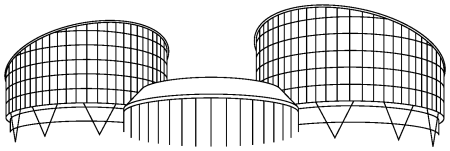

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF VALERIAN DRAGOMIR v. ROMANIA

(Application no. 51012/11)

JUDGMENT

STRASBOURG

16 September 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 Valerian Dragomir v. Romania,

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

Josep Casadevall, *President*,
Alvina Gyulumyan,
Dragoljub Popović,
Luis López Guerra,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges*,
and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 26 August 2014,

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

PROCEDURE

1. The case originated in an application (no. 51012/11) 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 Valerian Dragomir ("the applicant"), on 3 August 2011.

2. The applicant was represented by Mr A. Stoica, a lawyer practising in Timişoara. The Romanian Government ("the Government") were represented by their Agent, Mrs C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged under Article 5 § 1 of the Convention that there had been no legal basis for his detention for almost eleven hours on the premises of the prosecuting authorities. Under Article 3 of the Convention he complained about the conditions of his detention at the Bucharest Police Station detention facility, mainly on account of overcrowding and improper conditions of hygiene.

4. On 23 November 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1980 and lives in Timişoara.

A. The background of the case

6. In February 2011 a large-scale criminal investigation was initiated against ninety-four police and customs officers for corruption-related offences.

7. According to the charge, between October 2010 and January 2011 a criminal group was formed at the Moravița and Foeni border checkpoints, which were controlled by the Timiș County Border Police Inspectorate ("the PCTF"). Its members were involved in acts of corruption and the smuggling of cigarettes from Serbia.

8. The applicant was a customs officer at the Moravița border checkpoint at that time, and was considered to be part of the criminal group by the investigation authority. On 3 February 2011 the National Anti-Corruption Prosecution Service ("the NAP") initiated a criminal investigation against him on suspicion of being a member of a criminal group and bribery. On 28 March 2011 prosecutors extended the investigation to take into account the offence of repeated smuggling.

B. The circumstances surrounding the applicant's placement in pre-trial detention

9. On 7 February 2011 the prosecutor issued orders to appear on behalf of the applicant and the other ninety-three police and customs officers. The orders contained reasons justifying the measure. After referring *in extenso* to the impugned facts and the nature of the offences allegedly committed, the prosecutor emphasised that it was in the best interests of the investigation to take all the suspects to the NAP headquarters simultaneously.

10. In the framework of the criminal investigation, on 8 February 2011 police officers from the NAP carried out a search at the applicant's home. The search started at 6 a.m. and lasted about three hours. The applicant benefitted from the legal assistance of a lawyer of his own choosing during the search. Related searches were carried out at the residences of the other officers under suspicion.

11. At about 9 a.m. the police officers informed the applicant that on 7 February 2011 the prosecuting authorities had issued an order to appear before the NAP on his behalf.

12. At 9.15 a.m. he was taken to the headquarters of the Timiș County Police Inspectorate.

13. At about 2 p.m., he was taken with ninety-three other police and customs officers by bus to the NAP headquarters in Bucharest. He alleged that during the journey he could not get off the bus and could not use his mobile phone or contact his lawyer.

14. At about 9.20 p.m., after travelling almost 600 km, they arrived at the NAP headquarters in Bucharest.

15. The applicant alleged that at the NAP headquarters in Bucharest he had been kept in a room under permanent guard and that he could not have any contact with his lawyer. He also claimed that he had neither been allowed to go and purchase food nor offered it; he had only been allowed to leave the room to go to the toilet or for a cigarette.

16. Multiple investigative activities were carried out that night by a large team of prosecutors. Each suspected officer was informed of the charges against him and invited to give a statement in the presence of a lawyer of his own choosing.

17. The same lawyer who had assisted the applicant during the search carried out at his residence arrived at the NAP headquarters at about 00.27 a.m.

18. At 8.15 a.m. on 9 February 2011, after almost eleven hours, the applicant was informed in the presence of his lawyer of the charges against him. He was provided with an eleven-page document containing a record of the facts.

19. At about 9.33 a.m. the applicant informed the investigators that he refused to give a statement on the grounds that he was very tired after being deprived of sleep for more than thirty hours.

20. At about 10.55 a.m. he was informed that the prosecutor had decided to remand him in custody for twenty-four hours.

C. The applicant's pre-trial detention

21. A decision was taken to prosecute the applicant and a request to place him in pre-trial detention was lodged with the competent court.

22. At about 8 p.m. on 9 February 2011 he was taken to the Bucharest Court of Appeal for an examination of the prosecutor's request concerning his pre-trial detention. The hearing started at 10.30 p.m. and lasted almost one hour. The court granted the prosecutor's request and ordered the pre-trial detention of the applicant for twenty-nine days, from 9 February until 10 March 2011. The reasons adduced by the court to justify the detention were the existence of a reasonable suspicion that he had committed the alleged crimes, and their gravity and nature.

23. The applicant was taken to the Bucharest Police Station detention facility.

24. An appeal lodged by the applicant against his pre-trial detention was dismissed by the High Court of Cassation and Justice on 14 February 2011.

25. On 2 March and 4 April 2011 respectively, the Bucharest Court of Appeal extended the applicant's pre-trial detention. The court referred to the gravity of the charges, the strong suspicion that the offences had been committed and the repeated nature of the offences. It also stressed

that the applicant had acted in his capacity as a customs officer when allegedly committing the offences. It concluded that it would not be in the public interest to release the applicant and the other customs and police officers. In assessing the impact on the public the applicant's release from detention would have, the court stressed that the acts had been allegedly committed by a significant number of perpetrators over a long period of time, were repetitive and that the perpetrators were customs and police officers in charge of the protection of legal order.

26. On 9 March and 8 April 2011 respectively, the High Court of Cassation and Justice dismissed the applicant's appeals against the extension of his detention, upholding the interlocutory judgments of the Bucharest Court of Appeal.

27. On 3 May 2011 the applicant was transferred to the Timişoara Police Station detention facility.

28. On 6 May 2011 the Timişoara Court of Appeal ordered his release from detention. An appeal lodged by the prosecutor was dismissed by the High Court of Cassation and Justice on 7 May 2011.

29. The applicant was released on 8 May 2011 after three months in detention.

30. It appears that the proceedings on the merits are still pending.

D. The applicant's conditions of detention at the Bucharest Police Station detention facility

31. The applicant claimed that he had been placed in a cell measuring 16 square metres, which he had shared with seven other detainees. He also complained of improper conditions of hygiene.

32. According to the applicant, the cell had a squat toilet and a shower, which were not separated from the living area.

33. The Government provided information about the applicant's conditions of detention. They submitted that the applicant had been detained in a cell measuring 14.57 square metres, which he had occupied with seven other detainees. They pointed out that each cell had sanitary facilities such as a toilet and a shower, which were separated from the rest of the cell by a curtain.

II. RELEVANT LAW AND PRACTICE

34. Excerpts from the relevant international and domestic reports concerning the situation in Romanian prisons are given in *Iacov Stanciu v. Romania*, (no. 35972/05, §§ 125-129, 4 July 2012).

35. In the reports on its June 2006 and September 2010 visits to Romania, the CPT expressed concern about the conditions of detention at the Bucharest Police Station detention facility. According to these reports,

cells were overcrowded, toilets were not separated from the rest of the cell, and detainees did not receive any personal hygiene products.

36. The relevant provisions of the Code of Criminal Procedure (CCP) concerning police custody and pre-trial detention are set out in *Creangă v. Romania* ([GC], no. 29226/03, § 58, 23 February 2012).

37. An order to appear before the courts (*mandatul de aducere*) was, at the material time, defined in Articles 183-184 of the CCP, which read as follows:

Article 183

"(1) A person may be brought before a criminal investigation body or a court on the basis of an order to appear, drawn up in accordance with the provisions of Article 176, if, having been previously summonsed, he or she has not appeared, and his or her questioning or presence is necessary.

(2) An offender or a defendant may be brought [before the authorities] on the basis of an order to appear even before being summonsed, if the criminal investigation body or the court considers that, and provides reasons why, the measure is necessary for the determination of the case.

(3) The person brought [before the authorities] by virtue of an order to appear under paragraphs 1 and 2 shall be heard immediately and be available to the judicial authorities only for such time as is required to question him or her, except where his or her remand in custody or pre-trial detention has been ordered.

(4) The person brought [before the authorities] on the basis of an order to appear shall be heard immediately by the judicial authorities."

Article 184

"(1) [An] order to appear is enforced by the police.

(2) If the person specified in the order cannot be brought [before the authorities] because of an illness or for any other reason, the police officer appointed to enforce the order shall mention this in an official report, which shall be immediately handed to the criminal investigation body or the court.

(3) If the police officer appointed to enforce the order to appear does not find the person specified in the order at the specified address, he shall investigate and, if unsuccessful [in locating the individual], shall draw up an official report mentioning the investigative activities undertaken.

(3^{1}) If the offender or the defendant refuses to accompany a police officer or tries to escape, he or she may be forced to comply with the order."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

38. The applicant complained about the conditions of his detention at the Bucharest Police Station detention facility, particularly with regard to overcrowding and poor hygiene conditions.

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

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

A. Admissibility

39. 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

40. The applicant submitted that the conditions of his detention at the Bucharest Police Station detention facility had been inadequate. He complained of overcrowding and poor hygiene conditions. He also contended that the sanitary facilities, which comprised a shower and a squat toilet, were not separated by the rest of the cell. Therefore, he had lacked any privacy in using the toilet.

41. The Government argued that there had been no infringement of Article 3 of the Convention on account of the applicant's conditions of detention.

2. The Court's assessment

(a) General principles

42. The Court reiterates that under Article 3 of the Convention the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of execution of the measure of detention do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII, and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

43. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

44. The Court has considered extreme lack of space as a central factor in its analysis of whether an applicant's detention conditions complied with Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, § 39, 7 April 2005). In a series of cases, the Court considered that a clear case of overcrowding was a sufficient element for concluding that Article 3 of the Convention had been violated (see *Colesnicov v. Romania*, no. 36479/03, §§ 78-82, 21 December 2010, and *Budaca v. Romania*, no. 57260/10, §§ 40-45, 17 July 2012). Moreover, the Court has already found a violation of Article 3 of the Convention on account of the lack of privacy when using the toilet (see *Onaca v. Romania*, no. 22661/06, §§ 38-39, 13 March 2012).

(b) Application of those principles to the case in hand

45. The applicant was detained at the Bucharest Police Station detention facility between 10 February and 4 May 2011.

46. The Court notes that, even at the cell capacity indicated by the Government, the applicant's personal space turns out to have been less than 4 square metres, which falls short of the standards imposed by the Court's case-law. Furthermore, in the instant case it is not contested that the toilet and the shower were not separated from the living area by a real partition (see paragraphs 32 and 33).

47. The applicant's submissions about overcrowding and unhygienic conditions correspond to the findings by the CPT in respect of Bucharest Police Station detention facility (see paragraph 35 above).

48. The Court concludes that the conditions of the applicant's detention caused him distress that exceeded the unavoidable level of suffering inherent in detention and that attained the threshold of degrading treatment proscribed by Article 3.

49. There has accordingly been a violation of Article 3 of the Convention in respect of the material conditions of the applicant's detention in the Bucharest Police Station detention facility.

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

50. The applicant complained that his deprivation of liberty from 9.20 p.m. on 8 February 2011 to 8.15 a.m. on 9 February 2011 was unlawful and arbitrary. He relied on Article 5 § 1 of the Convention, the relevant parts of which read as follows:

> "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:

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;"

A. Admissibility

51. 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

52. The Government submitted that between 9.20 p.m. on 8 February and 10.55 a.m. on 9 February 2011 the applicant had been kept at the disposal of the investigators on the basis of the order to appear before them.

53. The applicant's presence had been necessary because of his direct involvement in substantial criminal activity committed by a large organised crime group.

54. The Government contended that the expedition of the formalities had been affected, among others factors, by the time of arrival of the accused's' chosen lawyers at the NAP headquarters. The order of the accused' questioning had therefore been determined not only by the priorities of the inquiry, but also by the time of arrival of the defence lawyers.

55. The Government maintained that the accused had been kept in a waiting room at the NAP headquarters. They had been offered water and coffee and had been allowed to obtain food from their lawyers. The investigators had taken all the measures possible to reduce the periods of time necessary for progressing the procedural measures, having regard to the complexity and particularities of the case.

56. The Government argued that it had been in the interests of the proper advancement of the investigation to issue an order to appear in the name of the applicant. The investigators had issued the order, taking into account that under Article 183 of the CCP a person might be brought before a prosecutor on the basis of an order to appear even without having been previously summonsed, if an interview or his or her presence was considered necessary.

57. In the Government's view, the prosecutor's decision to issue an order to appear was proportionate to the scope of bringing the applicant before the judicial authorities to inform him of the charges and to question him. They further pointed out that the domestic legislator had not intended to include the institution of orders to appear among the measures of pre-trial

detention. Orders to appear were included among the procedural measures, more precisely the summonses issued by the judicial authorities.

58. Lastly, the Government pointed out that the applicant had not been deprived of liberty, but his free movement had been restricted for the purposes of the pending investigation with a view to establishing the facts. They concluded by pointing out that in the event that the Court found that the applicant had been deprived of his liberty, it should be considered to fall within the ambit of Article 5 § 1 (c) of the Convention.

59. The applicant submitted that he did not contest the lawfulness of the order to appear before the investigators but his unlawful confinement from the moment the effects of that order to appear had ceased, namely from the moment he had arrived at the NAP headquarters at 9.20 p.m. on 8 February 2011 until 8.15 a.m. the next day.

60. The applicant maintained that he had not been immediately informed, even before his questioning, about the crime that was being investigated, its legal classification, the right to be assisted by a lawyer and the right to make a statement. He disagreed with the Government's allegation that the expedition of these formalities had been affected by the time of arrival of his defence lawyer at the NAP headquarters. Although his lawyer had arrived at 12.27 a.m., he had only been informed of the charges against him when being questioned by the prosecutor.

61. As regards the conditions he had been kept in until that questioning, the applicant claimed that he had been guarded by police officers and gendarmes. He added that he had been kept in a boardroom, not a waiting room, and had not received coffee, water or food as maintained by the Government. He also submitted that the police officers had prevented his lawyer, who had arrived at the NAP headquarters at 12.27 a.m., from contacting him while he was waiting to be questioned.

62. The applicant also submitted that his deprivation of liberty on the basis of an order to appear for approximately eleven hours was contrary to Article 183 of the CCP. In this connection, he pointed out that according to Article 183 §§ 3 and 4 a person brought before the authorities by virtue of an order to appear should be immediately heard by the judicial authorities and could not remain at their disposal for more than the time strictly necessary for his questioning.

2. The Court's assessment

(a) The period to be taken into account

63. The Court notes that in his initial application, the applicant alleged that he had been deprived of liberty between 9.20 p.m. on 8 February and 10.55 a.m. on 9 February 2011. In his written submissions, he had only complained of a deprivation of liberty until 8.15 a.m. on 9 February 2011. The Court will therefore refer only to the latter time period indicated.

64. The Court nevertheless notes that between 8.15 and 10.55 a.m. on 9 February 2011 the applicant was being questioned by the prosecutor in the presence of his lawyer.

(b) Whether the applicant was deprived of liberty

65. The Court must first establish whether or not the applicant was deprived of his liberty within the meaning of Article 5 of the Convention.

66. In order to determine this, the starting point must be his or her specific 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 (see *Guzzardi v. Italy*, 6 November 1980, § 92, Series A No. 39, and *Mogoş v. Romania* (dec.), no. 20420/02, 6 May 2004).

67. In this connection, the Court must emphasise 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 (see *Creangă*, cited above, § 92). Thus, the fact that both the national authorities and subsequently the respondent Government considered that the applicant had not been arrested and detained does not automatically mean that the applicant was not deprived of his liberty.

68. In the present case the applicant claimed – and the Government have not disputed – that the applicant spent almost eleven hours in a waiting room at the NAP headquarters before being questioned by the prosecutor.

69. According to the Court's established case-law, coercion is a crucial element in its examination of whether or not someone has been deprived of his or her liberty within the meaning of Article 5 § 1 of the Convention (see, for example, *Foka v. Turkey*, no. 28940/95, §§ 74-79, 24 June 2008 and *M.A. v. Cyprus*, no. 41872/10, §§ 186-193, ECHR 2013 (extracts)). The applicant in the present case did not volunteer to go to the NAP headquarters.

70. The Court further notes that the applicant was guarded by police officers continuously and that at no point during the journey from his home to Bucharest was he allowed to leave of his own free will. He was also guarded by police officers while waiting at the NAP headquarters.

71. The Court therefore considers that the applicant was under the authorities' control throughout the entire period, and concludes that he was deprived of his liberty within the meaning of Article 5 § 1 of the Convention.

(c) Whether the applicant's deprivation of liberty was compatible with Article 5 § 1 of the Convention

72. The Court must now determine whether the applicant was deprived of his liberty "in accordance with a procedure prescribed by law" within the meaning of Article 5 § 1 of the Convention. The words "in accordance with

a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. While it is normally in the first place for the national authorities, notably the courts, to interpret and apply domestic law, the position is different in relation to cases where failure to comply with the law entails a breach of the Convention. This applies, in particular, to cases in which Article 5 § 1 is at stake and the Court must then exercise a certain power to review whether national law has been observed (see *Baranowski v. Poland*, no. 28358/95, § 50, ECHR 2000-III). In particular, it is essential, in matters of deprivation of liberty, that the domestic law define clearly the conditions for detention and that the law be foreseeable in its application (see *Zervudacki v. France*, no. 73947/01, § 43, 27 July 2006, *Creangă*, cited above, § 101).

73. The applicant was taken from his home at about 9.15 a.m. on 8 February 2011 on the basis of an order to appear before the investigation authorities. The order was issued on the basis of Articles 183 and 184 of the CCP, as in force at the material time.

74. The Court notes that according to Article 183 § 1, an individual could be brought before a criminal investigation body or a court on the basis of an order to appear, if, having been previously summonsed, he or she had not appeared and an interview or his or her presence was necessary. Pursuant to Article 183 § 2, an offender or a defendant could be exceptionally brought before the courts on the basis of an order to appear even before being summonsed, if the criminal investigation body or the court considered the measure necessary for the determination of the case, and provided reasons why.

75. In this connection, the Court observes that the prosecutor's order of 7 February 2011 (see paragraph 9 above) issued on the basis of Article 183 § 2 of the CCP contained reasons justifying the measure (contrast *Ghiurău v. Romania*, no. 55421/10, § 85, 20 November 2012).

76. The Court further notes that, under Article 183 §§ 3 and 4 of the CCP, the person appearing by virtue of the order to appear shall be heard immediately and be available to the judicial authorities only for such time as is required to question him or her. In this connection, the Court notes that although the applicant arrived at the NAP headquarters at 9.20 p.m., he was not questioned by a prosecutor until after almost eleven hours.

77. As results from the prosecutor's order of 7 February 2011, the applicant and his ninety-three other colleagues were summonsed to appear before the NAP as suspects ("*învinuiți*") as a criminal investigation had been opened in the case in respect of all of them on 3 February 2011. Therefore, the Court considers that the lawfulness of the applicant's deprivation of liberty must be examined under Article 5 § 1 (c) of the Convention.

78. As regards the Government's submission that the order of the suspects' questioning had been determined not only by the priorities of the inquiry, but also by the time of arrival of the defence lawyers, the Court notes on the basis of the material available to it that the applicant's lawyer had arrived at the NAP headquarters at about 12.27 a.m. on 9 February 2011; however, the applicant was not invited to give a statement in the presence of his lawyer until 8.15 a.m.

79. Under Romanian law, there are only two preventive measures entailing a deprivation of liberty: police custody and pre-trial detention. In the present case, however, neither of those measures was applied to the applicant before 10.55 p.m. on 9 February 2011.

80. The Court is conscious of the constraints arising in a criminal investigation and does not deny the complexity of the proceedings instituted in the instant case, which required a unified strategic approach, in a large-scale case involving a significant number of people. However, with regard to liberty, the fight against corruption cannot justify recourse to arbitrariness and areas of lawlessness in places where people are deprived of their liberty (see *Creangă*, cited above, § 108).

81. Having regard to the foregoing, the Court considers that even from the applicant's arrival at the NAP headquarters at 9.20 p.m. on 8 February 2011, the prosecutor had a sufficiently strong suspicion to justify the applicant's deprivation of liberty for the purposes of the investigation, and that Romanian law provided for the measures to be taken in that regard, namely placement in police custody or pre-trial detention. However, the prosecutor decided only at a very late stage, after almost thirteen hours, to place the applicant in custody.

82. Accordingly, the Court considers that the applicant's deprivation of liberty between 9.20 p.m. on 8 February 2011 until 8.15 a.m. on 9 February 2011, had no basis in domestic law and that there has therefore been a violation of Article 5 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

83. Lastly, the applicant complained under Article 5 § 3 of the Convention that the Bucharest Court of Appeal did not provide sufficient reasons for his pre-trial detention and the two subsequent extensions of his detention.

84. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant did not claim any award in respect of pecuniary damage. As regards non-pecuniary damage, the applicant claimed EUR 5,000.

87. The Government contended that the amount claimed by the applicant in respect of non-pecuniary damage was excessive and that the mere acknowledgement of a violation of the Convention would represent in itself a just satisfaction.

88. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

89. The applicant also claimed EUR 100 for the costs and expenses incurred in connection with his correspondence with the Court.

90. The Government submitted that such an amount could be awarded to the applicant if a violation of the Convention was found.

91. 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, the Court considers it reasonable to award the sum of EUR 100 for the proceedings before the Court.

C. Default interest

92. 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 complaints concerning Articles 3 and 5 § 1 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* that there has been a violation of Article 5 § 1 of the Convention;

4. *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:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 100 (one hundred euros), plus any tax that may be chargeable to the applicant, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Done in English, and notified in writing on 16 September 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Josep Casadevall
President