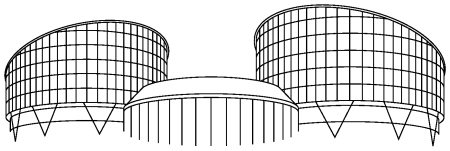

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ASSOCIATION FOR THE DEFENCE OF HUMAN RIGHTS IN ROMANIA – HELSINKI COMMITTEE ON BEHALF OF IONEL GARCEA v. ROMANIA

(Application no. 2959/11)

JUDGMENT

STRASBOURG

24 March 2015

FINAL

24/06/2015

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

In the case of Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania,

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

Josep Casadevall, *President,*
Luis López Guerra,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 3 March 2015,

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

PROCEDURE

1. The case originated in an application (no. 2959/11) 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 non-governmental organisation, the Association for the Defence of Human Rights in Romania – Helsinki Committee (*Asociaţia pentru Apărarea Drepturilor Omului în România – Comitetul Helsinki*, "the APADOR-CH") on behalf of Mr Ionel Garcea, on 23 December 2010.

2. The applicant association was represented by Ms N. Popescu and Mr D. Mihai, lawyers practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. On 22 November 2011 the complaints concerning the alleged lack of proper medical treatment in prison resulting in Mr Garcea's death, the quality of the ensuing investigation and the absence of an effective remedy to complain about the alleged violations were communicated to the Government under Articles 2, 3 and 13 of the Convention and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. Mr Ionel Garcea was born in 1973 and died on 19 July 2007 in Rahova prison hospital. He had no known relatives.

A. Mr Garcea's detention

5. At the material time, Mr Garcea was serving a seven-year sentence for a rape which he had consistently denied having committed. On the date of the criminal conviction, the courts found that he had full legal capacity (*discernământ*) and was thus capable of taking decisions and acting freely upon them.

6. Mr Garcea was held in Jilava and Rahova prisons and prison hospitals. He was diagnosed with epilepsy, personality disorder (impulsive and explosive), polymorphic psychosis and phlebitis of both legs. During his detention he had numerous conflicts with the prison warders, the police and the prosecutor. On several occasions he was reprimanded for "insulting authority" (*înjurii aduse cadrelor*) and for self-harm (inserting nails into his forehead).

7. In 2002, when he started serving his sentence, Mr Garcea contacted APADOR-CH from the police headquarters to inform them of his arrest. He also wrote to the association from prison. The association had paid for his legal assistance in a civil suit for damages brought against the State in connection with his detention in a previous case and in previous criminal proceedings, and had occasionally given him material support, such as medicine, paper, pens and prepaid telephone cards.

1. Medical care in detention

8. According to the official prison records, Mr Garcea received regular check-ups for his mental illness. He was admitted on ten occasions to the psychiatric ward of the prison hospitals for a few days each time. While in hospital he was prescribed medical treatment for his condition, which he often refused to take. On a few occasions he also refused medical examinations and often insisted on being discharged from hospital. On other occasions he signed the hospital consent form for treatment and at times he complained that he had not received medical treatment while in hospital.

9. On 4 August 2004 Mr Garcea inserted a nail in his forehead. On 9 August he was taken to the psychiatric ward of Jilava prison hospital and then to a civilian hospital. Mr Garcea agreed to have the metal object removed from his head, but later that day changed his mind. His two statements were recorded by the hospital personnel in his medical file.

The nail was ultimately removed and on 13 August 2004 he was discharged from the civilian hospital and sent back to the psychiatric ward of Jilava prison hospital.

10. At the beginning of 2005 Mr Garcea attempted suicide by overdose and as a result fell into a fourth-degree coma. It is mentioned in his medical record that in the psychiatric ward he refused any medical examinations following his suicide attempt and requested to be discharged.

11. In May 2005, after a week's stay in Rahova prison hospital where, according to the medical record, he did not receive any treatment for his phlebitis, Mr Garcea was transferred to Rahova Prison.

12. In June 2005 Mr Garcea was operated on in a civilian hospital in order to have metal fragments removed from his head (pieces of nails which he had inserted into his forehead). After the operation, the doctors performed a brain scan on Mr Garcea, only to discover that some pieces of metal had been left inside his head. Mr Garcea underwent another operation one month later.

13. According to his prison medical record, Mr Garcea was monitored by a psychologist in order to help reduce the risk of aggressive behaviour towards himself and others.

2. Incidents in prison

a) August 2004

14. Mr Garcea alleged that in August 2004 he had been beaten up by the prison intervention force and then handcuffed and chained to a hospital bed for two weeks.

15. On 17 December 2004, in reply to an inquiry made by APADOR-CH into those incidents, the prison administration explained that there was no evidence of a breach of prison rules and that Mr Garcea's immobilisation had been made necessary by his violent behaviour and had been approved by the prison governor. The official prison records from Jilava prison hospital mention three occasions on which Mr Garcea had been tied to his bed: on 19 and 25 August 2004 and again on 4 September 2004.

b) 26 July 2005

16. In August 2005, members of the APADOR-CH paid Mr Garcea another visit. He complained to them that he had been beaten up on several occasions by the warders. In particular, he stated that on 26 July 2005, at the end of a court hearing, the prison guards had pushed and slapped him in order to make him move faster. He had protested. When they had returned to the prison, the warders had tried to push him into a separate room in order to beat him up. He objected, broke a window and kept a piece of the broken glass in his hand with the intention of killing himself. The warders

interpreted his gesture as an attack and called the prison intervention forces, who chained him to a bed and beat him until he lost consciousness. He was then transported to Jilava hospital.

17. The APADOR-CH complained to the prosecutor's office attached to the High Court of Cassation and Justice about that incident, but received no answer.

18. The Government submitted an account of the above-mentioned incidents provided by the prison administration, who denied using any physical force against Mr Garcea. According to the prison administration, Mr Garcea refused to allow the prison guards to guide him to a room in order to be searched and instead became abusive, broke the glass in the door of that room and started moving towards the prison guards wielding a shard of broken glass. A member of the prison staff who escorted detainees from the court house dissuaded Mr Garcea from using the broken glass. According to the prison records, the prison staff handcuffed him because they were aware of his mental illness and of his past attempts to commit suicide. As he continued to be verbally aggressive, the guards attached his arms and legs to a bed and requested medical assistance.

3. Complaints lodged by APADOR-CH about the conditions of detention and the medical care

19. Following their visit of August 2005, members of APADOR-CH complained to the prison administration about the conditions of detention in which Mr Garcea was being held, which they considered inappropriate for his situation. They also urged the prison administration to provide him with medical treatment for his various conditions; they pointed out that his mental health was visibly deteriorating and that despite his repeated visits to hospitals, he had not received adequate and prompt medical treatment. The hospitals' willingness to provide medicines for him had been counteracted by the delays with which the doctors had issued the necessary prescriptions. They contended that, in their view, the lack of medical treatment for epilepsy and phlebitis amounted to torture. They also urged the prison authorities to stop provoking violent reactions from Mr Garcea through their attitude towards him and to stop using force against him. Lastly, the members of APADOR-CH asked the prosecutor's office to deal more expeditiously with Mr Garcea's complaint of ill-treatment.

4. Death of Mr Garcea

20. In June 2007, while he was being held in Jilava hospital, Mr Garcea inserted another nail into his forehead. On 7 June 2007 he was operated on in a civilian hospital. He was then sent to the Rahova prison hospital with a diagnosis of sepsis, post-extraction symptoms and acute bronchopneumonia.

21. From 16 to 26 June 2007 Mr Garcea's condition continued to deteriorate. The Rahova prison authorities decided to send him back to the civilian hospital for examination and possibly another operation. On 4 July 2007 he was returned from the civilian hospital to Rahova prison hospital, on the basis that his general condition had improved. The medical records of the same date from Rahova prison hospital indicated that the patient's general condition was serious. He remained in the prison hospital until his death on 19 July 2007. According to the official prison records, he was administered the prescribed antiseptic treatment in the prison hospital.

On 20 July 2007 an autopsy was carried out and the observations were recorded in an autopsy report.

B. Domestic proceedings concerning Mr Garcea's detention

1. Administrative complaint

22. On 27 July 2007 the APADOR-CH asked the prison administration to investigate the medical treatment given to Mr Garcea and the cause of his death. It raised several queries, in particular how Mr Garcea could have contracted bronchopneumonia when he had been held only in hospitals for the past few years. It also asked whether the medical treatment had been adequate, given the lack of reaction by the medical personnel to the continuous deterioration of Mr Garcea's condition in June and July 2007. The applicant association contended that although under the provisions of Joint Order No. 995/2007 issued by the Ministry of Justice and the Ministry of Health on 6 June 2007 (which replaced a similar order of 2003), a joint committee had to be set up to inquire into the causes of deaths in detention, no such steps had been taken in Mr Garcea's case.

23. The APADOR-CH asked to be informed about the progress of the investigations, adding that the deceased had no relatives.

2. Criminal proceedings

24. On 1 August 2007 APADOR-CH drafted a report into Mr Garcea's death and sent it to the prosecutor's office attached to the Bucharest County Court in order to help the investigation.

25. In the meantime, on 19 July 2007 the prosecutor had ordered a forensic examination of the cause of Mr Garcea's death. The medical report concluded that the death had been caused by "multiple organ failure, as a consequence of a cerebral abscess developed because of the repeated introduction of a metal object, necessitating neurosurgery and lengthy stays in hospital". The report also concluded that there was not enough evidence to suggest that there had been inadequate medical assistance in the case.

26. On 12 October 2007 the file was sent to the prosecutor's office attached to the Bucharest Court of Appeal, which, on 23 February 2009,

decided not to prosecute the prison doctors for improper conduct and endangering a person incapable of taking care of himself. They sent the file back to the prosecutor attached to the County Court in so far as the complaint concerned allegations of ill-treatment in detention.

27. The prosecutor's decision was communicated to the APADOR-CH on 3 March 2009.

28. The association objected to the decision, but on 9 April 2009 the Prosecutor General from the prosecutor's office attached to the Bucharest Court of Appeal dismissed the complaint. He considered that the association lacked *locus standi* to make the objection; he then re-examined the evidence of his own motion and concluded that the prosecutor's decision was correct.

29. The APADOR-CH lodged a complaint with the Bucharest Court of Appeal against the decision of the Prosecutor General of 9 April 2009, seeking to have the file sent back and to have an indictment filed by the prosecutor. It argued that Mr Garcea had not received adequate medical treatment in prison and that his death had been caused by medical negligence in the prison hospitals. It also argued that the investigation had not been exhaustive, as the prosecutor had done no more than provide details of the medical treatment that Mr Garcea had received, without examining whether there had been medical negligence in his case. The APADOR-CH also complained that the prosecutor had not examined the allegations of ill-treatment.

30. The Court of Appeal gave its ruling on 22 July 2009. It decided that the APADOR-CH had *locus standi*, as the High Court of Cassation and Justice had decided, in 2006, that non-governmental organisations acting in the field of human rights had the capacity to object to steps taken by the prosecutor. On the merits, the court found that the prosecutor's decision was correct, and was supported by the evidence in the file. It therefore dismissed the objection.

31. The APADOR-CH appealed. It reiterated that Mr Garcea had not received adequate medical treatment and care, which had led to his death, and that there had been no investigation into the allegations of ill-treatment. It pointed out that the prosecutor had failed to request an expert examination of the body.

32. In a final decision of 21 October 2009 the High Court of Cassation and Justice dismissed the appeal. It reiterated that the APADOR-CH had *locus standi* to pursue the complaint, but found that on the merits, the prosecutor's decisions were correct as there were no indications in the file that the prison doctors had failed to assist Mr Garcea or to provide him with adequate medical treatment.

33. As for the allegations of ill-treatment, on 23 March 2010 the prosecutor's office attached to the Bucharest County Court decided not to pursue the investigation on the ground that there was no conclusive evidence to suggest improper medical care. The decision was quashed by

the Bucharest Court of Appeal which, on 10 February 2011 sent the case back to the prosecutor, as it considered that the investigation had not been thorough and relevant evidence had not been administered. The court ordered that the investigation be pursued in order to establish:

– the conditions that had precipitated Mr Garcea's death;

– whether there was a causal link between his introducing metal objects into his skull and his death;

– whether the hospital procedures had been respected concerning the investigations and treatment for his various illnesses;

– the conditions in 2007 which had allowed the self-harm to occur; and

– whether the internal rules of the Jilava prison hospital had been respected.

The investigation is currently ongoing.

II. RELEVANT LAW

34. The relevant domestic and international law concerning criminal responsibility, social assistance, health and guardianship systems in Romania, as well as the issue of *locus standi* for associations to act on behalf of persons in need, are described in detail in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* ([GC], no. 47848/08, §§ 49-73, 17 July 2014).

35. The relevant domestic and international law concerning conditions of detention and medical care in prison for persons with mental illness is described in *Gheorghe Predescu v. Romania* (no. 19696/10, §§ 29-33, 25 February 2014).

36. In addition, the Patients' Rights Act (Law no. 46/2003) provides that the patient has the right to refuse or discontinue medical care; he has to confirm his decision in writing and to have medical personnel explain to him the risks incurred (Article 13).

37. Under the provisions of Joint Order no. 995/2007 of the Ministry of Justice and the Ministry of Health, which was adopted on 6 June 2007 and has been in force since 25 June 2007, a joint committee of the two ministries must be set up in order to inquire into deaths that occur in prison.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2, 3 AND 13 OF THE CONVENTION

38. The APADOR-CH, on behalf of Mr Ionel Garcea, complained about the conditions of detention and the death of Mr Garcea, as well as the investigation conducted into his detention. It relied on Articles 2, 3 and 13 of the Convention, which read as follows:

Article 2 (right to life)

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3 (prohibition of torture)

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

Article 13 (right to an effective remedy)

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

1. Locus standi of the APADOR-CH

39. The Government contended that the association did not have *locus standi* to lodge the present application on behalf of the late Mr Garcea; the case was therefore inadmissible as incompatible *ratione personae* with the provisions of Article 34 of the Convention, which reads as follows:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

40. The Government further contended that there was no strong link between Mr Garcea and the applicant association and that there were institutional alternatives for his representation, such as the Romanian Ombudsman.

41. The APADOR-CH pointed to the similarities between the current case and *Centre for Legal Resources on behalf of Valentin Câmpeanu* (cited above) and argued that it should be granted *locus standi* in the case.

42. The Court has recently established that in exceptional circumstances and in cases of allegations of a serious nature, it should be open to associations to represent victims, in the absence of a power of attorney and notwithstanding that the victim may have died before the application was lodged under the Convention. It considered that to find otherwise would amount to preventing such serious allegations of a violation of the Convention from being examined at an international level, with the risk that the respondent State might escape accountability under the Convention (see *mutatis mutandis*, *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 112).

43. Considering the information in its possession, the Court notes that, as was the case with Mr Campeanu, Mr Garcea died while he was in State custody and left no known relatives. He also suffered from mental illness. Moreover, in both cases there are serious allegations of a breach of the rights guaranteed under Articles 2, 3 and 13 of the Convention.

44. The Court also notes that during Mr Garcea's life, the APADOR-CH represented or assisted him on several occasions in his relations with the authorities (see paragraph 7 above), and continued to do so even after his death, without any objections from the respective authorities (see paragraphs 15, 16 and 19 above and *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 110).

45. For those reasons and notwithstanding the differences between the two cases – in particular that Mr Garcea was able, during his life, to lodge complaints and had a closer connection with the APADOR-CH than Mr Campeanu ever had with the association that represented him in the proceedings – the Court considers that the APADOR-CH should be granted standing to act as Mr Garcea's representative.

46. Accordingly, the Court dismisses the Government's objection concerning the lack of *locus standi* of the APADOR-CH, in view of the latter's standing as *de facto* representative of Mr Garcea in the proceedings.

2. Non-exhaustion of domestic remedies

47. The Government argued that the complaints under Articles 2 and 3 were premature, as the criminal investigations were still pending with the domestic authorities.

48. The applicant association replied that the domestic investigation had been pending for five years and no steps had been taken by the authorities to

demonstrate their commitment to carrying out an effective investigation. The APADOR-CH did not consider it useful to wait, in particular as the statutory time-limit would expire ten years after the events complained of.

49. The association further contended that the Government had been unable to produce any evidence that at least one investigative measure had been carried out. Moreover, it had been neither informed of nor involved in the investigations. Accordingly, it considered that the results of the investigation had not received a sufficient element of public scrutiny, nor had they safeguarded the interests of Mr Garcea's next-of-kin. The APADOR-CH relied, among other authorities, on *Predică v. Romania* (no. 42344/07, 7 June 2011); *Hugh Jordan v. the United Kingdom* (no. 24746/94, ECHR 2001-III (extracts)); and *Roşioru v. Romania*, (no. 37554/06, 10 January 2012).

50. The Court reiterates that the purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it. However, the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the alleged breaches and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain, not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. It falls to the respondent State to establish that these various conditions are satisfied (see, among many other authorities, *Vučković and Others v. Serbia* [GC], no. 17153/11, § §§ 69-77, 25 March 2014).

51. The Court considers that the objection is closely linked to the complaint under the procedural aspects of Article 2. It therefore joins it to the merits of the applicant's complaint.

3. Other reasons for inadmissibility

52. The Court notes that the application 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. Article 2 of the Convention

(a) The parties' submissions

(i) Submissions by the APADOR-CH

53. The APADOR-CH submitted that Mr Garcea had not been afforded proper medical care that was compatible with his mental and physical health. It pointed out that his refusal to accept treatment had not been

considered in the light of his mental condition, which had diminished his capacity to understand the consequences of his acts. It was difficult to assess whether the refusal to receive medical care expressed by an epileptic patient, in a particular state of vulnerability caused by reclusion, was the result of free will or not; additional measures were needed in order to guarantee the freedom and veracity of the patient's choice. Notwithstanding that particular situation, the authorities did no more than register the refusal in the medical records, without offering psychological counselling or taking any other effective measure to ensure that Mr Garcea understood his situation.

54. Moreover, contrary to the provisions of the Mental Health Act (Law no. 487/2002), Mr Garcea was not informed of the possibility of having a legal representative who might assist him in giving his consent for treatment. The applicant association emphasised the impersonal character of the consent forms used in hospitals, which did not allow the authorities to deduce whether the patient had been genuinely informed of the specific treatment he was to receive or of the consequences of his decision in that respect.

55. The applicant association complained that the Patients' Rights Act only provided for legal representation for persons whose legal capacity had been removed. However, in Mr Garcea's case, as his illness had only reduced his capacity to understand, no such representation had been necessary. Moreover, it contended that at no point had the authorities investigated the extent of the effects of his mental illness on his capacity to exercise sound judgment.

56. For those reasons, the APADOR-CH considered that Mr Garcea had been prevented from expressing his consent or refusal regarding treatment in an informed manner.

57. The applicant association also noted that the Government had been unable to provide any objective data to prove that the programmes for education and psycho-social assistance in prison were efficient.

58. In the APADOR-CH's view, through their defective manner of approaching Mr Garcea's situation, the State authorities had exposed him to serious and prolonged suffering. Instead of being treated for his mental illness, he had been punished for having harmed himself and for his occasional aggressive behaviour. It referred to the new Code of Criminal Procedure (Law no. 135/2010) and pointed out that, rather than offering support, the State chose as a matter of policy to punish prisoners who, like Mr Garcea, harmed themselves, by not ensuring that they received appropriate medical treatment if such treatment was not available in the prison system (Article 589 of the new Code).

59. The APADOR-CH further invoked a procedural violation of Article 2 of the Convention, arguing that neither the administrative inquiries nor the criminal investigations into the death of Mr Garcea had satisfied the

requirements of effectiveness enshrined in that Article. It reiterated that the joint committee required by law to inquire into deaths in prisons had not been set up in Mr Garcea's case, and that the prosecutor had failed to order essential investigative measures, in particular an expert examination of the body, in order to address the objections raised by the applicant association during the proceedings.

60. The applicant association further maintained that the observations made during the autopsy of 20 July 2007 could not replace the depth of a forensic examination of the body. Moreover, those conclusions did not specifically exclude the existence of malpractice.

(ii) The Government's submissions

61. Based on Mr Garcea's prison medical record and the information provided by the prison administration, the Government contended that Mr Garcea had received proper and efficient medical care. The domestic courts confirmed their assertion. The Government reiterated that it had been established by the courts that Mr Garcea had retained his ability to make sound judgements. Mentally-ill prisoners benefited from a special regime, set out by the prison administration on the basis of the Execution of Sentences Act (Law no. 275/2006), the Mental Health Act and programmes for psycho-social assistance in prison.

62. The Government refuted the argument put forward by the APADOR-CH that prisoners had been punished for self-harming and pointed out that Mr Garcea had received care after each attempted suicide. The fact that his wounds had finally led to complications that had caused his death could not engage the State responsibility.

63. The Government also opposed the interpretation given by the APADOR-CH to the provisions of the new Code of Criminal Procedure. They emphasised that its aim was to prevent abuse by persons who refused medical treatment or caused harm to themselves in order to obtain a stay of the execution of their sentence.

64. As for the procedural aspects of Article 2, the Government maintained that the criminal investigations had been thorough and effective.

(b) The Court's assessment

(i) General principles

65. The Court refers to the general principles concerning medical assistance to detainees, set out in its previous case-law (see, amongst many other authorities, *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI; *Peers v. Greece*, no. 28524/95, ECHR 2001-III; *Rivière v. France*, no. 33834/03, §§ 59-63, 11 July 2006; and *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, §§ 130-33).

66. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Where the authorities decide to place and maintain in detention a person with disabilities, they should demonstrate special care in guaranteeing such conditions as correspond to his special needs resulting from his disability (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 131, with further references).

67. The State's duty to safeguard the right to life must be considered to involve not only the taking of reasonable measures to ensure the safety of individuals in public places but also, in the event of serious injury or death, having in place an effective independent judicial system securing the availability of legal means capable of promptly establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, § 132, and *Predică*, § 65, both cited above).

(ii) Application of those principles to the present case

(a) Procedural head

68. The Court observes that several shortcomings occurred in the domestic proceedings concerning the death of Mr Garcea.

69. At the outset the Court notes that the investigations, which started in July 2007, are still pending with the prosecutor's office, more than seven years later. The circumstances of Mr Garcea's death were not examined by a specialised joint committee of the Ministry of Justice and Ministry of Health (see paragraph 37 above).

70. The Bucharest Court of Appeal considered that the investigation had not been thorough, as essential questions had been left unanswered by the prosecutor (see paragraph 33 *in fine*, above). Although on 10 February 2011 the Court of Appeal remitted the case to the prosecutor's office with detailed instructions, there is no information that those instructions have to date been fully complied with by the investigators (see *Predică*, cited above, § 69).

71. The Court also notes that the complaint of ill-treatment in detention, lodged by APADOR-CH on behalf of Mr Garcea, was left unanswered by the prosecutor's office (see paragraphs 17 and 19 *in fine*, above).

72. The foregoing considerations are sufficient to enable the Court to conclude that the authorities have failed in their obligation to conduct an effective investigation into Mr Garcea's death. The ineffectiveness of the investigation, and in particular the time it has taken the authorities to properly establish the circumstances of Mr Garcea's death, also allow the

Court to conclude that the current application is not premature and thus to dismiss the Government's objection of non-exhaustion of domestic remedies (see paragraph 47 above).

The Court accordingly holds that there has been a violation of Article 2 of the Convention under its procedural limb.

(b) Substantive head

73. The Court notes at the outset that it cannot assess whether Mr Garcea was in need of a representative, either for the criminal proceedings or for acquiescing to his medical treatment in prison, as the case file does not contain an expert assessment of his psychiatric condition or vulnerability in detention.

However, the Court notes that it was known from the prison hospital records that Mr Garcea had been suffering from mental illness (see paragraph 6 above). While in detention, he attempted suicide on several occasions, either by overdose of medication or by inserting nails in his forehead. On several occasions he had to be restrained by force and tied to his bed before the medical personnel were called to intervene (see paragraphs 15 and 18 above). On this count, the Court reiterates that the prison authorities must discharge their duties in a manner compatible with the rights and freedoms of the individual concerned. General measures and precautions should be available to diminish the opportunities for self-harm, without infringing on personal autonomy (see *Keenan v. the United Kingdom*, no. 27229/95, § 92, ECHR 2001-III). Such behaviour should thus have warned the authorities of the prisoner's special needs and of the risk of self-harm.

74. However, the Court notes that the domestic investigation into the possible link between the medical care in detention and Mr Garcea's ultimate death is ongoing. The medical evidence available at this point, albeit contested by the APADOR-CH, is not sufficient to support the allegations of medical negligence in the case.

For these reasons, in the absence of relevant information, the Court is unable to establish "beyond reasonable doubt" that the State was responsible for Mr Garcea's death.

75. In such circumstances the Court finds no violation of the substantive limb of Article 2 of the Convention

2. Articles 3 and 13 of the Convention

76. Under Article 3 of the Convention, the APADOR-CH complained that because of the lack of medical treatment, in particular in the last two weeks of Mr Garcea's life, the latter had endured significant suffering and the authorities had done nothing to alleviate his pain. In addition, they had not carried out an investigation into those aspects, which had been raised by the applicant association in its complaints.

77. Lastly, the APADOR-CH submitted that it had been deprived of an effective remedy to complain of the violations of Articles 2 and 3, in so far as the investigation into the death of Mr Garcea had been ineffective. It relied on Article 13 of the Convention.

78. Both parties submitted observations on those points.

79. Having regard to the findings relating to Article 2 of the Convention (see paragraph 72 above), the Court considers that there is no need to give a separate ruling on Articles 3 and 13 of the Convention (see, *mutatis mutandis*, *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 154).

II. OTHER ALLEGED VIOLATIONS

80. The APADOR-CH complained, on behalf of Mr Garcea, under Article 6 § 1 of the Convention, that the criminal proceedings had been unfair, as the courts had refused to order a forensic examination of the body to elucidate the allegations of medical negligence raised by the applicant association.

81. However, having regard to the facts of the case, the submissions of the parties and its findings under the procedural head of Article 2 of the Convention, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the remaining complaint (see, for the most recent authority, *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 156).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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

83. The APADOR-CH did not make a claim for damages on behalf of Mr Garcea.

B. Costs and expenses

84. The applicant association claimed 403,90 euros (EUR) for the costs and expenses incurred before the domestic courts, representing court fees, and EUR 9,060 for those incurred before the Court, representing its

lawyers' fees and postal costs. It requested that the lawyers' fees be paid directly to the two lawyers, namely EUR 3,190 to be paid to Ms N. Popescu and EUR 4,850 to be paid to Mr D. Mihai.

85. The Government considered that the claims were excessive.

86. 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, for costs and expenses under all heads, EUR 9,463.90 to be paid as follows: EUR 1,423.90 to the APADOR-CH; EUR 3,190 to Ms N. Popescu; and EUR 4,850 to Mr D. Mihai.

C. Default interest

87. 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. *Joins* to the merits the Government's objection of non-exhaustion of domestic remedies and *rejects* it;

2. *Declares* the complaints concerning Article 2 admissible;

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

4. *Holds* that there has been no violation of Article 2 of the Convention in its substantive limb;

5. *Holds* that there is no need to examine the admissibility and merits of the complaints under Articles 3, 6 and 13 of the Convention;

6. *Holds*

   (a) that the respondent State is to pay, in respect of costs and expenses, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable:

(i) EUR 1,423.90 (one thousand four hundred and twenty three euros and ninety cents) to the APADOR-CH;

(ii) EUR 3,190 (three thousand one hundred and ninety euros) to Ms N. Popescu;

(iii) EUR 4,850 (four thousand eight hundred and fifty euros) to Mr D. Mihai;

(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.

Done in English, and notified in writing on 24 March 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President