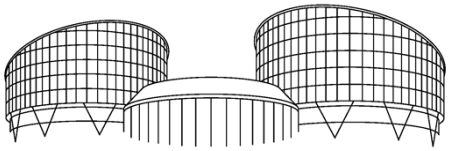

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF CIUPERCESCU v. ROMANIA (No. 3)

(Applications nos. 41995/14 and 50276/15)

JUDGMENT

Art 3 •Degrading treatment • Conditions of detention • Prison overcrowding
Art 8 • Family life • Prisoners' access to online communication with family members not guaranteed by the Convention • Short-term restriction of right provided for by domestic law • Availability of alternative means of communication

STRASBOURG

7 January 2020

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 Ciupercescu v. Romania (no. 3),

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

Jon Fridrik Kjølbro, *President,*
Iulia Antoanella Motoc,
Branko Lubarda,
Carlo Ranzoni,
Stéphanie Mourou-Vikström,
Jolien Schukking,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 10 December 2019,

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

PROCEDURE

1. The case originated in two applications (nos. 41995/14 and 50276/15) 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 Dragoş Ciupercescu ("the applicant"), on 6 August 2014 and 11 November 2015 respectively.

2. The applicant, who had been granted legal aid, was represented by Ms C. Boghină, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, most recently Ms S.-M. Teodoroiu, from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his rights protected by Articles 3 and 8 of the Convention had not been respected by the prison authorities in Giurgiu and Jilava Prisons.

4. On 9 February 2016 and 15 July 2016, respectively, notice of the applications was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Bucharest.

6. In 2005 the Bucharest County Court sentenced the applicant to eighteen years' imprisonment. He was detained in Giurgiu Prison between 21 January 2009 and 26 January 2015.

7. On 26 January 2015 the applicant was transferred to Jilava Prison, where he stayed until 13 October 2016, when he was transferred to Ploieşti Prison.

8. On 15 December 2016 the applicant was released on parole after serving eleven years of his sentence.

A. The applicant's conditions of detention in Giurgiu Prison and Jilava Prison

1. The applicant's account

9. On the basis of Law no. 254/2013 on the execution of sentences ("Law no. 254/2013", see paragraph 53 below), the applicant complained to the relevant post-sentencing judge of the inhuman conditions of his detention in both prisons.

(a) Giurgiu Prison

10. As regards Giurgiu Prison, the applicant complained of overcrowding, limited access to cold and warm running water, bedbug and cockroach infestations in his cell, a lack of adequate ventilation and lighting, and a lack of heating for one month.

11. The applicant lodged a complaint with the post-sentencing judge, claiming, *inter alia*, that the temperature in his cell was lower than 19˚C. On 12 November 2014 the judge allowed his complaint and ordered the prison authorities to ensure an appropriate minimum temperature of 19˚C in the cell. That decision was upheld by the Giurgiu District Court on 19 January 2015.

(b) Jilava Prison

12. The applicant complained of overcrowding and having no adequate place in which to have meals. He also maintained that because of the inadequate temperature in his cell, there were traces of damp on the walls. He also complained of the poor quality of the water, which contained worms and had a disagreeable smell and taste.

13. By a judgment of 16 March 2015 the post-sentencing judge dismissed as unfounded a complaint by the applicant of a lack of personal space and medical treatment during the period between 20 and 23 February 2015. The applicant challenged that decision before the Bucharest District Court. On 20 April 2015 the court allowed the applicant's complaint in part, holding that in cell E 5.26, where the applicant had been detained between 20 and 23 February 2015, he had had less than 4 square metres of personal space at his disposal.

14. A similar complaint was lodged in respect of cell E 6.2, where the applicant had been placed between 21 January 2015 and 20 February 2015. By a judgment of 23 March 2015 the Bucharest District Court found that the personal space afforded to the applicant had been less than 4 square metres.

15. On the basis of those judgments, the applicant filed another complaint with the post-sentencing judge, asking to be compensated for the ill-treatment which he had suffered on account of the poor conditions of his detention in Jilava Prison between 21 January and 23 March 2015.

16. By a judgment of 3 December 2015 the Bucharest District Court dismissed the applicant's claim, finding that the prison authorities were not at fault for that breach. The court also held that the period in question – going from 21 January until 23 March 2015 – had been short, and therefore the treatment during that period could not constitute such humiliating or degrading treatment for the applicant as to warrant financial compensation, especially having regard to the fact that he was serving his sentence under a semi-open regime.

17. The court also considered that by subsequently placing the applicant in cells where he had had more than 4 square metres of personal space, the breaches complained of had been remedied. The court concluded by stating that the judgment in itself constituted an appropriate remedy for the non-pecuniary damage suffered by the applicant.

2. The Government's account

(a) Giurgiu Prison

18. The Government contended that while in Giurgiu Prison the applicant had had a minimum of 3.39 square metres of personal space at his disposal at all times. He had had access to warm water twice a week, while the conditions relating to ventilation, lighting and heating had been satisfactory.

(b) Jilava Prison

19. The Government indicated that as of 23 February 2015 the applicant had been placed in cells affording him at least 4.9 square metres of personal space. More specifically, the applicant had been detained:

- from 23 February to 25 February 2015 in a cell measuring 9.76 square metres, occupied by only the applicant;
- from 26 February to 11 August 2015 in a cell measuring 14.72 square metres, occupied by one to three prisoners;
- from 12 August to 16 November 2015 in a cell measuring 13.50 square metres, occupied by one to two prisoners;
- from 16 to 20 November in Jilava Hospital;
- from 20 November 2015 to 10 March 2016 in a cell measuring 13.50 square metres, occupied by two prisoners;
- from 11 March to 9 May 2016 in a cell measuring 42.39 square metres, occupied by four to seven prisoners.

20. The Government also contended that the applicant had been serving his sentence under a semi-open regime, which meant that at the material time he had not been confined to his cell all the time; on the contrary, he had had free access to the courtyard between 8 and 11 a.m. and 1 and 6 p.m., and the doors to his cell had been open all day, with the exception of lunchtime, when his meals had been served in the cell.

21. The Government further submitted medical documents certifying that the quality of the water was up to standard. These documents were issued on the basis of samples taken at the beginning of 2016.

22. The Government contended that if any traces of damp appeared on the walls, prisoners needed to request their removal.

B. The applicant's exposure to passive smoking outside prison

1. The applicant's account

23. The applicant complained that he had been exposed to passive smoking while being transported from Giurgiu Prison to the courts and while in the waiting rooms at the courts. He further stated that the prison vans had been full of fumes.

24. According to the applicant's medical record, he suffered from bronchial asthma (*astm bronşic*). He declared that he had been a non-smoker since 1 April 2010.

25. Before the post-sentencing judge, the applicant complained of the conditions of transport to the court, claiming that he had been placed together with smokers. Those complaints were dismissed as unsubstantiated on 7 May 2014, the court indicating that smoking was not allowed in prison transport vehicles or in public places like court waiting rooms. A similar complaint was dismissed for similar reasons on 12 June 2014, the court holding that the technical inspections of the vehicles used for transporting the applicant were up to date.

2. The Government's account

26. As regards the applicant's complaints concerning passive smoking, the Government indicated that according to documents that had been submitted by the National Prison Administration, the applicant had declared himself to be either a smoker or a non-smoker, depending on the type of cell in which he had been placed. One recent declaration signed by the applicant on 26 January 2014 stated that he was a smoker. Furthermore, following a medical check-up completed on 19 October 2014, the relevant doctor had prescribed specific treatment for the applicant's asthma and had recommended that he stop smoking. The applicant had even bought cigarettes from the prison shop.

27. The Government argued that in any event smoking had been forbidden in prison transport vans and in all public places, including the waiting rooms at courts.

28. The Government further noted that the vehicles used for transporting detainees had accommodated the number of detainees without exceeding their capacity, and had had proper ventilation. Also, the vehicle inspections

were up to date. The duration of the journeys from the prison to the courts had never exceeded sixty minutes.

C. Complaints concerning the applicant's right to adequate dental treatment

1. The applicant's account

29. On 27 April 2015 the applicant asked to be taken for an urgent dental examination, claiming that he had lost a filling and was in a lot of pain. He indicated that he was ready to pay for the consultation, and that he preferred to be taken to a private practice outside the prison.

30. Since no specific steps were taken by the authorities, on 14 May 2015 the applicant lodged a complaint with the post-sentencing judge, complaining that he had not received adequate medical treatment for his dental problems.

31. On 15 May 2015 the prison authorities contacted the Bucharest Central Military Hospital to obtain an appointment for the applicant. An appointment was confirmed for 27 May 2015.

32. On that day the applicant was taken to the hospital, where he did not receive any treatment, as there was a lack of adequate medical supplies.

33. On 2 June 2015 the post-sentencing judge rejected the applicant's complaint (see paragraph 30 above), in view of the fact that a medical appointment had been made (see paragraph 31 above). The judge considered that the prison authorities could not be held responsible for the lack of adequate medical supplies, and that in any event a new appointment was about to be made.

34. The applicant challenged that decision. The Bucharest District Court allowed his claims on 11 August 2015; the court noted that the authorities had reacted to the applicant's request only after he had addressed his complaint to the judge, and most probably only because of that action. In that regard, the court considered that a detained person's right to adequate medical assistance was prescribed by law, and therefore the authorities needed to ensure that this right was respected without detainees being required to take further action.

35. On 8 June 2015 the applicant had addressed another similar complaint to the post-sentencing judge. That complaint was dismissed on 11 June 2015, the court holding that the prison authorities could not be held liable for the relevant lack of medical supplies or the manner in which the hospital fixed appointments.

36. On 12 July 2015 that decision was confirmed by the Bucharest District Court.

2. The Government's account

37. With respect to the dental care available to the applicant, the Government submitted that he had been examined and diagnosed, either in the prison's medical unit or in a dental practice located in a different prison; he had undergone treatment, including having dental fillings on various occasions: on 25 April, 6 May, 22 May, 27 May, 25 June, 3 July, 15 July, 31 July, 15 September and 10 November 2015, as well as on 13 May, 27 July, 30 September and 12 October 2016. On most of those occasions (save for 27 May and 15 July 2015, as well as 13 May and 12 October 2016) he had also received treatment involving antibiotics and/or painkillers.

38. The dentition model in the medical report shows that in 2005 the applicant had five fillings and one dental cavity, and he was missing one tooth. On 30 September 2016 two of his teeth were missing, one tooth had only its root, four teeth had fillings and one tooth had a cavity.

39. On two occasions, on 3 and 15 July, the applicant refused to be transferred to another prison which had a dental practice, on account of the fact that he did not trust a place where other detainees were also treated, as he could contract different contagious diseases. He refused to go to an appointment made for 22 June 2015, in view of the fact that he had a court hearing on the same date.

40. The Government indicated that the applicant's request to be taken to a private practice had not had a legal basis, as private doctors were free to choose their own clients. Nevertheless, the applicant could have asked to have a consultation with a private dentist in the prison's dental practice, at his own expense; such a request had never been formulated, as the applicant had been very reluctant to have consultations in the prison's medical offices.

D. The applicant's complaints concerning his right to online communication

1. The applicant's account

41. In April 2015 the applicant complained to the post-sentencing judge in Jilava Prison that his right to online communication with his wife had been infringed; his wife lived in Italy and could not come to visit him often, only once every three months. He relied on Article 66 of Law no. 254/2013 (see paragraph 54 below).

42. By a decision of 11 May 2015 the judge dismissed the applicant's complaint as unfounded.

43. A challenge by the applicant against that decision was allowed in part by the Bucharest District Court on 23 June 2015. The court noted that his right to online communication had been infringed. It also noted that although, in accordance with Article 66 of Law no. 254/2013, detainees

were entitled to online communication with their families, in practice, they could not have the benefit of that right, as the regulation for the implementation of the Law had not been adopted. The court concluded that although the prison administration could not be held liable for that infringement, the applicant's rights had been infringed on account of the lack of foreseeability of the Law.

44. On an unspecified date the applicant complained once again to the post-sentencing judge that his right to online communication had been infringed. The judge dismissed the complaint on 19 August 2015, noting that online communication had become possible between prison facilities only, and it was not yet used for communication with persons outside the prison network. The judge held that the prison authorities could not be held liable for other State authorities' failure to adopt the regulation for the implementation of the Law within the time-limit provided for by law.

45. On 30 September 2015 the Bucharest District Court dismissed an appeal by the applicant against that decision. The court noted that another final decision delivered on 23 June 2015 had already found that his right to online communication had been infringed (see paragraph 43 above). It held that the applicant's right continued to be infringed by the failure to adopt the implementation regulation.

46. On 11 April 2016 the implementation regulation was adopted (see paragraph 55 below).

2. The Government's account

47. In the period between April 2015 and February 2016 the applicant filed four applications requesting that he be allowed the right to communicate online with his wife. All of them were dismissed, in view of the fact that the implementation regulation had not been adopted.

48. The Government contended that the applicant had not lodged a similar complaint following the adoption of the implementation regulation.

E. Complaint concerning the confidentiality of the applicant's telephone communications

1. The applicant's account

49. The applicant complained to the post-sentencing judge in Jilava Prison that his right to the confidentiality of his telephone communications had been infringed. He alleged that he had to inform the prison authorities of all the telephone numbers which he wanted to call, and those numbers had to be approved by the prison authorities. A maximum of ten numbers were allowed.

50. On 4 August 2015 the judge dismissed the applicant's complaint on the grounds that the prison authorities should know the identity of all

persons with whom the applicant had telephone contact, in order to prevent the commission of fraud or other crimes; the court also held that the right to private telephone communications in prison was not an absolute right, but a right that could be restricted in order to ensure discipline in a detention facility.

51. The applicant challenged that decision before the Bucharest District Court. On 29 September 2015 the Bucharest District Court dismissed his complaint and upheld the decision of the post-sentencing judge.

2. The Government's account

52. According to the Government, the applicant lodged another similar complaint with the post-sentencing judge. That complaint was dismissed on 22 June 2015 for reasons similar to those given in the previous judgment (see paragraph 50 above); the decision was upheld by the Bucharest District Court on 20 October 2015.

II. RELEVANT DOMESTIC LAW

53. Article 56 of Law no. 254/2013 on the serving of prison sentences, which entered into force on 1 February 2014, provides that detainees may complain to a post-sentencing judge about measures taken by the prison authorities in respect of their rights within ten days of becoming aware of such measures. The judge's decision may be challenged before the domestic courts within five days of the detainee being notified of the decision.

54. In accordance with Article 66 of the same Law, certain categories of detainees are entitled to online communication with family members or other persons. The specific way of implementing this provision was to be set out by a regulation to be adopted within six months of the Law entering into force.

55. The relevant regulation was adopted on 11 April 2016. Its Articles 134-136 set out the conditions for granting detainees the right to communicate online with family members, and also set out how that right was to be implemented.

THE LAW

I. JOINDER OF THE APPLICATIONS

56. Having regard to the similar subject matter of the applications, both of which were filed by the same applicant, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

57. The applicant complained of the conditions of his detention in Giurgiu Prison and Jilava Prison. He referred essentially to: overcrowding; limited access to cold and warm running water; bedbug and cockroach infestations in his cell; a lack of adequate ventilation, lighting and heating; and the poor quality of the drinking water (see also paragraphs 10 and 12 above).

58. The applicant also complained that he had been exposed to passive smoking while being transported from Giurgiu Prison to the courts and while in the waiting room at the courts. He alleged that the prison vans had been full of fumes.

59. Lastly, the applicant complained that the prison authorities had failed to ensure he had access to adequate medical treatment in respect of his dental problems.

60. 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. Material conditions of detention

1. Giurgiu Prison

(a) The parties' submissions

61. The Government argued that in view of the factual details concerning the applicant's detention in Giurgiu Prison (see paragraph 18 above), in particular the fact that he had had at least 3.39 square metres of personal space at his disposal, the Court should apply the principles set out in the case of *Muršić v. Croatia* ([GC], no. 7334/13, 20 October 2016) and find that there had been enough elements to compensate for the lack of sufficient personal space, and thus find that the conditions of detention in Giurgiu Prison had been adequate.

62. The applicant maintained his claims.

(b) The Court's assessment

63. At the outset, the Court notes that in the statement of facts sent to the parties at the communication stage, it drew the parties' attention to the fact that it would assess the applicant's complaint concerning his conditions of detention in Giurgiu Prison for the period between 24 July 2012 and 26 January 2015.

64. The parties did not object to the Court delimiting the scope of the case, and presented their observations accordingly.

65. The Court observes that in the pilot case of *Rezmiveș and Others v. Romania* (nos. 61467/12 and 3 others, §§ 87-88 and §§ 115-116,

25 April 2017) it found a violation in respect of issues similar to those in the present case.

66. Having examined all the material submitted to it, including the relevant findings of the domestic courts (see in particular paragraphs 11 and 18 above), and in view of its case-law on the subject (see in particular *Alexandru Enache v. Romania*, no. 16986/12, § 46, 3 October 2017 and *Muršić*, cited above, § 139), the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of the applicant's complaint under Article 3 of the Convention. It therefore finds that the applicant's material conditions of detention in Giurgiu Prison for the period between 24 July 2012 and 26 January 2015 were inadequate.

67. This complaint is therefore admissible, and discloses a breach of Article 3 of the Convention.

2. Jilava Prison

(a) The parties' submissions

68. The Government argued that, having regard to the domestic courts' acknowledgment of the inadequate conditions of the applicant's detention during the first part of the period which he had spent in Jilava Prison, he was no longer a victim in respect of this period of time.

69. The Government further contended that, save for that first month, the applicant had been detained in cells whose maximum capacity had been respected and not exceeded, which meant that at all times he had had more than 4.9 square metres of personal space at his disposal (see also paragraph 19 above). These circumstances had been complemented by the applicant's free access to facilities outside of his cell in the specified schedule, which meant that the overcrowding complaint lacked any substance.

70. According to the Government, the other complaints formulated in respect of Jilava Prison were also unsubstantiated; the documents submitted proved that the water was clean and safe to drink, and that no request for the removal of damp on the walls, if there had been any damp, had been filed by the applicant (see also paragraphs 21-22 above).

71. The applicant maintained his complaints, referring to all aspects related to the material conditions of his detention; he reiterated that the subject matter of his complaints represented a systemic problem of Romanian prisons.

(b) The Court's assessment

(i) Detention period from 26 January until 23 March 2015

72. With regard to the period between 26 January and 23 March 2015, the Court takes note of the domestic courts' acknowledgment of the breach

of the applicant's rights protected by Article 3 of the Convention in relation to the material conditions of his detention during that period (see paragraphs 15-17 above).

73. Nevertheless, the Court reiterates that a decision or measure favourable to an applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 179-80, ECHR 2006-V). Only where both these conditions have been satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of the application.

74. In that regard, the Court notes that the domestic courts did not consider it appropriate to afford any other redress, financial or otherwise, to the applicant (see paragraph 17 above).

75. The Court notes that it appears that in the period following the domestic courts' acknowledgement the applicant was placed in cells where he had more than 4.9 square metres of personal space at his disposal (see also paragraph 78 below). However, that measure cannot be considered to have redressed the situation during the period when the applicant was detained in inadequate conditions.

76. In line with its well-established case-law on the matter (see among many other authorities, *Nikitin and Others v. Estonia*, nos. 23226/16 and 6 others, § 200, 29 January 2019), the Court concludes that the applicant has not lost his victim status in respect of the alleged violation of Article 3 concerning the material conditions of his detention during the period between 26 January and 23 March 2015. This complaint is therefore admissible.

77. Furthermore, ruling on the merits, the Court does not find any reasons justifying a departure from the domestic court's finding that the conditions of the applicant's detention during the above-mentioned period were inadequate. There has therefore been a violation of Article 3 of the Convention in this respect.

(ii) Detention period from 24 March until the applicant's transfer to Ploieşti Prison

78. Concerning the remainder of the time which the applicant spent in Jilava Prison, the Court observes that the applicant has not challenged the documentation produced by the Government (see paragraph 19 above), showing that he had had at least 4.9 square metres of personal space at his disposal in each cell. In that regard, the Court cannot but conclude that no issue in relation to the question of personal space in the sense of overcrowding arises in the present case.

79. The Court further reiterates that in cases where a detainee has more than 4 square metres of personal space at his disposal in multi-occupancy accommodation in prison, and therefore where no issue arises with regard to the question of personal space, other aspects of physical conditions of detention remain relevant for the Court's assessment of the adequacy of an applicant's conditions of detention under Article 3 of the Convention (see *Muršić*, cited above, § 140).

80. From that perspective, the Court firstly notes that, having regard to the semi-open regime under which the applicant was serving his sentence, even if he had to have meals in his cell, he could leave the cell and move freely around the accessible facilities for approximately eight hours per day (see paragraph 20 above), which was a significant amount of time. Such a favourable situation has a particular bearing when assessing the applicant's conditions of detention (see, *mutatis mutandis*, *Nikitin and Others*, cited above, § 193). In addition, it must be considered that, even when in his cell, the applicant was not exposed to extreme conditions, in view of the amount of personal space which he had at his disposal (see, for instance, *Yanez Pinon and Others v. Malta*, nos. 71645/13 and 2 others, § 116, 19 December 2017).

81. The Court also notes that according to the records submitted by the Government, the quality of the drinking water in the prison was verified and found to be in compliance with the standard parameters (see paragraph 21 above).

82. Lastly, as regards the applicant's complaint that there was damp on the walls of his cell (see paragraph 12 above), the Court considers that it does not have sufficient information to assess the veracity of this allegation. In any event, it refers to the Government's argument that if such a situation occurred in the prison, a request to have the damp removed would need to be filed by the prisoner concerned (see paragraph 22 above). In the present case, the applicant did not submit any such request.

83. Having regard to the above, the Court is not convinced that the overall conditions of detention in Jilava Prison from 24 March until 13 October 2016, when the applicant was transferred to Ploieşti Prison (see paragraph 7 above), subjected him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.

84. It follows that this part of the complaint is admissible, but discloses no breach of Article 3 of the Convention.

B. The conditions of the applicant's transport from Giurgiu Prison to the courts

1. The parties' submissions

85. The Government argued that, taking into account the underlying factual situation, as well as the limited duration of the alleged treatment (see

paragraphs 26-28 above), the treatment had not reached the Article 3 threshold.

86. The applicant maintained his complaint.

2. The Court's assessment

87. The Court firstly observes that the domestic courts rejected as unsubstantiated the applicant's complaints that he had been exposed to passive smoking while being transported from Giurgiu Prison to the courts and while in the waiting room at the courts (see paragraph 25 above).

88. The Court also notes that there are some discrepancies between the applicant's statements concerning his status as a non-smoker and the documents provided by the Government indicating the contrary (see paragraphs 24 and 26 above).

89. In any event, even assuming that the applicant's allegations as to his exposure to passive smoking were sufficiently evidenced, the Court considers that, in view of its limited duration, the treatment complained of did not attain the threshold of degrading treatment proscribed by Article 3 of the Convention (see *Tomov and Others v. Russia*, nos. 18255/10 and 5 others, § 119, 9 April 2019; and conversely, *Retunscaia v. Romania*, no. 25251/04, §§ 78-80, 8 January 2013).

90. It follows that this complaint is manifestly ill-founded, and should be dismissed as inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

C. Allegedly inadequate medical treatment

1. The parties' submissions

91. The Government considered that in view of the factual details revealed by the present case, the authorities had proved that they had been sufficiently diligent in promptly ensuring adequate treatment for the applicant's dental problems (see paragraphs 37-38 above).

92. The Government also argued that in the assessment of the applicant's complaint, due regard should be had to his own conduct in relation to the treatment proposed; in particular, the Government reiterated that on several occasions the applicant had expressed his reluctance to be treated in any dental practice where other prisoners were present (see paragraphs 39-40 above).

93. The applicant argued that he had received medical treatment following unacceptable delays, and on each occasion he had needed to make a lot of effort, especially before the domestic courts, to have his right to medical assistance respected.

2. The Court's assessment

94. The Court notes at the outset that, in respect of dental care, the case at hand differs significantly from the situation examined in the case of *V.D. v. Romania* (no. 7078/02, 16 February 2010), where the applicant, a toothless detainee, was left without effective treatment because of a structural problem in prison dental care, despite the fact that his situation had been acknowledged by medical personnel, and despite his repeated attempts to bring his problem to the authorities' attention (see *V.D. v. Romania*, cited above, §§ 95-98).

95. However, in the case under examination, the incidents complained of by the applicant related to the authorities' failure to promptly react to his isolated dental problems (see paragraph 29 above), rather than their systemic lack of diligence in ensuring that he received an effective dental treatment.

96. In that respect, the Court observes that, save for one incident when, in spite of having an appointment fixed at the Central Military Hospital, the applicant did not receive any treatment due to the lack of adequate medical supplies (see paragraphs 31-32 above), in general he received dental care or at least treatment involving antibiotics and/or painkillers when he needed it, albeit at times following some delays (see paragraph 37 above). The Court finds that such shortcomings are indeed regrettable; however, they cannot be considered to have severely affected the applicant's health.

97. Furthermore, the applicant failed to provide the Court with further information as to the concrete consequences for his health, such as how his dentition might have affected his mastication or digestion (contrast with *Iacov Stanciu v. Romania*, no. 35972/05, § 184, 24 July 2012).

98. In these circumstances, and having regard to the relatively short period of time in question (see paragraphs 29 and 31 above), the Court considers that, notwithstanding the regrettable shortcomings mentioned in paragraph 96 above, the treatment complained of cannot be considered as having caused the applicant suffering attaining the threshold of inhuman and degrading treatment proscribed by Article 3 of the Convention (see, by way of contrast, *Drăgan v. Romania*, no. 65158/09, §§ 86-94, 2 February 2016).

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

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

100. The applicant complained that his right to respect for private and family life had been violated by his inability to communicate online with his wife, who was living in Italy. He also argued that his being obliged to provide the prison authorities with a list of all the phone numbers he needed

to call in order to be authorised to make any phone calls from prison had constituted a breach of Article 8 of the Convention, which reads as follows:

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

A. The applicant's right to online communication with his wife

1. The parties' submissions

101. The Government indicated that before the adoption of the implementation regulation in respect of Article 66 of Law no. 254/2013 (see paragraph 55 above) the domestic authorities had not had any legal instrument to rely on to ensure that applicants could communicate online with their family members. However, a pilot project had been put in place to test the relevant infrastructure. The project had allowed online communication between 392 persons, all of whom had been in detention and had met specific criteria relating to the frequency of possible family visits, active involvement in various educational projects, the absence of disciplinary measures taken in respect of them, and so on.

102. The Government also pointed out that following the adoption of the implementation regulation, the applicant has not lodged any new request, even though the legislative framework had become appropriate for such requests.

103. The applicant maintained his complaints.

2. The Court's assessment

104. At the outset, the Court reiterates that it is an essential part of a prisoner's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family (see *Khoroshenko v. Russia* [GC], no. 41418/04, § 106, ECHR 2015).

105. However, the Court considers that Article 8 of the Convention cannot be interpreted as guaranteeing prisoners the right to communicate with the outside world by way of online devices, particularly where facilities for contact via alternative ways are available and adequate (see, in a similar context concerning the right to telephone calls, *Lebois v. Bulgaria*, no. 67482/14, § 61, 19 October 2017, with further references).

106. In the present case, the Court nevertheless observes that, in specific circumstances, domestic law, and notably Law no. 254/2013, allowed inmates to maintain contact with the outside world, particularly family members, through online communication. For security and practical

reasons, the exercise of that right was subject to the prison authorities' prior evaluation and approval. In any event, the specific elements to be considered as regards approving and exercising that right were to be set out in the implementation regulation, which was finally adopted on 11 April 2016, thus following a delay of one year and eight months vis-à-vis the time-limit set out in Article 66 of Law no. 254/2013 (see paragraphs 54 and 55 above).

107. The Court also observes that the applicant's right to online communication with his wife was acknowledged by the domestic courts, which, relying on the provisions of the domestic law, accepted both the existence of the right and the fact that the lack of regulation allowing for the implementation of that right represented a continuous breach (see paragraphs 43 and 45 above).

108. In such circumstances, even if it considers that Article 8 cannot be interpreted as imposing a general obligation to ensure access to online communication with family members, the Court notes that in the applicant's case his access to this communication facility in order to maintain contact with his wife, a right provided for by domestic law, was restricted.

109. However, this restriction related to a relatively short period of time, namely April 2015 until April 2016 at the latest, when the implementation regulation was adopted (see paragraphs 47 and 55 above). It also notes the information from the applicant indicating that during that time his wife was able to visit him once every three months (see paragraph 41 above). Furthermore, there is no evidence to show that the applicant had his right to make telephone calls restricted in any way during the same period, nor did he make any claim in that regard.

110. It follows that nothing prevented the applicant from maintaining meaningful contact with his wife via alternative means of communication, in the temporary absence of an adequate legal and infrastructural framework allowing him to communicate online (see, *mutatis mutandis*, *Ciszewski v. Poland*, (dec.), no. 38668/97, 6 January 2004).

111. Consequently, the Court finds that the restriction complained of does not disclose any appearance of a violation of Article 8 of the Convention. This part of the application is therefore manifestly ill-founded and should be dismissed as inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Confidentiality of the applicant's telephone communications

1. The parties' submissions

112. The Government indicated that the measure complained of had been prescribed by an accessible and foreseeable law, and had aimed to prevent any criminal activity facilitated by telephone communications. The preliminary steps to be taken by the applicant, namely the prior request for

authorisation of a list comprising a maximum of ten contacts, had been necessary so as to ensure that the numbers were put onto the prison's IT system in a timely manner, along with the lists submitted by all other prisoners. Nevertheless, the list could be changed at any time, following a request from the person seeking to make telephone calls.

113. The applicant maintained his complaints.

2. The Court's assessment

114. The Court notes that it has already dealt with an issue similar to the one in the present case. In *Coşcodar v. Romania* ((dec.), no. 36020/06, §§ 30-35, 9 March 2010), the Court essentially held that where access to a telephone was permitted, it might – having regard to the ordinary and reasonable conditions of prison life – be subject to legitimate restrictions, for example in the light of the need for facilities to be shared with other prisoners, and the requirement to prevent disorder and crime. Furthermore, the Court emphasised that the restriction in question had not related to the content of a telephone conversation, and the information provided to the authorities had referred exclusively to the names and phone numbers of those whom the applicant had intended to call.

115. In *Coşcodar*, cited above, the Court therefore concluded that the measures complained of, to the extent that they might be regarded as an interference with a person's private life or correspondence, could be considered justified in terms of the second paragraph of Article 8 of the Convention.

116. Turning to the present case, and having regard also to the domestic courts' findings in relation to the applicant's complaint (see paragraphs 50 and 52 above), the Court considers that the applicant has not put forward any fact or argument capable of persuading it to reach a different conclusion.

117. It follows that this complaint is manifestly ill-founded and should be dismissed as inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

118. The applicant raised various other complaints under Articles 3 and 8 of the Convention concerning in particular the authorities' refusal to grant him the possibility to enrol to certain training courses and the right to use certain specific personal items, as well as the alleged lack of adequate medical care provided to him for certain limited periods of time.

119. The Court has carefully examined these complaints. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any

appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

120. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

121. 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. Non-pecuniary damage

122. The applicant claimed 35,000 euros (EUR) in respect of non-pecuniary damage.

123. The Government contested the amount sought.

124. Having regard to all the circumstances of the present case, the Court accepts that the applicant must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Pecuniary damage and costs and expenses

125. The Court notes that no claim was made in respect of pecuniary damage or costs and expenses; it therefore makes no award under these heads (see *Tarakhel v. Switzerland* [GC], no. 29217/12, § 134, ECHR 2014 (extracts), and *Perdigão v. Portugal* [GC], no. 24768/06, § 87, 16 November 2010).

C. Default interest

126. 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. *Decides* to join the applications;

2. *Declares* the applications admissible in respect of the applicant's complaints concerning the material conditions of his detention in

Giurgiu Prison and Jilava Prison, and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant's material conditions of detention in Giurgiu Prison and Jilava Prison in the period from 24 July 2012 until 23 March 2015;

4. *Holds* that there has been no violation of Article 3 of the Convention in respect of the applicant's material conditions of detention in Jilava Prison in the period from 24 March 2015 until his transfer to Ploieşti Prison (13 October 2016);

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, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 7 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Deputy Registrar

Jon Fridrik Kjølbro
President