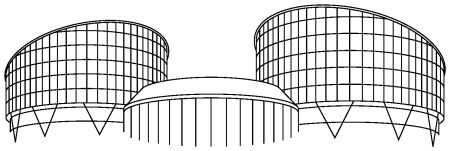

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF COSTEL GACIU v. ROMANIA

(Application no. 39633/10)

JUDGMENT

STRASBOURG

23 June 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 Costel Gaciu v. Romania,

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

Josep Casadevall, *President*,
Luis López Guerra,
Ján Šikuta,
Kristina Pardalos,
Johannes Silvis,
Iulia Antoanella Motoc,
Branko Lubarda, *judges*,
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 2 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 39633/10) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Costel Gaciu ("the applicant"), on 8 July 2010.

2. The applicant was represented by Ms M. Pop, a lawyer practising in Cluj-Napoca. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he had been detained in inhuman conditions in breach of his rights under Article 3 of the Convention. He also alleged that he had been subjected to unjustified discriminatory restrictions imposed on conjugal visits while he was in pre-trial detention.

4. On 6 November 2012 the complaints concerning the conditions of detention and the refusal of conjugal visits were communicated to the Government, and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Gherla.

6. On 29 March 2009 the applicant was arrested on suspicion of conspiracy to commit crimes and blackmail, and was placed in the Cluj County Police detention centre. On 28 July 2009 he was transferred to Gherla Maximum Security Prison ("Gherla Prison") where he remained until 2 February 2011, when his pre-trial detention was replaced by the courts with a prohibition on leaving the town.

A. Material conditions of detention

1. The applicant's account

7. The applicant alleged that for a period of four months, between 29 March and 28 July 2009, he was held in the Cluj County Police detention centre in a 4 sq. m underground cell with three other prisoners. The cell had no window or ventilation and the walls were covered in mould. He had no free access to water and the cell was extremely unhygienic. He further alleged that access to the toilet was given in accordance with a daily programme which in his opinion amounted to psychological torture.

8. In Gherla Prison the applicant was detained in severely overcrowded cells. He submitted that for a certain period he shared a 38 sq. m cell with twenty-six other prisoners. The cell also lacked ventilation because the window was covered with two rows of metal bars and additional metallic netting.

9. The applicant supported his allegations with statements from Mr S.O.A., who was held in a neighbouring cell in the Cluj County Police facility, and from Mr F.F., who was also held at the Cluj County Police centre at the same time as the applicant, and who afterwards shared a cell with him in Gherla Prison. They confirmed entirely the applicant's allegations.

2. The Government's account

10. In the Cluj County Police detention centre the applicant shared a cell of 4.14 sq. m with another prisoner (thus 2.07 sq. m of personal space for each inmate). The cell was not provided with any sanitary facilities such as a toilet, sink or shower. However, the centre had two common bathrooms where the prisoners had access to the toilet on request and to the showers twice a week. The cell had no window to the outside, but ventilation was ensured by a window located above the door and protected with bars and metallic netting.

11. In Gherla Prison the applicant was initially held in quarantine for three days in a 35 sq. m cell which he shared with fourteen other prisoners also in pre-trial detention (thus 2.33 sq. m of personal space for each inmate). The cell had seven rows of bunk beds.

12. Between 31 July and 19 August 2009, still in quarantine, the applicant shared a cell of 43.25 sq. m with twenty-five other prisoners (thus 1.66 sq. m of personal space for each inmate). This cell had eight rows of bunk beds.

13. On 19 August 2009 the applicant was transferred for six days to a cell measuring 16.38 sq. m together with five other prisoners (thus 2.73 sq. m of personal space for each inmate). The cell had three rows of bunk beds.

14. Between 24 August and 9 November 2009 the applicant was held in a cell of 15.96 sq. m with four other prisoners (thus 3.19 sq. m of personal space for each inmate). The cell had three rows of bunk beds. On 9 November 2009 the applicant was moved from this cell at his own request. Between 9 November 2009 and 22 September 2010 he was placed in a cell which measured 51.52 sq. m and accommodated fifteen prisoners (thus 3.43 sq. m of personal space for each inmate). The cell had nine rows of bunk beds.

15. Between 22 and 29 September 2010 the applicant shared a cell measuring 46 sq. m with twenty-two other prisoners (thus 2 sq. m of personal space for each inmate). The cell had nine rows of bunk beds.

16. From 29 September 2010 until his release on 2 February 2011 the applicant shared a cell of 15.96 sq. m with four other prisoners (thus 3.19 sq. m of personal space for each inmate).

17. The cells the applicant was held in were all provided with several tables and a window of 2 m x 1.40 m which ensured natural light and ventilation.

B. Visits during the applicant's pre-trial detention

18. On 22 April and 24 July 2010 the applicant requested to be allowed conjugal visits from his wife. His requests were refused by the prison authorities, with the reasoning that no right to such visits was provided for prisoners in pre-trial detention.

19. The applicant complained about these two refusals before the post sentencing judge in Gherla Prison. He relied on Article 82 of Law no. 275/2006 on the execution of sentences, which provided that prisoners on remand should benefit from the same rights as convicted prisoners. On 10 June 2010 the judge rejected the applicant's complaint, holding that in accordance with Article 44 letters a) and b) of the Regulation for the enforcement of Law no. 275/2006 the applicant, being a prisoner on remand, did not have the right to conjugal visits.

20. The applicant complained against this decision before the Gherla District Court. He underlined that the refusal of conjugal visits amounted to discrimination in breach of the Romanian Constitution and the case-law of the Court. On 26 July 2010 the Gherla District Court rejected the applicant's complaint with final effect, holding that the decision taken by the judge responsible for the execution of sentences on 10 June 2010 was correctly based on Law no. 275/2006, which provided for the right to conjugal visits only for convicted prisoners. The district court finally held that the contested decision was also in accordance with the Court's case-law, which stated that restrictions on conjugal visits were not, as such, in breach of Article 8 of the Convention.

21. According to the regulations in force at the relevant time the applicant had the right to a maximum of seventy-two visits throughout his entire detention period of one year and ten months. He was visited by his wife sixty-seven times. The remaining visits were by his father and sister. All the visits took place in an area designated for visits, separated by a glass wall and speaking to each other by telephone, under the visual surveillance of prison guards.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL STANDARDS

A. On the issue of material conditions of detention

22. Excerpts from the relevant provisions concerning the rights of detainees, namely Law no. 275/2006 on the execution of sentences, are quoted in *Iacov Stanciu v. Romania* (no. 35972/05, §§ 113-16, 24 July 2012).

23. The relevant findings and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") and the Council of Europe Commissioner for Human Rights with respect to Romanian prisons are described in *Iacov Stanciu* (cited above, §§ 125-29).

B. On the issue of prisoners' right to visits

24. Article 38 of Law no. 275/2006 provides that all visits are conducted under the visual surveillance of the prison authorities.

25. Under Article 48 (2^1) of the Law prisoners also have the right to conjugal visits, in compliance with the rules provided in Articles 43 and 44 of the Regulations for the enforcement of Law no. 275/2006, the relevant parts of which read as follows:

Article 43: Conjugal visits

"(1) Prisoners may benefit from a conjugal visit of up to two hours every three months ...

Article 44: Conditions for granting conjugal visits

"Prisoners may benefit from conjugal visits if they fulfil the following cumulative conditions:

a) they have been convicted with final effect ...

b) they are not under investigation or on trial in other criminal cases ..."

26. According to Article 2 of Order no. 2714/2008 issued by the Minister of Justice concerning visits, prisoners in pre-trial detention have the right to receive visits from their families in the area designated for visits and through a separation wall. These visits may last for up to two hours, depending on the number of requests and the available space, and may take place a maximum of four times per month according to Article 4 of the above Order.

27. The relevant United Nations and Council of Europe standards concerning the rights of prisoners in pre-trial detention are described in *Varnas v. Lithuania* (no. 42615/06, §§ 71-76, 9 July 2013).

28. The CPT's recommendations on the issue of prisoners' contact with the outside world, issued following a visit to Lithuania in 2010, are mentioned in *Varnas* (cited above, § 77).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

29. The applicant complained that the conditions of detention in Cluj County Police detention facilities and in Gherla Prison were inhuman. More specifically, he complained of overcrowding and lack of ventilation and hygiene. 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

30. 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*

31. The applicant contested the Government's factual submissions and alleged that they did not correspond to the situation in the prisons in which he had been detained. He referred in this respect to the statements from S.O.A. and F.F., which he added in support of his allegations (see paragraph 9 above).

32. Referring to the information submitted on the general conditions of detention (see paragraphs 10-17 above), the Government contended that the domestic authorities had taken all necessary measures to ensure that the applicant's conditions of detention were adequate. The Government lastly argued that the applicant's conditions of detention had not amounted to a violation of Article 3 of the Convention.

2. *The Court's assessment*

33. 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).

34. 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).

35. 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; *Flamînzeanu v. Romania*, no. 56664/08, § 98, 12 April 2011; and *Budaca v. Romania*, no. 57260/10, §§ 40-45, 17 July 2012).

36. Turning to the present case, the Court notes that the applicant complained of the inhuman conditions in which he was detained both in Cluj County Police detention facilities and in Gherla Prison for a period of one year and ten months.

37. The Court notes that, even if it accepts that the occupancy rate put forward by the Government is accurate, the applicant's personal space turns

out to have been most of the time significantly less than the minimum number of square metres recommended by the CPT (see paragraph 23 above), and in the instant case even lower than three square metres. The Court further points out that these figures were even lower in reality, taking into account the fact that the cells also contained detainees' beds and other items of furniture. This state of affairs in itself raises an issue under Article 3 of the Convention (see *Flămînzeanu,* cited above, §§ 92 and 98; *Iacov Stanciu*, cited above, § 173; and *Cotleț v. Romania (No. 2)*, no. 49549/11, § 34, 1 October 2013).

38. The Court also notes that it has previously found a violation of Article 3 of the Convention on account of overcrowding, lack of hygiene, ventilation or adequate lighting in Gherla Prison (see *Porumb v. Romania*, no. 19832/04, § 72, 7 December 2010; *Radu Pop v. Romania*, no. 14337/04, § 96, 17 July 2012; and *Axinte v. Romania*, no. 24044/12, § 50, 22 April 2014). It also considered that overcrowded cells can only increase the difficulties for both the authorities and detainees in maintaining an appropriate level of hygiene (see *Ion Ciobanu v. Romania*, no. 67754/10, § 42, 30 April 2013; and *Stark v. Romania*, no. 31968/07, § 35, 18 February 2014).

39. The Government have failed to put forward any argument that would allow the Court to reach a different conclusion in the current case.

40. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 14

42. The applicant complained that the refusal of his requests for conjugal visits for the sole reason that he was not a convicted prisoner had caused him mental suffering amounting to torture. He relied on Articles 3 and 7 of the Convention.

43. The Court considers that the essence of the applicant's grievances appears to be the allegedly unjustified difference in treatment as concerns conjugal visits between himself, a person in pre-trial detention, and a convicted prisoner serving a prison sentence. It therefore finds that the applicant's complaint falls to be examined under Articles 8 and 14 of the Convention (see *Varnas*, cited above, § 92) the relevant parts of which provide as follows:

Article 8

"1. Everyone has the right to respect for his private and family life...

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

Article 14

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

A. Admissibility

44. 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. Arguments of the parties

45. The applicant complained about the refusal of his requests for conjugal visits throughout his pre-trial detention, for a significantly lengthy period, totalling one year and ten months. Irrespective of the length of detention, under the domestic law a person being held in pre-trial detention was not entitled to conjugal visits, in contrast with a person already convicted, who had such a right. The applicant considered that such a difference in treatment lacked justification. In his view, although his guilt had not yet been established, he had to face much more serious restrictions than those already convicted. Lastly, he alleged that the lack of conjugal visits led to the dissolution of his marriage, which also caused him significant suffering, because he had two children.

46. The Government contested that argument. Firstly, they pointed out that a difference in treatment did exist between persons in pre-trial detention and convicted prisoners with respect to their right to conjugal visits, but that such a difference was "prescribed by law" (see paragraphs 24-26 above). They further considered that distinguishing between the two above-mentioned categories of persons deprived of their liberty had a legitimate aim. The restriction in question was required as a security measure to prevent further crimes from being committed or to ensure that criminal proceedings were not impeded. The grounds for imposing pre-trial detention

were also to ensure that the suspect would not obstruct the investigation by tampering with evidence or intimidating witnesses. The Government concluded that the difference of treatment was objectively and reasonably justified within the scope of Article 14 of the Convention. Lastly, the Government considered it worth noting that the applicant's requests for ordinary visits had never been refused by the prison administration, and as a result he had benefited from a large number of visits from his family during his detention.

2. The Court's assessment

47. The Court reiterates that Article 14 of the Convention protects individuals in similar situations from being treated differently without justification in the enjoyment of their Convention rights and freedoms. This provision has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols. However, the application of Article 14 does not presuppose a breach of one or more of such provisions, and to this extent it is autonomous. For Article 14 to become applicable, it suffices that the facts of a case fall within the ambit of another substantive provision of the Convention or its Protocols (see *Varnas*, cited above, § 106).

48. The Court will therefore establish whether the facts of the case fall within the ambit of Article 8, whether there has been a difference in the treatment of the applicant, and if so whether such different treatment was compatible with Article 14 of the Convention.

(a) Whether the facts of the case fall under Articles 8 and 14 of the Convention

49. The Court has held that detention, like any other measure depriving a person of his or her liberty, entails inherent limitations on private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him, or if need be assist him, in maintaining contact with his immediate family. Such restrictions as limitations imposed on the number of family visits, supervision over those visits and, if so justified by the nature of the offence, subjection of a detainee to a special prison regime or special visit arrangements, constitute an interference with his rights under Article 8, but are not of themselves in breach of that provision (see, among other authorities, *Bogusław Krawczak v. Poland*, no. 24205/06, §§ 107-108, 31 May 2011, and *Trosin v. Ukraine*, no. 39758/05, § 39, 23 February 2012).

50. The Court has also had occasion to establish that more than half the Contracting States allow conjugal visits for prisoners (subject to a variety of different restrictions). However, while the Court has expressed its approval for the evolution in several European countries towards conjugal visits, it has not so far interpreted the Convention as requiring Contracting States to

make provision for such visits. Accordingly, this is an area in which the Contracting States enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals (see *Dickson v. the United Kingdom* [GC], no. 44362/04, § 81, ECHR 2007-V).

51. In the present case the Court observes that the applicant lodged several complaints with the prison authorities and the criminal court, claiming that the absence of conjugal visits was discriminatory and also detrimental to his physical and mental health as well as his family life (see paragraphs 18-20 above). The Court accepts that the prohibition of conjugal visits which the applicant had complained of comes within the ambit of Article 8 (see, by contrast, *Epners-Gefners v. Latvia*, no. 37862/02, § 65, 29 May 2012). The Court accordingly concludes that Article 14 of the Convention, in conjunction with Article 8, is applicable in the present case (see *E.B. v. France* [GC], no. 43546/02, § 47, 22 January 2008, and *Varnas*, cited above, § 110).

(b) Whether the applicant had "other status" and whether his position was analogous to that of convicted prisoners

52. Remanding a person in custody may be regarded as placing the individual in a distinct legal situation, which even imposed for a temporary period, is inextricably bound up with the individual's personal circumstances and existence. The Court is therefore satisfied, and it has not been disputed between the parties, that by the fact of being remanded in custody the applicant fell within the notion of "other status" within the meaning of Article 14 of the Convention (see, *mutatis mutandis*, *Shelley v. the United Kingdom* (dec.), no. 23800/06, 4 January 2008, and *Clift v. the United Kingdom*, no. 7205/07, §§ 55-63, 13 July 2010).

53. In order for an issue to arise under Article 14, there must be a difference in the treatment of persons in analogous, or relevantly similar, situations (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007–IV). The requirement to demonstrate an "analogous position" does not mean that the comparator groups must be identical. The fact that the applicant's situation is not fully analogous to that of convicted prisoners and that there are differences between the various groups based on the purpose of their deprivation of liberty does not preclude the application of Article 14. It must be shown that, having regard to the particular nature of his complaint, the applicant was in a relevantly similar situation to others who were treated differently (see *Clift*, cited above, § 66).

54. The applicant's complaint under examination concerns the legal provisions regulating his visiting rights while on remand. They thus relate to issues which are of relevance to all persons detained in prisons, as they determine the scope of the restrictions on their private and family life which

are inherent in deprivation of liberty, regardless of the ground on which they are based.

55. The Court therefore considers that, as regards the facts at issue, the applicant can claim to have been in a relevantly similar situation to a convicted person (see *Laduna v. Slovakia*, no. 31827/02, § 58, ECHR 2011, and *Varnas*, cited above, § 114).

(c) Whether the difference in treatment was justified

56. A difference in treatment is discriminatory if it has no objective and reasonable justification, in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment. The scope of this margin will vary according to the circumstances, the subject matter and the background. The Court has accepted that, in principle, a wide margin of appreciation applies in questions of prisoners and penal policy (see *Clift*, cited above, § 73, with further references).

57. As regards the facts of the present case, the Court notes that the applicant was held in pre-trial detention from 29 March 2009 to 2 February 2011. The regime of his detention was governed by Law no. 275/2006 on the execution of sentences. Under that legislation, all accused persons detained during investigations and judicial proceedings were only entitled to receive ordinary visits, which took place in the visiting area of the prison through a separation wall and under visual surveillance by prison guards. Convicted prisoners had in addition the right to a conjugal visit of up to two hours every three months (see paragraph 25 above).

58. Above all, a person detained pending trial had no right to conjugal visits whatever, and this restriction on the visiting rights of remand prisoners was applicable in a general manner, regardless of the reasons for their detention and related security considerations or their behaviour while in detention.

59. The Court notes the Government's argument that the grounds for imposing pre-trial detention and thus limiting the suspect's contacts with the outside world serve to guarantee an unhindered investigation. That being so, it also observes that Article 10 § 2 (a) of the International Covenant on Civil and Political Rights requires, *inter alia*, that accused persons should, save in exceptional circumstances, be subject to separate treatment appropriate to their status as unconvicted persons who enjoy the right to be presumed innocent (see paragraph 27 above). The 1987 European Prison Rules contain an analogous rule. Similarly, the 2006 European Prison Rules, provide that unless there is a specific prohibition for a specified period by the judicial authority in an individual case, untried prisoners are to receive visits and be allowed to communicate with family members in the same way

as convicted prisoners (see paragraph 27 above). This approach appears to be supported by the CPT, which considered that any restriction on a remand prisoner's right to receive visits should be based on the requirements of the investigation or security considerations, be applied for a limited period and be the least severe possible (see paragraph 28 above). Romanian legislation, however, restricts remand prisoners' visiting rights in a general manner and to a greater extent than those of convicted persons placed in a prison, as in the applicant's case. In this regard the Court has already had occasion to hold that, as far as specific restrictions on a detained person's visiting rights are concerned, the aim of protecting the legitimate interests of an investigation may also be achieved by other means which do not affect all detained persons, regardless of whether they are actually required, such as the setting up of different categories of detention, or particular restrictions as may be required by the circumstances of an individual case (see *Laduna*, cited above, § 66, and *Varnas*, cited above, § 119).

60. As to the reasonableness of the justification of difference in treatment between remand detainees and convicted prisoners, the Court acknowledges that the applicant in the instant case had been charged with conspiracy to commit crimes and blackmail. However, it also finds that security considerations relating to any criminal family links were absent in the instant case (see *Messina v. Italy* (no. 2), no. 25498/94, §§ 65-67, ECHR 2000-X). Namely, the applicant's wife was neither a witness nor a co-accused in the criminal case against her husband, which removed the risk of collusion or other forms of obstructing the process of collecting evidence (see, in contrast, *mutatis mutandis*, *Silickienė v. Lithuania*, no. 20496/02, §§ 28 and 29, 10 April 2012). Nor has the Court any information to the effect that the applicant's wife was involved in criminal activities. Accordingly, the Court is not persuaded that there was a particular reason to prevent the applicant from having conjugal visits from his wife (see, by contrast, *Klamecki v. Poland (no. 2)*, no. 31583/96, § 135, 3 April 2003; *Bagiński v. Poland*, no. 37444/97, § 92 et seq., 11 October 2005; and *Kučera v. Slovakia*, no. 48666/99, § 130, 17 July 2007). Above all, the Court notes that in justifying the prohibition on the applicant having conjugal visits when placed in pre-trial detention, the Government, like the domestic prison authorities and the Gherla District Court, in essence relied on the legal norms as such, without any reference as to why those prohibitions had been necessary and justified in the applicant's specific situation.

61. The Court therefore considers that the particularly lengthy period of the applicant's pre-trial detention (one year and ten months) reduced his family life to a degree that could not be justified by the inherent limitations involved in detention. It therefore finds that by refusing to allow the applicant conjugal visits when detained on remand the authorities failed to

provide a reasonable and objective justification for the difference in treatment, and thus acted in a discriminatory manner.

62. There has therefore been a violation of Article 14 in conjunction with Article 8 of the Convention.

63. The Court also considers that since it has found a breach of Article 14 of the Convention taken in conjunction with Article 8, it is not necessary to examine whether there has been a violation of Article 8 alone.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage for his exposure to inhuman conditions of detention in breach of Article 3 of the Convention. He further claimed EUR 50,000 in respect of non-pecuniary damage for the breach of his rights under Article 8 alone and taken in conjunction with Article 14 of the Convention.

66. The Government submitted that the amounts claimed were excessive and unsubstantiated.

67. The Court observes that in the current case it found the respondent State to be in breach of Article 3 as well as Article 8 taken in conjunction with Article 14 of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 9,800 in respect ofnon-pecuniary damage.

B. Costs and expenses

68. The applicant also claimed EUR 1,500 for costs and expenses incurred before the Court. He submitted in this respect an invoice for the amount of 6,500 Romanian lei (RON) (EUR 1,400) paid to his representative.

69. The Government requested the Court to award only the costs incurred in connection with the violations found in the current case and only in so far as they had been duly justified.

70. 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 (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). 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 1,400 for costs and expenses incurred with the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds* that there has been a violation of Article 14 of the Convention in conjunction with Article 8;

4. *Holds* that there is no need to examine the complaint under Article 8 of the Convention taken alone;

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 currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 9,800 (nine thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,400 (one thousand four 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;

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

Done in English, and notified in writing on 23 June 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Josep Casadevall
President