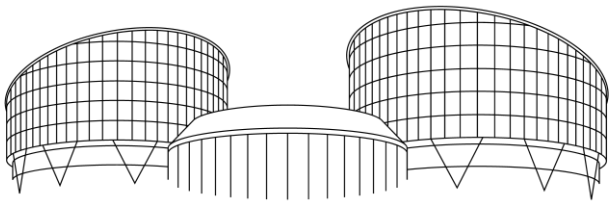

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF HACIOGLU v. ROMANIA

(Application no. 2573/03)

JUDGMENT

STRASBOURG

11 January 2011

FINAL

20/06/2011

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

In the case of Hacioglu v. Romania**,**

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

Josep Casadevall, *President,*
Elisabet Fura,
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Ann Power, *judges,*
and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 7 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 2573/03) 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 Turkish and Bulgarian national, Mr Sezgin Hacioglu ("the applicant"), on 6 August 2001.

2. The applicant, who had been granted legal aid, was represented by Mr Laurent Hincker and Mrs Valérie Billamboz, lawyers practising in Strasbourg. The Romanian Government ("the Government") were represented by their Agent, Mr Răzvan-Horaţiu Radu, of the Ministry of Foreign Affairs.

3. On 12 May 2009 the President of the Third Section decided to communicate to the Government the complaints concerning the conditions of the applicant's detention, the alleged interference with his private life and the alleged lack of fairness of the criminal proceedings instituted against the applicant. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. The Turkish and Bulgarian Governments were informed of the application, in view of the applicant's nationality (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court). They did not wish to intervene.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Istanbul.

A. The origin of the case

6. At the relevant time, the applicant was working for the Turkish company A., which in January 1999 started a joint venture in the oil industry with the Romanian company P. based in Constanţa. From February 1999 the applicant worked in Constanţa at company P.'s headquarters.

7. On 19 July 1999 the joint venture ended and, on the basis of a prior agreement between the two companies, A.'s employees based in Constanţa were requested to return all documents belonging to company P.

8. On 26 July 1999 at 10 a.m. the applicant unsuccessfully tried to take some documents from company P.'s headquarters, following which P.'s management ordered that all company A.'s employees leave the headquarters by the end of that day.

9. At 4 p.m. the applicant left the premises with documents classified "confidential", concerning, in particular, human resources strategies, redundancy proposals, maps of company P.'s properties and of the port, and information on the management team and on the company's export deals. At his home in Constanţa he put the documents in envelopes and then handed them to O.M. at the latter's petrol station in Lazu. O.M. gave the envelopes to a Turkish bus driver, who was instructed to take them to Istanbul and to call upon his arrival for further instructions; the phone number was written on the envelopes.

10. On 25 August 1999 the Romanian border guards at Vama Veche confiscated the documents from the bus driver.

B. The applicant's detention

1. The detention in Constanţa Police detention facilities

11. On the evening of 30 August 1999 the applicant was arrested when trying to leave Romania at the Ostrov border checkpoint and taken to the Constanţa Police headquarters. According to the indictment, he was:

> "invited to give explanations to the criminal investigation authorities concerning the documents found at Vama Veche checkpoint; it had been already established at that time that he was the person who had facilitated the illegal transportation of the documents belonging to P."

At 8 a.m. on the next day, he was taken to a prosecutor who issued an arrest warrant and placed him in police custody in the Constanţa Police detention facilities. According to the applicant's statements, he was not allowed to contact anyone between 30 and 31 August.

12. The applicant was held in the police detention facilities from his arrest until 29 October 1999.

13. The applicant described the conditions in custody as follows: he was not given food for the first twenty-four hours of his detention in the police headquarters and was not given any written information in Turkish. He was not allowed a pen and paper to write to his family. During the investigations he was not allowed to talk with his family or counsel in private and was prevented from contacting the Turkish Embassy.

14. According to the information from the Constanţa Police, the cells in the police detention facilities measured 20 sq. m and had three to four beds each. The toilets were situated on the corridor. No concrete information about the applicant's stay was furnished, as, according to the applicable regulations, the relevant documents are only kept by the prison authorities for a five-year term, which has already expired in the applicant's case.

2. The detention in Poarta Albă and Rahova Prisons

15. The applicant was transferred to Poarta Albă Prison on 29 October 1999. He remained there until his conditional release on 15 May 2002, with the exception of the period from 24 August 2000 to 16 May 2001 when he was detained in Rahova Prison.

16. He alleged that in Poarta Albă he had been held in poor conditions. In particular, he claimed that hot water had been very rarely available and the prisoners at times had not had been able to wash themselves for months. The prisoners had to improvise and use electrical appliances to heat water in their cells to enable them to wash. He alleged that he had not received a copy of the internal regulations in Turkish.

17. The Government produced official records describing the applicant's detention as follows.

18. For the first twenty-one days of his detention, the applicant was placed in cell no. 19 which was 39.48 sq. m in size. He shared the room with approximately forty-five other persons.

19. For most of his stay the applicant was placed in the section for foreign prisoners, in cells nos. 1 and 6 which were 15.26 sq. m in size and had six beds each. There were four to six prisoners in a cell at all times. Each cell had its own toilet, separated from the living space by a wall. There was no hot running water; the inmates were scheduled for a weekly bath. The cells and the toilets had windows for airing and natural light. The cells were heated with wood. Electricity and cold water were permanently available. The prisoners were responsible for cleaning the premises.

In 2004 the toilets were renovated and modernised.

20. During his stay he received four visits from his mother, five from his father, five from his lawyer and three from representatives of the Turkish Consulate. On each visit, the applicant received a parcel of food and cigarettes. His right to receive visits was not restricted during his detention.

21. The conditions in Rahova Prison were similar to those in Poarta Albă. The applicant was placed in a 19.55 sq. m cell which had ten beds.

C. Criminal proceedings against the applicant

22. On 31 August 1999 the applicant, in the presence of his chosen lawyer, E.B., and an interpreter, was informed of the reasons for his arrest. At that time he could not provide an address where his family could be contacted as all his relatives lived abroad (Turkey and Bulgaria), but he agreed that his counsel could contact the family. From the observations submitted by the applicant, it appears that the chosen counsel E.B. was asked by company A. to defend him.

Throughout the investigations, the applicant was represented by E.B, and another counsel specialised in criminal law, both representatives of his own choosing, and assisted by an authorized interpreter.

23. At different dates during September 1999, the prosecutor proceeded to hearing testimonies of fourteen witnesses, who worked for company P. and could provide relevant information regarding the documents that the applicant had tried to remove from the headquarters of the company P. and the events of 26 July 1999.

24. On 19 October 1999, the applicant, in the presence of his counsel and assisted by an interpreter was confronted with two of the witnesses in the case. The minutes of the confrontations indicate that he addressed questions to those witnesses.

25. On 25 October 1999 the Prosecutor attached to the Constanţa Court of Appeal indicted the applicant for theft of documents (*sustragerea de înscrisuri*, Article 242 of the Criminal Code) and industrial espionage (Article 19 of Law no. 51/1991 on Romania's national security).

26. The case was tried by the Constanţa County Court, based on the evidence adduced, in particular, expert reports on the content of the documents taken by the applicant from company P. and witness testimonies. In his defence the applicant claimed that he had not been aware of the content of the documents taken and that he had done nothing but follow orders from his superiors.

27. The County Court held eight hearings. At each hearing the applicant was represented by counsel and assisted by an interpreter. For the first hearing, which took place on 26 October 1999, the applicant was assisted by a lawyer appointed by the authorities. That hearing did not bear on the merits of the case, but concerned the extension of the applicant's pre-trial detention.

28. On 18 November 1999 the County Court allowed the defence counsel's request and postponed the case in order to allow the applicant, in the presence of an interpreter and his lawyer, to familiarise himself with the prosecution file. The applicant personally or through his counsel made no further complaints to the County Court during the proceeding.

29. On 6 and 20 January 2000 the County Court heard the applicant's testimony and witness evidence. Fourteen witnesses were heard, the same that had testified before the prosecutor and they all maintained their previous statements. The defence counsels participated in the examination of the witnesses and asked questions; they informed the court that they no longer insisted on the summoning of the absent witnesses. They insisted nevertheless that two witnesses, employees of the State Property Fund (FPS) be examined by the court. One of the proposed witnesses testified at the next hearing, held on 3 February 2000. The applicant, through his counsel declared that he did not insist in the summoning of the second proposed witness.

On 24 February the parties presented their case; the applicant was invited to speak again before the end of the hearing (*ultimul cuvânt al inculpatului*). On the same date, the applicant submitted written conclusions by which he claimed to be innocent and provided arguments as to why it could not be held his acts constituted a crime.

30. On 28 February 2000 the court convicted the applicant as charged and sentenced him to four years' imprisonment. According to the Government, a written translation of the first instance judgement was served to the applicant.

31. The applicant appealed, claiming that he had been wrongfully convicted. On 7 April 2000 the Constanţa Court of Appeal upheld the judgment, based on the evidence existing in the file and on the pleadings before it. It rejected the defence request for a new witness, another employee of FPS, as it considered that the evidence was not relevant to the case. The applicant was represented by counsel of his choosing and assisted by an interpreter. The applicant was invited to speak before the end of the hearing.

32. The applicant appealed again on points of law, arguing that the acts he had committed were not the crimes he had been accused of.

The Supreme Court of Justice held three hearings in the case; the applicant was represented by counsel of his choosing and assisted by an interpreter. On 22 February 2001 the Supreme Court heard the defence counsel and the prosecutor and invited the applicant to speak before the end of the hearing (*ultimul cuvânt al inculpatului*). It postponed the delivery of the final decision until 8 March.

33. In a final decision of 8 March 2001 the Supreme Court of Justice dismissed the applicant's appeal and upheld the previous decisions.

II. RELEVANT DOMESTIC LAW

34. The relevant provisions of Law no. 23/1969 on the execution of sentences are described in paragraphs 23 and 25 of the *Năstase-Silivestru* judgment (see *Năstase-Silivestru v. Romania*, no. 74785/01, 4 October 2007).

35. Law 23/1969 was replaced by Emergency Ordinance no. 56/2003 on the rights of prisoners ("Ordinance 56"), adopted by the Government on 25 June 2003 and ratified by Parliament on 7 October 2003. That Ordinance constituted a general measure taken by the Government in the execution of the judgment adopted by the Court in the case of *Petra v. Romania* (23 September 1998, *Reports of Judgments and Decisions* 1998-VII; see the Committee of Minister's Resolution CM/ResDH(2007)92).

III. COUNCIL OF EUROPE DOCUMENTS

36. The relevant findings and recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") are described in *Artimenco v. Romania* (no. 12535/04, §§ 22-23, 30 June 2009). In particular, the Court notes that in the report on the 2002-2003 visits, the CPT expressed concerns over the limited living space available to prisoners and the insufficient space provided by the regulations in place at that date. It also noted that prisoners were sometimes obliged to share a bed and that the toilets were not sufficiently separate from the living space.

37. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies), insofar as relevant, reads as follows:

> "23.1 All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice. ...
>
> 23.4 Consultations and other communications including correspondence about legal matters between prisoners and their legal advisers shall be confidential. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

38. The applicant complained under Articles 3 and 8 that while he was held in the Constanta Police detention facilities he was not given food for

the first twenty-four hours, he had not been allowed to contact his family, his mobile phone and belongings had been confiscated and he had not been allowed to talk with his family in private.

Relying on Article 3, he further complained of the poor detention conditions in Poarta Albă and Rahova Prisons.

39. Article 3 of the Convention reads as follows:

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

40. Article 8 of the Convention 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 parties' submissions

41. The Government raised a preliminary objection of non-exhaustion of domestic remedies, in so far as the applicant had not complained to the authorities about the conditions of his detention or the alleged breach of his privacy rights. In addition, they pointed out that the applicant could have lodged a civil law complaint against the Prison.

42. Lastly, the Government considered that the applicant had not respected the six-month rule in so far as the complaints referred to his detention in the Constanţa Police detention facilities. The Government relied on an *a contrario* interpretation of *Kokoshkina v. Russia*, no. 2052/08, § 53, 28 May 2009.

43. The applicant submitted that the Government could not prove the effectiveness of the indicated remedies and that, in any case he had been faced with a systemic problem in the detention facilities. He also contended that his detention should be examined as a single period and that dividing it according to the time spent in the detention facilities would be artificial.

2. The Court's assessment

(a) Non-exhaustion of domestic remedies

44. The Court has already found that Law no. 23/1969 does not provide an effective remedy for complaints concerning the conditions of detention (see, in particular, *Petrea v. Romania*, no. 4792/03, § 34-36, 29 April 2008).

It also reiterates that for the general conditions of detention, in particular the alleged overcrowding, the applicant could not be required at the material time to have recourse to any remedy (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001, and *Solovyev v. Russia* (dec.), no. 76114/01, 27 September 2007).

45. It therefore rejects the Government's plea of non-exhaustion of domestic remedies.

(b) Six-month rule

46. The Court recalls that it had previously refused to treat the time spent by the applicants in different detention facilities as a continuing situation in cases where their complaints related to specific events (see, *Seleznev v. Russia*, no. 15591/03, § 35, 26 June 2008).

In the instant case, the Court notes that the applicant complained about specific events concerning the period spent in the Constanta Police detention facilities (see paragraph 38 above). These complaints have not been reiterated with regard to the other detention facilities.

47. The Court notes that the applicant had been transferred from the Constanţa Police detention facilities on 29 October 1999. He had lodged his application with the Court on 6 August 2001. It follows that his complaints under Articles 3 and 8 concerning this period of detention fall outside the six-month time-limit set by the Convention.

(c) Other grounds for inadmissibility

48. The Court notes that in so far as the complaints refer to the detention conditions in Poarta Albă and Rahova Prisons, they are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' positions

49. The Government contended that the conditions of detention were acceptable according to the standards set by the relevant case-law.

50. The applicant considered that the overcrowding was a serious problem in that on several occasions there had been few persons sharing one bed. He reiterated that hot water and heating had not been available.

2. The Court's assessment

51. The Court refers to the principles established in its case-law regarding the conditions of detention and the medical care of detainees (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI;

Mouisel v. France, no. 67263/01, § 40, ECHR 2002-IX; and *Sarban v. Moldova*, no. 3456/05, §§ 75-77, 4 October 2005).

52. It also reiterates that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Kokoshkina*, cited above, § 59).

53. The focal point in the case at hand is the assessment by the Court of the living space afforded to the applicant in Poarta Albă and Rahova Prisons. The Court notes that the applicant did not contradict the Government's submissions on the size of the cells. What is contested between the parties is the actual occupancy of those cells: while the Government submitted that the number of persons in a cell was always inferior or equal to the designated occupancy, the applicant claimed that, at times, prisoners had had to share beds.

The Court notes that, even at the occupancy rate indicated by the Government, the applicant's living space seems to have been consistently below 3 sq. m, which falls short of the standards imposed by the case-law (see *Kokoshkina*, cited above, § 62; and *Orchowski v. Poland*, no. 17885/04, § 122, ECHR 2009-... (extracts)).

Moreover, the applicant's description of the overcrowding corresponds to the findings made by the CPT during that period (see paragraph 36 above).

54. Furthermore, the Court considers that taking into account the corroboration by the CPT reports of the applicant's description of sanitary conditions it cannot but conclude that the applicant was deprived of the possibility to maintain an adequate corporal hygiene in prison.

55. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees and unsatisfactory sanitary conditions (see, in particular, *Ciorap v. Moldova*, no. 12066/02, § 70, 19 June 2007; and the judgments cited above: *Kalashnikov*, §§ 97 et seq.; *Kokoshkina*, § 64; and *Petrea*, §§ 49-50).

In the case at hand, the Government failed to put forward any argument that would allow the Court to reach a different conclusion.

56. In the light of the above, the Court finds that the conditions of the applicant's detention caused him suffering that exceeded the unavoidable level of suffering inherent in detention and that attained the threshold of degrading treatment proscribed by Article 3.

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

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

57. The applicant complained of a violation of his rights of defence. In particular, he complained that he was not granted *ex officio* counsel and he had to hire a lawyer; that he was not heard by the courts and that he and his counsel did not have the opportunity to obtain examination of witnesses on his behalf and against him; that he was not assisted by an interpreter and that he did not receive written translations of all the judicial decisions concerning him. In a letter of 18 December 2002 the applicant specified that the interpreter assigned to assist him during the proceedings did not translate everything to him and complained that during the investigation he could not meet his counsel in private. He relied on Article 6 §§ 1 and 3 of the Convention.

58. Article 6 § 1 of the Convention reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

59. Article 6 § 3 of the Convention reads as follows:

> "3. Everyone charged with a criminal offence has the following minimum rights:
>
> (...);
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (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;
>
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

A. The parties' submissions

1. The Government's submissions

60. The Government argued that the criminal proceedings against the applicant were fair. They submitted in this respect that the proceedings had been adversarial and that the applicant had had the opportunity to propose and adduce evidence in his defence, as the minutes of the hearings of the case indicate. The applicant and his chosen counsel had made oral and written submissions to the domestic courts, all their requests for evidence being duly reviewed.

61. The Government further indicated that neither the applicant nor his chosen counsel raised before the domestic courts the complaints submitted to the Court in respect of the alleged unfairness of the proceedings.

62. In respect of the complaint regarding the alleged breach of paragraph c) of Article 6 § 3, the Government emphasised that the applicant decided to be represented by counsel of his own choice from the very beginning of the proceedings against him and therefore it was not true that the domestic authorities refused his alleged request for legal aid. Furthermore, throughout the proceedings he has been represented by one or two counsel of his own choice and it was only on one occasion that his counsel were not present and the domestic courts appointed counsel for him. Moreover, that particular hearing did not concern the merits of the case, but the review of the legality of his pre-trial detention.

63. As concerns the alleged violation of Article 6 § 3 (d), the Government submitted that the applicant had been heard by the domestic courts, as the records of the hearings indicated, and he had the opportunity to put forward evidence in his defence, as well as to address questions to the witnesses.

64. Noting that the applicant had been assisted by an authorised interpreter during the entire duration of the proceedings, including during the investigation phase, the Government considered that the applicant's complaint under Article 6 § 3 e) was manifestly ill-founded. They referred further to the fact that the applicant failed to bring any complaint before the domestic courts about an alleged failure of the assigned interpreter to provide accurate translation.

65. Finally, the Government considered that the applicant's complaints concerning the fairness of the proceedings were abusive, taking into account that he falsely contended that he had never been heard by the domestic courts and that he had been assisted by an interpreter on only one occasion.

2. The applicant's submissions

66. The applicant submitted observations on several aspects of Article 6. The Court shall rely in its examination on those observations that relate to the questions communicated to the parties on 12 September 2009 (see paragraph 3 above)

67. The applicant submitted that when he was arrested he had not been informed that he could choose between defending himself or being represented by counsel. He further referred to Rule 93 of the Standard Minimum Rules for the Treatment of Prisoners (Resolution (73)5 of the Committee of Ministers of the Council of Europe). According to the said provisions interviews between prisoners and their legal advisers may be within sight but not within hearing, either direct or indirect, of the police or institution official.

68. He considered that two distinct issues arose in respect of his rights under Article 6 § 3 c), on one hand that the authorities allegedly tried to

dissuade his counsel from assisting him; on the other hand that the Romanian legislation in force at the time, provided that during visits to convicted persons the conversation should be carried out in Romanian or in a language understood by the staff supervising the visit (Article 19 of Law no. 23/1969). He concluded that he could not therefore prepare his defence properly and that all his conversations with his counsel had taken place within the hearing of the authorities.

69. The applicant attached to his observations a statement by one of the counsel, E.B., who represented him during the proceedings in question. According to this statement, on the day following the applicant's arrest the counsel, upon a request of company A., saw him in the presence of the prosecutor. They had been denied the right to meet in private. They had also not been allowed to speak directly in English between themselves, but an interpreter was brought in to translate between Romanian and Turkish. When he later met the applicant a guard was always present. They spoke English, but had no guarantee that the guard would not understand their conversation. Counsel also conceded that despite the fact that he needed to ask for the permission of the Chief Prosecutor to meet the applicant, his requests were not refused.

B. Admissibility

1. Alleged abuse of the right of petition

70. The Court notes that the Government pleaded that the complaints under Article 6 §§ 1 and 3 should be rejected for abuse of right of petition as the applicant had included some untrue statements in his application form.

71. The Court recalls that a finding of abuse of right of petition may be made in extraordinary circumstances, in particular if it appears that an application was clearly unsupported by evidence or outside the scope of the Convention, or if the application was based on untruths in a deliberate attempt to mislead the Court (see, for example, *Ismoilov and Others v. Russia*, no. 2947/06, § 103, 24 April 2008).

72. The Court notes that indeed some statements in the initial application form concerning the assistance of an interpreter and the representation by counsel turned out not to be completely accurate. However, it observes that the initial application form was submitted by the applicant's representative at that time, counsel from Turkey who had not assisted the applicant during the proceedings before the Romanian courts. At the time, the applicant was detained in Romania. In these circumstances, the Court can envisage that communication between the applicant detained in Romania and his counsel, living in Turkey, may have led to some confusion as to factual details. It also notes that in a letter of 18 December 2002 (see paragraph 57 above), after his release from prison, the applicant presented a version of the facts which does not appear to contradict the Government's version. The same

version of events is also corroborated by a statement submitted by E.B., counsel who represented the applicant in the domestic proceedings (see paragraph 69 above).

73. Having regard to the above, the Court concludes that it is unable to find any indication of abuse in the present application and therefore rejects the Government's objection.

2. Other reasons for inadmissibility

74. The Court notes at the outset that the documents available in the case file indicate that the applicant did not, either in his appeal or in his appeal on points of law, raise any complaint in respect of the alleged procedural failures that he invoked before the Court.

75. However, the Court does not find it necessary to determine whether the applicant has exhausted domestic remedies, as it finds the applicants' complaints in any event inadmissible for the reasons stated below.

(a) Complaint concerning lack of privacy of the meetings with his counsel

76. By letter of 18 December 2002, the applicant complained that he could not meet his counsel in private, and that during the investigation, a guard was always present during the meetings he had with his counsel.

77. The Court notes that the final decision was delivered on 8 March 2001. Even though the decision was indeed drafted at a later date, the applicant provided a copy of it to the Court on 2 January 2002. Nevertheless, he raised this complaint for the first time before the Court on 18 December 2002, that is, more than six months after the latest date he had available to him a full copy of the said final decision.

78. It follows that this complaint must be rejected as having been lodged outside the six-month time-limit, pursuant to Article 35 §§ 1 and 4 of the Convention.

(b) Complaint concerning alleged refusal to appoint an *ex officio* counsel

79. The applicant complained that he had not been provided with a court-appointed lawyer and had had to hire counsel himself. In his observations he specified that he had not been informed at the moment of his arrest that he could choose between defending himself in person or through the assistance of counsel.

80. The Court notes that from the applicant's submissions, as well as from the statements of his counsel at that time, it appears that that lawyer had been asked by the applicant's employer to defend the applicant. No document in the case file indicates that the applicant at any time made a request for legal aid or that he questioned the performance of the lawyers representing him. Moreover, he does not seem to have at any time expressed the wish to defend himself or stated that he did not want the services of the lawyers who represented him.

81. In view of the above, the Court considers that the applicant's complaint under this aspect of Article 6 of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 and therefore inadmissible in accordance with Article 35 § 4 of the Convention.

(c) Complaint concerning the alleged impossibility of calling and questioning witnesses and the alleged failure of the domestic courts to hear the applicant

82. The applicant complained that he had not been heard by the courts and that he and his counsel did not have opportunity to obtain examination of witnesses on his behalf and against him.

83. The Court stresses in the first place that it is not its task to act as a court of appeal or, as is sometimes said, as a court of fourth instance, for the decisions of domestic courts. According to the case-law, the latter are best placed to assess the credibility of witnesses and the relevance of evidence to the issues in the case (see, amongst many authorities, *Vidal v. Belgium*, 22 April 1992, § 32, Series A no. 235-B, and *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B). The Court further reiterates that the principle of equality of arms, one of the broader concepts of a fair hearing, requires each party to be given a reasonable opportunity to present their case under conditions that do not place them at a substantial disadvantage *vis-à-vis* the opponent. The right to adversarial proceedings means in principle the opportunity for the parties to have knowledge of and to comment on all evidence adduced or observations submitted, with a view to influencing the court's decision (see *K.S. v. Finland*, no. 29346/95, § 21, 31 May 2001).

84. Turning to the facts of the case, the Court observes that all the witnesses heard during the investigation also testified before the first-instance court. It appears that there was no contradiction between the statements given at the different stages of the proceedings. The applicant himself gave a full statement before the first-instance court and in the appeal proceedings he was given the last word. It also appears that two cross-examinations were organised during the investigation and that during the trial the applicant, through his counsel, could address questions to the witnesses. His requests for witnesses in his defence were given due consideration, and even though it is true that in the appeal proceedings one of his requests was refused, the appellate court provided reasoning for its decision. Moreover, in his appeals the applicant, even though he was represented by counsel, failed to make any complaint in respect of his right to be heard by the courts or to call and question witnesses.

85. In the circumstances of the case, the Court is of the view that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(d) Complaint concerning the alleged lack of assistance of an interpreter

86. In the initial application form, the applicant contended that he was assisted by an interpreter only on one occasion. In his letter of 18 December 2002 the applicant redefined his complaint, by stating that the interpreter assigned to him throughout the proceedings did not translate everything to him. He further complained that he did not receive written translations of all the judicial decisions concerning him.

87. The Government indicated that the applicant was assisted by an interpreter throughout the entire proceedings, including the investigation stage. They further submitted that the applicant was given a translated copy of the first-instance judgement.

88. The Court reiterates that paragraph 3 (e) of Article 6 states that every defendant has the right to the free assistance of an interpreter. That right applies not only to oral statements made at the trial hearing but also to documentary material and the pre-trial proceedings. This means that an accused who cannot understand or speak the language used in court has the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings instituted against him which it is necessary for him to understand or to have rendered into the court's language in order to have the benefit of a fair trial (see, for example, *Hermi v. Italy*, 18114/02, §§ 69-70). The said provision does not go so far as to require a written translation of all items of written evidence or official documents in the procedure. In that connection, it should be noted that the text of the relevant provisions refers to an "interpreter", not a "translator". This suggests that oral linguistic assistance may satisfy the requirements of the Convention (see *Husain v. Italy* (dec.), no. 18913/03, 24 February 2005). The fact remains, however, that the interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events (see *Güngör v. Germany* (dec.), no. 31540/96, 17 May 2001). In view of the need for that right to be practical and effective, the obligation of the competent authorities is not limited to the appointment of an interpreter but, if they are put on notice in the particular circumstances, may also extend to a degree of subsequent control over the adequacy of the interpretation provided (see *Kamasinski v. Austria*, no. 9783/82, § 74, 19 December 1989; *Diallo v. Sweden* (dec.), no. 13205/07, 5 January 2010).

89. In the present case, the Court notes that the applicant has been systematically assisted by an interpreter. Thus, the records of the questioning by the prosecutor, as well as of the hearings held before the courts, indicate that the applicant was assisted by an authorised interpreter each time. Moreover, there is nothing in the case file to show that the interpreter provided inaccurate or inadequate translation to the applicant, who never raised any complaint before the domestic authorities in this respect.

90. As regards the applicant's complaint that he did not receive translated written copies of all the judicial decisions concerning him, the Court notes firstly that he does not seem to have lodged such a request with the domestic authorities. Moreover, it considers that the applicant, after discussions with counsel, could not have been unaware of the content of the decisions. In this respect it is important to note that he lodged an appeal and an appeal on points of law against the judicial decisions convicting him, raising specific complaints, and therefore it does not appear that he had not been aware of their content or that he had been unable to exercise his defence rights by exhausting all available domestic remedies (see, *mutatis mutandis, Baka v. Romania*, no. 30400/02, § 76, 16 July 2009).

91. In these circumstances, the Court is unable to discern any violation of the right to have the free assistance of an interpreter.

92. It follows that the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

93. The applicant raised other complaints under Articles 5 § 1 (c), 6 §§ 1 and 2, 7 of the Convention, Article 2 § 1 of Protocol No. 4 to the Convention and under Article 2 § 1 of Protocol No. 7.

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

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage caused by the violation of the rights guaranteed by the Convention. He also claimed EUR 50,000, representing loss of income during his detention.

97. The Government considered that the requests were exaggerated and there was no causal link between the alleged violations and the damages sought. They argued that a conclusion of violation of the Convention Articles could constitute just satisfaction in the case. Lastly, they put forward that the amount sought in respect of pecuniary damage was speculative.

98. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects the applicant's claim in this respect. Nevertheless, it considers that the applicant suffered distress as a result of the conditions of his detention. It therefore awards him EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

99. The applicant also claimed EUR 25,000 for the costs and expenses incurred before the domestic courts and the Court. He sent an invoice, by which his representatives in the proceedings before the Court claimed EUR 2,350, of which EUR 1,582.50 was payable by the applicant and EUR 850 had already been received in legal aid from the Court. A second invoice was produced, by which the representatives sought EUR 1,674.40 from the applicant.

100. The Government pointed out that the applicant only adduced two invoices but no document, such as a contract between him and the lawyers, which would prove the connection to the case.

101. 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 were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 3,000 for the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning Articles 3, in so far as they refer to the conditions of detention in Poarta Albă and Rahova Prisons admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 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:
      (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,000 (three thousand euros), plus any tax that might be chargeable to the applicant, for 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;

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

Done in English, and notified in writing on 11 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President