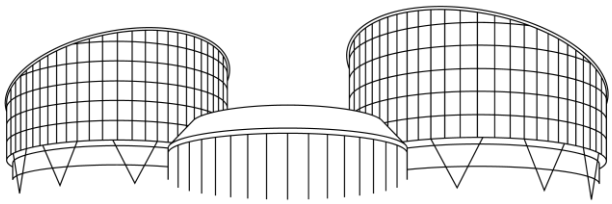

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BĂLTEANU v. ROMANIA

(Application no. 142/04)

JUDGMENT

STRASBOURG

16 July 2013

FINAL

16/10/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

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In the case of Bălteanu v. Romania,

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

Josep Casadevall, *President*,
Alvina Gyulumyan,
Corneliu Bîrsan,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos,
Johannes Silvis, *judges*,
and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 25 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 142/04) 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 Viorel Bălteanu ("the applicant"), on 22 October 2003.

2. The applicant was represented by Mr Vladimir Florea, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their co-Agent, Ms Irina Cambrea, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his right to respect for his private life had been infringed, that the criminal proceedings against him had not been fair and that his pre-trial detention had been too long.

4. On 15 September 2011 the above complaints were communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and lives in Bucharest. At the time of the events in question, he was a traffic police officer.

6. On 17 January 2003 the applicant and his colleague stopped M.D. in traffic and checked his papers. They observed that M.D. did not have an

appropriate driving licence for the type of vehicle he was driving, which constituted a criminal offence. They confiscated the car registration papers and M.D.'s driving licence.

7. On 20 January 2003 M.D. and R.J. (a passenger in the car when the applicant stopped M.D.) informed the prosecutor that the applicant had asked them to pay 10,000,000 Romanian lei (ROL) in order that he not pursue a criminal investigation against M.D. On the same date, the prosecutor obtained the authorisation of the Anti-Corruption Prosecutor's Office under Articles 91^1 and 91^4 of the Code of Criminal Procedure to intercept the applicant's conversations. He also marked the bills that M.D. and R.J. brought to pay the bribe.

8. R.J. called the applicant to set up a meeting. Later that day R.J. and M.D. met the applicant in his office (shared with five other colleagues and with S.D., his superior). Only the applicant and S.D. were present at that time. Both the telephone call and the conversation in the applicant's office were recorded.

After R.J. and M.D. left, the prosecutor arrived and searched the applicant's office. He found the money for the bribe which had been previously marked. The applicant denied having taken money from R.J. and M.D. or having committed any crime.

9. At the end of the search, the prosecutor arrested the applicant on a charge of having taken a bribe in order to favourably influence a criminal investigation. The prosecutor started criminal proceedings against the applicant that day.

10. On 21 January 2003 the applicant was placed in pre-trial detention for thirty days by order of the prosecutor. The decision was confirmed by the Bucharest County Court by an interlocutory judgment of 11 February 2003. The applicant's pre-trial detention was subsequently extended by the county court at regular intervals (on 20 March 2003, 10 April 2003, 8 May 2003, 9 September 2003 and 7 October 2003) until 21 November 2003, when he was released pursuant to the decision on the merits rendered by the court of first-instance (see paragraph 18 below).

The applicant contested each court order concerning his pre-trial detention and opposed any request by the prosecutor to have this detention extended, but his appeals were dismissed by the court of appeal. The courts heard the arguments presented by the parties and took account of the evidence gathered by the prosecution. On these grounds, they considered that there were strong indications that the applicant had committed the crime he had been accused of and that given the nature of that crime, its gravity and its impact on public order, as well as the fact that the applicant had been a police officer and had been accused of having committed a crime in connection with his status, his continued detention was justified. As the examination of the merits of the case unfolded, the courts considered that the fact that newly adduced evidence might have cast doubt on the manner

in which the alleged crime had been committed did not alter the gravity of the crime itself, or its impact on society (final decision of 3 April 2003 by the Bucharest Court of Appeal, deciding on an appeal against the interlocutory judgment of 20 March 2003).

11. On 29 January 2003 the applicant was acquainted with the contents of the prosecution file (*prezentarea materialului de urmărire penală*).

12. On 3 February 2003 the prosecutor committed the applicant for trial.

13. Before the County Court, the applicant denied having taken any money. The court heard testimony from him and from witnesses called by both the prosecution and the defence (hearings of 11 March and 10 April). Despite efforts being made by the court, R.J. could not be found and brought before the court to give testimony.

The applicant contested the lawfulness of the recordings made by the prosecutor and asked that the prosecutor's office produce the authorisation for interception and the original tapes (at the hearings of 10 April and 8 May 2003). He argued that, as R.J. had reported "the police officers" to the prosecutor, it was important to hear evidence from her in order to clarify whether she had meant the applicant in particular or somebody else from his office. He also pointed out that the transcripts disclosed that the money had not been found where R.J. had supposedly left it.

14. On 25 April 2003 the prosecutor's office informed the court that the tapes and their transcripts had been annexed to the indictment and therefore stored in a specially designated place at the court's registry. On 5 June 2003 the prosecutor further explained that the authorisation issued in the case was a classified document and therefore could not be produced before the court.

15. In a judgment of 18 June 2003 the Bucharest County Court examined the evidence in the file, including the transcripts of the recorded conversations, found the applicant guilty as charged and gave him a four-year suspended prison sentence.

However, on 9 September 2003 the Bucharest Court of Appeal declared the judgment null and void, as one of the judges had omitted to sign it, and sent the case back to the Bucharest County Court. It maintained the applicant's detention.

16. The County Court did not consider it necessary to hear the evidence adduced in the first set of proceedings again. The applicant maintained his initial position and contested the lawfulness of the interception authorised by the prosecutor on 20 January 2003. Through his defence lawyers, he reiterated his request that the authorisation be produced and the tapes be listened to in open court. He pointed out that the voices on the recordings were indistinguishable from each other and that in the transcripts of the recorded conversations both his words and those uttered by S.D. had been marked with the letter "Y", which rendered it impossible to determine whether it had been him or S.D. requesting or accepting the bribe. He also contended that there had been no explicit reference to any sum of money in

the transcripts and that neither M.D. nor R.J. had named him in their initial statements to the police, but rather had talked about "the police officers".

17. On 18 November 2003 R.J. gave testimony before the court. She declared that it had not been the applicant but S.D. who had asked for money from her and had instructed her where to put it, and that the applicant had not been in the office when she had taken the money out of her pocket and put it on the table.

At the same hearing, the court noted that the parties had made no further requests to lead evidence.

18. On 20 November 2003 the County Court convicted the applicant of taking a bribe and gave him a four-year suspended prison sentence.

The court established the facts based on witness testimony given in both sets of proceedings before it (notably from M.D., R.J., the third occupant of the car at the time of the police check, the applicant's partner at that time and S.D.) and the transcripts of the conversations among the applicant, M.D. and R.J. It found that the applicant had invited M.D. and R.J. to his office, talked with them for a while, and had then asked M.D. to step out of the office while he continued the discussion with R.J. R.J. had told the applicant that she had the money and the applicant had answered "approved". She had then asked the applicant if they could talk in the office and when the applicant had answered yes, she had taken out the money. The applicant had told her to put the money on a table next to his desk. S.D. had occasionally joined in the discussion but was apparently absent from the office when R.J. left the money. When the prosecutor had entered the applicant's office, the money had been found under a tablecloth on the applicant's desk.

The court gave no explanation of its assessment of the new statements made by R.J. or the allegations that the transcripts were inaccurate.

19. Both parties appealed. The applicant maintained his innocence. Through his lawyers, he reiterated that, despite his repeated requests, the prosecutor had failed to disclose to the court the authorisation for interception and he again contested the lawfulness of the recordings, for the same reasons as argued before the first-instance court. He also requested that a new witness be heard, but on 3 March 2004 the court dismissed his request, as it considered that the evidence already adduced was sufficient.

20. By a decision of 11 March 2004 the Bucharest Court of Appeal ordered the applicant to serve his sentence. It upheld the remainder of the County Court's decision. The court considered that the facts as established by the first-instance court and the sentence handed down by that court had been supported by the evidence in the file, notably: statements given by R.J., M.D. and another person that had been in the car at the time of the traffic offence; the report made by the prosecutor when arresting the applicant; and the transcripts of the recorded conversations. The court considered that the new statements made by R.J. were not corroborated by

the remaining evidence, notably the transcripts of the conversations and M.D.'s statements. It also considered that, as S.D. had been absent from the office when R.J. had handed over the money (which had been verified through the transcripts), it was irrelevant to the establishment of the facts that both police agents had been marked as "Y" in the transcripts. Lastly, the court pointed out that the report drafted by the prosecutor concerning the interceptions, together with the tapes of the recordings, had been added to the file, as required by law.

21. The applicant appealed on points of law. He reiterated that the recording of the conversations had been unlawful and that the tapes had not been authentic and should not have been admitted as evidence. He also averred that in none of the statements given by M.D. and R.J had he been designated as the officer who had received the bribe; they had referred only to "the police officers".

22. By a final decision of 15 June 2004 the High Court of Cassation and Justice (the former Supreme Court of Justice) again suspended the applicant's sentence. The High Court did not answer the applicant's arguments as to the alleged unlawfulness of the recordings.

II. RELEVANT DOMESTIC LAW

23. The legislation in force at the relevant time concerning telephone tapping and changes to the law brought into force on 1 January 2004 are described in *Dumitru Popescu v. Romania (no. 2)* (no. 71525/01, §§ 39-46, 26 April 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

24. The applicant complained that the recording of his communications with third parties had been unlawful and had lacked proper authorisation, thus breaching the requirements 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. Admissibility

1. The scope of the application

25. The Government contended that the applicant had not expressly complained of a violation of his right to respect for his private life guaranteed by Article 8 of the Convention. His complaint had only concerned the alleged unlawfulness of the recordings, the lack of proper authorisation and the procedure followed for the transcription of the conversations recorded. In their view, those arguments pertained to the sphere of Article 6 of the Convention.

26. The applicant reiterated that he had also complained about the manner in which the prosecutor had issued the authorisation for interception.

27. The Court reiterates that in *Dumitru Popescu*, cited above, it examined the domestic law governing telephone tapping under Article 8 of the Convention, including the manner in which authorisations for interception were given. Furthermore, the Court notes that in his initial letter to the Court in the present case, the applicant expressly cited Article 8 and described his complaint as being about unlawful telephone interceptions.

28. Therefore, without prejudging the merits of the case, the Court is satisfied that the manner in which the applicant formulated his complaint, albeit succinct, allows the Court to examine whether the applicant's Article 8 rights were effectively guaranteed by domestic law and respected by the authorities.

Consequently, the Government's objection will be dismissed.

2. The Government's objection of non-compliance with the six-month rule

29. The Government averred that the applicant should have lodged his complaint within six months of the date on which he had first learned of the interception. They contended that the applicant had become aware of the interception on 29 January 2003 at the latest, as that was the date on which he had become acquainted with the prosecution file. Therefore, in lodging his complaint on 22 October 2003, he had failed to observe the six-month time-limit.

30. The applicant did not comment on this point.

31. The Court reiterates that, as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. However, where it is clear from the outset that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant. Nor can Article 35 § 1 be interpreted in a manner which would require an applicant to seize the Court of his

complaint before his position in connection with the matter has been finally settled at the domestic level (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 157, ECHR 2009).

32. The Court notes that according to the domestic law of the respondent State, interceptions can be subject to expert examination within the trial of the person concerned. Therefore, the Court sees no reason to exclude that the domestic courts could declare an interception unlawful. The interested party could then seek compensation under the provisions of the general tort law, namely Articles 998-999 of the former Civil Code. Furthermore, after 1 January 2004 the Code of Criminal Procedure regulated the storage of data obtained through telephone tapping and gave the courts the power to order the destruction of intercepted data which was not used as evidence in the file. It also imposed on the persons involved with tapping and recording an obligation to refrain from disclosing details of the operation.

33. Moreover, it is possible for the domestic courts of the respondent State to apply the Convention provisions directly and to find in a particular situation that a certain national legal provision contradicts Article 8 of the Convention (see *Dumitru Popescu*, cited above, §§ 101-103).

34. The Court also observes that a person affected by interception could seek by means of a separate action against the authorities, at least after 1 January 2004, to have the courts declare the interception unlawful and award compensation (see *Patriciu v. Romania* (dec.), no. 43750/05, § 86, 17 January 2012, and also, *mutatis mutandis*, *Tokarczyk v. Poland* (dec.), no. 51792/99, 31 January 2002).

35. The Court considers that, in the absence of any specific arguments from the Government, all the above means of action should be considered equally available to a person who contests the lawfulness of interception. In such circumstances, the choice of methods used belongs entirely to an applicant who, if he has exhausted a remedy that is apparently effective and sufficient, cannot be required to have also tried to make use of others that were available but probably no more likely to be successful (see *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III).

36. In the present case, the Court notes that the applicant contested the lawfulness of the recordings and the accuracy of the transcripts throughout the domestic proceedings. Furthermore, when legislative changes were brought into force on 1 January 2004, increasing the courts' powers concerning interception, the applicant's case was pending before the appeal court, which had full jurisdiction to examine the merits of his complaint (see paragraphs 19 and subsequent, above).

In this respect, the present case differs essentially from *Begu v. Romania* (no. 20448/02, 15 March 2011), where the Court concluded that the applicant, who had been convicted by a final decision of 22 December 2003, thus before the new provisions of the Code of Criminal Procedure became

enforceable, had no effective remedy to complain about the interception affecting him (see *Begu*, cited above, § 147).

37. It follows that the choice made by the applicant in the present case to contest the lawfulness of the interception and covert recording during the trial against him constituted an effective remedy, in the particular circumstances of the case. It was therefore sensible for him to await the outcome of the domestic proceedings before lodging his complaint under Article 8 with the Court.

The Government's preliminary objection of non-observance of the six-month rule will therefore be dismissed.

3. The overall admissibility of the complaint

38. 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' arguments

39. The applicant argued that the prosecutor ordering the interception and recording of his conversations had not been an independent legal officer for the purposes of the Convention. He reiterated that he had lacked the opportunity to listen to the tapes in open court. Relying on *Dumitru Popescu* (cited above) and *Calmanovici v. Romania* (no. 42250/02, 1 July 2008), he pointed out that the Court had already found that the system authorising the interception of communications in place at the time of the facts of the present case had not offered adequate safeguards against arbitrary interference.

40. The Government put forward that any interference which may have arisen in the case had satisfied the requirements of Article 8 § 2 of the Convention. In particular, it had been provided by law, namely Articles 91^1– 91^5 of the Code of Criminal Procedure, had pursued the legitimate aim of preventing crime and had been proportionate to its legitimate aim, as the interception had been ordered for a very short period of time and had only concerned two conversations. They also argued that the national authorities enjoyed a certain discretion concerning the manner in which the system of police surveillance was operated.

2. The Court's assessment

41. The Court observes at the outset that the interception and recording of the applicant's conversations with R.J. and M.D. are covered by the

notions of "private life" and "correspondence" within the meaning of Article 8 (see, among other authorities, *Craxi v. Italy (no. 2)*, no. 25337/94, § 57, 17 July 2003; *Bykov v. Russia* [GC], no. 4378/02, § 72, 10 March 2009; and *Drakšas v. Lithuania*, no. 36662/04, § 52, 31 July 2012). It also notes that in the present case those conversations were recorded on 20 January 2003 based on an authorisation given by the prosecutor.

42. The Court has already found that the system authorising the interception of communications in place at the time of the facts of the present case lacked proper safeguards and thus breached the requirements of Article 8, in so far as the prosecutor authorising any surveillance was not independent from the executive (see *Dumitru Popescu*, cited above, § 71); a prosecutor's decision to intercept communications was not subject to a judge's approval before being carried out (*idem*, § 72); a person under surveillance could not challenge before a court the merits of the interception (*idem*, § 74); and that there was no mention in the law of the circumstances in which transcripts should be destroyed (*idem*, § 79). Although the interceptions in *Dumitru Popescu* and *Calmanovici*, both cited above, were ordered on the grounds of national security, which was not relied upon in the present case, the manner in which they were carried out was the same in both situations. The Court therefore considers that when it was initiated in the present case the procedure by which the telephone tapping was authorised also lacked the proper safeguards required by Article 8.

43. The Court reiterates that the amendments to the Code of Criminal Procedure came into force during the appeal proceedings in the present case and thus allowed for increased supervision by the courts of telephone interceptions (see paragraph 32 above and *Dumitru Popescu*, cited above, §§ 82-83). The system in place established a more rigorous procedure with supplementary safeguards for the persons concerned. The Court will therefore only assess how those guarantees were applied by the national authorities to the applicant's particular situation (see *Klass and Others v. Germany*, 6 September 1978, § 33, Series A no. 28).

44. In this connection, it notes that the domestic courts did not offer a comprehensive answer to the applicant's repeated objections concerning the lawfulness of the authorisation and the accuracy of the transcripts. They merely noted that the report made by the prosecutor concerning the recordings, together with the tapes, had been attached to the court file. They accepted without questioning the prosecutor's refusal to present the authorisation (see paragraph 14 above).

45. In acting in this manner, the domestic court deprived the safeguards provided by the new legislation of the respondent State of all meaning. Moreover, because the courts did not examine the lawfulness of the recordings or the accuracy of the transcripts, the applicant could not avail himself of the possibility to seek their destruction under the provisions of

the Code of Criminal Procedure in force after 1 January 2004, or to seek compensation for unlawful interception under the general tort law.

46. For these reasons, the Court considers that in the present case there has been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

47. Under Article 6 §§ 1 and 3 (d) of the Convention, the applicant alleged that the courts had not interpreted the evidence correctly and had not given reasons for their decisions. He further complained that the actions of the prosecutor culminating in his arrest had been unlawful, that R.J. and M.D. had been instructed by the prosecutor how to behave and what to say during the investigation, that the sum allegedly received as a bribe had been planted in his office, and that the conversations recorded by the prosecutor had not clearly shown whether the money had been meant for him or for S.D. He also complained that the prosecutor had not disclosed the authorisation for interception to the courts. He relied on Article 6 §§ 1 and 3 (d) of the Convention.

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

1. The parties' arguments

48. The Government raised a preliminary plea of non-exhaustion of domestic remedies, contending that the applicant had not complained before the domestic courts of a denial of his right to adduce witness evidence. They further argued that he had made no request for additional evidence to be brought before the appeal courts. They also pointed out that the applicant had availed himself of the opportunities offered during the proceedings to challenge the authenticity of the transcripts and to oppose their use; however, he had not asked for an expert examination of the tapes. In any event, they noted that the transcripts were not the only evidence on which the courts had based their decisions.

49. In his observations in reply to those presented by the Government, the applicant averred that he had never been heard by the courts deciding on the merits of his case after the quashing of the first decision. The courts had failed to review the lawfulness of the recordings and the accuracy of the

transcripts. They had based their decisions on evidence gathered by the prosecutor or admitted by the first-instance court (whose judgment had been quashed) and had failed to examine the evidence directly.

2. The Court's assessment

(a) General principles

50. At the outset, the Court points out that the guarantees enshrined in paragraph 3 of Article 6 represent specific applications of the general principle stated in paragraph 1 of that Article and for this reason it will examine them together (see, among many others, *Deweer v. Belgium*, 27 February 1980, § 56, Series A no. 35; *Doorson v. the Netherlands*, 26 March 1996, § 66, *Reports of Judgments and Decisions* 1996-II; and *Artico v. Italy*, 13 May 1980, § 32, Series A no. 37).

51. The Court further reiterates that it is not competent to deal with an application alleging that errors of fact or law have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (see *Bykov*, cited above, § 88). Moreover, it is not its role to examine legislation in the abstract, but to consider the manner in which it affected the applicant (see, *mutatis mutandis*, *Klass and Others v. Germany*, 6 September 1978, § 33, Series A no. 28).

52. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 31, *Reports* 1997-VIII, and *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). It is therefore not for the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the "unlawfulness" in question and, where a violation of another Convention right is concerned, the nature of the violation found.

53. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence were respected. It must be examined in particular whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see *Bykov*, cited above, § 90).

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

54. The Court observes that pursuant to the relevant provisions of the Code of Criminal Procedure, the domestic courts accepted as evidence in the case file the transcripts of the conversations intercepted by the prosecutor.

55. The Court highlights that evidence does not have a pre-determined role in the respondent State's rules of criminal procedure. The courts are free to interpret a piece of evidence in the context of the case and in the light of all the other evidence before them (see *Dumitru Popescu*, cited above, § 110). In the case at hand, the recordings were not treated by the courts as a plain confession or an admission of knowledge capable of lying at the core of a finding of guilt (see *Bykov*, cited above, § 103).

56. The Court is satisfied that the domestic courts based their decisions on a substantial body of evidence: they heard testimony from several witnesses for the prosecution and for the defence, and took the opportunity to study the conflicting positions and to explain their views on them in the course of their examination of the case. They also gave reasons for dismissing further claims by the defence.

57. Lastly, the Court notes that the applicant complained in his observations that he had not been heard in person by the courts in the second set of proceedings. The Court notes at the outset that the applicant failed to raise this argument in the domestic proceedings or in his initial application with the Court.

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

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

59. The applicant complained that he had been kept in pre-trial detention for a period of over ten months without relevant or sufficient reasons. In addition, he considered that the domestic courts had not taken into account his personal situation and the absence of any danger posed by him to the public order.

The complaint was communicated under Article 5 § 3 of the Convention, which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. The parties' arguments

60. Relying on *Wemhoff v. Germany* (27 June 1968, Series A no. 7), *B. v. Austria* (28 March 1990, Series A no. 175) and *Labita v. Italy* [GC] (no. 26772/95, ECHR 2000-IV), the Government contended that, for the purposes of Article 5 § 3 of the Convention, the applicant had been detained from 21 January 2003 to 18 June 2003 and from 9 September 2003 to 1 November 2003, that is for a total of seven months and nine days.

They averred that the applicant's continued detention had been justified in the light of the weighty evidence against him, had been reviewed at regular intervals by a judge and had not been unreasonably lengthy. They cited *Erimescu v. Romania* ((dec.), no. 33762/05, 18 January 2011).

61. The applicant contended that the domestic courts had given only summary reasons using standard wording for their decisions extending his detention which, in his view, had not satisfied the requirements of Article 5 § 3 of the Convention.

B. The Court's assessment

1. *General principles*

62. The Court reiterates that a person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify continued detention. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. Quasi-automatic prolongation of detention contravenes the guarantees set forth in Article 5 § 3 (see *Tase v. Romania*, no. 29761/02, § 40, 10 June 2008).

63. It also reiterates that, generally speaking, when determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance, or, possibly, when the applicant is released from custody pending criminal proceedings against him (see, for more recent authority, *Idalov v. Russia* [GC], no. 5826/03, § 112, 22 May 2012).

64. The Court has developed in its case-law four fundamental justifications for detention pending-trial: the danger of absconding, of tampering with evidence, of repetition of the offence(s) or of disturbance to the public order (see *Calmanovici*, cited above, § 93; *Georgiou v. Greece* (dec.), no. 8710/08, 22 March 2011; and the cases cited therein). Furthermore, the question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features. Continued detention

can be justified in a given case only if there are actual indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see *Idalov*, cited above, § 139; *McKay v. the United Kingdom* [GC], no. 543/03, §§ 42 and 45, ECHR 2006-X; and *Bujac v. Romania*, no. 37217/03, § 68, 2 November 2010).

2. Application of those principles to the present case

65. The Court notes at the outset that the applicant was first placed in pre-trial detention on 21 January 2003. He was convicted by a first-instance court on 18 June 2003, but that conviction was declared null and void in a decision of 9 September 2003. The applicant's detention was subsequently extended at steady intervals until a judgment was adopted by the first-instance court on 20 November 2003.

Therefore, assuming that the detention was continuous from 21 January 2003 to 21 November 2003 and fell entirely within the ambit of Article 5 § 3, the applicant spent at most a total amount of ten months in pre-trial detention for the purposes of this provision (see *Wemhoff*, cited above, § 9).

66. The Court will look into the manner in which the domestic courts extended this detention and whether they gave relevant and sufficient reasons for their decisions.

67. At the outset, the Court notes that, in application of the rules established at the domestic level, the courts extended the applicant's detention every thirty days. The applicant systematically contested those extension orders and sought to be released pending trial.

68. The Court notes that the domestic courts based their decision to keep the applicant in detention mainly on the impact of the alleged crimes on the public order. In doing so, they undertook an examination of the particular circumstances of the case and gave specific reasons based on the applicant's personal situation and that the evidence gathered suggested he had committed the offence (see paragraph 10 above).

69. It is to be noted that the reasons given by the domestic courts remained the same throughout the proceedings (gravity of the crimes and impact on the public order). However, the Court considers that such an occurrence was legitimate, notably given the relatively short period of time between the two examinations by those courts of the reasons for extending the applicant's detention (see *Medinţu v. Romania* (dec.), no. 5623/04, § 47, 13 November 2012, and *Georgiou* (dec.), cited above). Moreover, their reasoning was neither succinct nor formulaic, and took into account developments in the trial proceedings (see, *a contrario*, *Begu*, cited above, § 86, and paragraph 10 above).

70. In the light of the particular circumstances of the case, the Court considers that the domestic authorities offered relevant and sufficient reasons for extending the applicant's pre-trial detention, which, overall, was not excessively long.

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

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. Lastly, the applicant complained that the prosecutor had not been qualified, under Article 5 § 3 of the Convention, to arrest him on 20 January 2003. However, the Court observes that the applicant was brought before a judge who examined the lawfulness of his detention on 11 February 2003. Therefore, in lodging his application with the Court on 22 October 2003 the applicant failed to observe the six-month rule in respect of this complaint (see *Mujea v. Romania* (dec.), no. 44696/98, 10 September 2002).

It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 1,000,000 euros (EUR) in respect of pecuniary damage, representing the salary he had not been paid because of the criminal proceedings, the cost of supporting his family, the costs incurred during his detention and the damage caused by his inability to find a job because of his conviction. He also sought EUR 200,000 in respect of non-pecuniary damage.

74. The Government contended that the applicant had failed to substantiate his claims. They also argued that there was no causal link between the alleged violations and his pecuniary claims. They considered that the non-pecuniary claims were exaggerated and that the finding of a violation could in itself represent sufficient reparation.

75. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On

the other hand, it awards the applicant EUR 4,500 in respect of non-pecuniary damage.

B. Costs and expenses

76. The applicant also claimed EUR 9,000 for costs and expenses incurred before the Court, comprising the cost of translations, postage and lawyers' fees.

77. The Government pointed out that the applicant had not substantiated his claims.

78. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the above criteria and to the lack of any documents justifying the costs and expenses claimed, the Court rejects the claim.

C. Default interest

79. 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 concerning Article 8 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, in respect of non-pecuniary damage, EUR 4,500 (four thousand five hundred euros) plus any tax that may be chargeable, to be converted into the respondent State's national currency 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;

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

Done in English, and notified in writing on 16 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President