 2010 the applicant reiterated his request for urgent treatment and informed the authorities that he was finally in a position to pay the necessary costs.

96. On 11 October 2010 he was allowed to start the treatment for his dental problems at his own expense in the private practice of Dr E.M. in the city of Ploieşti, with appointments and treatment (including a prosthesis) on 11, 15, 20 and 26 October 2010, 3, 19, 23 and 29 November 2010, 3, 8 and 17 December 2010, and 5, 18 and 24 January 2011. During the appointments he was under prison escort. The medical findings and the treatment prescribed were recorded in health reports which were included in his prison medical file.

The applicant submitted to the Court a copy of the medical report following his first appointment, on 11 October 2010, from which it appears that he had caries and needed a prosthesis.

97. By May 2011 the applicant had lost 14 teeth.

2. The Government's account

98. The Government submitted that while in Ploieşti Prison the applicant was diagnosed with tooth abscesses, partial edentulism, gum inflammation and chronic periodontitis.

99. He was examined, diagnosed and/or underwent treatment as follows:

- tooth abscesses, on 16, 17, 18 and 19 August 2002, on 9 and 15 January 2004 and on 20 December 2005;
- tooth pain, facial and tooth neuralgia, on 11 April, 4 August, 1 September, 13 October and 3 November 2004;
- periodontal inflammation, on 20 April 2005;
- chronic periodontitis, on 13 May 2005 and 2 May and 16 June 2006;
- tooth extraction, on 28 January 2006;
- vital dental pulp extirpation, on 12 June 2006; and
- coronary obturation of one root canal, on 22 September 2006.

100. For all these problems he received appropriate treatment with antibiotics, vitamins, anti-inflammatory drugs and pain killers.

101. While in Rahova Prison, the applicant was examined and diagnosed with periodontal abscess on 16 March 2007 and with vestibular abscess on 26 March 2007, for which he received antibiotic treatment.

He also underwent the following surgery: two vital dental pulp extirpations on 12 June 2006, coronary obturation on 22 September 2006, root canal obturation on 29 March 2007, as well as two dental extractions, on 14 November 2007 and 29 January 2008.

102. On 6 July 2007 the applicant was taken to the Dental Surgery Clinic in Bucharest, where no disease "requiring emergency surgery" was detected.

103. The Government submitted a letter of 15 February 2011 from the Director of the Medical Directorate of the NPA, in which the Director indicated that, upon examination of the applicant's prison medical file, it appeared that the applicant had received treatment for his dental problems from 9 January 2004 until 7 October 2010. He admitted that it did not emerge from that file that any therapy plan had been conceived in respect of the applicant's dental problems. Lastly, the letter indicated that from 13 October 2010 the applicant had been consulting a private dentist in Ploieşti to have a prosthesis made.

104. Lastly, the Government submitted an undated medical record concerning the applicant from which it appears that he was provided with an estimate of the costs of a dental prosthesis by the private practice of Dr E.M., where he had been treated between October 2010 and January 2011 (see paragraph 96 above).

C. The applicant's domestic complaints concerning the material conditions of detention

105. In 2004 and 2006 the applicant made numerous complaints on the basis of Government Ordinance no. 56/2003 (see paragraph 115 below) concerning the poor conditions of his detention, including the lack of beds and living space, and inadequate medical treatment.

106. For instance, on 4 June 2004 the applicant lodged a complaint with the Ploieşti Court of First Instance, complaining of overcrowding, a poor diet and lack of appropriate medical care.

This complaint was eventually dismissed by a final judgment of Prahova County Court on 12 August 2004, which found that "the conditions of detention complained of exist in all prisons and cannot therefore be considered as an action or a failure imputable to the prison administration and therefore contrary to the legal provisions".

107. Following the entry into force of Law no. 275/2006 on the execution of sentences (see paragraph 116 below), the applicant lodged a complaint with the delegate judge concerning the conditions of his detention, and in particular, poor hygiene, lack of personal space, lack of dental examinations and appropriate medical treatment in general, and inappropriate and insufficient food.

108. On 26 January 2009 the delegate judge dismissed the complaint on the grounds that the conditions of detention in Jilava Prison were not contrary to the requirements of either the domestic law or the Council of Europe's instruments, that Jilava Prison had not had a dentist since 2007 and that therefore detainees were taken for consultation in limited numbers to Prahova Prison, and that in any event, about 80% of the prison population in Romania had dental problems. The applicant was also informed that he would be taken to see a dentist at Rahova Prison on 29 January 2009.

The applicant's appeal against this decision was dismissed on 23 March 2009.

D. Proceedings for a stay of execution

109. On the basis of Article 455 of the Code of Criminal Procedure, in conjunction with Article 453 c), the applicant made several requests for a stay of execution of his sentence, in order to work and earn the money he needed for his family and to afford proper medical treatment for himself.

110. His request made in 2004 was eventually dismissed by the Ploieşti Court of Appeal on 16 June 2004, despite a favourable recommendation by the Welfare Department of Ploieşti City Council.

Another request, made in 2006, was dismissed on 15 November 2006 by the Ploieşti Court of Appeal, and a request made in 2007 was eventually dismissed by the Bucharest Court of First Instance on 12 December 2007.

E. Criminal complaints against a prison doctor

111. The applicant also lodged a criminal complaint against A.R., the general practitioner at Ploieşti Prison, alleging that he was left without appropriate medical care for his various ailments, such as dental and eye diseases, headaches, stomach ulcer, sinusitis and cervical spinal cord compression.

112. On 13 October 2004 the military prosecutor in charge of the investigation took a statement from the doctor, who declared that the applicant had no chronic or acute disease that required emergency treatment. The same day, the prosecutor decided not to open proceedings against the doctor. The applicant's appeal against that decision was dismissed on 18 February 2005 by a higher-ranking prosecutor as having been lodged out of time.

The applicant lodged a complaint against the prosecutors' decisions with the Bucharest Military Court, which dismissed it on 12 April 2005. This decision was upheld by the Military Court of Appeal (*Tribunalul Militar Teritorial*) on 26 May 2005.

II. RELEVANT DOMESTIC LAW AND PRACTICE

113. 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 intentionally or negligently caused that damage.

114. Excerpts from the relevant provisions of Law no. 23/1969, on the execution of sentences, concerning the rights of detainees are described in paragraphs 23 and 25 of the *Năstase-Silivestru* judgment (see *Năstase-Silivestru v. Romania*, no. 74785/01, 4 October 2007).

115. Law no. 23/1969 was replaced by Emergency Ordinance no. 56/2003 ("Ordinance 56") on the rights of prisoners, adopted by the Government on 25 June 2003 and ratified by Parliament on 7 October 2003. The Ordinance 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 provided for by law. The court could either cancel the impugned measure or reject the complaint.

116. Emergency Ordinance no. 56/2003 was repealed on 18 October 2006 by Law no. 275/2006 on the execution of sentences, which in its section 38 provides for a similar appeal to be lodged with a judge delegated by the court of appeal to supervise the observance of the prisoners' rights. The delegate judge's decisions can be appealed against to a court. The delegate judge and the court can either cancel the impugned measure or reject the complaint.

Law no. 275/2006 also stipulates that sentences must be executed in conditions compatible with respect for human dignity, and that each

detainee must be provided with a bed, that cells must have natural light, that detainees must wear civilian clothes when serving their sentences, and that if they do not have any, these should be provided free of charge by the prison authorities.

No provision deals with the structural quality of the place of detention or how much space detainees should have.

117. Order No. 433/C of the Minister of Justice, of 5 February 2010, concerning compulsory minimum standards in prison facilities, entered into force on 15 February 2010. According to this order, the minimum living space was set at 6 cubic meters per person (about 2 square metres per person) for prisoners assigned to the open and semi-open prison regime, and 4 square metres per person for other categories of prisoners, including minors and remand prisoners.

118. Joint Order No. 1361/C/1016/2007 of the Ministers of Justice and Health, of 6 July 2007, concerning health insurance for detained persons provided, *inter alia*, that only detainees who lacked financial resources and had lost more than 50% of their chewing ability while in detention were entitled to a free prosthesis. In other cases, detainees had to bear part of the cost of the prosthesis.

119. On 21 February 2012 the Ministers of Justice and Health issued a new Joint Order No. 429/125/2012 concerning health insurance for detained persons. According to this order, detained persons are entitled in all cases to free medical assistance from a special budget at the disposal of the National Prisons Administration.

III. RELEVANT INTERNATIONAL STANDARDS

120. The Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV), of 31 July 1957, and 2076 (LXII), of 13 May 1977, provide, in particular, as follows:

> "10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation...
>
> 11. In all places where prisoners are required to live or work,
>
> (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
>
> (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness...

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

45. (2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited...”

121. The relevant extracts from the General Reports prepared by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) read as follows:

Extracts from the 2nd General Report [CPT/Inf (92) 3]

“46. Overcrowding is an issue of direct relevance to the CPT’s mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard... It is also axiomatic that outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners."

Extracts from the 3rd General Report [CPT/Inf (93)12]

"30. Health care services for persons deprived of their liberty is a subject of direct relevance to the CPT's mandate. An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment". Further, the health care service in a given establishment can potentially play an important role in combating the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments). Moreover, it is well placed to make a positive impact on the overall quality of life in the establishment within which it operates...

34. While in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention regime [...] The health care service should be so organised as to enable requests to consult a doctor to be met without undue delay.

Prisoners should be able to approach the health care service on a confidential basis, for example, by means of a message in a sealed envelope. Further, prison officers should not seek to screen requests to consult a doctor.

35. A prison's health care service should at least be able to provide regular out-patient consultations and emergency treatment (of course, in addition there may often be a hospital-type unit with beds). The services of a qualified dentist should be available to every prisoner. Further, prison doctors should be able to call upon the services of specialists.

As regards emergency treatment, a doctor should always be on call. Further, someone competent to provide first aid should always be present on prison premises, preferably someone with a recognised nursing qualification.

Out-patient treatment should be supervised, as appropriate, by health care staff; in many cases it is not sufficient for the provision of follow-up care to depend upon the initiative being taken by the prisoner.

36. The direct support of a fully-equipped hospital service should be available, in either a civil or prison hospital...

38. A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly...

39. A medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.

Further, daily registers should be kept by health care teams, in which particular incidents relating to the patients should be mentioned. Such registers are useful in that

they provide an overall view of the health care situation in the prison, at the same time as highlighting specific problems which may arise...

53. It lies with prison health care services - as appropriate acting in conjunction with other authorities - to supervise catering arrangements (quantity, quality, preparation and distribution of food) and conditions of hygiene (cleanliness of clothing and bedding; access to running water; sanitary installations) as well as the heating, lighting and ventilation of cells. Work and outdoor exercise arrangements should also be taken into consideration.

Insalubrity, overcrowding, prolonged isolation and inactivity may necessitate either medical assistance for an individual prisoner or general medical action vis-à-vis the responsible authority."

Extracts from the 7th General Report [CPT/Inf (97) 10]

"...

As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee's mandate (cf. CPT/Inf (92) 3, paragraph 46). An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention..."

Extracts from the 11th General Report [CPT/Inf (2001) 16]

"28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports...

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions... Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners... [E]ven when such measures are required,

they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy; moreover, the absence of these elements generates conditions favourable to the spread of diseases and in particular tuberculosis...”

122. Concerning overcrowding, the CPT indicates the following in the document named “CPT standards” (CPT/Inf/E (2002) 1):

“50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners....”

123. On 30 September 1999 the Committee of Ministers of the Council of Europe adopted Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation, which provides in particular as follows:

“Considering that prison overcrowding and prison population growth represent a major challenge to prison administrations and the criminal justice system as a whole, both in terms of human rights and of the efficient management of penal institutions;

Considering that the efficient management of the prison population is contingent on such matters as the overall crime situation, priorities in crime control, the range of penalties available on the law books, the severity of the sentences imposed, the frequency of use of community sanctions and measures, the use of pre-trial detention, the effectiveness and efficiency of criminal justice agencies and not least public attitudes towards crime and punishment...

Recommends that governments of member states:

- take all appropriate measures, when reviewing their legislation and practice in relation to prison overcrowding and prison population inflation, to apply the principles set out in the appendix to this recommendation...

Appendix to Recommendation No. R (99) 22

I. Basic principles

1. Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only, where the seriousness of the offence would make any other sanction or measure clearly inadequate.

2. The extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding. Countries whose prison capacity may be sufficient in overall terms but poorly adapted to local needs should try to achieve a more rational distribution of prison capacity...

II. Coping with a shortage of prison places

6. In order to avoid excessive levels of overcrowding a maximum capacity for penal institutions should be set.

7. Where conditions of overcrowding occur, special emphasis should be placed on the precepts of human dignity, the commitment of prison administrations to apply humane and positive treatment, the full recognition of staff roles and effective modern management approaches. In conformity with the European Prison Rules, particular attention should be paid to the amount of space available to prisoners, to hygiene and

sanitation, to the provision of sufficient and suitably prepared and presented food, to prisoners' health care and to the opportunity for outdoor exercise.

8. In order to counteract some of the negative consequences of prison overcrowding, contacts of inmates with their families should be facilitated to the extent possible and maximum use of support from the community should be made..."

124. On 11 January 2006 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2006)2 to member States on the European Prison Rules, which replaced Recommendation No. R (87) 3 on the European Prison Rules accounting for the developments which had occurred in penal policy, sentencing practice and the overall management of prisons in Europe. The amended European Prison Rules lay down the following relevant guidelines:

"1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.

...

10.1. The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction."

Allocation and accommodation

"18.1. The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18.2. In all buildings where prisoners are required to live, work or congregate:

a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b. artificial light shall satisfy recognised technical standards; and

c. there shall be an alarm system that enables prisoners to contact the staff without delay.

18.4. National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.

18.5. Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

19.3. Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

19.4. Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

22.1. Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.

22.4. There shall be three meals a day with reasonable intervals between them.

22.5. Clean drinking water shall be available to prisoners at all times.

27.1. Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

27.2. When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise."

Organisation of prison health care

"40.1 Medical services in prison shall be organised in close relation with the general health administration of the community or nation.

40.2 Health policy in prisons shall be integrated into, and compatible with, national health policy.

40.3 Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

40.4 Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer.

40.5 All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.

Medical and health care personnel

41.1 Every prison shall have the services of at least one qualified general medical practitioner.

41.2 Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency.

41.3 Where prisons do not have a full-time medical practitioner, a part-time medical practitioner shall visit regularly.

41.4 Every prison shall have personnel suitably trained in health care.

41.5 The services of qualified dentists and opticians shall be available to every prisoner.

Duties of the medical practitioner

42.1 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary.

42.2 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall examine the prisoner if requested at release, and shall otherwise examine prisoners whenever necessary.

42.3 When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:

a. observing the normal rules of medical confidentiality;

b. diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;

c. recording and reporting to the relevant authorities any sign or indication that prisoners may have been treated violently;

d. dealing with withdrawal symptoms resulting from use of drugs, medication or alcohol;

e. identifying any psychological or other stress brought on by the fact of deprivation of liberty;

f. isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment;

g. ensuring that prisoners carrying the HIV virus are not isolated for that reason alone;

h. noting physical or mental defects that might impede resettlement after release;

i. determining the fitness of each prisoner to work and to exercise; and

j. making arrangements with community agencies for the continuation of any necessary medical and psychiatric treatment after release, if prisoners give their consent to such arrangements.

43.1 The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent with health care standards in the community, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed.

43.2 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.

43.3 The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

44. The medical practitioner or other competent authority shall regularly inspect, collect information by other means if appropriate, and advise the director upon:

a. the quantity, quality, preparation and serving of food and water;

b. the hygiene and cleanliness of the institution and prisoners;

c. the sanitation, heating, lighting and ventilation of the institution; and

d. the suitability and cleanliness of the prisoners' clothing and bedding.

45.1 The director shall consider the reports and advice that the medical practitioner or other competent authority submits according to Rules 43 and 44 and, when in agreement with the recommendations made, shall take immediate steps to implement them.

45.2 If the recommendations of the medical practitioner are not within the director's competence or if the director does not agree with them, the director shall immediately submit the advice of the medical practitioner and a personal report to higher authority.

Health care provision

46.1 Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals, when such treatment is not available in prison.

46.2 Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment. "

IV. INTERNATIONAL AND DOMESTIC REPORTS CONCERNING THE SITUATION IN ROMANIAN PRISONS

A. Reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

125. The CPT visited Romania in 1995, 1999, 2001, 2002, 2003, 2004, 2006, 2009 and 2010 and carried out periodic visits to various detention establishments, including the prisons of Gherla, Bucharest-Jilava and its hospital, Codlea, Craiova, Tulcea, Bacău and Ploieşti.

126. Overcrowding of prisons and lack of reasonable hygiene facilities at the national level were constantly highlighted by the CPT, which also 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.

127. In the report published on 11 December 2008 (CPT/Inf (2008) 41) following a visit from 8 to 19 June 2006 to a number of detention facilities, including the prisons of Bucharest-Jilava, Bacău, Craiova and Ploieşti, the CPT found that severe overcrowding and lack of reasonable hygiene facilities 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.

Moreover, the CPT found in respect of the prisons visited, in particular the prisons of Bacău and Ploieşti, a lack of access to natural light, bad air ventilation, particularly dirty mattresses, lack of activities outside the cells, bad quality food and poor hygiene in the kitchens, and widespread non-observance of the daily one-hour walk. The conditions in Bucharest-Jilava Prison, in particular the section for dangerous detainees, were qualified as appalling by the CPT, which noted that the prison administration itself had acknowledged that material conditions of detention throughout the prison were extremely poor. The CPT declared itself

particularly concerned about the constant lack of beds and the fact that in all the prisons visited the personal space per detainee was no more than 1.5 square metres and sometimes even as little as 0.6 square metres. While welcoming the changes introduced in domestic legislation providing for personal space of 4 square metres for each prisoner, the CPT recommended, *inter alia*, that necessary measures be taken to ensure compliance with this requirement. The CPT found the detainees' access to medical treatment to be insufficient, including with respect to dental care: lack of adequate staff, long waiting periods for consultation, inadequate consultation procedures. The CPT formulated a number of recommendations, including increased use of the possibility to grant, in due time, a stay of execution for health reasons.

B. Reports by the Council of Europe Commissioner for Human Rights

128. In a report following his visit to Romania in October 2002 the Commissioner for Human Rights made the following comments on the situation in prisons:

> "11. However, the prison service is facing serious problems, in particular the dilapidation of many of the prisons and, above all, chronic overcrowding. [...] Thus the overall occupancy level for prisons is 137% and there is a manifest shortage of beds. My visit to Codlea prison, which has an occupancy level of 197% and where 25 prisoners are regularly held in cells designed for 15, clearly illustrated the situation. I was all the more concerned to learn that some prisons had even higher occupancy levels, rising to 353%.
>
> 12. Being aware of the problem, the authorities keep the highest rates of overcrowding for open prisons, where the prisoners work during the day and are therefore not continually faced with the acute lack of space. However, this solution cannot be other than very temporary. The fact that several prisoners received pardons during my visit demonstrates that changes in prison policy are both possible and expected. Given that, for economic reasons, there are no plans to build new prisons at the moment I would urge the authorities to develop a system of alternative penalties, effective management of release on parole and a judicial policy requiring moderation in the use of detention. I welcome the efforts of the Ministry of Justice in this direction and invite it to complete these reforms as soon as possible [...]."

129. In his follow-up report on Romania (2002-2005) on the assessment of the progress made in implementing his earlier recommendations, published on 29 March 2006, the Council of Europe Commissioner for Human Rights made the following comments on the situation in prisons:

> "11. In spite of the efforts made to improve prisons, recent studies carried out by the Romanian authorities show that the situation remains difficult. In 2004, out of 44 prisons, 8 had very good conditions, 15 had good conditions, 15 had satisfactory conditions and 6 had particularly difficult conditions, including Jilava prison, near Bucharest, which was visited by the members of the Office of the Commissioner.

12. Prison over-population continues to be a persistent problem in Romania, although the number of prisoners has fallen from more than 47,000 in 2002 to around 39,000 at the end of 2004. On average, the rate of overpopulation has fallen significantly and is now at an acceptable level of 101%. However, certain prisons still have an intolerable overpopulation [In particular the Bacău prison, which had a rate of overpopulation of 288% on 31 December 2004]. From a general point of view, living conditions in prison have improved but still require further improvement, owing in particular to the lack of resources allocated to them.

13. As well as the lack of means, there is a manifest lack of prison staff. Romania has on average one warder for seven prisoners, and even one for seventeen prisoners in certain prisons, whereas the average in Europe is closer to one warder for four prisoners. That shortage means that warders on duty have to increase their working time and are reduced to a purely supervisory role, and it may have negative consequences on their actions or interventions. Lastly, the lack of staff represents a significant obstacle to the normalisation of prison life and exacerbates the shortage of equipment and the problems associated with overpopulation, and severely limits work towards reintegration.

14. Nonetheless, a significant process of modernisation has been initiated. Among the objectives of the Strategy for the reform of the judicial system 2004-2007, mention should be made of the intention to build new prisons and to modernise nine centres. Over the period 2001-2005, 6,332 new places were created.

15. In this process for the improvement of living conditions in prisons, mention may be made of the modernisation of the young offenders' centre in Gaesti and the creation of the centres in Ocna and Buzias, the construction at Rahova prison of a hospital specialising in surgery, and the provision of hot and cold water and installation of central heating in all prisons. Also noteworthy, finally, is the transparency of the Ministry of Justice, which publishes detailed statistics on the prison situation on its internet site.

16. As regards alternatives to detention, the new Criminal Code, adopted in June 2004 introduced the possibility of an open or semi-open prison regime for petty offences. It also provides for options other than imprisonment for young offenders and offers wider possibilities for the application of penalties.

17. The Commissioner's team visited Jilava and Rahova prisons, both near Bucharest. These two prisons to a large extent reflect the situation in prisons in Romania at the time of the visit.

18. At the time of the visit, Rahova prison had 1,915 prisoners, including 80 minors, for 2,200 places. The different wings of Rahova prison have recently been renovated and provide reasonable living conditions. However, a problem of overcrowding affected the women's section, where up to 16 women were being held in cells with only 10 beds. There are two reasons for this overcrowding. First, women's prison sections are rare in the Bucharest area and prisoners wish to or must remain in Rahova (in order to be near their families, or because the proceedings are still pending, etc.); and, second, the women's wing was reduced by one half in order to build the new prison hospital.

19. Rahova prison hospital admits and treats prisoners from the whole country. It has a very modern operating facility and the latest generation of medical equipment. As the Director of the Prison Administration states, the construction of this facility required a significant but essential financial effort, as prison medicine was incomplete

and inappropriate. Prisoners are now able to receive proper care, sometimes in better conditions than in some civil hospitals.

20. By comparison with the positive example found in Rahova, Jilava prison appeared, at the time of the visit, to be in an alarming situation. Essentially a transit prison and a preventive detention prison, it had 2,500 prisoners for 1,400 places, and was one of the most overcrowded prisons in Romania. Conditions were deplorable from any point of view, as the Director of Romanian Prisons acknowledged. All the installations were obsolete, the windows incapable of keeping out the cold and the furniture from another era. Over-population meant that in some cases 27 prisoners had to live in cells designed for 6 or 8 prisoners.

Conclusions

21. The Commissioner emphasises the efforts made and the investments carried out to improve prison conditions and welcomes the adoption of new alternative measures. There is a clear intention to increase available prison places in order to reduce prison overpopulation. The programme of bringing prisons into line with the standards of the Council of Europe must be continued. However, significant difficulties remain and an urgent solution must be envisaged for the most obsolete and the most overcrowded prisons, such as Jilava prison."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

130. The applicant complained under Article 3 of the Convention of inhuman and degrading treatment on account of the material conditions of detention and the lack of adequate medical care in the various prisons where he had been detained. In particular, he complained of severe overcrowding, insalubrious sanitary facilities, the presence of lice, poor quality food, lack of hot or cold running water, lack of adequate activities and excessive restrictions on out-of-cell time. He further complained of inadequate health care and that in response to his repeated requests for dental care he was told that there were not enough funds.

131. He submitted that the situation amounted to a structural problem, which has been acknowledged by the domestic authorities.

132. Article 3 of the Convention reads as follows:

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

A. Admissibility

133. The Government submitted first that the applicant's complaint in respect of the conditions of his detention had been decided by a final judgment of 12 August 2004, and that the application, which was lodged

with the Court only on 14 September 2005, was therefore outside the six-month time-limit.

134. Alternatively, in their observations of 15 February 2011 the Government alleged that the copy of the record of the medical examination carried out on 11 October 2010 which the applicant had sent to the Court (see paragraph 96 above) contained inscriptions which were not made by Dr E.M. They submitted a written statement by Dr E.M. according to which certain handwritten inscriptions on that record were not in her handwriting, and that the original of that medical record was kept by the Ploieşti Prison administration. The Government inferred that the applicant had tried to use a forged document in support of his allegations. They therefore argued that his application should be declared inadmissible for "abuse of the right of individual petition", pursuant to Article 35 § 3 of the Convention.

135. The applicant disagreed. He pointed out that he had lodged numerous complaints concerning his conditions of detention, including inappropriate health-care. His complaint lodged with the Ploieşti Court of First Instance on 4 June 2004 and examined by a final judgment of 12 August 2004 related to only one episode of a continuous situation covering all the prisons in which he was detained.

He also argued that the problem of conditions of detention was a structural problem in Romanian prisons, for which the six-month period ran, according to the Court's case-law, from the cessation of the situation.

In his observations of 2 May 2011 the applicant submitted that the document concerning the consultation of 11 October 2010 was part of his prison medical file, kept, according to the relevant legal provisions, by the Ploieşti Prison administration. It was not for him to explain why there was different handwriting on that document and in any event that record did not bring any new information concerning his dental problems. He had submitted the record to the Court in support of his allegations that, while he was in prison, he had been treated in a private practice for his dental problems.

136. The Court reiterates that Article 35 § 1 of the Convention permits it to deal with a matter only if the application is lodged within six months of the date of the final decision in the process of exhaustion of domestic remedies. It also reiterates that in cases where there is a continuing situation, the six-month period runs from the cessation of that situation (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004).

137. The Court reiterates that the concept of a "continuing situation" refers to a state of affairs in which there are continuous activities by or on the part of the State which render the applicant a victim (see *Posti and Rahko v. Finland*, no. 27824/95, § 39, ECHR 2002-VII). Complaints which have as their source specific events which occurred on identifiable dates cannot be construed as referring to a continuing situation (see *Camberrow MM5 AD v. Bulgaria*, (dec.), no. 50357/99, 1 April 2004).

Hence, the Court has previously refused to treat the time spent by applicants in different detention facilities as a continuing situation in cases where their complaints related to specific episodes, such as force-feeding (see *Nevmerzgitskiy v. Ukraine* (dec.), no. 58825/00, 25 November 2003) or failure to render medical assistance at different facilities (see *Tarariyeva v. Russia* (dec.), no. 4353/03, 11 October 2005).

138. In the instant case, the Court notes that during the period of his detention the applicant was frequently transferred between nine detention facilities, and complained about the conditions of detention in six of these. He did so consistently, even after having lodged the present application (see paragraphs 105 to 108 above).

In any event, the applicant alleged that the conditions remained substantially identical, and that his transfer from one facility to another did not in any way change his situation.

His complaints do not relate to any specific event but concern the whole range of problems regarding sanitary conditions, the temperature in the cells, overcrowding, lack of adequate medical treatment, in particular dental treatment, and so on, which he suffered during almost the entire period of his detention, until 11 May 2010. It follows that the applicant's detention in Jilava, Ploieşti, Mărgineni and Rahova Prisons, and Jilava and Rahova Prison Hospitals can be regarded as a continuing situation.

139. In respect of the Government's allegation that the applicant availed himself, with dishonest intention, of a document in which different handwriting had been used, the Court recalls that an application may be rejected as abusive, *inter alia*, if it was knowingly based on untrue facts (see, for instance, *Akdivar and Others v. Turkey*, 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV; *I.S. v. Bulgaria* (dec.), no. 32438/96, 6 April 2000, unreported; *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; and *Nold v. Germany*, no. 27250/02, § 87, 29 June 2006).

In the instant case, the Court notes, on the one hand, that the original of the impugned document was part of the applicant's medical prison file and, as such, was in the custody of Ploieşti Prison administration. On the other hand, Dr. E.M. did not state that the information recorded in that document, at the end of the examination she had carried out on 11 October 2010, was untrue.

Furthermore, the Government did not claim that the information contained in the medical record of 11 October 2010 was untrue or not known to the authorities: information about the applicant's dental problems such as caries and the need for a prosthesis was already recorded in the applicant's prison file (see paragraphs 78, 83 and 103 above). Finally, the impugned document contained undisputed information on the appointments made by the applicant with the private practice of Dr E.M.

Therefore, the Court finds that the Government's objection is unsubstantiated, there being no indication that the application was based, knowingly or otherwise, on untrue facts.

Accordingly, the Court dismisses the Government's objections.

140. The Court notes that the application 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 submissions of the parties

(a) The applicant

141. The applicant contested the Government's submissions and reiterated that he had been held in precarious conditions, that the cells had been overcrowded and the quality of the food very poor, that the conditions of detention had not been conducive to maintaining proper hygiene and that he had had no out-of-cell activities. He referred to the CPT reports and various domestic NGOs' reports for the relevant periods as confirming his allegations.

142. The applicant further alleged that while in detention he had developed various diseases as a result of the poor conditions. As he did not receive adequate treatment, many of these diseases had developed into chronic diseases which were not adequately treated. The applicant submitted that, although he had made several complaints concerning the lack of medical care and medicines, he had been told that there were no funds available.

(b) The Government

143. Referring to the information submitted on the general conditions of detention (see paragraphs 33-42 above), the Government contended that the domestic authorities had taken all necessary measures in order to ensure that the applicant had adequate conditions of detention.

As to overcrowding, they stressed that the number of beds started to exceed the number of detainees from 2004 in most prisons, and from 2006 in Ploieşti Prison.

144. As regards medical treatment, the Government submitted that the applicant's complaint could not be understood as a request to obtain dentures free of charge. Concerning the other diseases, the Government submitted that a number of measures (see paragraphs 98-102 above) had been taken to ensure that the applicant's health was being taken care of in an adequate manner. The applicant had failed to point to any inadequacies in this area and his complaints were wholly unsubstantiated.

The Government argued that in any event, the applicant's conditions of detention had not amounted to a violation of Article 3 of the Convention. They relied on the Court's judgment in the case of *Kudła v. Poland* [GC] (no. 30210/96, § 92-94, ECHR 2000-XI).

(c) The third-party intervener

145. Its scope of activity including monitoring of detention conditions in prisons and police cells, APADOR-CH, the third-party intervener, carried out fact-finding missions in prisons. Based on the result of these visits, it provided specific information on the establishments visited after the entry in force of Law no 275/2006.

146. Between 2002 and March 2011 APADOR-CH conducted regular visits in more than 20 prisons throughout the country, including the prisons of Aiud, Gherla, Baia Mare, Colibaşi, Drobeta Turnu-Severin, Timişoara, Bucharest-Jilava and its hospital, Giurgiu, Bucharest-Rahova and its hospital, Focşani (Mândreşti), Poarta-Albă and its hospital, Tichileşti (Brăila) Prison for juvenile offenders and Târgşor Prison for women. After each visit, a public report was drawn up, including on-the-spot direct findings as well as information and statistics submitted by the authorities on the relevant matters.

147. The third-party intervener submitted a summary of its main findings on the prisons visited and referred, for further details, to each specific report.

148. Overcrowding has been and remains a general problem in Romanian penitentiaries. All the prisons visited had serious overcrowding problems at the time of the visits. Discussions with prison administrations showed that prison staff did not apply the CPT standard (minimum requirement of 4 square metres per detainee); instead, they regularly used norms based either on the number of beds or on a minimum of 6 cubic meters per detainee, and even these norms were often not observed. New regulations introduced by Order no. 433/2010 approving the minimum compulsory standards in prison facilities apply the 4 square meters legal requirement only to maximum security and closed regime prisoners and only in new or renovated prison facilities.

149. All the prisons visited allowed less than 4 square metres per detainee, with averages of 0.7 square metres in Timişoara Prison; 1 square metre in Colibaşi Prison; 2.08 square metres in Jilava; 1.65 square metres in Focşani Prison; 2.62 square metres in Târgşor; 2.0 square metres in Rahova Prison, or even less, as in 2009 a cell measuring 18 square metres accommodated eleven prisoners; 1.36 square metres in Ploieşti Prison; 2.0 square metres in Mărgineni Prison; and 2.77 square metres in Rahova Prison.

150. The detainees' living conditions were directly affected by the overcrowding in the prisons.

151. In Rahova Prison there were no chairs or benches in the cells.

152. In 2008 in Jilava Prison the water was muddy and full of impurities, unsuitable for drinking and risky even for washing. The basement of the older wing was flooded with water and dejections, and was a source of pestilential stench and infection that infested that part of the prison with rats and cockroaches, rendering the situation intolerable and a real danger for the detainees' health.

153. Hot water was generally provided on a schedule. Theoretically, access to showers was granted on a weekly basis, once or twice a week; in practice, however, because of overcrowding and the limited number of showers, access to them was limited. In all the prisons the shower facilities needed repairs, were frequently insalubrious and required better cleaning. The findings were the same with regard to the hygiene and cleanliness of toilets and sinks in the rooms. The latter had only cold water and were used for all purposes: cleaning the toilets, which often did not have running water, the personal hygiene of the detainees, washing their clothing and cleaning the cell.

154. Parasites such as lice in the dirty, worn-out mattresses and bed linen, rendering de-bugging operations inefficient, were not uncommon, including in Jilava, Aiud, Colibaşi and Rahova prisons. As a result of the poor hygiene there were numerous cases of dermatitis, scabies and/or prurigo.

155. In the cold season some establishments, such as Aiud and Rahova prisons, did not provide enough heating in the cells. In Colibaşi Prison the light switches were placed outside the cells, out of the detainees' reach, and some detainees complained that lights were occasionally left on during the night.

156. In all the facilities visited detainees complained about the poor quality/quantity of the food. Lunches consisted mainly of rice, dried beans or potatoes. Fresh vegetables were never used. In general, meat of poor quality (pork carcass, lard, bones) was used and the portions served to individual detainees contained only traces of meat. Detainees relied mainly on the food they could afford to buy from the prison store and food received from family or friends. Even in cases where detainees had special dietary needs (for health or religious reasons), the food provided contained a lot of lard. When questioned about this situation, the prison doctors explained that the only obligation they had was to provide an "organoleptic examination" of the detainees' food.

157. Food was generally served in the cells since the prisons did not have canteens. The premises where food was prepared and stored lacked minimum hygiene standards and a large majority of the premises monitored were unfit for food preparation or storage (dirty, run-down kitchens with mould and fungi on the walls).

158. The prohibition of food parcels sent by post (Orders of the Minister of Justice nos. 3042/2007 and 2714/2008) had negative effects on those detained a long way from their families and whose families could not afford the cost of transport to the prison.

159. The detainees' right to medical care is provided for in sections 50 to 52 of Law no. 275/2006 and Order no. 1361/2007 on medical assistance to detainees in the custody of the National Prison Administration. According to these provisions, medical treatment and drugs must be provided free of charge.

160. The third-party intervener found that the whole prison system had insufficient medical staff. As a result, strict scheduling was required in order to accommodate all detainees, be it for visits for health problems or for regular check-ups.

161. Many detainees complained that they did not receive their medication on time and that it had to be bought for them by their families precisely because they did not get to see the doctor more than once a month. There was a shortage of medicines in many prisons, which the National Prison Administration acknowledged was due to bureaucratic problems. Untreated or badly treated diseases were frequent.

162. Only a small percentage of detainees were offered the possibility to work, and very few indoor activities were offered to the large number of detainees who were not allowed to work. The prisons visited were understaffed and the staff untrained in this respect. Lack of activities was the second complaint, after the quality of the food, voiced by detainees in all the facilities monitored.

163. With regard to outdoor activities, in general the exercise yards were insufficient considering the number of inmates in each prison, and most often devoid of any equipment. In particular, in Jilava Prison the exercise yards were mere cages covered with wire nets, exposed to the sun and rain, where detainees were only able to stand idle or walk. In Giurgiu Prison high-risk/dangerous detainees were taken out in cages on top of the buildings and not in the exercise yards.

164. A large number of detainees were willing to work because of the salary, albeit modest (part of which salary went to the National Prison Administration and the remaining part to the detainee, who was not allowed to spend it all before his release), and the possibility of having their sentence reduced. However, the percentage of detainees working inside or outside the prison was very small (ranging from none to less than 50%).

2. The Court's assessment

(a) General principles

165. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. The Convention

prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (*Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

As the Court has held on many occasions, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Furthermore, in considering whether a 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. Although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see *Peers v. Greece*, no. 28524/95, §§ 67-68 and 74, ECHR 2001-III, and *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII).

166. Measures depriving a person of his liberty may often involve an inevitable element of suffering or humiliation. Nevertheless, the suffering and humiliation involved must not go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.

In the context of prisoners, the Court has already emphasised in previous cases that a detained person does not, by the mere fact of his incarceration, lose the protection of his rights guaranteed by the Convention. On the contrary, persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Under Article 3 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*, § 102, and *Kudła*, § 94, judgments cited above).

167. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

168. The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the

detention conditions complained of were "degrading" from the point of view of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, 7 April 2005).

In previous cases where applicants had at their disposal less than 3 square metres of personal space, the Court 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 other authorities, *Sulejmanovic v. Italy*, no. 22635/03, § 51, 16 July 2009; *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, § 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §47-49, 29 March 2007; and *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005).

169. By contrast, in other cases, where the overcrowding was not as severe as to raise in itself an issue under Article 3 of the Convention, the Court noted other aspects of physical conditions of detention as being relevant for its assessment of compliance with that provision. Such elements included, in particular, the availability of ventilation, access to natural light or air, adequacy of heating arrangements, compliance with basic sanitary requirements and the possibility of using the toilet in private. Thus, even in cases where a larger prison cell was at issue – measuring in the range of 3 to 4 square metres per inmate – the Court found a violation of Article 3 since the space factor was coupled with the established lack of ventilation and lighting (see, for example, *Babushkin v. Russia*, no. 67253/01, § 44, 18 October 2007; *Ostrovar v. Moldova*, no. 35207/03, § 89, 13 September 2005; and *Peers*, cited above, §§ 70-72) or the lack of basic privacy in the prisoner's everyday life (see, *mutatis mutandis*, *Belevitskiy v. Russia*, no. 72967/01, §§ 73-79, 1 March 2007; *Valašinas*, cited above, § 104; *Khudoyorov v. Russia*, no. 6847/02, §§ 106-107, ECHR 2005-X (extracts); and *Novoselov v. Russia*, no. 66460/01, §§ 32 and 40-43, 2 June 2005).

170. Moreover, the State's obligation under Article 3 of the Convention to protect the physical well-being of persons deprived of their liberty has been interpreted as including an obligation to provide them with the requisite medical assistance (see, for instance, *Hurtado v. Switzerland*, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79; *Kudła* cited above, § 94; and *Istratii and Others v. Moldova*, no. 8721/05, 8705/05 and 8742/05, § 49, 27 March 2007). The mere fact that a detainee was seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate. The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and the treatment he underwent while in detention, that the diagnoses and care are prompt and accurate, and that where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at curing the detainee's diseases or preventing their aggravation, rather than addressing them on a

symptomatic basis. The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through (see *Visloguzov v. Ukraine*, no. 32362/02, § 69, 20 May 2010 and the case-law cited therein).

(b) Application of these principles to the present case

i. Material conditions of detention

171. The Court observes that the applicant spent his entire detention in seven detention facilities. In his application lodged with the Court in 2005 he complained about the conditions of detention in four of them: Ploieşti Prison, Jilava Prison and its hospital, Mărgineni Prison, and Rahova Prison and its hospital.

172. The Court notes that the Government acknowledged overcrowding in all the detention facilities where the applicant was held until 2004, and in Ploieşti Prison until 2006 (see paragraph 34 above). It further notes that the statistics provided by the Government in reply to the allegations of overcrowding were based on occupancy of the available beds, and not on surface per detainee. Moreover, with regard to significant periods of time, they did not provide any information at all, on the ground that the relevant records had been destroyed in keeping with specific regulations (see paragraph 35 above).

173. Despite the scarce and scattered information submitted by the Government, the Court observes, based on all the material at its disposal, that the personal space allowed to detainees in the detention facilities where the applicant was detained between 2002 and 2011 was, save for occasional situations, consistently less than three square metres (see paragraphs 28, 49, 61 to 63 and 123 to 127 above). The Government have not put forward any element capable of refuting the applicant's allegations of overcrowding in the cells where he was detained in Ploieşti Prison, Jilava Prison and its hospital, Mărgineni Prison, and Rahova Prison and its hospital, which are corroborated by the above-mentioned information from many sources, including the Government. This state of affairs in itself raises an issue under Article 3 of the Convention (see, among many other authorities, *Marian Stoicescu v. Romania*, no. 12934/02, §§ 13 and 24, 16 July 2009; *Orchowski v. Poland*, no. 17885/04, § 122, ECHR 2009-...; and *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, § 77, 20 October 2011, with further references).

Furthermore, this situation was worsened by the fact that in many detention facilities there were fewer beds than inmates, so that the applicant had to share often his bed with other inmates (see paragraphs 13, 19 and 27 above).

174. Concerning the material conditions of detention, the Court notes that the Government did not refute either the precise allegations made by the

applicant or the findings of the various bodies who visited the detention facilities in which the applicant was detained. In reply to the applicant's specific allegations the Government merely referred in great detail to the legal provisions governing the rights of detainees.

175. Having regard to the applicant's allegations, supported by the findings made by the CPT, the Human Rights Ombudsman and APADOR-CH, but also based on the information provided by the Government, the Court finds it established that the applicant also experienced the following conditions: lack of appropriate furniture in the cells; poor sanitary facilities, such as a limited number of toilets and sinks for a large number of detainees, toilets in cells with no water supply, sinks in cells providing only cold water for a wide range of needs (personal hygiene, washing clothing and personal objects, cleaning the toilets), limited access to showers providing hot water; poor sanitary conditions in general, including the presence of cockroaches, rats, lice and bedbugs, worn-out mattresses and bed linen, and poor quality food. Moreover, the applicant was confined to his cell most of time, save for one hour of daily exercise and even as little as thirty-minutes walk; very often he was not able to spend time outside the overcrowded cells (see paragraphs 14 to 18, 22, 23, 29 to 32, 40, 67, 125 to 129, and 145 to 164, above).

176. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees and unsatisfactory sanitary conditions (see, in particular, *Ciorap v. Moldova*, no. 12066/02, § 70, 19 June 2007; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; *Bragadireanu v. Romania*, no. 22088/04, §§ 92-98, 6 December 2007; and *Iamandi v. Romania*, no. 25867/03, §§ 56-62, 1 June 2010).

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

Not only do the above conditions not satisfy the European standards established by the CPT (see paragraphs 121 and 122 above), but the cumulative effect of overcrowding in large capacity (and sometimes also insalubrious) dormitories, a poor regime of activities, bad food and poor hygiene conditions can prove detrimental to the prisoners (see also, *mutatis mutandis*, *Kalashnikov v. Russia*, cited above, § 97, and *Kehayov v. Bulgaria*, no. 41035/98, § 66, 18 January 2005).

178. The Court also considers that the applicant's situation owing to insufficient personal space, bad food, poor hygiene conditions such as those described above, lack of appropriate activities outside the cell and lack of sufficient daily exercise was further exacerbated by his numerous transfers during his detention. In this respect, the Court notes that from January 2002 until his release in May 2011, the applicant was transferred 38 times between the various detention facilities, only five of which transfers

concerned his stay in Rahova or Jilava Prison hospitals (see paragraph 8 above).

179. Even though in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court considers that the distress and hardship he endured exceeded the unavoidable level of suffering inherent in detention and went beyond the threshold of severity under Article 3 of the Convention.

ii. Health care in detention

180. It is common ground between the parties and supported by the documents submitted by the Government that upon his arrest in 2002 the applicant was not suffering from any illness. Only hepatitis he had been diagnosed with six years before he was placed in detention was mentioned in his medical file (see paragraph 70 above).

181. The Court notes that in the course of his detention the applicant developed a number of chronic and serious illnesses.

In August 2002 the applicant started to have dental problems, complaining repeatedly each year of sore teeth and other associated pains. Between 2002 and 2003 he had several teeth extracted, and it was not until the beginning of 2005 that he was diagnosed with partial edentulism and that a dental prosthesis was recommended.

As from January 2004 the applicant also complained regularly of headaches. In December 2004 he was diagnosed with occipital neuralgia, for which treatment was recommended.

In March 2005 he was diagnosed with chronic periodontitis, several extractions were performed and further monitoring was recommended. In 2006 he was again diagnosed with chronic generalised periodontitis requiring treatment, frontal edentulism, and occipital neuralgia requiring treatment, but also with neuralgia of the superior laryngeal nerve, nasal septal deviation and chronic rhinitis (see paragraph 83 above). Treatment of his dental problems was again recommended.

The diagnosis of chronic periodontitis was again made in 2007 and further dental extractions were performed between 2006 and 2008.

In 2008 chronic pharyngitis and a worsening of the applicant's migraine were detected.

By July 2010 the applicant was found to be suffering also from the following chronic illnesses: duodenal ulcer, chronic hepatitis, chronic migraine and biliary dyskinesia (see paragraph 91 above).

182. Despite his chronic diseases, the Court notes that the applicant was treated on a symptomatic basis. No comprehensive record was kept of either his health or the treatment prescribed and followed. Thus, no regular and systematic supervision of the applicant's state of health was possible. No comprehensive therapeutic strategy was set up, aimed at, to the extent

possible, curing his diseases or preventing their aggravation rather than addressing them on a symptomatic basis.

The applicant's medical record indicates no treatment for the above chronic illnesses, including the chronic periodontitis. It appears that the applicant received symptomatic treatment consisting of pain killers and, for occasional infections, antibiotics.

183. Moreover, the Court notes that even some of the medical recommendations and prescriptions of the doctors who examined the applicant were not implemented, such as the treatment for his neuralgia, a dental prosthesis and appropriate monitoring and treatment of his dental problems (see paragraphs 74, 77-78, 80 and 87-89 above). Frequently the applicant had to wait for several weeks, despite severe pains, to be provided with medical assistance, in particular for his teeth, because no dentist was available (see paragraphs 73, 76, 82 and 91 above).

184. As a result, the applicant's health seriously deteriorated over the years. In particular, his dental problems grew worse, and yet no appropriate treatment was envisaged. Combined with his other untreated chronic ailments, this resulted in various constant pains and, in respect of his dentition, eventually to the complete loss of fourteen teeth and the main part of two other teeth.

185. Furthermore, the Court observes that the elements in the file indicate that the applicant followed all the treatments recommended to him by the doctors who examined him while in detention. Therefore, he did not contribute in any way to the worsening of his health condition (see, *per a contrario*, *Epners-Gefners v. Latvia*, no. 37862/02, § 44, 29 May 2012).

Lastly, the Court observes that it was not until October 2010 that the applicant's dental problems were taken care of intensively (fourteen appointments over a period of four months) and comprehensively (check-up and treatment of all remaining teeth, as well as a dental prosthesis) in a private practice outside the prison, which the applicant was allowed to consult only after he stated that he was in a position to do so at his own expense.

186. In view of the above, the Court is not satisfied that the applicant was provided with adequate medical care during his detention, which in itself, having regard to the long period concerned and to the consequences on the applicant's health, raises an issue under Article 3 of the Convention.

iii. Conclusion

187. The foregoing considerations are sufficient to enable the Court to conclude that the conditions in prison, in particular the overcrowding and lack of access to hygiene, as well as inappropriate treatment of his health problems, caused the applicant suffering attaining the threshold of inhuman and degrading treatment proscribed by Article 3.

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

II. APPLICATION OF ARTICLE 46 OF THE CONVENTION

188. Before examining the claims for just satisfaction submitted by the applicant under Article 41 of the Convention, and having regard to the circumstances of the case, the Court considers it necessary to determine what consequences may be drawn from Article 46 of the Convention for the respondent State. Article 46 of the Convention reads as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

A. The parties' submissions

1. The applicant

189. Referring to the reports of national and international bodies on the conditions of detention (see paragraphs 125 to 129 above), the applicant argued that his allegations related to a structural problem in Romanian prisons, which could only be resolved by taking adequate measures in the framework of Article 46 of the Convention. Overcrowding, poor hygiene conditions, inappropriate medical care, in particular dental care, were widespread and persistent despite the adoption of new legal provisions.

2. The Government

190. The Government contended that the national statutory requirements granting rights to persons detained were in perfect compliance with those set by the Court's case-law relating to Article 3. It agreed that the situation in certain Romanian prisons did not comply with the national statutory requirements, and that some prisons experienced overcrowding. However, such a situation was not permanent but could also fluctuate significantly.

191. Occasionally, there were other problems than overcrowding, but these problems had been identified and measures had been taken to tackle them: in 2010 measures aiming at improving the minimum space per detainee (see paragraph 117 above); in 2002 a new law on amnesty; in 2003 the abolition of prison sentences for minor offences, and changes in the Code of Criminal Procedure with regard to pre-trial detention; in 1999, specialisation of detention facilities according to the types of crimes committed and the offenders' age and sex; in 1998 and 2007, statutory measures aimed at increasing the quantity of products available to each detainee in order to maintain an adequate level of hygiene; in 1997 the establishment of a committee in charge of supervising the condition of the

buildings and cells; in 2002 and 2004, measures aimed at improving the quality of water; in 1999 measures for setting up an adequate heating system; from 2006 acquisition of vehicles for the transportation of detainees; in 2010 a circular letter from NPA aimed at ensuring the same level of food for detainees throughout the country, and so on.

192. The Government submitted therefore that there was no systemic problem in respect of the conditions of detention in Romanian prisons and invited the Court to decide on a case-by-case basis whether a prisoner's particular circumstances amounted to a violation of Article 3.

Moreover, referring to the Court's judgement in the case of *Orchowski* cited above, the Government stressed that the number of judgments against Romania in which the Court has already found a violation of Article 3 of the Convention on account of inappropriate conditions of detention was very low and did not suffice to classify the problem as a structural one.

3. The third-party intervener

193. The third-party intervener submitted that its direct findings (see paragraphs 145 to 164 above) disclosed the existence of a systemic problem within the Romanian prison system even after the entry into force and subsequent implementation of Law no. 275/2006. They submitted that in the absence of any substantial improvement, a pilot-case procedure could trigger a reform in the system, and would be an efficient remedy to the systemic problem.

B. The Court's assessment

194. The Court reiterates that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court has found to have been violated. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that have led to the Court's findings (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 120, ECHR 2002-VI; *Lukenda v. Slovenia*, no. 23032/02, § 94, ECHR 2005-X; and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 134, ECHR 2008-...; *Poghossian v. Georgia*, no. 9870/07, §§ 67 to 70, 24 February 2009; *Ghavtadze v. Georgia*, no. 23204/07, §§ 102 to 106, 3 March 2009). This obligation has been consistently emphasised by the Committee of Ministers in the supervision of the execution of the Court's judgments (see, for example, ResDH(97)336, IntResDH(99)434, IntResDH(2001)65 and ResDH(2006)1). In theory it is not for the Court to

determine what measures of redress may be appropriate for a respondent State to take in accordance with its obligations under Article 46 of the Convention. However, the Court's concern is to facilitate the rapid and effective suppression of a shortcoming found in the national system of protection of human rights (see *Driza v. Albania*, no. 33771/02, § 125, ECHR 2007-XII (extracts)).

195. In the present case the Court found a violation under Article 3 of the Convention for inadequate living and hygiene conditions, including health care, in the prisons in which the applicant was detained, which can be said to be a recurrent problem in Romania.

The Court has regularly found violations of Article 3 of the Convention in respect of the conditions of detention that have existed over a number of years in Romanian prisons, in particular overcrowding, inappropriate hygiene and lack of appropriate health care (see, among many other cases, *Bragadireanu*, cited above; *Petrea v. Romania*, no. 4792/03, 29 April 2008; *Gagiu v. Romania*, no. 63258/00, 24 February 2009; *Brânduşe v. Romania*, no. 6586/03, 7 April 2009; *Măciucă v. Romania*, no. 25673/03, 26 August 2009; *Artimenco v. Romania*, no. 12535/04, 30 June 2009; *Marian Stoicescu v. Romania*, no. 12934/02, 16 July 2009; *Eugen Gabriel Radu v. Romania*, no. 3036/04, 13 October 2009; *V.D. v. Romania*, no. 7078/02, 16 February 2010; *Dimakos v. Romania*, no. 10675/03, 6 July 2010; *Coman v. Romania*, no. 34619/04, 26 October 2010; *Dobri v. Romania*, no. 25153/04, 14 December 2010; *Cucolaş v. Romania*, no. 17044/03, 26 October 2010; *Micu v. Romania*, no. 29883/06, 8 February 2011; *Fane Ciobanu v. Romania*, no. 27240/03, 11 October 2011; and *Onaca v. Romania*, no. 22661/06, 13 March 2012). The Court's findings concern many prisons in Romania, spread throughout the territory, such as Bucharest-Jilava, Bucharest-Rahova, Giurgiu, Ploieşti, Gherla, Aiud, Mărgineni, Timişoara, Botoşani, Târgu-Ocna, Mândreşti, Poarta-Albă, Târgşor, Baia-Mare, Galaţi and Craiova.

196. The Court takes note of the fact that the respondent State has taken certain general steps, including legislative amendments, to remedy the structural problems related to overcrowding and the resulting, inadequate conditions of detention (see paragraphs 33 to 42 and 191 above). By virtue of Article 46 of the Convention, it will be for the Committee of Ministers to evaluate the general measures adopted by Romania and their implementation as far as the supervision of the Court's judgment is concerned.

The Court cannot but welcome these developments, which may ultimately contribute to the improvement of the overall living and sanitary conditions in Romanian prisons. However, in view of the extent of the recurrent problem at issue, consistent and long-term efforts, such as the adoption of further measures, must continue in order to achieve complete compliance with Articles 3 and 46 of the Convention.

197. The Court considers that in order to properly comply with the obligations stemming from the Court's previous judgments in similar cases, an adequate and effective system of domestic remedies should be put in place, at the applicants' disposal, allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief.

198. The remedy which under Romanian law relies mainly on the delegate judge (see paragraph 116 above) should allow the delegate judge and the domestic courts to put an end to a situation found to be contrary to Article 3 of the Convention and to grant compensation if such findings are made.

199. As to the domestic law on compensation, it must reflect the existence of the presumption that substandard conditions of detention have occasioned non-pecuniary damage to the aggrieved individual. Substandard material conditions are not necessarily due to problems within the prison system as such, but may also be linked to broader issues of penal policy. Moreover, even in a situation where individual aspects of the conditions of detention comply with the domestic regulations, their cumulative effect may be such as to constitute inhuman treatment. As the Court has repeatedly stressed, it is incumbent on the Government to organise its prison system in such a way that it ensures respect for the dignity of detainees (see, among other authorities, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 229, 10 January 2012, with further references).

The level of compensation awarded for non-pecuniary damage by domestic courts when finding a violation of Article 3 must not be unreasonable taking into account the awards made by the Court in similar cases. The right not to be subjected to inhuman or degrading treatment is so fundamental and central to the system of the protection of human rights that the domestic authority or court dealing with the matter will have to provide compelling and serious reasons to justify their decision to award significantly lower compensation or no compensation at all in respect of non-pecuniary damage (see *mutatis mutandis*, *Ananyev and Others* cited above, § 230).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

200. 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

201. The applicant claimed 1,600 Romanian Lei (RON) in respect of pecuniary damage, on account of the price he had to pay for the dental prosthesis he had to wear because of the lack of adequate dental care. He also claimed 200,000 euros (EUR) in respect of non-pecuniary damage and an allowance of EUR 1,000 per month for the rest of his life, in compensation for the irreversible chronic diseases he developed while in detention.

202. The Government submitted that the applicant's claims were excessive and unfounded.

203. The Court notes that in paragraph 188 above it has found a violation of Article 3 of the Convention on separate accounts of improper living conditions in the various detention facilities where the applicant was detained and lack of adequate medical care during his detention. It further finds it reasonable to assume that the applicant certainly incurred costs which were directly attributable to the violation found. It also takes the view that as a result of the violation found the applicant undeniably suffered non-pecuniary damage which cannot be made good merely by the finding of a violation.

Consequently, having regard to the circumstances of the case seen as a whole and deciding on equitable basis, the Court awards the applicant EUR 20,000 in respect of pecuniary and non-pecuniary damage, plus any amount that may be chargeable in tax.

B. Costs and expenses

204. The applicant also claimed EUR 5,720 for the costs and expenses incurred by his lawyers in the proceedings before the Court, and submitted an itemised schedule of these costs.

205. The Government contested this claim as excessive.

206. 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 reasonable as to quantum. In the present case, regard being had to the documents in its possession, the above criteria, and the fact that legal aid was paid to the

applicant, the Court considers it reasonable to award the sum of EUR 4,800, to be paid into the applicant's representatives' bank account as identified by them.

C. Default interest

207. 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 application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the material conditions of the applicant's detention and the inappropriate treatment of his health problems;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the respondent State's national currency at the rate applicable on the date of settlement:
      (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 4,800 (four thousand eight hundred euros), in respect of costs and expenses, to be paid into a bank account indicated by the applicant's representatives;
   (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 24 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President