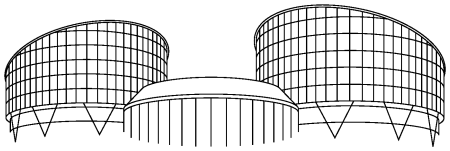

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

# CASE OF IUSTIN ROBERTINO MICU v. ROMANIA

*(Application no. 41040/11)*

JUDGMENT

STRASBOURG

13 January 2015

*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 Iustin Robertino Micu v. Romania,**

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

Josep Casadevall, *President*,
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges*,
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 9 December 2014,

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

## PROCEDURE

1. The case originated in an application (no. 41040/11) 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 Iustin Robertino Micu ("the applicant"), on 22 June 2011.

2. The applicant was represented by Mr C. S. Feteanu, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his rights guaranteed by Article 3, 5 and 13 of the Convention, whether regarded separately or together, had been breached because he had been unable to obtain access to food in spite of his medical condition and he had been unlawfully deprived of his liberty for the period he spent under the control of a police officer and at the National Anticorruption Department's Office for questioning prior to his placement in police custody. In addition, he alleged that he had lacked a domestic remedy to deal with his complaints concerning the aforementioned measures taken against him.

4. On 18 December 2012 the application was communicated to the Government.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Bucharest.

### A. Criminal proceedings against the applicant and his detention pending trial

6. By orders of 5 and 8 March 2010 the National Anticorruption Department ("the N.A.D.") instituted criminal proceedings against the applicant and three other co-accused, all of them border guard police officers, for bribe-taking and abetting bribe-taking. It held – on the basis of testimonial, documentary and surveillance evidence of phone conversations between one of the co-accused, his wife and a third party – that there was reasonable suspicion that on 6-7 September 2007 the applicant and his colleagues had asked seven Turkish nationals to pay them money in order to allow them to leave Romania.

7. On 8 March 2009 prosecutor G.B., who was attached to the N.A.D., authorised several police officers to enforce a warrant to appear (*mandat de aducere*) issued in the applicant's name and the names of the three co-accused. According to the order to appear produced by the N.A.D., the applicant's presence was required in order for him to be heard as an accused (*învinuit*) in the criminal investigation instituted against him in 2008. No other reasons or considerations were stated on the order.

8. On 9 March 2010 two police officers went to the applicant's workplace to enforce the warrant to appear. According to the report produced by the police officers and signed by the applicant, he was shown the warrant to appear and was informed that he would be taken to the N.A.D.'s premises. He was also informed that he could contact and retain the services of a legal representative of his own choosing. He refused to do so because he considered that he did not need one. The applicant and the escorting police officers left the applicant's workplace at 8.40 a.m.

9. On the same date, at 12 noon, G.B. informed the applicant in the presence of a publicly appointed legal representative that a criminal investigation had been opened against him for bribe-taking. According to the documents submitted before the Court, and signed by the applicant and his legal representative, he had refused to retain a legal representative of his own choosing and had accepted assistance from a publicly appointed lawyer. According to the statement made before the prosecutor, he notified the authorities that he suffered from diabetes and that he needed his insulin treatment, which would have to be brought from his workplace. In addition, he requested the authorities to notify his wife in the event of his placement in police custody. He also stated that he reaffirmed the statement he had

made previously concerning the events in connection with which he was being investigated. According to the record of the applicant's statement, he was heard as an accused by the prosecutor at N.A.D.'s offices from 12 noon to 9.34 p.m.

10. On the same date, at 7.36 p.m., the applicant was informed that at 7.08 p.m. he had been charged with bribe-taking. According to the report produced by the authorities and signed by the applicant and his legal representative he refused to make any statement as a defendant (*inculpat*) and reaffirmed the statement he had made as an accused.

11. By an order dated 9 March 2010 the N.A.D. placed the applicant in police custody for twenty-four hours commencing at 9.15 p.m. for bribe-taking. The arrest order was signed by both the applicant and his legal representative. It stated that on the basis of the available evidence there was reasonable suspicion that the applicant had accepted money from Turkish nationals for the purpose of allowing them to return to Turkey. It also stated that the offence in question was punishable by over four years' imprisonment and his release would constitute a danger to public order, bearing in mind that he was a border guard officer and had committed the offence at his workplace.

12. On 10 March 2010, relying on testimonial, documentary and audio surveillance evidence, the N.A.D. asked the domestic courts to detain the applicant pending trial.

13. By an interlocutory judgment of 10 March 2010 the Court of Cassation dismissed the N.A.D.'s request and ordered the applicant's release on condition that he remain in the country. It held that the available evidence was plagued by inconsistencies which should have been resolved by the investigating authorities. In addition, except for the seriousness of the offence, none of the other legal requirements for detaining the applicant pending trial had been met. In particular, there was no evidence in the file that he had attempted to abscond or to obstruct justice. Also, it had not been proven that his release would be a danger to public order, given that the events in question had occurred in 2007 and that the applicant was not responsible for the length of the criminal investigation. Consequently, it considered that the implementation of an alternative measure was more appropriate in his case.

14. On 8 April 2010 the Court of Cassation, sitting as a second instance court, dismissed as ill-founded an appeal by the N.A.D. against the interlocutory judgment of 10 March 2010.

15. By a judgment of 17 March 2011 the Bucharest Court of Appeal convicted the applicant of bribe-taking and sentenced him to three years' imprisonment. The applicant appealed on points of law (*recurs*) against the judgment.

16. On 11 February 2013 the Court of Cassation allowed the applicant's appeal on points of law against the judgment of 17 March 2011 and

acquitted him. It also noted that he had been held in police custody for twenty-four hours from 9 to 10 March 2010.

### B. Criminal proceedings instituted by the applicant against prosecutor G.B.

17. On 21 April 2010 the applicant instituted criminal proceedings with no civil claims against the prosecutors investigating his case – in particular G.B. – for, *inter alia*, abuse of office by restricting certain rights, perjury, unlawful arrest and improper investigation, torture and unlawful perversion of justice (*represiune nedreaptă*). He argued that the prosecutor had obtained testimonial evidence against him in breach of domestic and international criminal procedure rules and had detained him for thirty-seven hours instead of the twenty-four allowed by law. In addition, there had been no reasonable suspicion that he had committed the offence, nor had the other legally-required criteria for his detention been met. Also, he had been subjected to intense physical and psychological suffering because the order to appear issued by the prosecutor had been unjustified and devoid of grounds, in breach of Article 183 (2) of the Romanian Code of Criminal Procedure ("the C.C.P."). Lastly, he had been refused a medical examination, medical treatment and food for the entire time he was under the authorities' control, even though he had notified them of his medical condition.

18. On 10 May 2010 the applicant brought proceedings seeking to have prosecutor G.B. removed from the case on the grounds that he had instituted criminal proceedings against him in April 2010.

19. By a final order delivered on the same date, the hierarchically superior prosecutor attached to N.A.D., namely L.P., dismissed the applicant's action of 10 May 2010 on the ground that there was no evidence in the file that G.B. had had a personal interest in the outcome of the case or that he had had a feud with one of the parties in the case. The fact that the applicant had instituted criminal proceedings against him was not an incompatibility ground provided for by law.

20. By a final order of 2 July 2010 the public prosecutor's office attached to the Court of Cassation dismissed the applicant's criminal complaint of 21 April 2010 against the prosecutor G.B. on the grounds that the offences cited by the applicant were inexistent and that his claims amounted to a complaint against the acts and measures carried out by the prosecutor during the investigation stage of the criminal proceedings instituted against him. The purpose of a criminal complaint was not, however, to censor the acts and measures carried out by a prosecutor. The lawfulness of such measures could only be examined within the framework of a complaint lodged with the hierarchically superior prosecutor against the

acts and measures carried out by the investigating prosecutor. The applicant appealed against the order before the domestic courts.

21. By interlocutory judgments of 16 November 2010 and 18 January 2011 the Court of Cassation ordered that the investigation file be attached to the court's file and that G.B. be summoned before the court. According to the applicant, neither the investigation file nor G.B. was ever presented to the court.

22. By a final judgment of 12 April 2011 the Court of Cassation dismissed the applicant's complaint against the order of 2 July 2010. It held that the applicant's complaints concerned investigative acts carried out by G.B. During ongoing criminal proceedings, other legal remedies are available to the accused or the defendant(s) by virtue of the criminal procedure rules, and these could have been used here to express dissatisfaction in respect of the alleged breaches of the procedural rules and of their lawful rights. In this connection, the court identified several complaints the applicant could have lodged within the framework of the criminal proceedings instituted against him, namely a complaint against the prosecutor's orders for preventive measures and based on Article 51 et seq., Article 64 § 2, Article 67 et seq., and Articles 140 § 2, 172 § 6, 275-278, 320 and 332 of the Romanian Criminal Procedure Code. In addition to the aforementioned legal remedies, the defendants had other lawful means of lodging complaints against the person investigating or supervising the investigation of their case. However, a criminal complaint lodged against the prosecutor who had carried out the investigation in criminal proceedings that were still pending was not one of the legal means the applicant could have used, as it opened up the possibility of having aspects of legality regarding the pending criminal trial examined outside the framework expressly provided by the Criminal Procedure Code and of examining aspects of the criminal proceedings instituted against him. Moreover, the procedure allowing the prosecutor's orders to be challenged before domestic courts did not allow the court to substitute its judgment for that of the judicial organs charged with the examination of the pending criminal proceedings instituted against him. The applicant appealed on points of law (*recurs*) against the judgment.

23. On 28 July 2011 the applicant brought proceedings against the Court of Cassation seeking an injunction to force that court to examine both the appeal on points of law lodged by him against the final judgment of 12 April 2011 and the unconstitutionality objections raised by him after the previously mentioned judgment was delivered.

24. On 12 September 2011, by a final judgment delivered in private, the Court of Cassation dismissed the applicant's appeal on points of law against the judgment of 12 April 2011 as inadmissible. It held that, following recent law reforms, judgments delivered by the domestic courts in proceedings

challenging the legality of a prosecutor's decision not to institute criminal proceedings were no longer appealable before two levels of jurisdiction.

25. By a judgment of 28 November 2011 the Bucharest Court of Appeal dismissed the applicant's action of 28 July 2011. It held that ordering the Court of Cassation to examine his appeal on points of law would breach the principle of legal certainty. In addition, an unconstitutionality objection had been raised by the applicant after the proceedings had ended on 12 April 2011 and there was no legal framework that would allow the Court of Appeal to force another court to examine them. The applicant appealed on points of law against the judgment of 28 November 2011 and according to him, the appeal was dismissed as ill-founded.

### C. Criminal proceedings instituted by the applicant against prosecutor L.P.

26. On 31 May 2010 the applicant brought criminal proceedings with no civil claims against the prosecutor L.P. for abuse of office against the public interest, incitement to the unlawful exercise of a profession and to perjury, incitement to unlawful perversion of justice, and incitement to the retention and destruction of documents. He claimed that, as G.B.'s hierarchically superior prosecutor, L.P. had approved the criminal-investigation measures undertaken by G.B., including the evidence dismissed and gathered by him, and had allowed G.B. to detain him and institute the criminal proceedings against him, even though he had been aware that he was innocent.

27. By a final order of 28 October 2010 the public prosecutor's office attached to the Court of Cassation dismissed the applicant's criminal complaint against L.P. on the grounds that the offences cited by the applicant were non-existent. It held that the complaints lodged by the applicant against L.P. were related to those lodged by him against G.B. In the latter's case the public prosecutor's office had already discontinued the criminal investigation for similar reasons. The applicant appealed against the order before the domestic courts.

28. By a final judgment of 28 March 2011 the Court of Cassation dismissed the applicant's complaint against the order of 28 October 2010. It held that L.P. had neither investigated the applicant's case nor undertaken any acts or measures in this respect. He had merely approved the proposal submitted by G.B. before the domestic courts to detain the applicant pending trial. The fact that he had examined and dismissed the applicant's complaints in respect of the legality of the criminal proceedings instituted against him did not engage his criminal liability. In the absence of evidence to suggest that the prosecutor had acted unlawfully or that he had breached his duties, the applicant's arguments in support of his complaint could not be assessed within the framework of a criminal investigation. Most of the applicant's complaints were in fact arguments in his defence based on

challenges to the way the evidence had been produced, the measures undertaken and the procedural flaws. According to the relevant criminal procedure rules, such complaints could be raised by the applicant before the domestic courts examining his case but could not be interpreted as constituting the elements of an offence. The applicant appealed on points of law against the judgment.

29. On 21 November 2011, by a final judgment delivered in private, the Court of Cassation dismissed the applicant's appeal on points of law against the judgment of 28 March 2011 as inadmissible. It held that, following recent law reforms, judgments delivered by the domestic courts in proceedings challenging the legality of a prosecutor's decision not to institute criminal proceedings were no longer appealable before two degrees of jurisdiction.

### D. Other sets of criminal proceedings instituted by the applicant against prosecutors G.B. and L.P.

30. On 4 August 2011 the applicant brought criminal proceedings with no civil claims against prosecutors G.B. and L.P. for breach of the secrecy of his correspondence, amongst other things. He argued that the two prosecutors had unlawfully monitored his electronic mail correspondence during the spring of 2010 and in June 2010 had publicly presented the content of one of his electronic mails in court.

31. By a final judgment of 12 June 2012 the Court of Cassation dismissed the criminal proceedings with no civil claims that had been brought by the applicant against prosecutor G.B. for forgery and use of forged documents during the course of the criminal proceedings conducted by the said prosecutor against him. It held that the offences alleged by him were in fact allegations of breaches of procedural rules by the prosecutor investigating his case, which could have been examined by the appellate courts over the course of the criminal proceedings instituted against him, particularly since the proceedings in question were still pending before the domestic courts.

32. By a final order of 26 June 2012 the Prosecutor's Office attached to the Court of Cassation dismissed criminal proceedings that had been instituted by the applicant against prosecutors G.B. and L.P. on 4 August 2011 on the grounds that no unlawful act had been committed. The applicant did not appeal against the order before the domestic courts.

33. By a final order of 12 September 2012, the public prosecutor's office attached to the Court of Cassation dismissed criminal proceedings that had been instituted by the applicant against, *inter alia*, prosecutors G.B. and L.P. for slanderous denunciation, unlawful arrest and abusive investigation, and forgery on the grounds that, amongst other things, the available evidence did not suggest the existence of any offence committed by the

aforementioned prosecutors. The applicant did not challenge the decision before the domestic courts.

### E. The applicant's medical condition

34. According to the applicant's medical papers he has been suffering from type-two diabetes since 1997 and has been treated with insulin since 2009.

35. On 9 March 2010 at 10.30 p.m., prior to being placed in a detention cell, the applicant was examined by the detention center's medical nurse. According to the report produced on that day, the applicant's general condition was relatively good. He informed the medical nurse that he required insulin treatment twice a day, in the morning and in the evening. He said that he had tested his own blood sugar level using his own tester at 9 p.m. and that his blood sugar level was high.

36. On 10 March 2010 the applicant was examined by a doctor specialising in diabetes and nutrition. According to the medical certificate produced on the same day, the applicant was following a programme of treatment involving two insulin injections per day, one in the morning and one in the evening.

37. Between 12 March 2010 and 16 May 2012 the applicant was examined by specialist doctors and was tested ten times. According to the medical certificates produced on those dates, he continued to receive two injections of insulin per day until November 2011, but the dosage was increased twice. In addition, doctors recommended that he take sick leave on six occasions. Furthermore, on 11 February 2011 it was recommended that he take his evening insulin dosage no earlier than 8 p.m. In November 2011 he was advised to administer three insulin injections per day.

### F. Other relevant information

38. In his initial submission to the Court on 22 June 2011 the applicant stated that on 9 March 2010 at about 7.30 a.m. the two police officers holding the warrant to appear had taken him to the N.A.D.'s office. At the N.A.D.'s office he had been left waiting in a room until 12 noon, when the police officers informed him that he needed to retain the services of a legal representative. Afterwards, he had again been left waiting for hours.

39. At about 7 p.m. a publicly appointed legal representative had arrived and the applicant had been questioned by prosecutor G.B. in her presence. He had been asked two short questions and afterwards he had once more been left waiting.

40. At about 9 p.m. prosecutor G.B. had informed the applicant that he had been placed in police custody for twenty-four hours.

41. At about 10 p.m. he had been handcuffed and taken to the detention center. At the detention center the police guards had taken away from him the syringe, the insulin and the device for measuring blood sugar levels he had had on him. The applicant had informed the police guards that he was suffering from diabetes and retinopathy and that he had not eaten the entire day. His request for a medical test to be carried out by a doctor had been dismissed and he had been visited by a nurse.

42. In his submission before the Court on 16 August 2012 the applicant stated that on 9 March 2010 after being taken to the N.A.D.'s office, he had been locked in a room and guarded by armed guards. Although he had informed the prosecutor investigating his case that he had been suffering from diabetes requiring insulin treatment and retinopathy, the latter had refused to allow him to eat for the purposes of being able to take his insulin treatment.

43. On the same date, according to the applicant, his two mobile phones had been confiscated by the police officers who accompanied him to the N.A.D.'s office without producing a report attesting to this confiscation measure. Also, he had been denied contact with his family and had not been allowed to retain the services of a legal representative of his own choosing. During his placement in police custody he had not been provided with food appropriate to his condition or with plates, glasses or cutlery to be able to eat the food.

44. On 11 April 2013 the N.A.D. informed the Government that as soon as the applicant had informed the prosecutor investigating his case that he suffered from diabetes and needed his insulin treatment – which would have to be brought from his workplace – steps had been taken to retrieve the applicant's treatment from his workplace. Within thirty minutes the applicant had had access to his treatment kit and had been allowed to use it without any restriction. In addition, the police officer who had brought the treatment kit from the applicant's workplace had also bought food for the applicant using his own money and had allowed him to eat.

45. On the same date the N.A.D. informed the Government that the applicant had been questioned by the prosecutor as an accused from 12 noon to 12.34 p.m. The fact that the record of the applicant's statement mentioned 9.34 p.m. (21.34) as the time when the hearing had ended had been an error, given that the next procedural act carried out by the prosecutor had started at 12.45 p.m. In addition, the N.A.D. stated and provided evidence that for the rest of the time the prosecutor had not been hearing or carrying out procedural acts in relation to the applicant, but rather had been working on procedural acts and measures undertaken in relation to the three remaining co-accused and the available witnesses.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Former Romanian Criminal Code

46. Article 247 defines the offence of abuse of office by restricting certain rights as the act, by a public servant, of restricting the exercise of a person's rights.

47. Article 266 defines the offence of unlawful arrest and improper investigation as the unlawful placement in police custody and detention of a person, or forcing a person to serve a sentence or a safety and educational measure in ways not regulated by domestic legislation.

48. Article $267^1$ defines torture as the act, by a State agent, of intentionally causing a person physical or psychological suffering in order to obtain from him or others information or confessions, or to punish him for an act he has committed or is suspected of having committed, or to intimidate him or a third party.

49. In Article 268 unlawful perversion of justice is defined, *inter alia*, as the act of instituting criminal proceedings and ordering a person's detention knowing that he is innocent.

### B. Former Romanian Criminal Procedure Code

**Article 51**
**Request for removal**

"(1) If an incompatible person did not step down, a party may ask for his or her removal at any stage of the criminal proceedings as soon as that party has learnt the reason rendering him or her incompatible.

(2) The request for removal may be oral or in writing, and must show for each person the reason of incompatibility... A request for removal may only be made in relation to those judges sitting on the panel of judges...

..."

**Article 53**
**Procedure for examination during the criminal-investigation stage of the proceedings**

"(1) During the criminal-investigation stage of the proceedings the hierarchically superior prosecutor examines the ... request for removal lodged against the prosecutor investigating the case.

...

(4) The request for removal lodged against the prosecutor investigating the case must be examined within three days by the hierarchically superior prosecutor.

..."

**Article 64**
**Evidence**

"...

(2) Unlawfully obtained evidence may not be used in the criminal trial."

**Article 67**
**Relevance and necessity of the evidence**

"(1) During the criminal proceedings the parties may propose evidence and ask for it to be produced.

(2) If the evidence is relevant and necessary for the case, the request for production of evidence may not be denied.

(3) The denial or approval of the request must be justified."

**Article 71[1]**
**Conditions for hearing the accused or the defendant**

"If during the hearing the accused or the defendant claims to be experiencing the symptoms of an illness that might be life-threatening, the hearing must be stopped and the investigating body must take steps for the accused or the defendant to be examined by a doctor. The hearing may be reopened once the doctor has decided that the accused's or defendant's life is no longer endangered."

**Article 140[1]**
**Complaint against the prosecutor's order for preventive measures**

"(1) Any complaint lodged against ... the prosecutor's order for placement in police custody must be lodged before the hierarchically superior prosecutor within twenty-four hours, counting from the moment the measure was taken...

(2) The prosecutor must make a decision before expiry of the twenty-four hour period. counting from the moment the measure was taken..

(3) The prosecutor shall quash the measure if he decides that it was unlawful or unjustified."

**Article 172**
**Rights of the legal representative**

"...

(6) A person's legal representative has the right to complain under Article 275 if his requests were not approved...

..."

**Article 320**
**Clarifications, exceptions and requests**

"...

(2) The president shall ask the prosecutor and the parties if they would like to raise preliminary objections, to make requests or to ask for new evidence.

...

(4) The prosecutor and the parties may also request the production of new evidence during the judicial-investigation stage of the proceedings."

**Article 332**
**Clarifications, exceptions and requests**

" (1) If the court observes before the judicial-investigation stage of the proceedings has ended that the criminal investigation of the case was carried out by a non-competent body, it may cease its activity and return the case to the prosecutor...

..."

**Article 183**
**The warrant to appear**

"(1) A person may be brought before [a] criminal-investigation body or [a] court on the basis of a warrant to appear,..., if, having been previously summoned, he/she has not appeared, and his/her hearing or presence is necessary.

(2) An accused or a defendant may be brought [before the authorities] on the basis of a warrant to appear even before being summoned if the criminal-investigation body or the court provides reasons demonstrating that this measure is necessary in the interest of solving the case.

(3) Any person appearing by virtue of the warrant referred to in paragraphs 1 and 2 of this Article shall be available to the judicial or non-judicial authorities for only such time as is required to question them, save where an order has been made for them to be placed in police custody or pre-trial detention.

(4) A person brought on the basis of a warrant to appear shall be heard immediately by the judicial or non-judicial body."

50. Excerpts from the relevant domestic provisions concerning complaints against the prosecutor's decisions, namely Articles 275-278, are set out in *Dumitru Popescu v. Romania (no. 1)*, no. 49234/99, § 43, 26 April 2007.

## THE LAW

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

51. The applicant complained that, in spite of his medical condition, he had not been provided with any food during the period he spent under the police officers' control and at the National Anticorruption Department for questioning. 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

52. The Court notes that the 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*

53. The applicant submitted a large number of details before the Court aimed to establish the exact timeline of the impugned events in order to support his claims.

54. The applicant contested the Government's submissions that at 12 noon he had been questioned by the prosecutor and had been informed of his rights in the presence of a publicly appointed legal representative. He further argued that the available documents indicated that at 12 noon the prosecutor had simultaneously informed the applicant of his rights as an accused, had prepared the record of the meeting, had heard the applicant and had recorded his statement. Both legally and logically speaking, it would have been impossible for the prosecutor to have carried out so many procedural acts simultaneously. In reality the prosecutor had failed to inform him of his rights and of the offence of which he had been accused and had failed to ask him to write a statement in his own words.

55. The applicant also contended that the publicly appointed legal representative's authorisation to represent him had not been approved by the Bucharest Bar Association until 10 March 2010. In addition the publicly appointed legal representative had not been present at the N.A.D.'s office at 12 noon.

56. The applicant submitted that throughout the day of 9 March 2010, after arriving at the N.A.D.'s premises, he had been kept in an office and guarded by two police officers. Three other officers were working in the same office but none of them had spoken to him. At about 12 noon the two police officers guarding him had asked him if he had chosen a legal representative, without telling him the reason why he would need one. They had interpreted his subsequent question why he needed to choose legal representation as amounting to consent to relinquishment of that right. The applicant had not protested because he had been unaware of what he had been accused.

57. The applicant argued that he had been questioned by the prosecutor at about 4 p.m. and then had only been asked if he wished to reaffirm the statement he had made to the police in 2008 in respect of the events of the present case. It was only at 7 p.m. that he had been informed of the facts of which he had been accused, but he had not been told why he had been taken

to the N.A.D.'s office nor had he been informed of his rights as an accused. The publicly appointed legal representative had not arrived at the N.A.D.'s office until 8 p.m. Afterwards, the applicant had been questioned by the prosecutor and the procedure for placement in police custody had been instituted. The applicant had managed to read nothing but his statement, and had merely signed the other documents prepared by the prosecutor without having read them. The fact that his lawyer had also signed his statement without objections was proof that his hearing had ended at 9.34 p.m.

58. The applicant contested that he had stated at 7.36 p.m. that he did not wish to make statements as a defendant. That would have been impossible, given that his questioning as an accused had ended at 9.34 p.m. The fact that his refusal had been mentioned in a document produced at 7.36 was due to the fact that the template for this document, which had been printed out by the prosecutor from his computer, contains such a standard refusal.

59. The applicant further submitted that at about 4 p.m., when he had met the prosecutor for the first time, he had informed him about his illness, about the required treatment, and about the fact that he had not been feeling well. In spite of the requirements of the relevant criminal procedure rules, the prosecutor had failed to take the necessary steps to have the applicant examined by a doctor and had informed the applicant orally that he could not spare any personnel to escort him to a doctor.

60. The applicant contended that the prosecutor had asked one of the police officers to bring his insulin treatment kit, which he had left at work. However, the kit in question had been made available to him only two hours later, specifically at about 6 p.m. The applicant also contested the Government's submission that while he had been held at the N.A.D.'s office he had also been given food. He contended that it was not until 10 p.m. that a police officer had offered him a sandwich, after he had been transferred to the detention center.

61. The Government argued that – according to the information provided by the N.A.D. – the applicant had not informed the prosecutor investigating his case about his illness and the required treatment until 12 noon. Once he had been notified, the prosecutor had promptly dispatched a police officer to bring the applicant's treatment kit from his workplace. The treatment kit had been left at the applicant's workplace because the latter had initially not informed the authorities about his illness. The police officer had returned with the applicant's treatment kit within approximately thirty minutes. He had also bought the applicant some food with his own money.

62. The Government submitted that the authorities' prompt reaction to the applicant's condition made the present case similar to *Patriciu v. Romania* (dec.), no. 43750/05, §§ 41-44, 19 March 2013 and had to be distinguished from *Soare and others v. Romania*, no. 24329/02, §§ 221-222, 22 February 2011.

63. The Government contended that the applicant's medical condition had not been affected by the aforementioned events. According to the available medical evaluation at the time of his imprisonment, the applicant's condition had been generally good.

*2. The Court's assessment*

64. The Court reiterates that according to its well-established case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (see *Jalloh v.Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX). In considering whether treatment is "degrading" within the meaning of Article 3, one of the factors which the Court will take into account is the question of whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see *Raninen v. Finland*, 16 December 1997, § 55, *Reports of Judgments and Decisions* 1997-VIII, and *Peers v. Greece*, no. 28524/95, §§ 68 and 74, ECHR 2001-III).

65. The Court points out that it has already held that the use of certain interrogation techniques, in a premeditated way and for long periods of time, could cause the person subject to such techniques to suffer physical or psychological harm in violation of Article 3 of the Convention (see *Ireland v. the United Kingdom*, 18 January 1978, § 167, Series A no. 25). It has also held that making applicants wait for ten hours in order to be questioned as witnesses – without food and water, and without the opportunity to rest – amounted to inhuman and degrading treatment (see *Soare and others*, cited above, §§ 221-222).

66. In the instant case the Court notes that the factual circumstances of the case are disputed by the parties. Moreover, the applicant alleged that the records contained in the documents drafted by the prosecutor investigating his case and produced by the Government before the Court had been wildly inaccurate in terms of the time-frame and of the actual events that happened on 9 March 2010 and did not reflect the reality on the ground.

67. However, the Court notes that the applicant stated in his submissions before the Court that he had signed all the documents produced by the prosecutor even though he had managed to read only the statement he had given as an accused. In addition, the applicant had not provided any explanation as to why he had agreed to sign documents that he had not read or why he had not objected in writing to signing them in the absence of sufficient time for reading them. Moreover, the applicant had failed to raise any objections in respect of the accuracy of the information concerned, even as regards the statement he had signed after reading it.

68. Therefore, notwithstanding the applicant's submissions, the Court considers that the information recorded in the documents produced by the prosecutor on 9 March 2010 and signed by the applicant was generally

accurate and it can rely on it. Consequently, given that the same prosecutor was also investigating the applicant's co-accused, and that according to the available evidence from 12.45 p.m. onwards he had been involved in procedural acts that did not involve the applicant, and that at 7.36 p.m. the applicant had already been charged with bribe-taking and had become a defendant, the Court considers it reasonable to accept the N.A.D's submission before the Government that the applicant's hearing as an accused had lasted from 12 noon to 12.34 p.m. and not until 9.34 p.m. (21.34) as had been wrongly stated in the available documents.

69. In these circumstances, the Court notes that the applicant was taken to the N.A.D.'s office at 8.40 a.m. by two police officers on the basis of a warrant to appear which stated that the applicant's presence was required at the N.A.D.'s office in order for him to be heard as an accused in a criminal case that had been opened in 2008. According to the enforcement report produced by the two police officers, which the applicant did not contest, he had been presented with the warrant to appear and had declined to retain a legal representative of his own choosing. Neither the enforcement report nor any other evidence in the file suggests that the applicant informed the two police officers about his illness or the fact that he needed his insulin treatment kit.

70. On arrival at the N.A.D. office the applicant appears to have had his first contact with the prosecutor investigating his case from 12 noon to 12.34 p.m. Once the applicant had informed the prosecutor about his illness and the fact that he needed the medical kit which had been left at his workplace, the latter dispatched a police officer to bring it. Even leaving aside the Government's submission that the kit had arrived within thirty minutes, the Court notes that the applicant acknowledged that he had received the requested medical kit within two hours. In addition, there is no evidence in the file to suggest that the applicant did not have unrestricted access to the medical kit. The Court's finding is reinforced by the applicant's own statement recorded in the medical report produced at the time of his imprisonment, according to which he had measured his blood sugar level using his own tester.

71. The Court further notes that the parties' submissions in respect of whether or not the applicant was provided with food on 9 March 2010 before he left the N.A.D.'s office are also contradictory. While the Government contended that he had been given food, the applicant denied it (contrast *Patriciu*, cited above, § 41). The Court observes that the applicant acknowledged that he had been given some food on 9 March 2010, but only at 10 p.m. after he had been remanded in police custody, had left the N.A.D.'s office, and had been in the process of being transported to a detention center. In addition, the Court notes that the Government have not presented any evidence demonstrating that the police officer who brought the applicant's medical treatment kit also purchased food for the applicant.

72. The Court further notes that the length of the investigation into the applicant's case could be justified in view of the fact that it could be regarded as complex – involving three other co-accused – and related to serious criminal accusations that had been brought against him. In addition, there is no evidence in the reports produced by the prosecutor on that day that the applicant or his legal representative had asked either the prosecutor or the police officers to provide him with food or to temporarily suspend the hearings on account of their excessive length or the applicant's tiredness. However, the Court also observes that the applicant brought criminal proceedings against the prosecutor and contended that he had been refused food during the entire day he spent under the authorities' control (contrast *Patriciu*, cited above, § 41). Furthermore, the domestic courts dismissed the applicant's complaint without examining the substance of his claim.

73. The Court also cannot but notice that the Government did not contend that the availability of the medical treatment kit alone, in the absence of food, had been sufficient for the applicant's condition. Also, according to the available medical evidence, it appears that the treatment the applicant experienced on 9 March 2010 had affected him physically. In this connection, the Court notes that, according to the medical report produced on the same date at the time of his imprisonment, the applicant's general condition was only relatively good. The same medical report also recorded the applicant's statement that at 9 p.m. his blood sugar level had been elevated. Neither the report in question, nor any other evidence submitted by the Government before the Court, rebutted that fact.

74. Given the scarcity and contradictory nature of the available evidence, the Court cannot speculate as to the exact causes for the applicant's physical condition on the evening of 9 March 2010 or whether his own behaviour – in failing to inform the police officers about his illness and the need for his treatment kit when they left his workplace – had contributed decisively to it. However, given the nature of the applicant's illness and the absence of any conclusive evidence submitted by the Government that the applicant was provided with food prior to 10 p.m., the Court considers that this factor appears also to have played a role with regard to the applicant's physical condition.

75. In the circumstances, including the applicant's illness, the Court finds that the treatment the applicant was subjected to on 9 March 2010 prior to his remand in police custody exceeded the inherent and inevitable suffering caused by the legal proceedings and questioning related to the case.

76. It follows that there has been a violation of Article 3 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

77. The applicant complained that he had been unlawfully deprived of his liberty for the period he spent under the police officers' control and at the N.A.D.'s office for questioning prior to his placement in police custody. He relied on Article 5 § 1 of the Convention, which reads 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:
>
> (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;
>
> (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

78. 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*

79. The applicant submitted that on 9 March 2010 he had been unlawfully deprived of his liberty from 8.40 a.m. to 9.34 p.m. Under the domestic criminal procedure rules, the warrant to appear could not justify a person's deprivation of liberty. In addition, the authorities had not complied with the aforementioned criminal procedure rules because they had not provided any reasons why they had issued this order against him. There had been no danger that the applicant might contact the victims of his alleged offence, because he had been unaware of the accusations brought against him and had not known who his accusers were. Also, the authorities had disregarded the law by holding the applicant for periods longer than had been necessary to question him.

80. The applicant also contended that, although the criminal file had been opened in 2008, he had never been summoned to appear before the prosecutor investigating the case. He had been summoned only once in 2008 to appear before the police. On that occasion he had attended the hearing and had been questioned as a witness in the case.

81. The Government contended that the enforcement of the warrant to appear before the criminal-investigation authority issued in the applicant's name could not be considered a deprivation of liberty within the meaning of Article 5 § 1. The applicant's presence at the N.A.D.'s office from 8.40 a.m. to 9.30 p.m. had been required for the good administration of justice, namely to prevent the co-accused from communicating with one another. The domestic legislation allowed for a person to be brought before a prosecutor on the basis of a warrant to appear, particularly in circumstances where – as in the applicant's case – his presence was necessary in order for him to be questioned for the first time as an accused. The criminal procedure rules did not make the issuance of the warrant to appear conditional on the accused's previous refusal to appear and to cooperate with the investigating authorities. Moreover, the domestic judicial authorities, including the Romanian Constitutional Court, had considered that the provisions of Article 183 of the former Romanian Criminal Procedure Code did not amount to deprivation of a person's liberty.

82. The duration of the measure had been justified by the numerous procedural acts that had had to be administered by the same prosecutor in respect of all the co-accused.

83. The Government also contended that no force had been exerted on the applicant by the police officers in order to make him accompany them and that he had been allowed to contact a legal representative of his own choosing. In addition, the authorities had provided the Court with a detailed account of all the procedural measures that had been carried out in respect of the applicant and the other co-accused during the period the applicant was at the N.A.D.'s office. Moreover, the applicant's presence at the N.A.D.'s office had been necessary, given that he needed to be informed about the accusations against him and that his placement in police custody had also been based on the evidence presented by the authorities on that date.

84. The Government further submitted that – even if the Court were to consider that the applicant had been deprived of his liberty – the warrant to appear before the criminal-investigation authority had been issued in compliance with national law, had been justified, and had been proportionate in its scope.

*2. The Court's assessment*

85. The Court reiterates that Article 5 of the Convention enshrines a fundamental right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. In proclaiming the "right to liberty", paragraph 1 of Article 5 contemplates the physical liberty of the person; its aim is to ensure that no one should be deprived of that liberty in an arbitrary fashion. Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be

deprived of their liberty, and no deprivation of liberty will be lawful unless it is justified on one of those grounds.

86. The Court also 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 actual 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 the deprivation and the restriction of 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). Admittedly, in determining whether or not there has been a violation of Convention rights it is often necessary to look beyond the appearances and the language used, and to concentrate on the realities of the situation (see *Van Droogenbroeck v. Belgium*, 24 June 1982, § 38, Series A no. 50).

87. Where the "lawfulness" of detention is in issue, including the question of 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).

88. In the instant case the Court considers that, given the parties' contradictory submissions, it is necessary to establish the period to be taken into consideration. It notes that, according to the documents produced by the parties, the applicant left his workplace accompanied by the two police officers enforcing the warrant to appear at 8.40 a.m. and that he was placed in police custody at 9.15 p.m. In these circumstances, notwithstanding the parties' submissions, the Court concludes that the restrictions on liberty complained of started at 8.40 a.m. on 9 March 2010 and ended at 9.15 p.m. on the same day.

89. The Court further observes that the Government contended that the applicant accompanied the police officers willingly to the N.A.D.'s office and that they did not use force against him. In this connection, the Court notes that the applicant was guarded by police officers continuously and that there is no evidence in the file to suggest that applicant would have been allowed to leave of his own free will or that he had been notified that he could do so. It also notes that the Government have not contested the applicant's allegations that at the N.A.D.'s office he had been continuously guarded by two armed police officers and had been kept in an office where there were a total of five police officers. 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.

90. 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, first and foremost, up to the national authorities, especially 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 of the Convention is at issue 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 concerning deprivation of liberty, that the domestic law clearly defines the conditions for detention and that the law be foreseeable in its application (see *Zervudacki v. France*, no. 73947/01, § 43, 27 July 2006, and *Creangă v. Romania* [GC], no. 29226/03, § 101, 23 February 2012).

91. The Court notes that, in the present case, the legal basis for depriving the applicant of his liberty was Article 183 of the former Romanian Code of Criminal Procedure.

92. 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 summoned, he or she had not appeared and his or her questioning or presence was required. In this connection, the Court notes that the applicant contended that he had never been summoned to appear before the N.A.D.'s prosecutors in connection with criminal proceedings against him, and the Government failed to submit any evidence to the contrary, for example a copy of the summons.

93. The Court further notes that, pursuant to Article 183 § 2 of the same code, an accused or a defendant could 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 provided reasons why this measure was necessary in the interest of solving the case.

94. In this respect the Court observes that the prosecutor's order of 9 March 2010 issued on the basis of Article 183 § 2 of the former Romanian Code of Criminal Procedure did not provide any reasons as to why this measure was required for the questioning of the applicant as an accused. The Court therefore concludes that by omitting to specify the reasons on which it was based, the prosecutor's order failed to conform to the rules applicable to domestic criminal procedure. While the Government contended that the measure had been justified in order to prevent the applicant from contacting his co-accused, amongst other things, those reasons were not included in the warrant presented to the applicant.

95. Furthermore, the Court doubts whether the applicant's deprivation of liberty and his transfer to the N.A.D.'s office escorted by two police officers were necessary to ensure that he gave a statement as an accused. In this connection, the Court notes that the criminal file in respect of the applicant's case was opened in 2008 and the applicant had obeyed the summons issued by the police in his name in order to be questioned as a witness. In addition, the Court notes that the domestic courts ordered his immediate release after he had been placed in police custody and was able to contest the measure before the court.

96. The Court considers that the above circumstances disclose that the applicant was not deprived of his liberty in accordance with a procedure prescribed by domestic law, which renders the deprivation of the applicant's liberty from 8.40 a.m. to 9.15 p.m. on 9 March 2010 incompatible with the requirements of Article 5 § 1 of the Convention.

97. There has therefore been a violation of Article 5 § 1 of the Convention.

## III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

98. The applicant further complained of the fact that he had no domestic remedy to deal with the complaints regarding the measures in violation of Articles 3 and 5 that had been taken against him. He relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

### A. Admissibility

99. 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*

100. The applicant contested the finding by the domestic authorities that he could have employed other legal means to lodge complaints against the acts and measures that the prosecutor had taken against him.

101. The applicant contended that in theory he could have lodged a complaint in respect of the preventive measures undertaken by the

prosecutor, but that remedy could have been used only from the moment he was placed in police custody.

102. The applicant further submitted that after his release he had asked for the removal of the prosecutor investigating his case but his request had been dismissed by the hierarchically superior prosecutor. In addition, the prosecutors' actions about which he had complained amounted to criminal offences, not simple breaches of the criminal procedural rules. However, by employing the legal means provided by the former Criminal Procedure Code, the hierarchically superior prosecutor and the domestic courts could have examined only the alleged breaches of the criminal procedure rules. The existence and the nature of an offence could have been determined only following a criminal complaint lodged with the Prosecutor's Office.

103. The Government submitted and emphasised that the criminal complaints lodged by the applicant against the prosecutors investigating his case had amounted to effective remedies for the type of complaints lodged by the applicant. That was why the applicant's complaint before the Court had not been lodged outside the six-month time-limit. The mere fact that the applicant had been discontented with the outcome of the criminal proceedings he had instituted against the prosecutors could not in itself lead to the conclusion that the remedies in question had been ineffective.

104. The Government contended that the domestic authorities had examined the applicant's complaints and – in the absence of any supporting evidence – had classified them as challenges against the acts and measures carried out during the investigation.

*2. The Court's assessment*

105. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by acts or omissions of the authorities of the respondent State (see *Aksoy v. Turkey*, 18 December 1996, § 95, *Reports* 1996-VI).

106. In view of the Court's findings above with regard to Articles 3 and 5, these complaints are clearly "arguable" for the purposes of Article 13. The applicant should accordingly have been able to avail himself

of effective and practical remedies capable of enforcing the substance of these Convention rights.

107. The Courts notes in the present case that the domestic authorities have failed to examine the substance of the applicant's complaint under Article 3 of the Convention concerning the lack of food given his medical condition prior to his placement in police custody. In spite of the serious allegation raised by him, the authorities limited themselves to qualifying it as a complaint against the prosecutor's acts and measures without establishing relevant factual details.

108. Moreover, the Court observes that the domestic courts held that the criminal complaints brought by the applicant were not one of the legal means he could have used. However, the domestic courts' position was contradicted by the Government who considered the complaints lodged by the applicant to amount to effective remedies. While the domestic courts indicated that the applicant could have used other remedies, the Court notes that they expressly identified only some of those remedies and it does not appear from the available evidence that they would have yielded better results. In this connection, the Court notes that the applicant attempted to use one of the remedies indicated by the domestic courts, namely a request for the removal of the prosecutor investigating his case, but his request was dismissed on procedural grounds.

109. The Court notes that the aforementioned considerations also apply in respect of the applicant's complaint under Article 5 of the Convention concerning his deprivation of liberty from 8.40 a.m. to 9.15 p.m. on 9 March 2010. In addition the Court recalls that it has already established that under Romanian law there are only two measures entailing a deprivation of liberty, in particular police custody and pre-trial detention (see *Creangă*, cited above, § 107). However, neither of those measures was applied to the applicant prior to 9.15 p.m. on 9 March 2010. Consequently, the Court is not convinced that the domestic authorities perceived the restriction on the applicant's liberty prior to 9.15 p.m. on 9 March 2010 as a deprivation of liberty and were prepared to pursue the criminal complaints opened by the applicant in that regard. The Court's doubts are reinforced by the judgments of the domestic courts which considered that the applicant's criminal complaints amounted in reality to complaints against the investigating acts carried out by the prosecutor. Given the contradictions between the Government and the domestic courts as to what might have been the appropriate remedies for the applicant to exhaust in the circumstances of his case, the Court does not consider it unreasonable that the applicant raised his complaints before the Court only after he attempted to put his grievances to the domestic authorities.

110. In this context, given the Government's silence and the absence of any examples of relevant domestic case-law on other remedies that might have proved effective for the applicant, the Court finds in the particular

circumstances of the case that the State has failed in its obligations under Article 13 of the Convention.

111. Consequently, there has been a violation of Article 13 of the Convention in conjunction with Articles 3 and 5 of the Convention.

## IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

112. Relying on Articles 3, 5, 6, 8, 13 and 1 of Protocol No. 1 to the Convention, taken alone or together, the applicant raised a large number of other complaints concerning alleged breaches of his rights guaranteed by the Convention.

113. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as they fall within its jurisdiction, the Court finds that 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 part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. 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

115. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage on account of the physical and psychological suffering to which he had been subjected.

116. The Government submitted that the Court's finding of a violation would amount to sufficient just satisfaction. They also argued that the sum claimed by the applicant in respect of non-pecuniary damage was excessive.

117. The Court considers, however, that the applicant must have suffered distress as a result of the treatment he was subjected to by the authorities on 9 March 2010 prior to his placement in police custody. Consequently, making an assessment on an equitable basis, the Court awards the applicant EUR 5,850 in respect of non-pecuniary damage, plus any tax that may be chargeable.

### B. Costs and expenses

118. The applicant also claimed 17,958 Romanian lei (RON) (approximately EUR 4,180) for the costs and expenses incurred before the domestic courts, and EUR 2,500 for those incurred before the Court. He submitted copies of invoices and legal assistance contracts supporting part of his claims.

119. The Government submitted that the amount claimed by the applicant was excessive and was not fully supported by the documents submitted by him. In addition, the costs and expenses incurred by him before the domestic courts should not be compensated at all.

120. 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, having regard to the above criteria, the supporting documents submitted and the nature of the issues dealt with, the Court considers it reasonable to award the sum of EUR 3,000 to cover the applicant's costs and expenses.

### C. Default interest

121. 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 concerning the lack of access to food in spite of his medical condition for the period he had been under the authorities' control prior to being remanded in police custody, the complaint under Article 5 concerning the unlawfulness of his detention prior to being remanded in police custody, and the complaint under Article 13 concerning the lack of an effective remedy for the aforementioned complaints 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* that there has been a violation of Article 13 of the Convention;

5. *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 national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 5,850 (five thousand eight hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, 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;

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

Done in English, and notified in writing on 13 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Josep Casadevall
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Silvis is annexed to this judgment.

J.C.M.
J.S.P.

# CONCURRING OPINION OF JUDGE SILVIS

I agree with the Court's findings of violations in this case. However, a short technical remark is in order concerning the lack of a remedy in respect of the applicant's deprivation of liberty for thirteen hours before he was taken into police custody.

In my view, this part of the applicant's complaint should have been addressed under Article 5 § 4 of the Convention and not under Article 13 in conjunction with Article 5. According to the Court's established case-law, the more specific guarantees of Article 5 § 4 make it a *lex specialis* in relation to Article 13 (principle stated in *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, § 60, Series A no. 77, and *Chahal v. the United Kingdom*, 15 November 1996, § 126, *Reports of Judgments and Decisions* 1996-V; see, as recent examples, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 202, ECHR 2009, and *S.T.S. v. the Netherlands*, no. 277/05, § 59, ECHR 2011). That being so, Article 5 § 4 (like Article 5 § 5) absorbs the requirements of Article 13 in relation to Article 5.

Admittedly, the Court has found violations of Article 13 in conjunction with Article 5 in some cases involving (alleged) deprivation of liberty. This has happened, on occasion, in cases concerning unacknowledged detention (*İpek v. Turkey*, no. 25760/94, § 209, ECHR 2004-II), or where the State's responsibility was engaged in respect of secret detention on its territory (*Husayn (Abu Zubaydah) v. Poland*, no. 7511/13, 24 July 2014), or where the record of an arrest had been destroyed (*Aleksandra Dmitriyeva v. Russia*, no. 9390/05, 3 November 2011). It is obvious that the present case differs from cases of those kinds.

The question whether or not the domestic authorities applied a legitimate form of preliminary detention prior to 9.15 p.m. on 9 March 2010 is, in my view, not decisive for the applicability of Article 5 § 4. The Court has established that the applicant's deprivation of liberty for thirteen hours before he was taken into police custody was incompatible with the requirements of Article 5 § 1, which finding does not preclude the applicability of Article 5 § 4. 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, namely 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; *Varbanov v. Bulgaria*, no. 31365/96, § 58, ECHR 2000-X; and *Stanev v. Bulgaria* [GC], no. 36760/06, § 170, ECHR 2012).

Turning to the specific circumstances of this case, considered in retrospect, I find that the lack of a remedy concerning the applicant's deprivation of liberty, examined under Article 13 in conjunction with Article 5, did not place him in a worse position than the more rigorous test under Article 5 § 4 would have done, so that in the end I can certainly live with the outcome.