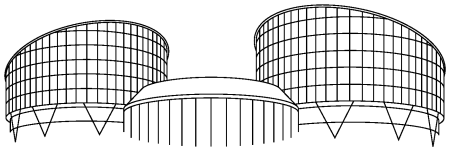

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF LAZARIU v. ROMANIA

(Application no. 31973/03)

JUDGMENT

STRASBOURG

13 November 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Lazariu v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Luis López Guerra,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 21 October 2014,

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

PROCEDURE

1. The case originated in an application (no. 31973/03) 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, Mrs Victoria Lazariu ("the applicant"), on 15 August 2003.

2. The applicant, who had been granted legal aid, was represented by Mr D. Burghelea, a lawyer practising in Iaşi. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs, and Ms I. Cambrea, co-Agent.

3. The applicant complained of various violations of her rights under Articles 3, 5, 6 and 8 of the Convention.

4. By a decision of 22 November 2011 the Court decided to communicate the applicant's complaints under the following Articles of the Convention: Article 3 concerning alleged ill-treatment on 28 May 2003; Article 5 § 1 concerning the legality of the alleged deprivation of liberty on 28 May 2003 and from 28 May to 5 June 2003, when she was held in a psychiatric hospital; Article 5 § 4 concerning the right to judicial review of the legality of her confinement in a psychiatric hospital; Article 6 § 1 concerning the alleged lack of reasoning in the domestic decisions delivered in the criminal proceedings against her and the duration of those proceedings; Article 6 § 1 taken together with Article 6 § 3 (c) concerning the right to be heard by the domestic courts; and Article 8 concerning the right to respect for private life, and to declare the remainder of the application inadmissible.

5. The applicant and the Government each submitted further written observations (Rule 59 § 1) on the merits.

6. On 12 July 2013 the Court decided, of its own motion, to restrict public access to the case file, in accordance with Rule 33 § 2.

7. On 6 March 2014 the Court decided to ask for additional observations from the parties concerning the admissibility of the complaint under Article 5 § 1 of the Convention concerning the legality of the alleged deprivation of liberty on 28 May 2003.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1951 and lives in Iaşi.

A. Incident on 28 May 2003

9. The applicant, who was admitted to the Bucharest Bar Association in December 2004, was involved, as a party, in several sets of civil and criminal proceedings.

10. In February 2003 she was informed by E.E., a prosecutor attached to the Iaşi District Court, that she was suspected of incitement to false testimony. She was specifically suspected of having persuaded the witnesses in a different set of criminal proceedings to give false testimony. The development of those proceedings is described in paragraphs 37 to 57 below.

11. At about 9 a.m. on 28 May 2003 the applicant went to the prosecutor's office attached to the Iaşi District Court. According to her, she wanted to submit a complaint to the superior of the prosecutor investigating the case against her. According to the Government, the applicant went there at the prosecutor's invitation in order to be informed of the content of the criminal file against her (*prezentarea materialului de urmărire penală*).

12. The applicant argued that the prosecutor had seen her for only a few minutes at the entrance to his office and that afterwards she had been taken by a police officer to a room on the first floor, where she was kept waiting.

13. The Government claimed that when the prosecutor declined the applicant's request to have photocopies of all the documents in the criminal file, she had refused to remain in the prosecutor's office. Consequently, at 9.30 a.m. the prosecutor issued an order to appear (*mandat de aducere*) to prevent her from leaving the building and instructed police officer M.L.E. to ensure that it was complied with. The Government submitted a copy of the order to appear. They also claimed that the applicant had refused to comply with the order, and had continued to behave inappropriately, using malicious language against the prosecutors and the police. The police

prevented her from leaving the building. At 10.40 a.m. the applicant was received by the chief prosecutor. She was then allowed to write a complaint in the waiting room of the building.

14. Subsequently, at an unknown time the same day, E.E. ordered the applicant's immediate confinement to the Iaşi Psychiatric University Hospital ("the Socola hospital") for an assessment of her mental state. The reasons given were the following:

> "Given that [the applicant] has shown an exaggerated propensity to complain and that her language has become extremely vehement, facts that give rise to doubts as to her psychological state, and having regard to Articles 116, 117 and 203 of the Code of Criminal Procedure and section 14 of Decree no 79/1971, I order that a psychiatric assessment be conducted ...".

15. While she was still in the building, the applicant made a handwritten complaint against the confinement order. In her complaint, she also mentioned that she had been held in the building since 11 a.m. After her confinement she lodged other similar complaints.

16. At about 2 p.m., as the applicant refused to go to the hospital, prosecutor E.E. asked the police to execute the confinement order. According to the applicant, several police officers dragged her by the hands and lifted her by force into a car, in which she was then taken to the hospital. She sustained several bruises and other injuries. According to a report drafted by the Iaşi police the same day, four police officers (other than M.L.E. – see paragraph 13 above) carried the applicant in their arms to the car. She resisted and tried several times to hit her knees against a wooden doorframe.

17. The applicant was photographed by the press while being taken away from the premises of the prosecutor's office. She submitted to the Court several articles that had appeared in the local press. They included a photograph of the applicant on her knees in a doorway while being dragged out of the building by two police officers.

B. The applicant's confinement in a psychiatric institution

18. At about 3 p.m. on 28 May 2003 the applicant was presented to the doctor on duty at the Socola hospital.

19. On 5 June 2003 the applicant underwent an examination by a panel of three doctors at the Socola hospital. The examination report concluded that she was mentally sound and aware of her acts. She was released from the hospital on the same day.

20. On 9 June 2003 the applicant was informed by a note from the chief prosecutor attached to the Iaşi District Court that her complaint against the confinement order had been dismissed by a decision of 6 June 2003. The prosecutor's note did not indicate any reasons for the dismissal of the applicant's complaint.

C. Investigations into the incident of 28 May 2003

21. On 29 May 2003 the applicant underwent a forensic medical examination. The doctor reported that she had various bruises on her arms and legs which could have been caused by being hit with blunt objects and by pressure exerted with the fingers, and estimated that she needed three or four days' treatment.

22. Following the incident, the applicant submitted numerous requests with various authorities, such as the police, the prosecutor's office, the Ministry of Justice and the President of Romania. Those relevant to the case are summarised below.

1. Request to the Iaşi County Police

23. On 3 June 2003, the applicant wrote to the Iaşi County Police asking to be informed of the legal grounds of the actions taken by the police on 28 May 2003. She also requested the names of the police officers who had escorted her by car from the prosecutor's office to the Socola hospital.

24. On 26 June 2003, the police informed her that she had been escorted to the Socola hospital by virtue of an order delivered by the prosecutor under Article 117 of the Code of Criminal Procedure ("the CCP"), but that they could not disclose the names of the police officers because they were not their employees.

2. Request to the Iaşi Police (Second Precinct)

25. On 4 August 2003, the applicant wrote to the Iaşi Police (Second Precinct) with a similar request (see paragraph 23 above).

26. On 13 August 2003, the police informed her that the officers who had escorted her were indeed employed by the Iaşi Police (Second Precinct), but that they could not disclose their names without a specific instruction from the prosecutor's office attached to the Iaşi District Court.

3. Criminal complaints

27. The applicant lodged several complaints against E.E. and other prosecutors who had examined her case, and against M.L.E. She generally complained of abusive behaviour, insults, defamation and the disclosure of confidential information with reference, among other things, to the 28 May 2003 incident. It appears that the prosecutor's office attached to the Iaşi Court of Appeal examined most of those complaints and decided not to prosecute. The applicant did not challenge the decisions not to prosecute before the courts.

28. One particular complaint of the applicant's was examined by the prosecutor's office attached to the High Court of Cassation and Justice ("the High Court"). The complaint, directed against M.L.E., E.E. and three other

prosecutors, referred, among other things, to ill-treatment, torture and illegal deprivation of liberty.

29. On 19 June 2003, the applicant was heard by a prosecutor. She gave evidence on the circumstances of her complaint, identifying the individuals against whom she had complained.

30. On 21 July 2003, the prosecutor's office attached to the High Court decided not to prosecute, on the grounds that the individuals under investigation had not committed the alleged offences.

31. The applicant challenged the prosecutor's decision before the High Court under Article 278^1 of the CCP (see paragraph 66 below). By a decision 15 April 2005, the High Court referred the case to the chief prosecutor of the same prosecutor's office. By a decision of 16 December 2005 the chief prosecutor dismissed the applicant's criminal complaint, on the grounds that her complaints had already been examined or were under examination at that time. The applicant was informed of that decision on 27 December 2005.

32. The applicant did not challenge the decision of 16 December 2005 before the courts.

4. Action lodged under Law no. 29/1990 on administrative litigation (the Administrative Litigation Act)

33. In November 2003, the applicant brought an action against the Iaşi District Court, the Iaşi Court of Appeal and the prosecutor's office attached to the Iaşi Court of Appeal, claiming that they had unlawfully examined a complaint she had made in February 2003. At a later date, she extended her complaint against the Romanian Government, the Ministry of the Interior, the Romanian Gendarmerie, the General Prosecutor's Office and the Ministry of Public Finance. She claimed that they had been responsible for the actions of the prosecutor's office attached to the Iaşi Court of Appeal.

34. On 15 January 2004, the applicant extended her complaint against a judge, several prosecutors, police officers and gendarmes, claiming that they had been involved in her confinement in the Socola hospital.

35. By a decision of 20 February 2006, the Iaşi Court of Appeal dismissed the applicant's complaint. It noted, in particular, that, with regard to the individuals allegedly involved in her confinement in the psychiatric hospital, the provisions of the Administrative Litigation Act were not applicable and that the applicant should have lodged a criminal complaint.

36. The applicant lodged an appeal on points of law. By a decision of 16 January 2007, the High Court dismissed her appeal for lack of specification.

D. Criminal proceedings against the applicant

37. On 13 December 2003 the prosecutor's office attached to the Iaşi District Court issued an indictment against the applicant and eight other individuals ("the co-accused"). The applicant was charged on several counts: defamation, incitement to give false testimony, unlawfully practising activities specific to the profession of lawyer (*practicarea ilegală a activităţilor specifice profesiei de avocat*), fraud, forgery and use of forged documents.

38. The case was initially assigned to the Iaşi District Court. The applicant challenged the latter's impartiality before the High Court and asked for the file to be transferred to a different court. On 5 March 2004, the High Court assigned the case to the Cluj Napoca District Court ("the District Court").

39. Fifty-six hearings were held before the District Court. Most of the postponements were for procedural issues (irregularities in notifying the parties, missing case file, failure of proposed witnesses to appear before the court) or at the request of the co-accused or civil parties. The hearing was postponed about twenty-five times at the applicant's request, owing either to a change of counsel, to her inability to appear before the court for medical or professional reasons or to her challenging the judge reviewing her case. A few of the applicant's requests overlapped those made by the prosecution or the co-accused.

40. On 18 March 2005 a District Court judge made a written note in the case file that some documents relating to the charge of "fraud" were missing.

41. On 24 March 2005 in the District Court the bill of indictment was read out in the presence of the applicant and her chosen counsel. The applicant's counsel asked that the co-accused be heard separately by the court in order to avoid them influencing each other. Six of the co-accused were heard during that hearing. The applicant and her counsel asked them a few questions. Two of the co-accused did not appear in court and so could not be heard. The court acceded to the applicant's request to hear the testimonies of four witnesses. She undertook to produce the home addresses of the witnesses in question.

42. On 6 September 2005 the District Court heard testimony from the applicant. She criticised the manner in which the criminal investigation had been conducted: the prosecutors had refused to carry out a graphology test, had influenced the witnesses and had communicated confidential information to the press. She also complained that her defence rights had been disregarded.

43. On 21 March 2006 the District Court approved, in the applicant's presence, her request to have eight additional witnesses heard. The court also heard another co-accused. The applicant's request to have all the

co-accused, the civil parties and the plaintiffs heard once again was dismissed on the grounds that their testimonies had been taken in accordance with the law.

44. On 5 September 2006 the District Court heard the last co-accused in the proceedings in the applicant's presence.

45. The District Court also heard six of the witnesses proposed by the applicant. The other witnesses did not appear in court for various reasons (for example, they had refused to appear or were too ill to do so).

46. On 24 April 2007 the applicant declared before the District Court that the offences with which she had been charged had become statute-barred but that she wanted the proceedings to continue in order to prove her innocence.

47. During the proceedings before the District Court the applicant requested numerous times that the case be remitted to the prosecutor. However, all her requests were dismissed for lack of grounds. She also asked for a graphology report to be prepared, but her request was dismissed because such a report had already been prepared during the criminal investigation and there was no need for a new one. The applicant raised an objection of non-constitutionality, which was dismissed as ill-founded. She also argued that the proceedings in respect of the charge of false testimony should be discontinued as a final decision on the subject had already been made, but her objection was dismissed on the grounds that a prosecutor's decision could not be likened to a judicial decision.

48. The first-instance proceedings lasted until 23 July 2009, when the District Court delivered a judgment in the case. It established that the applicant had committed all the offences with which she had been charged, but discontinued the criminal proceedings against her on the charges of incitement to false testimony, false accusation and carrying out activities specific to the profession of lawyer, noting that criminal liability for those offences was time-barred. It also found the applicant guilty of the charges of fraud, forgery and use of forged documents, and gave her a three-year suspended sentence. The court found that the evidence adduced during the prosecutor's investigation was corroborated by the evidence adduced directly before it, namely statements by the accused persons, the civil parties and the witnesses, including the witnesses proposed by the applicant. The court further established that the applicant had forged three documents issued by a law office with a view to certifying her alleged status as an apprentice lawyer, and had pretended to be a lawyer in order to represent five people before the courts. She had forged the signatures of two of her clients on documents she had used in the proceedings concerning those clients. The District Court also ordered the applicant to pay damages to the civil parties.

49. The applicant, the prosecutor and the civil parties lodged an appeal before the Cluj County Court ("the County Court"). The applicant made

written submissions in support of her appeal, requesting leave, among other things, to give a statement before the appellate court.

50. The County Court held four hearings in the case. The applicant did not attend, but was represented by court-appointed counsel.

51. During the final hearing on 12 April 2010, the applicant was represented by court-appointed counsel. The court noted that the applicant had submitted a power of attorney for counsel of her choice, indicating that he could not be present at the hearing in question and asking for its postponement. The court decided to proceed with the review of the case even though the applicant and her chosen counsel were not present, indicating that the applicant had been lawfully summoned at the addresses she had given and that she could be represented by the court-appointed lawyer. The latter asked that the criminal proceedings against the applicant be discontinued or, in the alternative, that a milder sentence be applied.

52. The County Court delivered its decision on 27 April 2010. It found that the sentence applied to the applicant was too mild, given the offences with which she was charged. It further held that the way in which she had committed the offences revealed that she was highly dangerous. Taking into account her behaviour after having committed the crimes, and her constant denial of guilt, it held that finding her guilty was not sufficient warning for her and that it was therefore fitting that she should serve a prison sentence. It accordingly sentenced her to five years' imprisonment.

53. The County Court also found that for two of the crimes of which the applicant had been convicted by the first-instance court (forgery and use of forged documents) her criminal liability was time-barred, and discontinued the proceedings regarding those charges.

54. The applicant lodged an appeal on points of law, submitting written observations. She raised the following arguments, *inter alia*:

- she had not been heard by the lower courts;
- the case file was incomplete as, according to a note by the first-instance judge, the documents relating to the fraud charge were missing from the file;
- two of the co-accused had stated before the first-instance court that they had been forced during the criminal investigation to declare that she had incited them to make false statements;
- the lower courts had breached her right not to be tried twice for the same acts, since by a final decision of 7 November 2002 the Iaşi County Court had found that her co-accused had not given false testimonies;
- one of the civil parties had never made a request to join the proceedings as a civil party;
- her requests for evidence had not been approved; and

- numerous procedural errors had vitiated the entire proceedings and her right to defence had not been respected during the criminal investigation and before the courts.

55. The case was registered before the Cluj Court of Appeal ("the Court of Appeal"). The Court of Appeal held two hearings in the case; the applicant did not attend them.

56. During the final hearing on 20 October 2010, the applicant was represented by a different court-appointed lawyer from the one who had represented her in the appeal proceedings (see paragraph 50 above). The court-appointed counsel indicated that the applicant had instructed her to ask for a postponement of the hearing. The Court of Appeal dismissed her request. The applicant's representative asked for her acquittal or for a milder sentence.

57. By a final decision of the same date, the Court of Appeal dismissed the applicant's appeal on points of law as manifestly ill-founded. The court found that the applicant's right to defence had been respected throughout the proceedings. The court further held that the lower courts had examined extensive evidence, correctly determined the facts of the case and established her guilt beyond any doubt. It also held that the sentence given to her had been correctly determined.

E. Complaints lodged by the applicant concerning press coverage of the 28 May 2003 incident

58. On 3 June 2006, the applicant complained to the Iaşi County Police that police officers had called the press during her removal from the prosecutor's office to the Socola hospital on 28 May 2003. On 27 June 2003, the police dismissed her allegations and found that the applicant herself had called the press from her mobile phone.

59. The applicant also lodged several complaints, both criminal and civil, against the journalists who had published articles following that incident. She submitted before the Court copies of first-instance judgments by which two journalists had been ordered to pay her 4,640 euros (EUR) for non-pecuniary damage. She also lodged a complaint against the photographer who had allegedly taken the photograph that featured in the impugned articles. The Năsăud District Court dismissed her complaint on 24 November 2004, reasoning that that photographer was not the one who had taken photographs of her, and that taking a person's photograph was not, in any event, a punishable offence.

60. The applicant did not provide any information as to whether those judgments became final or were appealed against. Nor did she inform the Court whether she had received the non-pecuniary damages ordered by the courts.

II. RELEVANT DOMESTIC LAW AND PRACTICE

61. Articles 69 to 74 of the CCP set out the procedure for taking the statement of the accused. They do not establish precisely when the accused must give testimony.

62. The provisions of Article 117 § 1 of the CCP on psychiatric assessment, as well as the relevant case-law of the Romanian Constitutional Court, are described in *C.B. v. Romania* (no. 21207/03, §§ 35-36, 20 April 2010).

63. The provisions of Articles 136 to 150 of the CCP on the preventive measures that can be taken during the criminal proceedings are described in *Creangă v. Romania* [GC] (no. 29226/03, § 58, 23 February 2012).

64. Article 183 § 1 of the CCP provides that an individual may be brought before a criminal-investigation body or a court on the basis of an order to appear, if, having been summoned, he or she had not appeared and his or her hearing or presence was necessary. Article 183 § 2 provides that an individual may exceptionally be brought before the courts on the basis of an order to appear even before being summoned, if the criminal-investigation body or the court considers that this measure is necessary for the determination of the case, and provides reasons why.

65. Article 250 of the CCP refers to the presentation to the accused of the file as established by the prosecutor ("*prezentarea materialului de urmărire penală*"). The accused has the right to familiarise himself with the content of the file and must be provided with the facilities to do so. He or she may also make further requests or give fresh testimony.

66. Article 278^1 of the CCP introduced by Law no. 281/2003 provides that a prosecutor's decision not to prosecute may be contested before the courts. Law no. 281/2003 entered into force on 1 January 2004 and included transitional provisions with regard to prosecutors' decisions adopted before its entry into force.

67. The provisions of Law no. 487/2002 on mental health and the protection of people with mental disorders ("The Mental Health Act"), its amendments and the relevant secondary legislation are described in *B. v. Romania (no. 2)* (no. 1285/03, §§ 43-60, 19 February 2013). In particular, Sections 12 and 13 of the Act provide that the assessment of a person's mental health, with a view to making a diagnosis or determining whether the person is of sound mind, requires a direct examination by a psychiatrist at the request of the person concerned in the case of voluntary admission, or at the request of an appropriate authority or authorised person in the case of compulsory admission. Sections 44-53 of the Act govern the various circumstances in which compulsory admission may take place, following a psychiatric examination, and the relevant procedure (a request stating reasons, submitted by the family, the police or the person's doctor, among others; notification of the psychiatrist's decision to the patient, his or

her representative and family, and also to the public prosecutor's office and a medical panel, for confirmation). Also, an appeal against a decision on compulsory admission may be lodged "with the competent court according to the law" by the patient or his or her representative (section 54).

68. By a decision of 12 April 2011, the High Court of Cassation and Justice found that the accused or the defendant, who claimed that the procedural rules or their lawful rights had been breached, could complain of it only within the framework of the criminal proceedings opened against them. However, a criminal complaint lodged against the prosecutor who had carried out the investigation in pending criminal proceedings was not one of the legal means the accused or the defendant could use, as it gave them the possibility to have aspects of lawfulness concerning the pending criminal trial examined outside the framework expressly provided by the CCP and of the pending criminal proceedings opened against them. Moreover, if the prosecutor's decision was challenged before the courts, the latter could not substitute their judgment to that of the judicial authorities in charge with the pending criminal proceedings.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

69. The Government contended that the applicant had abused the right of individual application. In her response to the Government's observations, she had used offensive language against the Government Agent.

70. The Court reiterates that, in principle, an application may only be rejected as abusive under Article 35 §§ 3 and 4 of the Convention if it was knowingly based on untrue facts, even if it uses offensive language (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV). However, the persistent use of insulting or provocative language by an applicant may be considered an abuse of the right of application within the meaning of Article 35 § 3 of the Convention (see *Apinis v. Latvia* (dec.), no. 46549/06, 20 September 2011, *Řehák v. the Czech Republic* (dec.), no. 67208/01, 18 May 2004, *Manoussos v. the Czech Republic and Germany* (dec.), no. 46468/99, 9 July 2002, *Duringer and Others v. France* (dec.), nos. 61164/00 and 18589/02, ECHR 2003-II (extracts), and *Stamoulakatos v. the United Kingdom*, no. 27567/95, Commission decision of 9 April 1997).

71. The Court notes, on the one hand, that in her response to the Government's observations, the applicant made some remarks concerning the Government Agent's professional and private life. It finds the use of

such language unacceptable and deplores the applicant's attitude in this respect. On the other hand, the Court takes into consideration that such expressions occur rarely in the applicant's voluminous submissions (see *Manoussos*, cited above, and compare and contrast *Haţegan v. Romania* (dec.), no. 24159/03, §§ 29-30, 17 April 2012).

72. Considering all the circumstances of the case, the Court does not find it appropriate to declare the application inadmissible as being abusive within the meaning of Article 35 § 3 of the Convention, and dismisses the Government's preliminary objection.

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

73. The applicant complained of the unlawfulness of her deprivation of liberty on 28 May 2003 when she was held at the prosecutor's office from 9.30 a.m. until sometime in the afternoon and later confined to a psychiatric hospital, where she was held until 5 June 2003. She relied on Article 5 § 1 of the Convention, the relevant parts of which provide:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> ...
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants."

74. The Court notes that the applicant's complaint is twofold. She complained, first, of deprivation of liberty while she was held at the prosecutor's office, and secondly, of her confinement to a psychiatric institution. The Court will examine those complaints separately.

A. The applicant's alleged deprivation of liberty on the premises of the prosecutor's office

1. Admissibility

75. The Government raised a preliminary objection that the applicant had not exhausted domestic remedies.

76. They argued that, given the particular context of the case, namely the short duration of the applicant's stay at the prosecutor's office following the delivery of the warrant to appear, which did not amount to a deprivation of

liberty, made it impossible for a judge to rule immediately on the lawfulness of the warrant to appear. However, the applicant could have challenged, after the events, the prosecutor's decision and she disposed of two remedies to that end.

77. Thus, the Government inferred, on the one hand, that the applicant had only made a general criminal complaint with regard to the events on 28 May 2003, without raising a specific complaint of illegal deprivation of liberty, and that, in any event, she had not challenged before the courts, under Article 278^1 of the CCP, the prosecutor's decisions not to prosecute (see paragraphs 27 and 32 above). Had she done so, the courts could have either referred the case back to the prosecutor's office or examined the merits of the complaint. On the other hand, they argued that the applicant did not lodge a civil action for damages, on the basis of the general tort law in force at the time of events.

78. The Government did not provide copies of pertinent domestic case-law, but referred to the opinion of the High Court of Cassation and Justice and of several other courts, expressed in March-April 2014. The majority of these courts contended that both the criminal and the civil remedy were effective and adequate. With regard to the criminal complaint, opinions diverged as to the legal qualification of the facts: illegal deprivation of liberty (*lipsire de libertate în mod ilegal*), illegal arrest and abusive investigation (*arestare nelegală şi cercetare abuzivă*) or abuse in function (*abuz în serviciu*).

79. The applicant maintained that she had exhausted all domestic remedies available at the time of events.

80. The Court reiterates that the obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports* 1996-IV).

81. However, there is no obligation to have recourse to remedies which are inadequate or ineffective. To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see, among other authorities, *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004 and *Vučković and Others v. Serbia* [GC], no. 17153/11, § 74, 25 March 2014).

82. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of

the case, or that there existed special circumstances absolving him or her from this requirement (see *Akdivar and Others*, cited above, § 68; and *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010).

83. In the instant case, the Court notes that the Government indicates two remedies that the applicant could have used: a criminal complaint and a civil action for compensation.

84. With regard to the criminal remedy, the Court notes that the Government did not submit relevant domestic case-law and relied rather on the opinions expressed by the High Court of Cassation and Justice and other Romanian courts in 2014. Without challenging the validity of those opinions, the Court notes that they were expressed eleven years after the events in case and are of a theoretical nature, disclosing the state of the law and of the legal practice of recent years and not necessarily of those in force in 2003.

85. In any event, the Court notes that the opinions that the Government relied on do not disclose a unanimous domestic practice (see paragraphs 68 and 78 above). Moreover, if some of the courts expressed the opinion that the applicant could have lodged a criminal complaint for illegal deprivation of liberty or illegal arrest (see paragraph 78 above), the Government themselves, in their submissions before the Court, contradicted such opinion by arguing that the warrant to appear did not entail a deprivation of liberty (see paragraph 76 above).

86. The Court therefore finds that, in the particular circumstances of the case, the Government did not establish that the criminal complaint was an effective remedy. Consequently, the applicant was not under the obligation to challenge before the courts the decision of 16 December 2005 of the chief prosecutor of prosecutor's office attached to the High Court of Cassation and Justice (see paragraph 32 above).

87. With regard to the civil claim for damages, the Court notes that the Government did not submit in support of their allegations any examples of relevant domestic case-law contemporary to the timeframe in the present case and referred only to the theoretical opinions expressed by the High Court of Cassation and Justice and other domestic courts (see paragraph 84 above).

88. In any event, the Court has already found that in a situation of allegations of abuse against State agents a civil action for damages based on the general tort law would have been in theory available to the applicant (*mutatis mutandis*, *Kilyen v. Romania*, no. 44817/04, § 26, 25 February 2014). However, it has also found in similar cases against Romania that, at the time of the events, civil liability had a subjective character in Romanian law, requiring proof of negligence on the part of the person complained against (see *Kilyen*, cited above, § 26; and *Eugenia Lazăr v. Romania*, no. 32146/05, § 90, 16 February 2010).

89. In view of its findings above with regard to the effectiveness of the criminal complaint, the Court considers it unlikely that an action for compensation under the general principles of tort law would have had any prospects of success in the current case (see paragraph 85 above).

90. The Court therefore finds that, in the particular circumstances of the case, the Government did not establish that the civil action for damages was an effective remedy.

91. It follows that the Government's preliminary objection as to the exhaustion of domestic remedies must be rejected. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

92. The applicant maintained that she had been unlawfully held on the premises of the prosecutor's office. A police officer had been especially assigned to prevent her from leaving. She remained most of the time in the waiting room located on the first floor of the building and did not have access to her criminal file.

93. The Government argued that Article 5 § 1 of the Convention was not applicable in the case, since the applicant had not been deprived of her liberty. She had gone of her own free will to the prosecutor's office and at 9.30 a.m., when she had declared that she intended to leave, the prosecutor had issued on order to appear before the courts in order to make sure that she remained in the building and became acquainted with the criminal file against her. A police officer was instructed to ensure that the order was followed and she was prevented from leaving the building. She left the building by car, escorted by police officers, some time during the afternoon. At 3.35 p.m. she had already been seen by a doctor at the Socola hospital.

94. However, unlike in the case of *Creangă v. Romania*, cited above, the applicant was free to go wherever she wanted within the building and made use of that right by meeting two prosecutors in their respective offices and by drafting a complaint on a bench in the waiting room. She remained in the building until her confinement order could be executed.

95. The Government argued that, in any event, the requirements of Article 5 § 1 of the Convention had been met. The deprivation of liberty had been justified under Article 5 § 1 (b) of the Convention, since its purpose had been to allow the applicant to become acquainted with the criminal file against her. Relying on the case of *Soare and Others v. Romania* (no. 24329/02, 22 February 2011), they pointed out that the order had not had a punitive intent, but had been issued in order to ensure that an obligation prescribed by law was fulfilled. Moreover, the order to appear had a legal basis in domestic law, namely Articles 183 and 250 of the CCP, and it had been delivered by the prosecutor in the interests of the proper

administration of justice. Bearing in mind the applicant's behaviour in the past, when she had refused to comply with such orders, the prosecutor had reasons to suspect that she might try to obstruct and delay the proceedings. The Government provided copies of summonses to appear which had been sent to the applicant in December 2002 and January 2003, as well as police reports stating that the applicant had not responded to those summonses.

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

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

98. In the instant case, the Court notes that on 28 May 2003 the applicant was subjected to an order to appear delivered by the prosecutor. In the sense of the CCP (see paragraph 63 above) the order to appear is not a preventive measure, such as police custody or preventive detention. In this regard, the Court reiterates that the characterisation or lack of characterisation given by a State to a factual situation cannot decisively affect the Court's conclusion as to the existence of a deprivation of liberty (*Creangă*, cited above, § 92).

99. The Court must therefore examine the applicant's concrete situation. The parties agree that the applicant was prevented by the police from leaving the premises of the prosecutor's office. The Government argued, however, that that restriction had not amounted to a deprivation of liberty since the applicant had been free to move within the building.

100. The Court further notes that the applicant was ordered not to leave the premises of the prosecutor's office at 9.30 a.m. on 28 May 2003 and that a police officer was assigned to enforce that measure. During the afternoon of that day the applicant was not allowed to leave the building freely; rather, the police escorted her by car to the Socola hospital. The Court therefore considers that the applicant was under the authorities' control throughout the entire period and concludes that she was deprived of her liberty within the meaning of Article 5 § 1 of the Convention (see *Ghiurău v. Romania*,

no. 55421/10, § 80, 20 November 2012, and *Creangă*, cited above, §§ 94-100).

101. The Court also notes that in the present case the applicant's deprivation of liberty was based on the relevant provisions of the CCP (see paragraph 64 above). More specifically, under Article 183 § 1, an individual could be brought before an investigating authority or a court on the basis of an order to appear, if, having been previously summoned, he or she had not appeared and his or her hearing or presence was necessary. In this connection, the Court notes that the Government have argued that the applicant had not complied with summonses to appear delivered in December 2002 and January 2003, and provided copies of them. The Court also notes that under that particular provision of the CCP, the prosecutor was not required to give additional reasons for issuing order to appear (compare and contrast, *Ghiurău*, cited above, § 83).

102. The Court therefore finds that the applicant was deprived of her liberty in accordance with a procedure prescribed by domestic law. However, compliance with national law is not in itself sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among many other authorities, *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33; *Amuur v. France*, 25 June 1996, § 50, *Reports* 1996-III; and *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008).

103. One general principle established in the Court's case-law is that detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see, for example, *Bozano v. France*, 18 December 1986, § 60, Series A no. 111, and *Čonka v. Belgium*, no. 51564/99, § 41, ECHR 2002-I). The condition that there must be no arbitrariness further demands that both the order to detain and the execution of the detention must genuinely conform with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1 (see *Winterwerp*, cited above, § 39; *Bouamar v. Belgium*, 29 February 1988, § 50, Series A no. 129; and *O'Hara v. the United Kingdom*, no. 37555/97, § 34, ECHR 2001-X). There must in addition be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention (see *Bouamar*, cited above, § 50; *Aerts v. Belgium*, 30 July 1998, § 46, *Reports* 1998-V; and *Enhorn v. Sweden*, no. 56529/00, § 42, ECHR 2005-I).

104. The notion of arbitrariness in the contexts of sub-paragraphs (b), (d) and (e) also includes an assessment whether detention was necessary to achieve the stated aim. The detention of an individual is such a serious measure that it is justified only as a last resort where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained (see *Witold Litwa*, cited above, § 78, and *Enhorn*, cited above, § 44). The principle of proportionality further dictates that where the purpose of detention is to secure the fulfilment of an obligation provided for by law, a balance must be struck between the importance in a democratic society of securing the immediate fulfilment of the obligation in question, and the importance of the right to liberty (see *Vasileva v. Denmark*, no. 52792/99, § 37, 25 September 2003). The duration of the detention is a relevant factor in striking such a balance (*ibid.*)

105. In the instant case, the Court notes that the order to appear was issued by the prosecutor at 9.30 a.m. but that the applicant was already in the building at that particular time. The Government argued that the purpose of the measure was to allow the applicant to become acquainted with her criminal file, which she had refused to do, and that such an order was therefore necessary for the proper administration of justice. They further argued that the order to appear was justified under Article 5 § 1 (b) of the Convention, namely to ensure that an obligation prescribed by law was fulfilled.

106. The Court notes that under Article 250 of the CCP (see paragraph 65 above) presentation of the criminal file is a right of the accused rather than a legal obligation. In order to allow the applicant to exercise that right, the authorities should have considered less severe measures than deprivation of liberty (see, *mutatis mutandis*, *Stelian Roşca v. Romania*, no. 5543/06, § 69, 4 June 2013). The Government did not argue that the authorities had considered alternative measures that would have enabled the applicant to become acquainted with the criminal file against her.

107. Even assuming that it was necessary for the applicant to be acquainted with her file and thereby prevent a delay in the proceedings, the Court notes that, after the order was issued, the applicant was not given access to her file. The Government did not argue to the contrary, but rather asserted that while she had been held on the premises of the prosecutor's office, the applicant had been allowed to go wherever she wanted and had made use of that right by meeting with two prosecutors and drafting a complaint in the waiting room (see paragraph 94 above).

108. Having regard to the above, the Court finds that the alleged purpose of the order to appear was not met and that the applicant's detention on the premises of the prosecutor's office for several hours on 28 May 2003 was arbitrary.

109. There has accordingly been a breach of Article 5 § 1 (b) of the Convention.

B. The applicant's confinement to a psychiatric institution

1. Admissibility

110. The Government raised a preliminary objection that the applicant had not exhausted domestic remedies. They argued that the applicant had not brought a separate action based on the provisions of the Mental Health Act (see paragraph 67 above).

111. Relying on the cases of *Filip v. Romania* (no. 41124/02, 14 December 2006) and *C.B. v. Romania* (cited above), they argued that the applicant should have brought an action under the Mental Health Act. They did not provide copies of relevant domestic decisions, since compulsory admission was a rare occurrence, but provided the opinions of five Courts of Appeal in Romania that had expressed the view that such an action was admissible. Two other Romanian Courts of Appeal had expressed the view that an action brought under the general provisions of the Romanian Constitution related to access to justice was also admissible. The Government concluded that the present case was therefore different from the case of *C.B. v. Romania* (cited above).

112. On 20 November 2013 the Government submitted a copy of a decision delivered on 27 January 2012 by the Cluj Court of Appeal granting financial compensation to an individual who had been confined for twenty-five days in a psychiatric institution.

113. The applicant claimed that the procedure for compulsory admission under the Mental Health Act had not been followed.

114. The Court has already described the principles governing the rule of exhaustion of domestic remedies (see paragraph 80 above).

115. Moreover, it has already examined a similar complaint in the case of *C.B. v. Romania* (cited above) and expressed its doubts as to whether a complaint based on the provisions of the Mental Health Act was admissible (*ibid*, § 65).

116. Indeed, the Court takes note that the Mental Health Act is applicable in a medical context and pursues a therapeutic aim. However, the applicant in the present case was deprived of her liberty in a criminal context, namely on the basis of CCP. Furthermore, the Act provides for two types of admission to a psychiatric institution: voluntary admission and compulsory admission. Since the Government have implied that the applicant had been subjected to compulsory admission, the Court notes that the Act provides for a detailed procedure to be followed in this case. Nonetheless, no such procedure was applied to the applicant since no

decision had been taken by a psychiatrist, nor had it been confirmed by the authorised panel (see paragraph 67 above).

117. In addition, the Court notes that, when they claimed that the Mental Health Act was applicable, the Government did not provide copies of relevant domestic decisions, but relied on the opinion of several Romanian Courts of Appeal that had expressed the view that an action based on the provisions of the Act was admissible. Without challenging the validity of those opinions, the Court notes that they were expressed in 2012, nine years after the applicant's confinement, and that they do not disclose a unanimous domestic practice (see, *mutatis mutandis*, *Rupa* (dec.), no. 58478/00, §§ 88-90, 14 December 2004). That also applies to the decision of the Cluj Court of Appeal of 27 January 2012 (see paragraph 112 above).

118. Moreover, it notes that the applicant's complaint against the prosecutor's decision to confine her was dismissed on 6 June 2003 by the chief prosecutor attached to the Iaşi District Court, without indicating any reasons for doing so (see paragraph 20 above).

119. Having regard to the above, the Court concludes that the provisions of the Mental Health Act are not applicable in the present case and that the Government's preliminary objection must be dismissed.

2. Merits

120. The applicant maintained that there had been no justification for her confinement to a psychiatric institution. Her confinement had been abusive since she was a person of sound mind, as confirmed the report issued by the Socola hospital on 5 June 2003.

121. The Government argued that the present case was different from the case of *C.B. v. Romania* (cited above).The applicant in the instant case had not been apprehended by force and handcuffed, but rather had been accompanied to the psychiatric institution by State agents who had used methods of constraint in a proportionate manner. Also, the applicant had displayed violent behaviour that had justified her confinement. The prosecutor had set a time-limit for the psychiatric assessment, and the applicant had been released before it had come to an end. The duration of the applicant's confinement had been relatively short.

122. The Government also argued that as the applicant had previously caused public disorder at the prosecutor's office and had refused to undergo a psychiatric assessment, less severe measures could not have been envisaged in her case. Lastly, they asserted that the applicant's behaviour had rendered a preliminary medical consultation impossible in her case.

123. The Court reiterates its established case-law according to which an individual cannot be considered to be of "unsound mind" and deprived of his liberty unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind; secondly, the mental disorder must be of a kind or degree warranting compulsory

confinement; and thirdly, the validity of continued confinement depends on the persistence of such a disorder (see *Winterwerp*, cited above, § 39, and *Johnson v. the United Kingdom*, 24 October 1997, § 60, *Reports* 1997-VII).

124. Bearing in mind the wide margin of appreciation that the States enjoy in terms of urgent confinement, it may be acceptable to seek the opinion of a medical expert immediately after the arrest in urgent cases or where a person is arrested on account of violent behaviour. In all other cases a prior consultation is necessary. Where no other possibility exists, for instance because the person concerned has refused to attend an examination, an assessment by a medical expert on the basis of the file must at least be sought, failing which it cannot be maintained that the person has reliably been shown to be of unsound mind (see *Varbanov v. Bulgaria*, no. 31365/96, § 47, ECHR 2000-X).

125. Lastly, detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest, which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is executed in conformity with national law, but it must also be necessary in the circumstances (see *Witold Litwa*, cited above, § 78).

126. In the instant case, the Court notes that the applicant was deprived of her liberty on the basis of Article 117 of the CCP, which provides that the psychiatric assessment of an accused is mandatory in cases of aggravated murder or when the investigating authorities or the competent court have doubts about the mental state of the accused.

127. The Court will examine the "lawfulness" of the applicant's psychiatric confinement with regard to Article 5 § 1 (e) of the Convention in the light of the principles already set out in the cases of *Filip* (cited above, §§ 60-66) and *C.B. v. Romania* (cited above, §§ 56-59).

128. The Court notes that the prosecutor in charge of the applicant's case found that she had displayed "an exaggerated propensity to complain and that her language [had] become extremely vehement" (see paragraph 14 above). However, none of the reasons indicated by the prosecutor relate to a medical condition. Moreover, it does not appear from the file that such an expert medical opinion was sought prior to the applicant's confinement.

129. The Court reiterates that an expert medical opinion, prior to confinement, was essential in such a case, especially since the applicant had no psychiatric record (see *C.B. v. Romania*, cited above, § 56). The Government argued that the applicant had displayed violent behaviour in the past; however, the Court finds that such behaviour was limited to "spoken language", as the prosecutor himself found. The Government did not argue that the applicant had committed acts of physical violence, posing a threat to herself or others (see *Filip*, cited above, § 60). In this regard, the Court takes note that, during the criminal proceedings against her, the applicant was not

charged with any violent offence. Even accepting the Government's argument that the applicant's behaviour made it difficult to arrange for a prior consultation, the Court notes that the State authorities did not seek a medical opinion based simply on the applicant's medical file either (see *Varbanov*, cited above, § 47).

130. While the prosecutor ordered the applicant's confinement with the clear purpose of obtaining a medical opinion, nothing indicates that when the applicant was admitted to the Socola hospital on 28 May 2003, the State authorities sought the doctors' opinion as to whether her confinement was necessary (see *Filip*, cited above, § 61, and *C.B. v. Romania*, cited above, § 57).

131. In addition, the applicant was not seen by a panel of three doctors until 5 June 2003, nine days after her arrival at the Socola hospital. She was found to be of sound mind and immediately released. The Government did not give any reasons as to why the applicant was not examined for nine days, despite having argued that her behaviour had justified urgent measures.

132. The Court therefore finds that the applicant's detention was not "the lawful detention ... of [a person] of unsound mind" within the meaning of Article 5 § 1 (e), as it was ordered without seeking a medical opinion.

133. There has accordingly been a breach of Article 5 § 1 (e) of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

134. The applicant argued that her complaint against the prosecutor's decision to order her confinement had not been reviewed by the courts. She relied on Article 5 § 4 of the Convention, which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

135. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

136. The applicant claimed that the domestic legislation did not provide a remedy against a prosecutor's decision to order an individual's

confinement. Even though the courts examined the merits of an action brought on the basis of Article 278[1] of the CCP (see paragraph 66 above) or of an interim injunction ("*ordonanţă preşedenţială*"), such remedies were illusory because of the delays with which the courts examined such actions and delivered their decisions.

137. Relying on the cases of *Filip* and *C.B. v. Romania* (both cited above), the Government argued that the applicant could have brought an action under the Mental Health Act (see also paragraphs 110-112 above).

138. According to the Court's established case-law, everyone who is deprived of his liberty is entitled to a review of the lawfulness of the detention by a court. The Convention requirement that an act of deprivation of liberty must be amenable to independent judicial scrutiny is of fundamental importance in the context of the underlying purpose of Article 5 of the Convention, the purpose of which is to provide safeguards against arbitrariness. What is at stake is both the protection of the physical liberty of individuals and their personal security (see *Kurt v. Turkey*, 25 May 1998, § 123, *Reports* 1998-III, and *Varbanov*, cited above, § 58).

139. The Court has already dismissed the Government's preliminary objection as to the applicability of the Mental Health Act to the present case (see paragraph 119 above) and found that the applicant's detention was based on the provisions of the CCP. In addition, the Court takes the view that an action brought on the basis of Article 278[1] of the CCP (see paragraph 66 above) could not constitute a speedy review within the meaning of Article 5 § 4 of the Convention. It therefore concludes that the decision to confine the applicant based on the provisions of Article 117 of the Code of Criminal Procedure was not subject to any judicial review.

140. There has accordingly been a breach of Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

141. The applicant complained that the length of the criminal proceedings against her had been excessive, that the courts that had examined her case had failed to take her testimony, and that the decisions of the appellate courts had failed to address all the arguments that she had raised before them. She relied on Article 6 §§ 1 and 3 (c) of the Convention, which, in so far as relevant, provides:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require".

142. The Court notes that the applicant's complaint is threefold. It will examine each aspect separately.

A. Length of proceedings

1. Admissibility

143. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

144. The applicant maintained that the length of the proceedings against her could not be considered reasonable. She claimed that the excessive duration had resulted from a systemic problem, rather than from her own behaviour during the trial.

145. Relying on the cases of *Šleževičius v. Lithuania* (no. 55479/00, 13 November 2001) and *Jakumas v. Lithuania* (no. 6924/02, 18 July 2006), the Government argued that the duration of the proceedings had been due to the complexity of the case and the applicant's behaviour. With regard to the latter, they insisted that the applicant had contributed to the overall duration by constantly requesting the postponement of the trial or by lodging inadmissible appeals on points of law against interlocutory judgments. They alleged that she had done so in order that the offences with which she had been charged would become statute-barred. The domestic courts had diligently observed the applicant's rights and it could not be said that their conduct had contributed to the duration of the proceedings.

146. The Court notes that the proceedings in the instant case started in February 2003, when the applicant was informed of the charges against her (see paragraph 10 above), and ended on 20 October 2010, when the Cluj Court of Appeal delivered the final decision (see paragraph 57 above). Therefore, the proceedings lasted approximately seven years and ten months for three levels of jurisdiction. The Court also notes that the first-instance proceedings before the District Court lasted approximately five years and ten months.

147. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier*

and Sassi v. France [GC], no. 25444/94, § 67, ECHR 1999-II, and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

148. Turning to the facts in the instant case, the Court notes that the case presented a certain degree of complexity, mainly owing to the complexity of the offences investigated and the number of co-accused and witnesses heard (see paragraphs 37, 41 and 45 above).

149. As regards the applicant's behaviour and the consequences it had on the overall duration of the proceedings, the Court notes that during the proceedings before the District Court the applicant made some twenty-five requests for postponements. In this regard, it notes that the District Court held a number of fifty-six hearings in total (see paragraph 39 above). It further notes that the applicant made such requests for postponement owing to a change of counsel, to her inability to appear before the court for medical or professional reasons, or having challenged the judge.

150. Therefore, the Court takes the view that the applicant, who became a lawyer during the trial, was herself responsible for an important part of the delay in the proceedings before the District Court. Moreover, the Court does not discern long periods of inactivity during the proceedings before the District Court (compare and contrast *Marinică Tiţian Popovici v. Romania*, no. 34071/06, § 28, 27 October 2009).

151. As regards the conduct of the relevant authorities, the Court notes that the County Court and the Court of Appeal remained active during proceedings in appeal and second appeal respectively and examined the case within the "reasonable time" requirement (*Bâzgă v. Romania* (dec.), n^{o} 34129/09, § 30, 17 December 2013).

152. Having regard to the above and after having duly evaluated what was at stake for the applicant in the criminal proceedings against her, the Court concludes that the length of the proceedings was not excessive and met the "reasonable time" requirement.

153. There has accordingly been no breach of Article 6 § 1 of the Convention in that respect.

B. Domestic courts' alleged failure to hear testimony

1. Admissibility

154. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

155. The applicant maintained that the domestic courts had failed to hear her in person, despite her constant requests; her appeal and appeal on points

of law were also based on that argument. She was present at forty hearings before the courts, notwithstanding the financial and personal difficulties that she had had to face since her case had been transferred from Iaşi to Cluj-Napoca. Nonetheless, none of the courts took steps in order to hear her testimony.

156. The Government argued that, during the first-instance trial, the court had invited the applicant to give testimony, but that she had first refused to do so, arguing that her co-defendants had not been heard, and thereafter had avoided doing so by requesting that the trial be postponed. The applicant did not attend the hearings during the appeal procedure, and thus prevented the court from questioning her. She also repeated her requests for the postponement of the trial before the Court of Appeal. During the trial, the courts duly summoned the applicant, despite the fact that she had frequently changed her address. The Government maintained that the applicant's constant dilatory behaviour during the trial demonstrated that she had willingly waived her right to be heard by the courts.

157. The Government also argued that the present case was different from the case of *Constantinescu v. Romania* (no. 28871/95, ECHR 2000-VIII), since the applicant had not been acquitted at first instance. Therefore, the appellate courts were not under an obligation to hear her in person.

158. Relying on the case of *Colozza v. Italy* (12 February 1985, Series A no. 89), the Government concluded that it had not been unreasonable for the appellate courts to continue the proceedings without the applicant since she had deliberately failed to appear before them.

159. The Court reiterates that, although it is not expressly mentioned in paragraph 1 of Article 6, the object and purpose of the Article taken as a whole are that a person "charged with a criminal offence" is entitled to take part in the hearing. Moreover, sub-paragraph (c) of paragraph 3 guarantees to "everyone charged with a criminal offence" the right "to defend himself in person" (see *Colozza*, cited above, § 27; *Belziuk v. Poland*, 25 March 1998, § 37, *Reports* 1998-II; and *Sejdovic v. Italy* [GC], no. 56581/00, § 81, ECHR 2006-II).

160. It is of capital importance that a defendant should appear, both because of his right to a hearing and because of the need to verify the accuracy of his statements and compare them with those of the victim, whose interests need to be protected, and of the witnesses (see *Sejdovic*, cited above, § 92). The law must accordingly be able to discourage unjustified absences (see *Poitrimol v. France*, 23 November 1993, § 35, Series A no. 277-A).

161. Turning to the facts of the present case, the Court notes that the applicant gave testimony before the District Court on 6 September 2005 and 24 April 2007 (see paragraphs 42 and 46 above). The Court also notes that the Romanian CCP allows the accused to give testimony at any time during

the proceedings (see paragraph 61 above). It therefore takes the view that, contrary to the applicant's statements, the District Court heard her in person (see, *mutatis mutandis*, *Ursu v. Romania* (dec.), no. 21949/04, § 39, 4 June 2013).

162. Furthermore, the facts of the present case are different from those of the *Constantinescu* case (cited above) in that the District Court did not acquit the applicant during the first-instance proceedings. Even assuming that the Court's conclusions in the case of *Constantinescu* are applicable in the present case since the County Court worsened the applicant's situation by handing down a heavier sentence to be effectively served in prison, the Court notes that, while she complained before the County Court and the Court of Appeal that the District Court had not heard her, the applicant did not attend any of the hearings before those courts. The Court takes the view that the applicant, who became a lawyer during the proceedings, must have been aware of the consequences of her repeated absences from the appellate courts (see, *mutatis mutandis*, *Ivanciuc v. Romania* (dec.), no. 18624/03, ECHR 2005-XI). It concludes that the applicant's behaviour during the proceedings prevented the appellate courts from hearing her in person.

163. Having regard to the above, the Court finds that it cannot be established that the domestic courts failed to hear the applicant in person.

164. There has accordingly been no violation of Article 6 §§ 1 and 3 (c) of the Convention in that respect.

C. Alleged lack of reasons in the decision delivered by the appellate courts

1. Admissibility

165. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

166. The applicant complained that the appellate courts had failed to address in their decisions all the arguments that she had raised before them.

167. The Government argued that the domestic courts had properly addressed all the questions that the applicant had raised before them. Relying on the case of *Helle v. Finland* (19 December 1997, *Reports* 1997-VIII), they maintained that the appellate courts had endorsed the reasons of the lower courts. They also argued that it was not necessary for the appellate courts to deal with every point raised by the applicant, since they were not all decisive in the case; they referred to the case of *Jahnke and Lenoble v. France* ((dec.), no. 40490/98, ECHR 2000-IX).

168. The Court reiterates that the effect of Article 6 § 1 is, *inter alia*, to place a "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant for its decision, given that the Court is not called upon to examine whether arguments have been adequately examined (see *Perez v. France* [GC], no. 7287/99, § 80, ECHR 2004-I, and *Buzescu v. Romania*, no. 61302/00, § 63, 24 May 2005). Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 59, Series A no. 288, and *Burg v. France* (dec.), no. 34763/02, ECHR 2003-II). The extent to which the duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (seec*Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A, and *Helle* cited above, § 55).

169. Turning to the facts in the instant case, the Court notes that it has already found that the applicant was heard in person by the District Court (see paragraphs 42 and 46 above). She also made extensive use of her right to make written submissions in which she raised numerous arguments (see paragraph 47 above). The Court also notes that the District Court properly examined the applicant's arguments, explained the reasons for dismissing her requests during the proceedings and, at the end of the proceedings, delivered a well-reasoned decision (see paragraph 48 above).

170. With regard to proceedings before the County Court in which the applicant's appeal was examined, the Court has already found that, although the applicant complained that she had not been heard by the District Court, she did not attend the hearings before the County Court and therefore prevented it from examining that complaint. Moreover, the Court notes that the County Court gave reasons for increasing the applicant's sentence and ordering it to be served in prison. Although the Court cannot endorse the County Court's position, which referred to the applicant's denial of guilt as an argument for increasing her sentence (see paragraph 52 above), it takes the view that the other reasons put forward by the County Court were convincing justifications for the applicant's sentence.

171. The Court therefore takes the view that the Court of Appeal, in reaching its decision, incorporated the reasons given by the lower courts (see *Helle*, cited above, § 56). The applicant did not claim that the arguments she had raised were new or that the Court of Appeal had not examined arguments that were decisive for her case (*ibid*, §§ 59-60).

172. Having regard to the above, the Court concludes that, given the particular circumstances of the case, the requirements of a fair trial were met.

173. There has accordingly been no violation of Article 6 § 1 of the Convention in that respect.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

174. The applicant alleged that her right to respect for her private life had been breached, as on 28 May 2003 the State authorities had called the press, who took photographs of her when she was being transferred by force to the Socola hospital and published them in various newspapers. She relied on Article 8 of the Convention, which, in so far as relevant, provides:

> "1. Everyone has the right to respect for his private ... life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

175. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

176. The applicant maintained that the police and the prosecutors had called the press with the aim of humiliating her in public.

177. The Government contested the applicant's allegations and claimed that in February 2003 she had asked for the press to be present during the investigation against her. With regard to the 28 May 2003 incident, they claimed that the applicant herself had called the press and that the State authorities had not interfered with her right to respect for her private life. The Government argued that, unlike in the case of *Toma v. Romania* (no. 42716/02, 24 February 2009), in which photographs had been taken at the police headquarters without the applicant's consent, in the instant case the photographs had been taken in a public space to which the press had unrestricted access. They argued that the applicant's complaint was therefore manifestly ill-founded.

178. The Court notes that the applicant's complaint is limited to the alleged interference with her right to respect for her private life. She claimed that on 28 May 2003 the prosecutor and the police called the press, who took photographs of her while she was being forcibly transferred to the Socola hospital and later published them in the local press, together with articles related to that incident. The Court must therefore determine whether the respondent State complied with its obligation not to interfere with the applicant's right to respect for her private life. It must verify whether there

has been an interference with that right in the present case and, if so, whether that interference satisfied the conditions laid down in the second paragraph of Article 8 (see *Sciacca v. Italy*, no. 50774/99, § 28, ECHR 2005-I).

179. The Court accepts that the publication of the applicant's photograph falls within the scope of her private life (see *Sciacca*, cited above, § 27, and *Von Hannover v. Germany*, no. 59320/00, § 53, ECHR 2004-VI). However, in the instant case, it has not been clearly established that the State authorities were directly responsible for the photographing of the applicant. Indeed, unlike in the case of *Sciacca*, the photographs were not taken by the State authorities and were not distributed by them to the press (compare and contrast, *Sciacca*, cited above, § 26).

180. Moreover, the photographs were taken at the entrance of the premises of the prosecutor's office (see paragraph 17 above). Therefore, unlike in the case of *Toma*, where the photographs were taken inside the police headquarters, in the instant case they were taken in a public space to which the press apparently had unrestricted access (compare and contrast, *Toma*, cited above, § 91). The applicant's allegations that the prosecutor or the police called the press are not supported by any evidence.

181. The Court therefore finds that there is no indication that the State authorities called the press with the specific purpose of making public the circumstances of the incident in which the applicant was involved.

182. There has accordingly been no violation of Article 8 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

183. The applicant alleged that on 28 May 2003 she was subjected to ill-treatment by State agents and that the investigation that followed had been ineffective. She relied on Article 3 of the Convention, which reads as follows:

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

184. The Government raised a preliminary objection that the applicant had not exhausted domestic remedies. Firstly, they claimed that although she had lodged several criminal complaints against the prosecutor, E.E., and although she was a lawyer, the applicant did not lodge any criminal complaint against the four police officers who had escorted her from the prosecutor's office waiting room to the car that transported her to the Socola hospital. Secondly, they argued that the applicant had not challenged before the courts the prosecutors' decisions not to prosecute (see paragraphs 27 and 32 above). Lastly, the applicant did not bring a civil action against the State agents involved.

185. The Court has already described the principles governing the rule of exhaustion of domestic remedies (see paragraph 80 above). In particular, it reiterates that it falls to the respondent State to establish that these various conditions are satisfied (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, §§ 74-75, ECHR 1999-IV).

186. In the instant case, the Court notes, on the one hand, that the applicant did not lodge a criminal complaint against the four police officers who escorted her to the Socola hospital and allegedly subjected her to ill-treatment. She did not give any reason why she chose not to make such a complaint, but lodged numerous other petitions and actions before the courts. The Court notes that the applicant was a lawyer herself and that the domestic courts had given her sufficient information that she could lodge such a criminal complaint (see paragraph 35 above). Even assuming that the names of the four police officers had not been communicated to her, there is no indication in the file that their names would not have been disclosed in the relevant criminal proceedings (see paragraph 26 above).

187. On the other hand, the applicant lodged a criminal complaint against the prosecutors who had examined her case and a police officer for ill-treatment and torture (see paragraph 28 above). However, in that set of proceedings, she failed to challenge before the courts, on the basis of Article 278^{1} of the Romanian Code of Criminal Proceedings, the prosecutor's decision not to prosecute. The Court reiterates that it has already held that the procedure under Article 278^{1} gives the courts the power to review an investigation carried out by the prosecutor in the case and to hear evidence (see *Stoica v. Romania*, no. 42722/02, §§ 106-107, 4 March 2008, and *Chiriţă v. Romania*, no. 37147/02, § 100, 29 September 2009). The applicant did not explain why she had not challenged before the domestic courts the decision of 16 December 2005 of the prosecutor's office attached to the High Court, especially since she had used that specific remedy during the proceedings (see paragraph 31 above).

188. It follows that the Government's preliminary objection must be allowed and that this complaint is inadmissible under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

189. 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

190. The applicant claimed 250,000 EUR in respect of pecuniary damage, and 500,000 EUR in respect of non-pecuniary damage.

191. The Government argued that the applicant's claim was excessive in the light of the Court's case-law on this matter.

192. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, on the basis of its case-law in the matter and taking into account the behaviour of the applicant (see paragraph 71 above), the Court awards her EUR 3,000 in respect of non-pecuniary damage incurred as a result of the violation of her Article 5 rights.

B. Costs and expenses

193. The applicant also claimed EUR 25,000 for costs and expenses incurred before the domestic courts and the Court. She submitted certain substantiating documents.

194. The Government argued that the applicant had not itemised the costs or proved that all the costs incurred had been necessary, especially those related to the lawyer's fees.

195. 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 and the above criteria and to the fact that the applicant has been granted legal aid by the Council of Europe, the Court considers it reasonable to award the sum of EUR 550, covering costs under all heads.

C. Default interest

196. 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. *Dismisses* the Government's preliminary objection related to the abuse of the right to petition;

2. *Declares* the complaint under Article 3 of the Convention inadmissible and the remainder of the application admissible;

3. *Holds* that there has been a violation of Article 5 § 1 (b) of the Convention with regard to the applicant's deprivation of liberty on 28 May 2003 from 9.30 a.m. until she was escorted by car to the Socola hospital;

4. *Holds* that there has been a violation of Article 5 § 1 (e) of the Convention with regard to the applicant's confinement in the Socola hospital;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention, on account of the lack of judicial review of the applicant's confinement in the Socola hospital;

6. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the length of the proceedings;

7. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention on account of the alleged failure of the domestic courts to hear the applicant in person;

8. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the alleged lack of reasons in the decisions delivered by the appellate courts;

9. *Holds* that there has been no violation of Article 8 of the Convention;

10. *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 currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant:

(i) EUR 3,000 (three thousand euros), in respect of non-pecuniary damage;

(ii) EUR 550 (five hundred and fifty euros), in respect of costs and expenses;

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

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

Done in English, and notified in writing on 13 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President