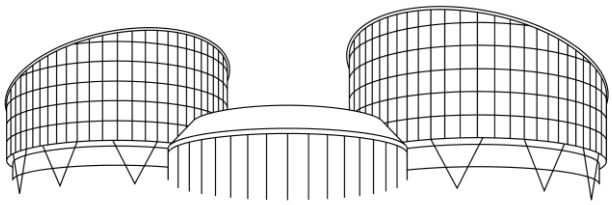

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF NICULESCU v. ROMANIA

(Application no. 25333/03)

JUDGMENT

STRASBOURG

25 June 2013

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 Niculescu v. Romania,

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

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

Having deliberated in private on 4 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 25333/03) 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 Romanian national, Ms Lidia Niculescu ("the applicant"), on 20 June 2003.

2. The applicant was represented by Mr Romeo Coman, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Mr Răzvan-Horaţiu Radu, of the Ministry of Foreign Affairs.

3. On 15 September 2009 it was decided to communicate to the Government the complaints concerning the conditions of the applicant's detention (Article 3 of the Convention), the alleged unfairness of the criminal proceedings against her (Article 6 of the Convention) and the impact of telephone tapping as an investigative measure and of the surveillance measures in prison on the right to respect for her private life (Article 8 of the Convention) and to declare inadmissible the remaining complaints. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

4. As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mrs Kristina Pardalos to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956 and lives in Bucharest. At the relevant time, she was a lawyer specialised in criminal matters, in the Bucharest Bar Association.

A. Criminal investigations against the applicant

6. On 4 April 2000 the Anti-Corruption Department of the Prosecutor's Office attached to the Supreme Court of Justice ("the prosecutor's office" or "the prosecutor") authorised telephone tapping in respect of the applicant and her husband for a period of six months, running until 4 October 2000. The authorisation was granted at the request of the Romanian Intelligence Service ("the RIS") under the National Security Act (Law no. 51/1991).

7. On 25 August 2000 the prosecutor's office issued a new similar authorisation, under the National Security Act, granting interception of another of the applicant's telephone lines, also until 4 October 2000.

8. On 11 September 2000 the RIS informed the prosecutor that the applicant had given bribes to several judges and prosecutors in order to obtain decisions favourable to her clients. It based the accusation on information obtained through the telephone tapping. Several conversations between the applicant and judge V.A. concerning cases of the applicant's clients had been recorded between 7 and 14 June 2000.

The RIS handed over the audio tapes and their transcripts to the prosecutor's office. The prosecutor then continued the surveillance of the applicant's activities, including through telephone tapping.

9. In its report, the RIS referred to G.D. as the applicant's "intimate friend", whereas other participants in the various conversations recorded are referred to simply as "friend". Those syntagms were reproduced several times in the decision adopted by the first-instance court.

B. Criminal proceedings against the applicant

10. On 30 April 2001 the prosecutor instituted criminal proceedings against the applicant (*începerea urmăririi penale*).

11. In the evening of 3 May 2001, as the applicant was returning home by car accompanied by T.C., a fellow lawyer, she was apprehended by the police and taken to the prosecutor's office for questioning on charges of corruption.

12. The applicant was shown the RIS report of 11 September 2000 (see paragraph 8 above) and then questioned throughout the night.

According to her, T.C. was not allowed to attend the actual questioning; he was allowed to see the applicant only afterwards, when she was writing a statement, which he then read and countersigned. In her statement the applicant confessed to the crimes and gave a detailed description of the facts. While the applicant was in the prosecutor's office, T.C. completed a power of attorney document so that he could represent her in the event that she was taken into custody that night. The applicant did not sign that document.

13. The applicant lodged a criminal complaint against the prosecutor in charge of the proceedings on the night of 3 May 2001, but on 2 September 2002 the Prosecutor's Office attached to the Supreme Court of Justice decided not to prosecute. The applicant did not object to that decision before the courts.

14. On 4 May 2001 the applicant was hospitalised for panic attacks, impulsive personality disorders and stress induced by her workload. She left the hospital the next day, on her own initiative.

15. On 7 May 2001 the prosecutor ordered the applicant's detention pending trial. However, she could not be arrested, as she had left the country. On 14 July 2001 the applicant was apprehended in Bulgaria. She was extradited at the prosecutor's request.

16. On 6 June 2001 the prosecutor set in motion the criminal trial against the applicant (*punerea în mişcare a acţiunii penale*).

17. On 18, 22 and 26 September, and 1 October 2001 the applicant gave new statements to the prosecutor in the presence of her appointed counsels. She retracted her initial confession, claiming that it had not represented the truth but was a mere reproduction of what the prosecutor had read to her from the RIS report (see paragraph 8 above). She claimed that at the time she had made the initial statement she had been in a state of shock, having been traumatised by the prosecutor and forced to confess to deeds that she had not committed. The prosecutor had suggested that if she confessed, only disciplinary action would be taken against the judges and prosecutors suspected of corruption; she was therefore led to believe that through her action she would help the magistrates who were under investigation.

She denied having committed any of the acts of corruption imputed to her and claimed that she could not remember what she and the other defendants had been referring to in the conversations recorded by the RIS and played to her by the prosecutor during questioning.

Mention was made in the statements that the applicant had been informed of the charges brought against her and of the rights of the defence.

18. On 12 December 2001 the prosecutor indicted the applicant for trading in influence (*trafic de influenţă*), giving bribes (*dare de mită*) and illegally crossing the border (*trecerea frauduloasă a frontierei*). Several other persons were committed to trial under the same measure, including judges V.A. and R.F. and a prosecutor.

In particular, the applicant was accused of having offered money to judges, including V.A. and R.F., in an attempt to have some of her clients released from pre-trial detention. She was also accused of having fled the country in order to escape the criminal proceedings against her.

C. First-instance court proceedings

19. The case was heard by the Criminal Division of the Supreme Court of Justice.

20. On 31 January 2002 the Supreme Court heard testimony from each defendant and the relevant parts of the audio tapes were played in their presence. None of them denied having had the recorded conversations.

21. The applicant denied having committed any crime and claimed that she could not remember exactly what she had been referring to in the conversations recorded by the RIS. She maintained that the discussions with V.A. had concerned only matters of law.

22. Judge V.A. also denied having committed any crime. He explained that his discussions with the applicant, which had been recorded through secret surveillance, as well as those he had had with his fellow judges about the cases referred to by the applicant, had concerned only questions of law. He maintained that he had not accepted any money or promise of money from the applicant. He reiterated that in his capacity as judge inspector, he was entitled to discuss questions of law with his colleagues.

23. Judge R.F. also denied having committed any crimes. She claimed that the only relevant discussions she had had with V.A. were in connection with the cases in which they had been sitting on the same bench. She declared that she did not know the applicant, had not accepted any money to intervene in any case and that the measures under scrutiny had been legitimate.

24. At the same hearing on 31 January 2002, the co-defendants alleged that there were procedural defects. They argued that as the prosecutor had failed to request the necessary authorisation for intercepting magistrates' conversations, the audio recordings were illegal.

The court gave detailed answers to their complaints. Concerning the telephone tapping, it noted that one of the applicant's clients had been indicted for weapons and ammunition smuggling, which, under the National Security Act, constituted a threat to national security and thus allowed the RIS, under a procedure regulated by the Code of Criminal Procedure, to seek authorisation from the prosecutor to intercept the suspect's conversations. The fact that during the surveillance activity the authorities came across telephone discussions among the co-defendants which led them to believe that the applicant was trying to corrupt judges constituted preliminary investigation (*acte premergătoare*).

The Supreme Court reiterated that so long as the recordings had been obtained during the preliminary investigation phase, they did not constitute evidence. Only if the judicial authorities considered their content relevant for the criminal proceedings could those recordings be admitted to the file.

25. On 21 February 2002 the statements made by the defendants were read out in court. They were allowed to supplement their testimony and put questions to their co-defendants.

26. At the same hearing the Supreme Court heard testimony from the witnesses for the prosecution.

27. On 14 March 2002, at the defendants' request, the Supreme Court ordered an expert examination of the audio tapes, in accordance with Article 91^5 of the Code of Criminal Procedure ("the CCP").

28. At a hearing on 4 April 2002 the Supreme Court dismissed a request by the co-defendants, A.V. and R.F., for the RIS to be asked to adduce the reports drafted by the officers in charge of the surveillance and the reports attesting to the transfer of the audio tapes between the RIS and the prosecutor's office. The Supreme Court considered that that evidence was irrelevant in so far as none of the parties involved had contested having had the recorded conversations.

29. On 4 April, 25 April, 9 May, and 6 June 2002 the Supreme Court heard eight witnesses for the defence.

30. Lawyer T.C. attested that the applicant had been in a state of shock the night when she had been taken to the prosecutor's office to give a statement; that he had accompanied her there but had not been allowed to attend the actual questioning; and that only afterwards had he seen her writing the statement, which he had then read and countersigned. He reiterated that while the applicant had been in the prosecutor's office, he had completed a power of attorney document so that he could represent her (see paragraph 12 above).

31. On 3 June 2002 the two experts rendered their report, as requested by the Supreme Court. They concluded that the audio tapes were neither authentic nor original and advised against admitting them as evidence in the criminal trial.

32. On 6 November 2002 the Supreme Court of Justice, sitting as a three-judge bench, rendered its decision. It changed the legal classification from a continuous crime of giving bribes, to three individual crimes of giving bribes. It convicted the applicant for the three counts of giving bribes, for trading in influence and for illegally crossing the border, and sentenced her to six years' imprisonment. The co-defendants were likewise convicted and received prison sentences for their deeds. The sums of money received in bribes were confiscated.

33. The Supreme Court considered that the statements made by the defendants and the witnesses, both before the prosecutor and in open court, corroborated the theory that some of the applicant's clients had been

released from prison because she had bribed the judges. The court also noted that some of the witnesses for the prosecution who had retracted their initial statements had admitted, either before the prosecutor or in court, that they had been pressured by the defendants into changing their declarations. The court also considered that the testimonies given by the applicant and the witnesses corroborated the transcripts of the telephone conversations.

34. The Supreme Court also made a lengthy analysis of the transcripts, thus responding to the defendants' allegations that they had been obtained unlawfully and that they could not be used as evidence as they had been collected during the preliminary investigation stage. The court reiterated that none of the participants had denied having had the conversations recorded on the tapes produced by the prosecutor and listened to in open court. It noted that the experts had not questioned that aspect either.

As for the authenticity and originality of the tapes, which the experts contested, the court pointed out that, in the sense of Article 224 of the Code of Criminal Procedure, the report concerning the transcripts, drafted by the prosecutor after the opening of the criminal proceedings, represented the evidence and not the tapes themselves (which were attached to the prosecutor's report, as the law required); neither did the original hard-disk on which the conversations had been recorded. In his report, the prosecutor attested to the authenticity of the recordings and proved that the procedure in place for the telephone tapping had been respected. The court confirmed those aspects. The defendants had had ample opportunity to challenge it, as provided for by the CCP.

Moreover, the court observed that the original recording had been digital, done straight onto the hard-disk of the equipment used by the RIS for telephone tapping; the tapes attached to the prosecutor's report were consequently copies of the original recordings. Because of its nature and purpose, the hard-disk could not be attached to the prosecutor's report; furthermore, it did not need to be attached as it did not constitute evidence. The court concluded that the absence of the hard-disk did not automatically disqualify the transcripts from being used as evidence.

The court noted that, for obvious reasons related to respect for the private life of those involved, it had not listened to all the conversations recorded by the RIS, but only to those relevant to the charges brought before it. However, the parts presented to it and to the defendants by the prosecutor represented full conversations. The dialogues were coherent, the sentences were not truncated and no words were missing or had been inserted into the dialogues. It observed that neither the experts nor the parties had claimed that the content of the conversations heard in court had been falsified.

35. The court was therefore satisfied that the prosecutor's report on the telephone tapping and its transcripts qualified as lawful evidence for admission to the case file.

36. The Supreme Court further dismissed the applicant's complaints concerning the manner in which she had been questioned by the prosecutor in the night of 3 May 2001. In particular, the court observed that the applicant's statement was clear and coherent. In the court's opinion, it showed no signs of having been given in an unbalanced mental state, as the applicant had tried to claim afterwards. The court proceeded to examine in parallel the RIS report and the applicant's incriminatory statement, and noted that she had offered significant details that did not figure in the RIS report. This proved that she had had the conversations, as only a direct participant could have known aspects that had not been revealed in the RIS report but had later been confirmed by supporting evidence. It also noted that neither she nor her counsel had made any complaints at that time about the questioning or the alleged disregard for the rights of the defence.

D. Appeal proceedings

37. All parties appealed against the judgment. In particular, the applicant complained that the Supreme Court had changed the classification of the crimes; that she had been forced to make the initial statement of 4 May 2001; that the telephone tapping had been illegal and in breach of Article 8 of the Convention – she asked the court to hear evidence from the experts – and lastly, that there had not been sufficient elements to justify her conviction by the lower court.

The applicant made no specific complaints concerning the wording of the judgment, in particular about the manner in which the court had qualified one of her interlocutors as an "intimate friend".

38. The case was heard by a nine-judge bench of the Supreme Court, who rendered the final decision on 8 October 2003.

39. The Supreme Court noted that the telephone tapping had not observed the stricter requirements relating to magistrates. It was nevertheless satisfied that such requirements were not relevant in the case because the magistrates had not been targeted by the initial measure of telephone tapping; on this point it reiterated that the information concerning the magistrates' alleged involvement had been obtained incidentally by the prosecutor. It observed that for the procedural acts concerning the magistrates the prosecutor had obtained all the necessary authorisations. The court also reiterated that as the tapes had disclosed information on the commission of crimes, they could not have been ignored by the authorities. Furthermore, the tapes had been made with the prosecutor's prior approval, as the law had required at the time, and had not contravened public order. The Supreme Court attached great importance to the fact that the defendants had not denied having had the recorded conversations. It also noted that the information obtained through the telephone tapping had been confirmed by

the evidence in the file. It therefore concluded that the tapes could be used as evidence.

The Supreme Court also decided that the evidence had to be interpreted in its entirety and in context, and reiterated that the law did not give precedence to any type of evidence to the detriment of others.

40. It therefore concluded that the evidence in the file was sufficient and that the first-instance court had correctly interpreted the facts based on the elements at its disposal.

41. The Supreme Court noted that the first-instance court had changed the legal classification of the crimes committed by the applicant from a continuous crime of giving bribe to several individual crimes of giving bribes and of the crimes committed by V.A. from a continuous crime of trading in influence and aiding and abetting the applicant to give bribes to several individual crimes of trading in influence and aiding and abetting the applicant to give bribes. It accepted that the first-instance court had erred in not allowing the parties to discuss the new legal classification of the crimes. However, it noted that such a failure did not trigger the nullity of the judgment and that in fact there had not been any risk of the defendants being disadvantaged by the new classification, as the consequences in law for both situations were identical.

E. Conditions of detention

42. From the date of her arrest on 7 December 2001 until her release on 1 March 2005, the applicant was held mainly in Bucharest-Rahova and Târgşor Prisons. She was first taken to the latter on 7 September 2002.

1. Conditions in Rahova Prison

43. Regarding the conditions of detention in Rahova Prison, the applicant alleged that she had been held in overcrowded, badly ventilated cells. She claimed that the occupancy rate had been between nine and twenty prisoners to one six-bed cell. She had had to share the cell with individuals suffering from consumption or HIV. She alleged that the detainee who had been suffering from HIV had been violent and had threatened her fellow inmates that she would contaminate them with the virus. The applicant further alleged that the prison authorities had failed to intervene, despite her complaints.

44. It appears from the official prison documents submitted by the Government that in Rahova Prison the applicant was held in a 21 sq. m cell containing ten bunk beds. The cell had a 1.44 sq. m window, and the ventilation was ensured naturally through the door and window. It contained a separate toilet measuring 1.78 sq. m with a window and a shower room measuring 6.48 sq. m. The detainees had permanent access to running drinkable water; hot water was available twice a week for two hours at a

time. The inmates were responsible for cleaning the facilities with products provided by the prison administration.

The detainees were allowed daily walks of one to three hours in the prison court yard.

2. Conditions in Târgşor Prison

45. According to the applicant, during her stay in Târgşor Prison she had had to work for more than ten hours each day and received less than the monthly average salary.

46. The official prison records submitted by the Government attested that the applicant had worked an average of 17.76 days a month for an average of eight hours a day, which was below the twelve-hour working day permissible under the Execution of Sentences Act ("Law no. 23/1969"; see paragraph 59 below). In accordance with the relevant law, the applicant's sentence was reduced in proportion to the work performed. She also received remuneration for her work, of which, in accordance with the law, 10% was paid to her and 90% to the prison.

3. Complaints against the Târgşor Prison administration

47. During her stay in Târgşor Prison the applicant lodged a complaint under Emergency Ordinance no. 56/2003 on the rights of persons deprived of their liberty ("Ordinance no. 56/2003"; see paragraph 59 below) alleging lack of privacy when making telephone calls from prison. She complained that the telephones were too close to each other to allow for private conversations and that the wardens remained close by when prisoners were using the phones. She sought 5,000 euros (EUR) in damages for mental suffering.

48. It appears from the information submitted by the prison authorities that detainees were required to write down in a special register the date and start time of telephone calls, the number dialled, and to sign their name.

49. On 26 October 2004 the Ploieşti District Court dismissed the complaint, considering that the situation in Târgşor Prison respected the relevant regulations concerning the confidentiality of telephone conversations and that therefore no infringement of the privacy rights guaranteed under Article 8 could be found.

50. In an appeal lodged against the District Court's judgment, the applicant pointed out that all the phone numbers dialled from prison were recorded in a special register, along with the date and time of the respective calls.

51. In a final decision of 15 December 2004 the Prahova County Court dismissed the appeal and upheld the District Court's decision. It observed that the telephones were placed at regular two-metre intervals approximately three to four metres from the warden's booth. Under the

regulations, the warden had an obligation to check that the telephone number dialled was the same as that entered by the prisoner in the special register, but she did not monitor the telephone conversation itself. The court considered that the registration of the dialled numbers did not constitute a breach of prisoners' privacy rights.

F. Applicant's divorce

52. On 4 September 2003 the applicant filed for divorce and custody of her minor child, on the grounds that her relationship with her husband had started to become tense in 2000; he had neglected their two children and had ultimately left home in May-June 2001.

53. The request was granted and in a decision of 13 November 2003 the Bucharest District Court declared the couple divorced. The applicant reverted to her maiden name, Niculescu.

G. Exclusion from the Bar Association

54. On 10 May 2001 the applicant was suspended from the Bar Association for the duration of the criminal proceedings against her.

On 27 October 2003 the Bucharest Bar Association decided, based on a recommendation by the National Bar Association, to exclude the applicant from its list of members. This decision was not communicated to the applicant.

55. As the final decision of 8 October 2003 (see paragraphs 38 and following, above) did not prohibit the applicant from exercising her profession, on 5 May 2005 she asked the Bucharest Bar Association to reinstate her. On 20 April 2005 the Bucharest Bar refused her request and informed her of the decision taken on 27 October 2003.

56. Having objected unsuccessfully to the National Bar Association, the applicant lodged a complaint with the administrative courts, invoking both procedural and substantive flaws in the contested decision.

57. On 8 January 2008 the Bucharest Court of Appeal dismissed the complaint, giving detailed responses to all the arguments raised by the applicant. In particular, the court noted that the applicant's name had been struck from the Bar Association's list of lawyers not to prohibit her from exercising her profession, but because, in committing crimes in the exercise of her profession, she had become unfit to practise as a lawyer, in accordance with the Legal Profession Act (Law no. 51/1995).

58. An appeal lodged by the applicant was subsequently dismissed by the High Court of Cassation and Justice, which gave the final ruling in the case on 22 October 2008.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL STANDARDS

A. On the conditions of detention

59. The relevant legal provisions concerning the conditions of detention, including a succession of laws on the execution of sentences – Law no. 23/1969, Ordinance no. 56/2003 (in force since 27 June 2003) and Law no. 275/2006 (in force since 23 July 2006) – and the effective remedies they introduced are summarised in *Iacov Stanciu v. Romania* (no. 35972/05, §§ 113-19, 24 July 2012).

In addition, the provisions of the above laws concerning prison work are detailed in *Floroiu v. Romania* (dec.), no. 15303/10, §§ 17-21, 12 March 2013).

The relevant findings and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") and the reports by the Council of Europe Commissioner for Human Rights, made following numerous visits to Romanian prisons, are also summarised in *Iacov Stanciu*, cited above, §§ 125-29).

There is no CPT report concerning Rahova Prison. However, a Romanian NGO, APADOR-CH (Association for the Defence of Human Rights in Romania – the Helsinki Committee) visited that establishment on 13 February 2009. The report prepared following its visit indicated that, based on the information submitted by the authorities, the average personal space for each prisoner was 2.77 sq. m. The overcrowding was obvious when visiting individual cells: one of the cells visited, measuring 18 sq. m, had accommodated eleven prisoners, even though only ten beds had been available. The report indicated that only one detainee had complained about the quality of the prison food and that many prisoners had preferred to eat the food they received from home or bought from the shop (see *Goh v. Romania*, no. 9643/03, § 38, 21 June 2011).

B. On the telephone tapping

60. The legislation in force at the relevant time concerning telephone tapping, including the National Security Act, is described in *Dumitru Popescu v. Romania (no. 2)* (no. 71525/01, §§ 39-46, 26 April 2007).

61. The relevant provisions of the Code of Criminal Procedure concerning the preliminary investigation read as follows:

Article 224 §§ 1 and 3
The preliminary investigation

"1. The criminal investigation authorities may conduct any preliminary investigation measures.

...

3. The report of execution of any preliminary investigation measure shall constitute evidence."

Article 228 § 1
Openi**ng of criminal proceedings (*urmărirea penală*)**

"The criminal investigation authority to which an application is made in accordance with any of the arrangements set forth in Article 221 shall order, by decision (*rezoluţie*), the opening of criminal proceedings where the content of that application or the preliminary investigation does not disclose any grounds for not prosecuting, as provided for in Article 10, with the exception of the ground set out in subparagraph (b)1."

62. Concerning the telephone tapping at the preliminary investigation stage, the High Court of Cassation and Justice considered, in a decision rendered in an appeal on points of law (decision no. 10 of 7 January 2008) that the lawfulness of the interception was not dependent on whether criminal proceedings had been opened; it further noted that the law did not impose an obligation on the authorities to inform the person concerned of that measure, an omission which the High Court found reasonable, given the purpose of the telephone tapping and its secrecy. However, the person concerned had subsequently had an opportunity to listen to the recordings and contest their content. The High Court also reiterated that there was no prior value attached to the report drafted by the prosecutor, as the courts were free to assess the evidence in the context of the files under examination.

By its decision no. 962 of 25 June 2009, the Constitutional Court confirmed that Article 91^1 of the CCP did not allow for evidence to be gathered during the preliminary investigations; any such evidence would fall under the courts' scrutiny.

C. On the telephone conversations in prison

63. The provisions of Ordinance no. 56/2003 and the subsequent Execution of Sentences Act (Law no. 275/2006), concerning the use of public telephones in prison, are described in *Brânduşe v. Romania* (no. 6586/03, § 26, 7 April 2009) and in *Coscodar v. Romania* ((dec.), no. 36020/06, § 12, 9 March 2010). In addition, in accordance with Article 7 of Order no. 4622 issued on 22 September 2003 by the Director General of the Prison Administration pursuant to the above Ordinance, the

prison staff had to keep a record of the numbers dialled by the detainees and the start time of telephone calls.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

64. The applicant complained about the conditions of detention in Rahova and Târgşor Prisons. In particular, she complained of overcrowding in Rahova and of the prison work in Târgşor. On 31 May 2010 she raised an additional complaint of overcrowding and poor sanitary conditions in Târgşor Prison. She relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. Conditions of detention in Târgşor Prison

65. The Government raised a plea of non-exhaustion of domestic remedies, arguing that the applicant had failed to lodge any complaint against the prison administrations concerning the conditions of detention and the work conditions in prison, either under the general provisions of the Criminal Code prohibiting ill-treatment and torture or under the provisions of Ordinance no. 56/2003. They argued that the applicant had not worked for more than eight hours a day and that it had been in her interest to work as she had thereby obtained significant benefits, such as remuneration and the reduction of her sentence.

66. The applicant contested the Government's argument. She maintained that she had had to work for more than eight hours a day and more than forty hours a week, and also during weekends, which went beyond what could reasonably be required of a detainee.

67. At the outset, the Court notes that, in lodging her complaint of overcrowding in Târgşor Prison, the applicant failed to observe the six-month time-limit stipulated in Article 35 § 1 of the Convention. She was released from prison on 1 March 2005 but did not lodge her complaint until 31 May 2010.

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

68. The Court further notes that the applicant complains of the working hours in Târgşor Prison and the remuneration received.

69. Even assuming that the applicant did not have at her disposal an effective remedy to complain about the work conditions, not even after the coming into force of Ordinance no. 56/2003 (see *Petrea*, cited above, § 35), the Court considers that this part of the complaint is manifestly ill-founded for the reasons explained below.

70. In reiterates that its role is not to examine the legislation *in abstracto*, 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).

71. In particular, according to the information from the official prison records (see paragraph 46 above), it appears that the applicant worked an average of eight hours a day for 17.76 days a month. Furthermore, the work performed benefited the applicant, as she received a reduction of her sentence and remuneration (see, *mutatis mutandis, Stummer v. Austria* [GC], no. 37452/02, § 103, ECHR 2011 and *Floroiu*, cited above, § 36). The applicant failed to prove that the prison working schedule was such as to humiliate and debase her to a level that would raise an issue under Article 3 of the Convention.

72. Furthermore, the Court notes that the applicant complained about the level of remuneration received for the work performed while in prison.

In a recent case, the Court found, albeit under Article 4 of the Convention, that the reduction of the sentence as a result of the prison work represents an acceptable form of remuneration (see *Floroiu*, cited above, § 36; and also, *mutatis mutandis*, *Stummer*, cited above, § 122 and *Twenty-one Detained Persons v. Germany*, nos. 3134/67, 3172/67, 3188-3206/67, Commission decision of 6 April 1968, Decisions and Reports (DR) 27, pp. 97-116).

73. Bearing in mind the reasoning it has given for its ruling under Article 4, as well as the particular circumstances of the present case, the Court considers that the work performed by the applicant, despite her dissatisfaction with the level of remuneration, does not pass the threshold set by Article 3 of the Convention.

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.

2. Conditions of detention in Rahova Prison

74. The Government extended their non-exhaustion objection to the conditions of detention in Târgşor Prison, for the same reasons as those cited above (see paragraph 65 above).

75. The Court notes that the applicant's complaint concerns the material conditions of her detention, relating, *inter alia*, to overcrowding and poor

sanitary facilities. It has already found, in numerous similar cases regarding complaints about conditions of detention relating to structural issues such as overcrowding or dilapidated installations, that given the specific nature of this type of complaint, the legal actions suggested by the Romanian Government do not constitute effective remedies (see, among others, *Petrea v. Romania*, no. 4792/03, § 37, 29 April 2008; *Eugen Gabriel Radu v. Romania*, no. 3036/04, § 23, 13 October 2009; *Iamandi v. Romania*, no. 25867/03, § 49, 1 June 2010; *Cucolaş v. Romania*, no. 17044/03, § 67, 26 October 2010; *Ogică v. Romania*, no. 24708/03, § 35, 27 May 2010; *Dimakos v. Romania*, no. 10675/03, § 38, 6 July 2010; and *Goh*, cited above, §§ 43-45).

76. Therefore, the Court dismisses the Government's preliminary objection in so far as it concerns the material conditions of detention in Rahova Prison.

The Court further notes that this part of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' positions

77. The applicant reiterated that she had been placed in overcrowded and badly ventilated cells.

78. The Government contended that the applicant's statements, unsubstantiated in any manner, were contradicted by the official records of the prison administration. They argued that the applicant had been held in satisfactory conditions.

2. The Court's assessment

(a) General principles

79. The Court refers to the principles established in its case-law regarding conditions of detention (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, §§ 90-94, ECHR 2000-XI; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; *Artimenco v. Romania*, no. 12535/04, §§ 31-33, 30 June 2009; and *Ogică*, cited above, §§ 40-41). It reiterates, in particular, that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3; the assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental

effects and, in some instances, the sex, age and state of health of the victim (see *Kudła*, cited above, § 91).

The Court has considered extreme lack of space as a central factor in its analysis of whether an applicant's detention conditions complied with Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, § 39, 7 April 2005). In a series of cases the Court considered that a clear case of overcrowding was a sufficient element for concluding that Article 3 of the Convention had been violated (see *Colesnicov v. Romania*, no. 36479/03, §§ 78-82, 21 December 2010, and *Budaca v. Romania*, no. 57260/10, §§ 40-45, 17 July 2012).

80. The Court has already found violations of Article 3 of the Convention on account of the material conditions of detention in Rahova Prison, especially with respect to overcrowding and lack of hygiene (see, among others, *Vartic v. Romania*, no. 12152/05, § 53, 10 July 2012; *Iacov Stanciu*, § 179; and *Goh*, § 66, both cited above).

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

81. The Court observes, based on all the material at its disposal, that the personal space allocated to the applicant in Rahova Prison was less than 4 sq. m (see paragraph 44 above). The Government have not put forward any element capable of refuting the applicant's allegations of overcrowding in the cells where she was detained, which are corroborated by the above-mentioned information from many sources, including the Government.

82. For those reasons the Court concludes that the detention caused her 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 in so far as the conditions of the applicant's detention are concerned.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

83. The applicant further complained that the interception of her communications had been illegal and had lacked proper authorisation, in violation of her Article 8 rights. She also complained that the courts had written in their decisions that G.D. was an "intimate friend" of hers, which had contributed significantly to her divorce (see paragraph 9 above). Under the same Article, she complained that the Târgşor Prison authorities had breached her right to confidentiality with regard to the location of the telephones and the warden's proximity during telephone conversations, as well as the obligation to register the numbers dialled.

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. On the applicant's divorce

84. The Government argued that there was no connection between the RIS referring to one of the applicant's acquaintances as an "intimate friend" and her subsequent divorce. There had been no mention of that factor in the divorce proceedings. Moreover, the applicant herself had instituted the divorce proceedings on the grounds that the relations with her former spouse had become cold and tense since 2000, that is, well before the RIS report became public, in 2001.

85. The applicant made no further comments on this point.

86. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system, thus dispensing the States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with this rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see, among many other authorities, *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52, and *Selmouni v. France* [GC], no. 25803/94, §§ 74-75, ECHR 1999-IV).

87. In the case under examination the Court notes that there is no indication in the file that the applicant complained to the authorities of that reference. In particular, from the elements before the Court it appears that the applicant did not raise the matter in her application for divorce (see paragraph 52 above) and the divorce court made no reference to that factor; nor did the applicant raise the matter in her appeal on the merits of the criminal proceedings (see paragraph 37 *in fine*, above). Furthermore, the Court cannot speculate on the role that that reference might have played in the deterioration of the applicants' relations with her spouse.

88. For this reason, even assuming that the RIS's reference, regrettable as it may be, constituted an attack on the applicant's honour and reputation severe enough to pass the threshold of Article 8 (see *A. v. Norway*,

no. 28070/06, §§ 63-65, 9 April 2009), the complaint must be declared inadmissible for failure to exhaust the domestic remedies.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention.

2. On the privacy of telephone conversations in Târgşor Prison

89. The Government averred that the wardens had ensured the privacy of telephone conversations, in accordance with the relevant rules, and pointed out that the domestic courts had confirmed that situation. They further argued that the mere inscription of the dialled numbers in a register did not breach the applicant's right to respect for her privacy and was aimed mainly at ensuring that detainees did not exceed the number of phone calls to which they were entitled under the regulations.

Lastly, the Government pointed out that no other detainee from Târgşor Prison had complained of lack of privacy of their telephone conversations.

90. The applicant contested those arguments.

91. The Court notes at the outset that the interference with the applicant's right to respect for her privacy was the result of the internal regulations of the prison and could be seen as pursuing the aim of enforcing the prison rule limiting the number of phone calls allowed (see *Coşcodar v. Romania* (dec.), no. 36020/06, § 30, 9 March 2010).

92. The Court further reiterates that in *Coşcodar* (cited above, § 33), it found that the presence of a warden during telephone conversations and the registration of numbers dialled from prison, albeit an interference with detainees' right to respect for their private life, was necessary in a democratic society for the purposes of Article 8 § 2 of the Convention, in so far as monitoring was less intrusive than interception of communications and as the monitoring was performed with the detainees' knowledge (see also concerning monitoring *Malone v. the United Kingdom*, 2 August 1984, § 84, Series A no. 82, and concerning the applicants' knowledge of the monitoring *Copland v. the United Kingdom*, no. 62617/00, § 44, ECHR 2007-I).

93. In the present case, the Court notes that a similar complaint was lodged with the domestic courts, which examined the facts in the light of the applicable legislation. They found that the telephones had been installed at intervals that allowed for the privacy of conversations and that the wardens had not remained close to the detainees during their conversations and thus had not listened in to the conversations (see also *Coşcodar,* cited above, § 30). Furthermore, the applicant was aware of the monitoring taking place, as she had written down the dialled numbers herself (see paragraph 48 above).

94. In the light of the above, the Court has no reasons to depart from its finding in *Coşcodar* (cited above, § 35), and concludes that the interference with the applicant's right to respect for her privacy caused by the

surveillance measures in place in Târgşor Prison was justified for the purposes of Article 8 § 2 of the Convention.

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.

3. On the telephone tapping

95. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

96. The applicant stated that the prosecutor's authorisation of the telephone interception had constituted a serious breach of the right to respect for her privacy. She argued that essential information had been missing from the authorisation, such as the name of the prosecutor who issued it, which had made it impossible for her to complain against that measure.

97. The Government did not contest that the telephone tapping had constituted interference with the applicant's rights. However, it had been carried out in accordance with the law, the National Security Act. Relying on *Klass and Others* (cited above, § 49), they stated that the Court had accepted that national security concerns could justify, in exceptional circumstances, measures of secret surveillance. Furthermore, the measure had been authorised by the prosecutor and the applicant had had the opportunity – of which she had availed herself – to obtain an expert examination of the evidence thus obtained.

2. The Court's assessment

98. The Court observes at the outset that telephone conversations 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 and *Drakšas v. Lithuania*, no. 36662/04, § 52, 31 July 2012). It also notes that in the present case the conversations between the applicant and V.A. were recorded in June 2000 under a mandate given to the RIS by the prosecutor under the National Security Act (see paragraph 8 above).

99. The Court further reiterates that it has already examined whether the system in place in Romania for telephone tapping on grounds of national security complied with the requirements of Article 8 of the Convention (see *Dumitru Popescu*, cited above, as well as *Calmanovici v. Romania*,

no. 42250/02, §§ 120-26, 1 July 2008). It has ruled that the system lacked proper safeguards and thus breached the requirements of Article 8, in so far as the prosecutor authorising the surveillance was not independent from the executive (see *Dumitru Popescu*, cited above, § 71); a prosecutor's decision to intercept communications was not subject to judicial review 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 the transcripts could be destroyed (*idem*, § 79).

100. The Court notes that the facts of the present case are similar to the ones examined in *Dumitru Popescu* and the same laws are applicable to them. It also observes that in the case under examination the applicants obtained an expert's opinion on the authenticity and originality of the tapes (see, *a contrario*, *Dumitru Popescu*, cited above, § 21). However, the remaining flaws identified by the Court in the system had an effect on the applicant's rights.

101. For these reasons, in the light of its previous case-law and having examined the observations submitted by the parties in the present case, the Court sees no reason to depart from the conclusion it reached in *Dumitru Popescu*, cited above, in particular given that the same laws are at issue in the case before it.

102. Accordingly, the Court considers that in the present case there has been a violation of Article 8 of the Convention on account of a lack of safeguards in the procedure for telephone interceptions on grounds of national security.

III. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (a), (b) AND (d) OF THE CONVENTION ON ACCOUNT OF THE CRIMINAL PROCEEDINGS

103. The applicant complained that the criminal proceeding against her had not been fair. She relied on Article 6 §§ 1 and 3 (a), (b) and (d) of the Convention, which read as follows:

> "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:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> ...
>
> (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; ..."

A. Admissibility

104. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

105. The applicant complained that on the night of 3 May 2001, the prosecutor had not informed her of the charges made against her or of her right to remain silent, thus breaching irremediably the rights of defence. She argued that the fact that she had been a criminal lawyer at that time should not come into play, as the law did not institute derogation from the right of defence for those in legal professions. She pointed out that the law prohibited the use of evidence obtained through compulsion or against the will of the accused.

She also argued that she had not been effectively assisted by counsel during that first interrogation.

Notwithstanding those flaws, the prosecutor and the courts had relied on the first statements that she had made to the prosecutor.

106. The applicant further complained that recordings of telephone conversations had been used as the main evidence for her conviction, even though they had been illegally obtained, before the opening of the criminal proceedings and without the proper procedure being observed by the authorities. She also complained that the courts had not interviewed the experts on the authenticity of that evidence and had decided contrary to the conclusions of their expert reports.

107. The Government contested those arguments. They averred that the applicant had been accompanied by a lawyer during the initial questioning and had had the opportunity of conferring with him. They pointed out that she herself had been a practising criminal lawyer at that time.

108. The Government noted that none of the accused persons had contested the content of the recorded conversations or the fact that the voices on the tape were theirs; therefore, the expert examination had not concerned either of those elements. They further pointed out that the courts had been satisfied that the evidence was sufficient for the examination of the case.

2. The Court's assessment

(a) General principles

109. 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* 1996-II; and *Artico v. Italy*, 13 May 1980, § 32, Series A no. 37).

110. According to the Court's case-law, for the purposes of Article 6, the "charge" could be defined as the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence or where "the situation of the [suspect] has been substantially affected" (see *Deweer*, cited above, § 46).

111. As regards the privilege against self-incrimination or the right to remain silent, the Court reiterates that these are generally recognised international standards which lie at the heart of a fair procedure. Their aim is to provide an accused person with protection against improper compulsion by the authorities and thus to avoid miscarriages of justice and secure the aims of Article 6. The right not to incriminate oneself is primarily concerned with respecting the will of an accused person to remain silent and presupposes that the prosecution in a criminal case seeks to prove the case against the accused without resorting to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see *Saunders v. the United Kingdom*, 17 December 1996, §§ 68-69, *Reports* 1996-VI). In examining whether a procedure has extinguished the very essence of the privilege against self-incrimination, the Court must examine the nature and degree of the compulsion, the existence of any relevant safeguards in the procedures and the use to which any material so obtained is put (see *Bykov v. Russia* [GC], no. 4378/02, § 92, 10 March 2009).

112. Early access to a lawyer is part of the procedural safeguards to which the Court will have particular regard when examining whether a procedure has breached the privilege against self-incrimination. In particular, in order for the right to a fair trial to remain sufficiently "practical and effective", Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the initial questioning of a suspect by the police, unless it is demonstrated, in the light of the particular circumstances of each case, that there are compelling reasons to restrict that right. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction (see *Salduz v. Turkey* [GC], no. 36391/02, §§ 54-55, ECHR 2008).

113. The Court further reiterates that it is not competent to deal with an application alleging that errors of law or fact 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).

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 the role of 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.

114. The Court has already found in particular circumstances of a given case, that the fact that the domestic courts used as sole evidence transcripts of unlawfully obtained telephone conversations, did not conflict with the requirements of fairness enshrined in Article 6 of the Convention (see, among other authorities, *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V; *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 76, ECHR 2001-IX; and *Dumitru Popescu*, cited above, § 106).

115. 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

116. The Court notes that the applicant's complaint is twofold: on the one hand, she complained about the manner in which the initial questioning had been conducted, and on the other, she complained about the evidence admitted to the file by the domestic courts.

i. The first interrogations

117. The Court observes that it is disputed between the parties whether T.C. had a real possibility to assist the applicant during the initial questioning. However, it is established that he remained in the vicinity during the questioning and read and countersigned the statement made by

the applicant. As he himself admitted, he filled in an application for power of attorney, giving the clear impression that he was there to provide counselling to the applicant (see paragraph 30 above).

Even assuming that T.C. was not present during the actual questioning, the Court notes that he read the statement before countersigning it, thus having enough knowledge about its content to allow him to advise the applicant against submitting it. In addition, under the scrutiny of her counsel, the applicant was free to change her mind about the statement given, should she have chosen to do so. She did not claim that she had been coerced into signing it.

118. Furthermore, the first-instance court, before which the applicant raised the same complaint, explained in detail why it considered that the applicant had declared freely and without coercion. The court observed in particular that the applicant had given a coherent account and details that could only have been known by her, as at that time certain details had not figured in the RIS report that had served as a starting point in the criminal investigations (see paragraph 36 above).

119. It is also to be noted that the applicant did not complain to the domestic authorities that at the beginning of the initial questioning, the prosecutor had failed to inform her of the charges brought against her. In fact, the parties agreed that at that time the RIS report had been presented to the applicant. Judging by the content of that report (see paragraphs 8 and 12 above), the Court considers that, at least for the purposes of the Convention, the applicant had enough elements at her disposal to understand the charges brought against her (see *Aleksandr Zaichenko v. Russia*, no. 39660/02, § 42, 18 February 2010, and *Begu v. Romania*, no. 20448/02, § 138, 15 March 2011).

Lastly on this point, the Court observes that, with the exception of the first handwritten statement, all the declarations signed by the applicant mention that she had been informed of the nature of the charges made against her (see paragraph 17 above).

120. As for the weight which the domestic courts attached to the applicant's first statement, the Court notes that evidence does not have a pre-established value in domestic law. The courts are free to interpret it in the context of the case and given all the elements available to them (see *Dumitru Popescu*, cited above, § 110). In the case at hand, the domestic courts based their decisions on an extensive body of evidence, of which the incriminatory statement was only one element. It was thus put into context and examined against the remaining elements in the file (see paragraph 33 above).

121. For those reasons, the Court considers that the way in which the initial questioning was conducted did not breach the applicant's defence rights, within the meaning of Article 6 of the Convention.

ii. Transcripts of the telephone conversations

122. 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 prosecutor's report concerning the telephone conversations between the defendants recorded during the preliminary investigation. The defendants argued that the tapes had been unlawfully obtained and that they had been proven not to be authentic and original.

123. The domestic courts responded extensively to those arguments when they were raised by the defendants (see paragraph 34 above).

124. The Court observes that the applicant freely engaged in the incriminatory conversations (see *Bykov*, cited above, § 102). Moreover, both the applicant and the defence counsels availed themselves of numerous opportunities to question the validity of that evidence, and the courts gave thorough answers to their objections. It is to be noted that the applicant did not question the reality of the conversations recorded or the authenticity of their content. The domestic courts also insisted on that point when they examined the experts' opinion disputing the "authenticity and originality" of the tapes (see paragraph 34 above and *Dumitru Popescu*, cited above, § 109).

125. Lastly, the Court reiterates that evidence does not have a pre-determined role in the respondent State's criminal procedure. In the case at hand, the recording was 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); it played a limited role in a complex body of evidence assessed by the court (see also paragraph 120 above).

126. The Court also reiterates that the domestic courts are better placed to assess what evidence is needed in trial and whether a particular request made by one of the parties – in this case, that the court interview the experts – is relevant for the case. Moreover, in the case under examination the court of last resort considered that the evidence in the file was sufficient to justify the decision rendered by the lower court (see paragraph 40 above).

127. Having examined the safeguards surrounding the analysis of the admissibility and reliability of the evidence concerned, the nature and degree of the alleged compulsion, and the use to which the material obtained through telephone tapping at the preliminary investigation stage was put by the courts in the current case, the Court considers that the use of transcripts in the trial did not breach the rights of the defence.

iii. Conclusion

128. The Court is satisfied that the two pieces of evidence contested by the applicant, namely her initial statement before the prosecutor and the transcripts of the telephone conversations, did not play an important role, either separately or combined, in securing the defendants' conviction.

In fact, the domestic courts based their decisions on an important 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 them in the context of the case.

129. For these reasons, the Court finds that the proceedings in the applicant's case, considered as a whole, were not contrary to the requirements of a fair trial.

It follows that there has been no violation of Article 6 §§ 1 and 3 (a), (b) and (d) of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

130. Lastly, the applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention about her exclusion from the list of lawyers, by decision of the Bar Association.

131. The Court notes that the applicant's grievances were thoroughly examined by the domestic courts, which responded to all her arguments by means of reasoned decisions. Furthermore, the applicant did not prove that she had incurred a pecuniary loss imputable to the State.

132. 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 (a) and 4 of the Convention**.**

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

133. 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

134. The applicant claimed the following amounts in respect of pecuniary damage:

- 6,125 euros (EUR) representing the amount confiscated by the courts in the criminal proceedings;
- 500 euros (EUR) representing the difference between the remuneration received for the prison work and its actual worth.

135. The applicant also claimed EUR 200,000 in respect of non-pecuniary damage.

136. The Government reiterated that the applicant had received remuneration for the work in prison. They considered that the non-pecuniary damages sought were excessive and stated that a finding of a violation should in principle suffice to redress the alleged damage incurred.

137. 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 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

138. The applicant claimed the following amounts in respect of the costs and expenses incurred before the domestic courts:

- EUR 724.70, representing the cost of the expert examination in the domestic proceedings;
- EUR 1,600, representing the lawyers' fee in the domestic proceedings; and
- EUR 400 in legal costs.

139. The applicant also claimed the following in respect of the costs and expenses incurred before the Court:

- EUR 500 for the lawyer's fee; and
- EUR 200 for postal costs.

She presented a certain number of invoices and certified payments.

140. The Government contested the justification presented by the applicant for the payment of those sums.

141. 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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads.

C. Default interest

142. 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 the conditions of detention in Rahova Prison, the complaint concerning the alleged infringement of the right to respect for private life by telephone interceptions and the complaints concerning the alleged unfairness of the criminal proceedings admissible, and the remainder of the application inadmissible;

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

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

4. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (a), (b) and (d) of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 25 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President