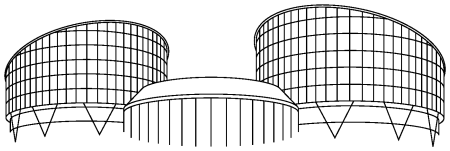

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

# CASE OF MARIAN CHIRIȚĂ v. ROMANIA

*(Application no. 9443/10)*

JUDGMENT

STRASBOURG

21 October 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 Marian Chiriță v. Romania,**

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Dragoljub Popović,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 30 September 2014,

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

# PROCEDURE

1. The case originated in an application (no. 9443/10) 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 Marian Chiriță ("the applicant"), on 25 May 2010.

2. The Romanian Government ("the Government") were represented by their Agents, Ms I. Cambrea and Ms C. Brumar, of the Ministry of Foreign Affairs.

3. Relying on Articles 2, 3, 8 and 14 of the Convention, the applicant alleged that the authorities had failed to provide him with the appropriate medical treatment while in detention and that this failure was due to his Roma ethnic origin.

4. On 15 September 2011 the application was communicated to the Government.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, who is of Roma ethnic origin, was born in 1969 and is currently detained in Jilava Prison.

6. On 11 February 2002 he was placed in detention in Arad Prison. On 12 October 2007 the Bucharest County Court convicted him of drug trafficking and sentenced him to twelve years and three months' imprisonment.

7. At a medical examination upon his initial placement in Arad Prison on 11 February 2002, the applicant was found to be a heroin addict suffering from sequels of tuberculosis and psychopathic tendencies.

8. On 8 August 2006 on a transfer to Gherla Prison he was diagnosed with arterial hypertension, coronary heart disease and dyslipidaemia.

### A. The applicant's first request to have his sentence suspended on medical grounds

9. On 30 March 2009 the applicant asked the Bucharest District Court to suspend his sentence for medical reasons. He alleged that his heart condition required surgery which could not be performed within the prison health system. He further submitted that any delays in receiving the appropriate treatment for his condition would put his life at risk.

10. Following an order by the court, in April 2009 the applicant underwent a coronary angiography (X-ray of the heart's arteries) and was seen by specialist doctors. According to the forensic medical report drafted by the Bucharest Institute of Forensic Medicine on that occasion, the illnesses he was suffering from included coronary heart disease, effort angina, a severe coronary lesion (80%-90%) and severe high blood pressure with an increased risk level. He was recommended bypass surgery in a public hospital, since it was considered that the hospitals within the prison system were not adequately equipped for such an operation.

11. By a letter of 17 September 2009 the authorities of the Giurgiu Prison, where the applicant was detained at the time, informed the court that the prison was capable of ensuring the security measures necessary for his admission to a public hospital for the recommended operation, therefore there was no need to suspend his sentence for that purpose.

12. On the basis of the above, on 1 October 2009 the Bucharest District Court rejected the applicant's request to have his prison sentence suspended.

13. On 2 November 2009 the Bucharest County Court allowed an appeal on points of law (*recurs*) lodged by him against that decision. The County Court held that the first-instance court had correctly decided that the prison authorities could ensure the necessary security measures to take the applicant out of prison and admit him to a public hospital. However, precise details on this needed to be set out in the operative provisions of the judgment. Accordingly, the Bucharest County Court ordered his admission, under escort, to a cardiovascular centre run by the Ministry of Health to receive the necessary treatment. The judgment became final.

## B. Medical treatment provided to the applicant following the judgment of 2 November 2009

14. Between 22 October and 23 November 2009 the applicant was admitted to the cardiology ward of Jilava Prison Hospital. The doctors there recommended his transfer to Rahova Prison Hospital with a view to his admission to a public cardiovascular clinic run by the Ministry of Health.

15. Between 23 November and 3 December 2009 the applicant was hospitalised in Rahova Prison Hospital. According to the hospital's assessment and treatment plan, he was recommended a cardiovascular examination at the Central Military Hospital (a public hospital in the Ministry of Health's network) on 26 November 2009. According to the same document, on 27 November 2009 he was examined by a cardiology doctor, who established that he could not be operated on at that time. On the stamp appearing next to these remarks the doctor's name was not visible, and the hospital where he was practising was not indicated.

16. On three occasions between March and September 2010 the applicant was seen by the prison doctor or admitted to prison hospitals for several days.

17. Between 7 and 28 October 2010 he was admitted to Rahova Prison Hospital for a new assessment of his heart condition. Open-heart surgery was recommended to him without delay, bearing in mind the length of time he had been suffering from heart problems. On 24 October 2010 he made a written statement which, in its relevant part, read as follows:

> "I was informed that the "open-heart" surgery I am about to undergo is very difficult ..., that is why I do not wish to undergo the open-heart surgery in the A.N.P. [prison] system ... because I fear for the worst and consider that it would be better to have this operation, which my life depends on, once my sentence has been suspended on medical grounds or once I have been released..."

## C. The applicant's second request to have his sentence suspended on medical grounds

18. On 4 June 2010 the applicant again asked the Bucharest District Court to suspend his prison sentence. He complained that the prison authorities had refused to enforce the final judgment of 2 November 2009 ordering his admission to a public hospital. He also alleged that he had first been diagnosed with heart problems in 2006. Subsequently, his condition had worsened every year and the prison authorities had failed to provide him with the appropriate treatment and to follow the specialist doctor's recommendation to admit him to a public hospital for treatment and surgery. He submitted that the only way for him to have the bypass operation in a public hospital would be by having his sentence suspended.

19. On 3 August 2010 the Bucharest District Court struck out the applicant's action as *res judicata*, since the matter had already been decided with final effect by the Bucharest County Court on 2 November 2009.

20. On 16 September 2010 the Bucharest County Court allowed his appeal on points of law and sent the case back to the first-instance court for re-trial, since the principle of *res judicata* did not apply to requests to have prison sentences suspended on health grounds.

21. In charge of the re-trial of the case, the Bucharest District Court ordered a new forensic expert report. The report submitted to the court on 11 March 2011 concluded that the applicant suffered from chronic coronary heart disease with effort angina and a 80%-90% coronary lesion, essential high blood pressure (stage I), chronic obstructive bronchopneumopathy (stage II) and persistent hepatitis C. The report further mentioned that, according to an examination carried out on 25 January 2011 by a cardiology doctor at the C.C. Iliescu Institute of Cardiovascular Diseases, a new coronary angiography was necessary. The cardiology doctor had concluded that the applicant's heart condition might benefit from surgical correction, to be performed in a specialist clinic, if this was found to be necessary following a new coronary angiography.

22. On 22 March 2011 the Bucharest District Court rejected the applicant's action, holding that the prison health system had the ability to ensure that he underwent the recommended coronary angiography and received the appropriate medication for all his conditions. The court based its reasoning on the conclusions of the new forensic report and on the fact that on 24 October 2010 he had allegedly "refused to undergo surgery under escort".

23. The applicant appealed on points of law against this judgment, emphasising that he had not refused to undergo surgery under security in a public hospital.

24. On 3 May 2011 the Bucharest County Court dismissed the appeal on points of law with final effect. It took into account the fact that the most recent forensic report drawn up in the applicant's case concluded that his heart condition might benefit from surgical correction, to be performed in a specialist public clinic, if this was found to be necessary following a new coronary angiography. However, since the coronary angiography and treatment with medication could be ensured within the prison health system, and the applicant had not been recommended urgent surgery, the court concluded that the legal requirements for suspending his prison sentence had not been met.

### D. Subsequent developments in the applicant's medical condition

25. In the course of 2011 the applicant was seen by the prison doctor on several occasions. On 27 July 2011 he was prescribed medication for his

heart condition by a cardiology doctor at the ambulatory care clinic of Dej Prison Hospital.

26. Between 21 September and 12 October 2011 he was admitted to Dej Prison Hospital, where he was subjected to blood tests and lung and knee X-rays and was diagnosed, in addition to his other conditions, with gonarthrosis (chronic wear) of the left knee. He was released with the recommendation that he follow a special diet, stop smoking, take medication for high blood pressure, his lungs and hepatitis and undergo regular examinations of his heart.

27. Between 8 and 14 June 2012 he was admitted to Bucharest Prison Hospital because of chest pains and breathing difficulties. He was diagnosed in particular with left ventricular failure, as having previously suffered a heart attack, coronary lesions (discovered in 2009), moderate ischemic mitral failure and arterial hypertension.

28. To date the applicant has not undergone a new coronary angiography as recommended by the specialist doctor on 25 January 2011.

### II. RELEVANT DOMESTIC LAW

29. The relevant provisions of the Code of Criminal Procedure concerning suspension of prison sentences (Articles 453 and 455), in force at the relevant time, are described in the case of *Aharon Schwarz v. Romania* (no. 28304/02, 12 January 2010).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

30. Relying on Articles 2, 3 and 8 of the Convention, the applicant complained that he had not received the appropriate medical treatment for his heart condition. The Court, which is master of the characterisation to be given in law to the facts of the case, finds that the complaint in issue falls to be examined solely under Article 3 of the Convention, which reads as follows:

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

#### A. Admissibility

31. 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

### *1. The parties' submissions*

32. The applicant submitted that he was suffering from a very severe heart condition which required a difficult operation that could not be performed within the prison health system. He stressed that although he had obtained a final judgment on 2 November 2009 ordering the prison authorities to admit him to a public hospital to receive the necessary treatment, the authorities did not obey that order. With respect to his statement of 24 October 2010, he clarified that he had refused to undergo surgery in a hospital in the prison system which was not adequately equipped for open-heart surgery, and where his family would not have been allowed to come and visit and care for him. He considered that his operation could only have been safely performed in a public hospital.

33. Based on the medical certificate issued on his hospitalisation in 2012, the applicant concluded that because of the constant refusal to provide him with treatment in a public hospital his condition had worsened, he suffered constant pain and had even had a heart attack (see paragraph 27 above). This situation, extending over a long period of time, had caused him immense physical and mental suffering.

34. After mentioning the main principles established by the Court in its case-law in respect of conditions of detention and medical treatment while in detention, the Government contended that the applicant had been regularly examined by doctors and had received the appropriate medical treatment for his illnesses.

35. More specifically, they contended that between 23 November and 3 December 2009 the applicant had been admitted to Rahova Prison Hospital with a view to his admission to the Central Military Hospital. On 27 November 2009 he had been examined there by a specialist doctor from the Central Military Hospital who established that he could not be operated on at that time. Under these circumstances, the applicant had been released back to his place of detention with a recommendation to follow the treatment recommendations made during his previous stay in Jilava Prison Hospital. Bearing in mind all the above, the prison authorities had therefore entirely fulfilled their obligations set forth in the judgment of 2 November 2009.

36. Lastly, the Government also submitted that the recommended surgery had not been performed on the applicant because of his written refusal to undergo an operation on 24 October 2010. In addition, the Government,

without any supporting evidence, alleged that he had also refused to undergo a second coronary angiography on 24 February 2011.

*2. The Court's assessment*

**(a) General principles**

37. The Court has emphasised on a number of occasions that a lack of appropriate medical treatment in prison may by itself raise an issue under Article 3, even if the applicant's state of health does not require his immediate release. The State must ensure that given the practical demands of imprisonment, the health and well-being of a detainee are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, §§ 93-94, ECHR 2000-XI, and *Sarban v. Moldova*, no. 3456/05 § 90, 4 October 2005).

38. The Court has also held that Article 3 of the Convention cannot be interpreted as guaranteeing every detained person medical assistance at the same level as "in the best civilian clinics" (see *Mirilashvili v. Russia* (dec.), no. 6293/04, 10 July 2007). It further held that it was "prepared to accept that in principle the resources of medical facilities within the [penal] system are limited compared to those of civil[ian] clinics" (see *Grishin v. Russia*, no. 30983/02, § 76, 15 November 2007). On the whole, the Court reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008).

39. The mere fact that a detainee is seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007). The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention (see, for example, *Khudobin v. Russia*, no. 59696/00, § 83, ECHR 2006‑XII), that diagnosis and care are prompt and accurate (see *Hummatov*, cited above, § 115, and *Melnik v. Ukraine*, no. 72286/01, §§ 104-106, 28 March 2006), 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 illnesses or preventing their aggravation, rather than addressing them on a symptomatic basis (see *Hummatov*, cited above, §§ 109 and 114; *Sarban*, cited above, § 79; and *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006).

40. Lastly, in assessing whether the authorities discharged their health care obligations *vis-à-vis* a detainee in their charge, the Court may also

analyse to what extent his state of health deteriorated in the course of his detention (see, for example, *Valašinas v. Lithuania*, no. 44558/98, § 54, ECHR 2001‑VIII, and *Farbtuhs v. Latvia*, no. 4672/02, § 57, 2 December 2004).

**(b) Application of these principles to the present case**

41. The Court has examined all the documentary evidence submitted by the parties. From this it appears that the applicant was diagnosed with coronary heart disease in August 2006, four years after his placement in detention. Even if the illness was detected after his arrest, nothing suggests that it arose as a result of his detention rather than natural causes. What is clear is that his condition was life-threatening and required medical supervision to ensure timely diagnosis and treatment.

42. The Court observes that the applicant asked the domestic courts on two occasions to suspend his sentence for medical reasons and that his requests were denied. However, this is not the issue in the present case. What is at stake here is the applicant's admission under escort to a public cardiovascular clinic to receive the appropriate treatment, as ordered by the Bucharest County Court in the final judgment of 2 November 2009.

43. The Court notes that this obligation had not been observed by the authorities since, from the information submitted by the parties, it does not result that the applicant had ever been hospitalised in a public cardiovascular clinic. It is true that the applicant had been admitted on several occasions to hospitals in the prison system, where he was examined and prescribed medication. However, the Court further notes that it was only by order of the domestic court, when the applicant lodged the two requests to have his sentence suspended, that he underwent thorough assessments in a specialist cardiovascular centre outside the prison system. Following the first round of assessments in 2009, he was recommended surgery in a specialist clinic outside the prison system (see paragraph 10 above). Subsequently, in 2011 he was recommended a new coronary angiography (see paragraph 21 above). However, no evidence was submitted by the Government of any admission to a public hospital or of any assessments being conducted or treatment prescribed to him by a doctor outside the prison health system. In this connection, the Court observes that the Government's statement that the applicant had been examined by a doctor from the Central Military Hospital on 27 November 2009 cannot be taken into consideration, since it was not supported by any evidence. Nor can the Court take into consideration the Government's allegation that he had refused to undergo a new coronary angiography, since no evidence was submitted in that regard either.

44. Concerning the Government's submission that the applicant had refused the surgery on 24 October 2010, the Court notes from his statement of that date that he specifically refused to undergo surgery in a hospital in

the prison system. In this connection, the Court further observes that the applicant was of the opinion, confirmed by the judgment of 2 November 2009, that the serious operation he required could only be safely performed in a public hospital. His statement of 24 October 2010 should not therefore have prevented the authorities from fulfilling their obligation set forth in a final court judgment, namely to admit him, under escort, to a cardiovascular clinic run by the Ministry of Health to receive the appropriate treatment (contrast *Gheorghe v. Romania* (dec.), no. 8810/11, § 63, 14 May 2013).

45. Lastly, the Court notes that in June 2012, on the applicant's admission to Bucharest Prison Hospital, additional aggravating factors were discovered in connection with his heart condition, including the fact that he had suffered a heart attack (see paragraph 27 above). In this connection, the Court observes that the Government submitted no information concerning the treatment provided to him after 2011.

46. In view of the above, the Court notes that, in breach of the specialist doctor's recommendations and the Bucharest County Court's final judgment of 2 November 2009, the prison authorities continually failed to admit the applicant to a public hospital for a period as long as four years (contrast *Sereny v. Romania*, no. 13071/06, §§ 85-86, 18 June 2013).

47. The Court considers that the seriousness of the applicant's condition, taken together with the authorities' failure to enforce, for a period of four years, a final judgment ordering his admission to a public hospital to receive the appropriate treatment, were sufficiently serious to amount to degrading treatment within the scope of Article 3 (see *Holomiov v. Moldova*, no. 30649/05, §§ 120-121, 7 November 2006).

Accordingly, there has been a violation of Article 3 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 14 TAKEN TOGETHER WITH ARTICLE 3 OF THE CONVENTION

48. The applicant complained that the authorities had failed to provide him with the appropriate treatment for his heart condition because of his Roma ethnicity, which was therefore inconsistent with the requirement of non-discrimination laid down by Article 14 of the Convention, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

49. The applicant submitted that the prison doctors had repeatedly made racist remarks regarding his ethnic origin and that he had been discriminated against in his access to medical care in comparison with non-Roma prisoners.

50. The Government contested that argument.

51. The Court has consistently held that Article 14 prohibits a discriminatory difference in treatment between persons in analogous or relevantly similar positions without a legitimate aim or in the absence of a reasonable relationship of proportionality between the means employed and the aim sought (see *Larkos v. Cyprus* [GC], no. 29515/95, § 29, ECHR 1999-I, and *Stec and Others v. the United Kingdom* [GC], no. 65731/01, § 51, ECHR 2006-...).

52. In the present case the Court considers that the applicant failed to provide a single concrete example of him having been treated in a discriminatory manner compared with detainees of non-Roma ethnic origin, and dismisses his allegations as wholly unsubstantiated.

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

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed a monthly allowance of 600 euros (EUR) in respect of pecuniary damage, owing to the fact that he had lost his ability to work as a result of the lack of appropriate medical treatment. He further claimed EUR 7,000 in respect of non-pecuniary damage.

55. The Government requested that the Court reject the claim in respect of pecuniary damage, since the applicant's inability to work did not result from a failure on the part of the authorities. With respect to the claim in respect of non-pecuniary damage, the Government submitted that this was excessive. In their view, should the Court find a violation of the applicant's rights guaranteed by Article 3 in the present case, such a finding should constitute sufficient just satisfaction.

56. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court observes that in the present case it has found a violation of Article 3 and finds that the applicant has suffered non-pecuniary damage which cannot be compensated solely by the above finding of a violation. It accordingly awards the applicant the entire amount claimed in respect of non-pecuniary damage.

### B. Default interest

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

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

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

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,000 (seven thousand euros), 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, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 21 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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|---|---|
| Marialena Tsirli | Josep Casadevall |
| Deputy Registrar | President |