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**La CEDU sui diritti dei detenuti con diturbi mentali**
**(CEDU, sez. IV, sent. 11 maggio 2021, ric. n. 73731/17)**

La CEDU si è pronunciata sull'art. 3 Conv. che recita "nessuno può essere sottoposto a tortura o trattamenti o punizioni inumani o degradanti". Il ricorrente, disabile per disturbi mentali condannato a reclusione per stupro, ha lamentato che il regime carcerario di massima sicurezza in cui era stato posto era incompatibile con le sue condizioni mentali, affermando inoltre di non aver ricevuto cure adeguate alla sua disabilità mentale. Ha inoltre sostenuto che la sua malattia era peggiorata in carcere, come dimostrato dal fatto che era diventato completamente dipendente dall'assistenza di terzi.
Per la Corte, il rischio di deterioramento della salute mentale e fisica del richiedente, derivante dalle condizioni di detenzione in un carcere di massima sicurezza, è stato sufficiente a dare luogo ad una violazione dell'art. 3 Conv. Per la Corte, lo Stato è tenuto a garantire che le modalità ed il metodo di esecuzione della misura non sottopongano un detenuto con disturbi mentali a disagio o a difficoltà di un'intensità che supera quell'inevitabile livello di sofferenza inerente alla detenzione e che la salute ed il benessere della persona siano adeguatamente garantiti. In tale ottica la Corte ha notato che gli obblighi ai sensi dell'art. 3 possono arrivare fino ad imporre allo Stato l'obbligo di trasferire i prigionieri in strutture speciali al fine di ricevere un trattamento adeguato. Per la Corte non solo le autorità nazionali non sono riuscite a garantire la salute del richiedente ma nonostante la sua complessa condizione e la sua autoaggressione, hanno ritenuto opportuno collocarlo sotto un regime carcerario di massima sicurezza, proprio sulla base del suo comportamento aggressivo. E' stato inoltre rilevato che viste le condizioni del richiedente, egli avrebbe avuto diritto all'aiuto di un assistente personale senza fare alcuna richiesta, tuttavia egli è stato lasciato senza aiuto. Infine, i giudici di Strasburgo hanno notato con preoccupazione che quando il ricorrente si trovava in ospedale carcerario, è riuscito a ferirsi gravemente inserendosi dei chiodi in testa. In conclusione alla luce di ciò la Corte ha affermato che le autorità nazionali non sono riuscite a fornire una coerente strategia terapeutica in grado di rispondere in modo adeguato alle esigenze mediche del ricorrente in modo da evitare di sottoporlo a trattamenti contrari all'art. 3 Conv.

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

FOURTH SECTION

**CASE OF EPURE v. ROMANIA**

*(Application no. 73731/17)*

JUDGMENT

Art 3 (substantive) • Degrading treatment • Placement in a maximum security prison of a detainee with mental disorders and history of self-aggression, needing regular medical care, supervision and personal assistance • Assistance by fellow inmates, without first-aid training and on somewhat occasional basis, unsuitable or insufficient and not part of any effective State assistance ensuring compatibility of detention conditions with respect for his dignity • Measures taken repeatedly at prison level sanctioned him for disciplinary misdemeanours • Authorities' failure to correctly identify applicant's medical needs and to provide him with comprehensive therapeutic treatment and supervision as required by his complex medical condition

STRASBOURG

11 May 2021

*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 Epure v. Romania,**

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

Yonko Grozev, *President,*

Tim Eicke,

Faris Vehabović,

Iulia Antoanella Motoc,

Armen Harutyunyan,

Gabriele Kucsko-Stadlmayer,

Ana Maria Guerra Martins, *judges,*

and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 73731/17) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Culiță Epure ("the applicant"), on 11 April 2018;

the decision to give notice to the Romanian Government ("the Government") of the complaints concerning the inadequate care provided to the applicant in detention having regard to the state of his mental health, raised under Article 3 of the Convention;

the parties' observations;

the decision to uphold the Government's objection to examination of the application by a Committee;

Having deliberated in private on 13 April 2021,

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

INTRODUCTION

1. The application, lodged under Article 3 of the Convention, concerns the domestic authorities' allegedly inadequate response to the applicant's medical needs while in detention, in particular having regard to the state of his mental health.

THE FACTS

2. The applicant was born in 1978. He currently lives in Măicăneşti, in a specialised State institution providing care to disabled adults. The applicant was represented by Mr M. Bratu, a lawyer practising in Focşani.

3. The Government were represented by their Agent, most recently Ms O. Ezer, of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

THE APPLICANT'S MENTAL DISABILITY

5. The applicant suffers from epilepsy and has been diagnosed on several occasions with slight to moderate mental impairment.

6. According to the Government, the applicant was first diagnosed in 2005 as having a disability on account of his mental-health issues. A disability certificate was first issued in 2006, noting that his working capacity was reduced to 35%. Further certificates issued in 2012 and 2013 noted the existence of a severe disability (*grad de handicap accentuat*), without a recommendation for the need of a personal care assistant.

In 2014 the applicant's disability was assessed as profound (first-degree disability – *grad de handicap grav*); however, it was not until 2016 that the commission which examined the applicant with a view to issuing the disability certificates recommended that he be provided with the help of a personal care assistant (see also paragraphs 27 and 29 below).

THE APPLICANT'S DETENTION, INCLUDING UNDER A MAXIMUM SECURITY PRISON REGIME

7. In 2012 the applicant, a repeat offender, was arrested and in 2014 he was convicted of rape and sentenced to eight years' imprisonment.

8. He was detained in several detention facilities. However, his complaints in the present application only concern the period from 6 December 2016 to 16 June 2019. He complains that he was held under a maximum security prison regime in spite of the state of his mental health, and that the medical care provided to him was inadequate, *inter alia* because he had not been assigned a personal care assistant on an ongoing basis until he was released on 16 June 2019.

9. From 4 October 2016 until 7 August 2018 he was kept under the maximum security prison regime in Focşani, Galaţi and Giurgiu prisons.

**Applications for interrupting the execution of the sentence on health grounds**

10. The applicant did not submit any requests to the relevant court to have the execution of his sentence interrupted or suspended on health grounds during the relevant period, namely from 6 December 2016 until his release.

11. Nevertheless, before 2016 he had lodged two applications to have the execution of his sentence interrupted on health grounds, arguing essentially that his mental illness would be better cared for in a regular hospital rather than in prison.

12. The first application, lodged in 2014, was withdrawn several months afterwards, as noted in the judgment of the Galaţi First Instance Court of 19 September 2014.

13. The second application was lodged later that year. A medical report of 20 February 2015, issued by the National Forensic Institute at the court's request, recommended that the applicant take appropriate medication and be subjected to further re-examination; the board concluded that adequate care for the applicant's health problems was available in the prisons' in-house medical wings or in prison hospitals.

14. The Focşani Court of First Instance dismissed the applicant's application on 29 May 2015, relying on the report's conclusions and on the fact that the applicant's "complex condition" did not prevent him from serving his sentence in prison.

The applicant did not challenge that decision, which became final.

**Requests to be placed under a less severe prison regime**

15. On an unspecified date at the end of 2016 the applicant lodged a complaint with the post-sentencing judge, complaining, *inter alia*, about the fact that he had been placed under a maximum security prison regime.

16. On 10 January 2017 the post-sentencing judge denied the applicant's complaint, noting that the maximum security prison regime was inapplicable only to those inmates who had a severe physical disability or to those having a first-degree disability, which, in the judge's view, was not the applicant's case.

There is no indication in the case file as to whether that decision was challenged by the applicant.

17. On an unspecified date in 2017 the applicant lodged a request with the National Prison Authority, asking to be moved from the maximum security prison regime in Focşani Prison, which he argued was ill-suited having regard to his mental disability. A negative reply was given on 28 September 2017, indicating to the applicant that the prison governor was the competent authority on the matter, and that such a request could also be made to the post-sentencing judge.

18. On 13 October 2017 the applicant lodged a request with the post-sentencing judge, asking to be placed under a less severe prison regime.

19. The judge dismissed that request on 18 October 2017, noting that during his detention the applicant had been sanctioned fifty-eight times for various misdemeanours, which implied that he did not meet the conditions for being placed under a less severe prison regime.

There is no indication in the case file as to whether that decision was challenged by the applicant.

**Applications to be released on parole**

20. On an unspecified date in 2017 the applicant applied to be released on parole. He argued that his release was necessary having regard to the deterioration of his health; he also indicated that he had been sent to serve his sentence under a maximum security regime because a personal care assistant could not be found to help him.

21. The first-instance court dismissed his request on 9 November 2017; that decision was upheld on 21 December 2017 by the Giurgiu County Court.

22. The courts considered that even though the objective requirements for release on parole – namely the amount of time already served (two-thirds of the total sentence) – had been fulfilled, the subjective requirements, relating to the applicant's behaviour proving his rehabilitation, had not. In particular, during the period from 26 September 2012 until 16 August 2017, the applicant had been sanctioned fifty-eight times, mostly on account of self-aggression, damage to property, hitting another inmate and being

disrespectful to the prison guards. The courts held that such an attitude could not be considered to constitute sufficient proof that the applicant had fully understood the aims of his sentence, which were rehabilitation and deterrence. His repeated acts of self-aggression proved that he did not understand that he needed to make efforts for social reintegration. Moreover, the applicant was a repeat offender, this being another fact which disqualified him from having his request granted.

23. In 2018 the applicant reiterated his request to be released on parole.

24. His request was dismissed by the first-instance court on 14 December 2018, that judgment being upheld by the Vrancea County Court on 27 February 2019. The courts noted that since his previous request (see paragraph 20 above), the applicant had received another sixteen disciplinary sanctions, the majority in response to his acts of self-aggression; furthermore, he did not have the benefit of any family support.

They further noted that the applicant was in a special situation, being mentally disabled; however, throughout his detention he had failed to prove that he was rehabilitated and that he no longer represented a danger to society.

25. The appellate court confirmed that his state of health had not improved while he was detained; on the contrary, it had worsened. However, releasing him "implied a high risk for social values, since the applicant had a tendency to commit violent crimes". It further held that the applicant's acts of violence were the result of the inadequate state of his mental health. The disciplinary sanctions were found to have been applied in relation to his acts of self-aggression (razor cuts on his arms, inserting nails in his head, cuts to his neck), which had occurred after he had been examined by a medical commission that had established that he needed ongoing medical treatment and a personal care assistant (see paragraph 27 below).

26. Lastly, the court noted, on the basis of the applicant's assertions before it, that he had the help of a personal care assistant and that he was also in receipt of adequate medical care.

THE APPLICANT'S RIGHT TO A PERSONAL CARE ASSISTANT

27. On 28 March 2016 a medical commission issued a certificate attesting that the applicant had been classified as a person with a permanent, severe mental disability on account of his condition (first-degree disability). The medical commission granted the applicant the right to a personal care assistant (see paragraphs 6 and 25 *in fine* above).

28. A social inquiry report issued on 15 March 2017 by the local authorities at the applicant's place of residence, Ţifeşti, noted that the applicant depended on others to communicate, either directly (as he could not be easily understood by those who were not familiar with him) or via communication means (as he was unable to use the phone by himself). He also depended on others to follow the medical recommendations he received. The report noted that he was capable of following only simple instructions to be executed on the spot ("then and there").

29. The above-mentioned report was relied on by the authorities, which on 31 March 2017 issued a similar certificate to the previous one (see paragraph 27 above), confirming the applicant's disability and his need for permanent assistance.

**The applicant's account**

30. The applicant submitted that he had lodged several requests with the prison authorities starting in September 2016, in which he had asked to be assigned a personal assistant. In each of his requests he had indicated the name of the co-detainee he had preferred to be assigned to him.

He stated, *inter alia*, that when he had received a different personal assistant from the one he would have preferred, he had cut his throat and the veins on his hand or harmed himself in other ways.

31. He also indicated that, during the relevant time frame (see paragraph 8 above), he had been left several times without a personal care assistant, both when he was in prison and when he was being transferred to a different detention institution, on the following dates: from 15 December 2016 to 10 March 2017; from 17 March to 9 October 2017; from 19 October 2017 to 3 March 2018; from 7 to 17 May 2018; from 28 May to 16 June 2018; from 27 June to 23 August 2018; from 4 September to 5 October 2018; and lastly, from 28 to 30 May 2019.

**The Government's account**

32. The Government submitted that during the relevant period of his detention (see paragraph 8 above), the applicant had lodged six requests concerning his right to have a personal care assistant assigned or replaced. In his requests lodged with the post-sentencing judge, he had either complained that he did not have the assistance of the person he would have preferred, or that he did not have an assistant at all.

33. Whenever it had been possible to take into account the applicant's preferences, in the sense that the personal assistant indicated by him had been medically fit to perform the task or had not been subject to disciplinary sanctions, the authorities had tried to accommodate those preferences (the Government pointed to one decision given by the post-sentencing judge on 3 October 2016, which had contained a recommendation that the prison's management consider the applicant's personal choices).

34. They also indicated that the applicant had been left without a personal assistant for certain periods (see paragraphs 39-47 below) when he had been admitted to prison hospitals, during which time he had been under constant supervision and care and therefore not in need of a personal care assistant. The Government also submitted that, contrary to what the applicant had mentioned (see paragraph 31 above), he had benefited from the help of a personal care assistant from 20 March until 4 April 2017, when he had been transferred to a different prison.

MEDICAL CARE PROVIDED TO THE APPLICANT

35. In 2013 a commission of three psychiatrists examined the applicant to determine whether, having regard to the state of his mental health, he was legally capable of being held accountable for the offence with which he had been charged (rape). The report mentioned that during his previous time in detention, the applicant had been admitted several times to the psychiatric ward of Jilava Prison.

The diagnosis established by the commission was that of "organic personality disorder with antisocial behaviour; slight mental impairment; grand mal seizures", with the conclusion that he was capable of being held criminally accountable.

36. On an unspecified date in 2018, possibly 12 December, a psychologist working in Focşani Prison issued a psychological report, following an evaluation of the applicant's mental health. The report mentioned, *inter alia*, the existence of a medium to severe cognitive disability in his case, as well as symptoms of paranoid schizophrenia and mental impairment, deviant behaviour and fear; and furthermore, motor and sensorial deficiencies, as well as a lack of spatial orientation.

The report also noted the applicant's incapacity to maintain personal hygiene, difficulties in adapting and integrating in a group, high irascibility, insufficient self-control and a major tendency to be impulsive, in particular concerning his own self. It also noted the existence of repeated suicide attempts and concluded that there existed an ongoing risk of suicide.

**The applicant's account**

37. The applicant submitted that the care he had received during his detention had been insufficient and had not had any regard to his particular situation as a mentally disabled inmate. Consequently, his mental health had deteriorated visibly and he had become completely dependent at all times on the help of others, especially as his epileptic seizures had occurred both day and night.

**The Government's account**

38. The Government underlined that during the relevant period, the applicant was admitted to prison hospitals on several occasions, either for regular check-ups of his psychiatric and neurological health problems, or as a consequence of self-inflicted injuries, as outlined below.

39. From 6 to 15 December 2016 and from 10 to 17 March 2017 he was admitted to Bucharest Jilava Prison Hospital, where he was examined mainly in view of recent acts of self-aggression. He was prescribed medication, and neurological and psychiatric examinations were recommended.

40. From 9 to 19 October 2017, on 3 March and from 19 March to 7 May 2018 the applicant stayed in Mioveni Prison Hospital.

During his first stay, while diagnosed with a depressive episode, the applicant injured himself by inserting a nail in his forehead. He consequently received medication both for his psychiatric condition and for his wound.

The applicant admitted at the time to having smoked ethnobotanical drugs.

41. During his stay in Mioveni Prison Hospital, two further incidents occurred.

42. On 3 March 2018 the applicant injured himself by inserting a nail in his forehead. He was taken to the accident and emergency department at the Giurgiu County Hospital, where he was treated for his wound and for his psychiatric condition.

He was then taken to Bucharest Rahova Prison Hospital for follow-up care and for psychiatric supervision and medication (see paragraph 45 below).

43. The second incident occurred on 30 March 2018, when the applicant inflicted superficial wounds on his arm.

44. The following day he was taken to the accident and emergency department, following an alleged quarrel with another inmate in the prison courtyard; he was found to have superficial wounds on his head, multiple scars on his neck and on his right arm, and five cuts on his left arm. A forensic medical report issued in connection with the incident concluded that those lesions could have occurred on 31 March and that they required one to two days of medical care. No further investigative measures were carried out in relation to the incident.

45. From 3 to 7 March 2018 the applicant was kept in Bucharest Rahova Prison Hospital, in particular as a consequence of the self-aggression he had committed while in Mioveni Prison Hospital (see paragraph 42 above). He was given medication for his wound and for his mental condition.

46. From 17 to 28 May 2019 he was admitted to Târgu Ocna Prison Hospital, suffering from acute stomach pain. He was examined accordingly and he had a pulmonary X-ray and blood tests taken. He received medication, including for his psychiatric problems.

47. In addition to the above-mentioned stays in hospital, the applicant was taken to hospital on an intermittent basis, such as on 23 June 2017, when he was taken to Bucharest Rahova Prison Hospital after having swallowed a razor blade. On that occasion, three self-inflicted wounds were detected and treated by the doctors, and an epileptic seizure he had on the same occasion was followed up by a neurological examination. Following the razor-blade incident, no particular symptoms were detected and it was recommended that the applicant be taken to the accident and emergency department in the event that the situation became critical.

RELEVANT LEGAL FRAMEWORK

48. Relevant excerpts from Law no. 254/2013 on the rights of detainees, including the procedure to follow when applying for parole, and from Ministry of Justice Order no. 433/2010 on mandatory rules for the serving of prison sentences are set out in *Rezmiveș and Others v. Romania* (nos. 61467/12 and 3 others, §§ 27, 31 and 34, 25 April 2017).

49. Article 71 § 2 of Law no. 254/2013 provides that medical assistance, treatment and care in prison are to be provided by qualified staff, free of charge, in accordance with the law, upon request or whenever necessary.

50. Excerpts from the relevant domestic legislation setting out the procedure on how to apply for an interruption of a prison sentence on health grounds are given in *Potoroc v. Romania* (no. 37772/17, § 44, 2 June 2020).

THE LAW

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

51. The applicant complained that the maximum security prison regime under which he had been placed was incompatible with his mental condition; that he had not received appropriate medical treatment for his mental disability; and that he had not been provided with a personal care assistant on a permanent basis, as required by the state of his health. He relied on Article 3 of the Convention, which reads as follows:

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

**Admissibility**

52. The Government argued that the applicant had not properly exhausted the available domestic remedies in relation to the alleged incompatibility of his medical condition with his detention regime. Thus, he had not actually submitted a request to have the execution of his prison sentence interrupted, nor had he complained about the medical treatment received in detention.

53. The applicant argued that he had submitted several requests to the authorities in which he had complained that the detention regime under which he had been placed was inadequate having regard to his mental condition (he referred to his requests to have his prison sentence interrupted on health grounds and to be released on parole – see paragraphs 11-14 and 20-24 above). The negative replies received – based mainly on his behaviour while in detention or on the fact that adequate care for his health problems had been available in the prisons' in-house medical network – showed that the authorities had failed to acknowledge that his particular condition required specific action. Therefore, the remedies attempted had not been effective in his case.

54. The Court reiterates that the assessment of the situation of detainees with mental disorders has to take into consideration their vulnerability and, in some cases, their inability to complain coherently or at all about how they are being affected by any particular treatment (see, for example, *V.D. v. Romania*, no. 7078/02, §§ 87-88, 16 February 2010; see also, *mutatis mutandis*, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 151, ECHR 2014; and *Murray v. the Netherlands* [GC], no. 10511/10, § 106, 26 April 2016).

55. These considerations hold true also when it comes to the manner in which such vulnerable persons manage to formulate their complaints before the domestic courts. The Court notes that, in the present case, the applicant made several attempts to bring before the relevant domestic authorities his complaints relating to the inappropriateness of his detention regime, having regard to his specific condition. Each time, his requests were dismissed on essentially two grounds: either the fact that his condition was adequately treated in prison, or that his own aggressive behaviour did not allow him to be placed under a less severe prison regime (see paragraphs 14, 16, 19, 22 and 24 above). However, it is precisely the apparent inadequacy, by virtue of its circularity, of this response to the applicant's grievance that constitutes the salient issue in the present case.

56. Having regard to the above and to the particular circumstances of the present case, the Court considers that the applicant provided the national authorities with the opportunity which is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention, namely of putting right the violations alleged against them (see, *mutatis mutandis* and among many other authorities, *Muršić v. Croatia* [GC], no. 7334/13, § 72, 20 October 2016).

57. The Court thus finds that the applicant properly exhausted domestic remedies. The Government's preliminary objection must therefore be dismissed.

58. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

**Merits**

*The parties' submissions*

**(a) The applicant**

59. The applicant argued that during his detention his mental illness had deteriorated, as was shown by the fact that he had progressively become fully dependent on the assistance of third parties, becoming severely disabled towards the end of his imprisonment.

60. He also submitted that the medical care and supervision received had been inappropriate. Concrete proof of that was the fact that he had managed to severely harm himself while under medical supervision (see paragraphs 40, 42 and 43 above, in which the incidents of October 2017 and March 2018 are described); moreover, on 31 March 2018 he had possibly been assaulted by third parties while in the courtyard of the prison hospital, an incident which had never been investigated by the relevant authorities (see paragraph 44 above).

61. He further argued that the authorities' replies to his request to be placed under another prison regime or in a hospital which would be more suitable for his mental condition had been dismissed, mainly having regard to the high number of disciplinary sanctions he had received, even though those misdemeanours had occurred precisely because of his incapacity to adapt to the prison

conditions in which he had been placed. Moreover, he submitted that the repeated imposition of disciplinary sanctions on a mentally disabled inmate on account of self-harm instead of attempting to prevent such incidents by providing him with appropriate care showed that the authorities were far from being able to grasp the nature of his problems and finding a potential solution.

62. Furthermore, his need for a personal care assistant on a permanent basis had been disregarded by the prison authorities, which had left him unattended for several periods of time (see paragraph 31 above). This had subjected him to anguish and humiliating situations, leading to self-harm and epileptic seizures.

63. The applicant concluded that the authorities had failed to put in place an appropriate and comprehensive therapeutic strategy capable of meeting his particular needs.

**(b) The Government**

64. The Government submitted that from 6 December 2016 until his release, the applicant had spent a total of eighty-nine days in prison hospitals, where he had been examined, supervised and medicated in accordance with the doctors' prescriptions.

65. They also argued that throughout his detention the applicant had failed to comply with the medical recommendations received, had refused to be examined or to take his prescribed medication for his psychiatric and neurological problems, and had refused food. They maintained, however, that the medical care provided to the applicant had been thorough and consistent and that there was no evidence on file proving that his health had worsened during and because of his detention.

66. Concerning the possibility of transferring the applicant to another institution in view of his mental condition, the Government submitted that any transfer to a prison hospital would only have been possible on a temporary basis, namely until a diagnosis had been established and the corresponding treatment and evaluation had been carried out. Prison hospitals were not detention institutions where inmates could be allowed to serve their sentences. In any event, any transfer to a psychiatric unit of an inmate who was considered by a medical commission to be in need of medical care for his mental condition, drug addiction or in any other state that could represent a risk to society had to be ordered by a court, on a temporary basis, namely until the person's condition had improved such as to no longer constitute a risk.

67. The Government contended that as far as had been possible, the applicant had been assigned a personal care assistant of his own choice; his requests had been dealt with promptly, as had been his related complaints lodged with the post-sentencing judge.

68. Lastly, the Government referred to *Mihăilescu v. Romania* ([Committee], no. 32002/15, § 20, 3 December 2019), in which the Court had disapproved in general terms of the domestic authorities' policy of assigning as personal care assistants inmates who were not trained or did not have the necessary qualifications to provide such assistance. However, the applicant in the present case only needed help when performing regular, day-to-day tasks and on occasions when he had an epileptic seizure. Such assistance did not require any specific training, as in fact the assistant was not called on to provide medical care to the applicant. In that respect, the authorities' policy could be considered as appropriate in the case of the applicant.

*The Court's assessment*

**(a) General principles**

69. The Court refers to the general principles laid down recently by the Grand Chamber in *Rooman v. Belgium* ([GC], no. 18052/11, §§ 141-48, 31 January 2019). In particular, the Court refers to the following paragraphs (references omitted):

"145. In determining whether the detention of an ill person is compatible with Article 3 of the Convention, the Court takes into consideration the individual's health and the effect of the manner of execution of his or her detention on it ... It has held that the conditions of detention must under no circumstances arouse in the person deprived of his liberty feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance ... On this point, it has recognised that detainees with mental disorders are more vulnerable than ordinary detainees, and that certain requirements of prison life pose a greater risk that their health will suffer, exacerbating the risk that they suffer from a feeling of inferiority, and are necessarily a source of stress and anxiety. It considers that such a situation calls for an increased vigilance in reviewing whether the Convention has been complied with ... In addition to their vulnerability, the assessment of the situation of these particular individuals has to take into consideration, in certain cases, the vulnerability of those persons and, in some cases, their inability to complain coherently or at all about how they are being affected by any particular treatment ...

146. The Court also takes account of the adequacy of the medical assistance and care provided in detention ... A lack of appropriate medical care for persons in custody is therefore capable of engaging a State's responsibility under Article 3 ... In addition, it is not enough for such detainees to be examined and a diagnosis made; instead, it is essential that proper treatment for the problem diagnosed should also be provided ... by qualified staff ...

147. In this connection, the 'adequacy' of medical assistance remains the most difficult element to determine. The Court reiterates that the mere fact that a detainee has been seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate. The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention, that diagnosis and care are prompt and accurate, and that where necessitated by the nature of a medical condition supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis. The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through. Furthermore, medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities ...

148. Where the treatment cannot be provided in the place of detention, it must be possible to transfer the detainee to hospital or to a specialised unit ..."

**(b) Application of these principles to the present case**

70. At the outset, having regard to the fact that the applicant had the opportunity to apply to the domestic courts for an assessment of the compatibility of his detention with his health, the Court notes that the decisions reached by the domestic authorities, were based on medical conclusions or

legal regulations which in the relevant court's view confirmed the applicant's real capacity to remain in prison under the detention regime complained of, as well as the necessity that he did so (see paragraphs 14, , 21, 22, 24 and 25 above).

71. In the light of the above, and having also regard to the applicant's complaint before it, as described in paragraph 51 above, the Court concludes that the present case does not concern the question of the applicant's initial fitness to serve his sentence, but rather the quality of the care provided, and in particular whether the national authorities did everything that could reasonably be expected of them to provide him with the medical care he needed and to offer him some prospect of an improvement in his condition (see, *mutatis mutandis*, *Potoroc v. Romania*, no. 37772/17, §§ 73-74, 2 June 2020).

*(i) Concerning the prison regime in which the applicant was placed*

72. The Court observes that it has already found that the risk of significant deterioration in the applicant's mental and physical health arising from the conditions of detention in a maximum security prison liable to aggravate the illness of a paranoid schizophrenic applicant was sufficient to give rise to a breach of Article 3 of the Convention (see *Aswat v. the United Kingdom*, no. 17299/12, § 57, 16 April 2013).

73. Therefore, even though it cannot be said that detention in a high-security prison facility in itself raises an issue under Article 3 of the Convention, as public-order considerations may lead the State to introduce high-security prison regimes for particular categories of detainees (see *Piechowicz v. Poland*, no. 20071/07, § 161, 17 April 2012), the State must nevertheless ensure that the manner and method of the execution of the measure do not subject a detainee with mental disorders to distress or hardship of an intensity exceeding that unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the person's health and well-being are adequately secured (see, for instance, *Wenner v. Germany*, no. 62303/13, § 55, 1 September 2016 and all the references cited therein).

74. In that vein the Court notes that obligations under Article 3 may go so far as to impose an obligation on the State to transfer prisoners (including those who are mentally ill) to special facilities in order to receive adequate treatment (see, for instance, *Murray*, cited above, § 105, referring to *Raffray Taddei v. France*, no. 36435/07, § 63, 21 December 2010).

75. Turning to the present case, the Court considers that not only have the domestic authorities failed to ensure the applicant's health and well-being through his placement in a special facility where he could have received adequate treatment and supervision on a more consistent basis, but on the contrary, in spite of his complex condition and history of self-aggression, they considered it appropriate to place him under a maximum security prison regime, precisely on the basis of his aggressive behaviour.

76. The Court finds that the placement of the applicant under such a restrictive prison regime for a significant period of time (more than one year and ten months – see paragraph 9 above) has not facilitated the applicant's rehabilitation or deterred him from committing further offences, these being, in the domestic courts' view, the essential aim of his sentence (see paragraph 22 above); most importantly, it has had severely negative psychological and emotional effects entailing a deterioration in his mental condition, as underlined by the medical authorities and by the courts (see paragraphs 25, 28 and 36 above).

*(ii) Concerning the personal care assistant assigned to the applicant*

77. The Court notes that the evidence from various medical sources confirmed that the applicant had several serious medical conditions which over time required more regular medical care and supervision (see paragraphs 6, 25, 28, 35 and 36 above).

78. The Court further notes that, keeping in mind the applicant's general health and given the vulnerable and difficult situation in which he found himself because of his permanent disability, as attested by medical certificates (see paragraphs 27 and 29 above), he should have been entitled, according to the national law, to the help of a personal care assistant, without having to make any special request.

79. However, during several periods, including while he was in transit between prisons or prison hospitals and in spite of several requests lodged by him in that regard, the applicant was left unaided (see paragraph 31 read in conjunction with paragraph 34 *in fine*, above). This in itself leads to a strong presumption of a violation of Article 3 of the Convention.

80. Furthermore, although the case file shows that at certain times the applicant had the assistance of various fellow inmates (see paragraphs 31 and 34 above), the Court is particularly concerned about the quality of their assistance, as they had neither been trained nor have the necessary qualifications to provide such assistance to a person such as the applicant with a complex condition in the area of mental disability; indeed, the manner in which the applicant's personal assistants were assigned appears to have been based on an assessment of their adequate physical shape and of whether they had or had not been subjected to disciplinary sanction, rather than on whether they had followed any type of medical training (see paragraph 33 above). In that connection, the Court refers to the medical evidence as well as to the applicant's allegations showing that the applicant's seizures were frequent and could occur at any time of the day or night, and involved episodes of high irascibility, aggressive behaviour and complete loss of self-control (see paragraphs 36 and 37 above). Therefore, the applicant must have known that at any moment he risked a medical emergency with very serious effects and that no qualified medical assistance was available. Hence, leaving him without specialised assistance in such situations must have given rise to considerable anxiety on his part (see, *mutatis mutandis*, *Khudobin v. Russia*, no. 59696/00, § 95, 26 October 2006).

81. In that connection, the Court reiterates that in circumstances where prison staff felt that they had been relieved of their duty to provide security and care to more vulnerable detainees whose cellmates had been given responsibility for providing them with daily assistance or, if necessary, with first aid (see *Semikhvostov v. Russia*, no. 2689/12, §§ 84-85, 6 February 2014, and *Potoroc*, cited above, § 77), it has already found a violation of Article 3 of the Convention on the basis that such assistance did not form part of any organised assistance by the State to ensure that the applicant was detained in conditions compatible with respect for his human dignity. That assistance could not therefore be considered suitable or sufficient in view of the applicant's physical disability (see *Farbtuhs v. Latvia*, no. 4672/02, § 60, 2 December 2004, and *D.G. v. Poland*, no. 45705/07, § 147, 12 February 2013).

82. Moreover, the Court reiterates that the feeling of inferiority and powerlessness which is typical of individuals who suffer from a mental disorder calls for increased vigilance in reviewing whether the Convention has (or will be) complied with (see *Aswat*, cited above, § 50).

83. Having regard to the above and noting that the personal care assistants provided to the applicant on a somewhat occasional basis were clearly not trained to provide him with any first-aid measures, the Court considers that in the present case the help offered by the applicant's fellow inmates did not form part of any effective assistance by the State to ensure that the applicant was detained in conditions compatible with respect for his human dignity. Such help cannot therefore be considered suitable or sufficient.

*(iii) Concerning the medical care provided to the applicant*

84. Moreover, the Court notes with concern that even on the occasions when the applicant was under the care and direct supervision of trained staff, namely while he was in a prison hospital, he managed to severely harm himself by inserting nails in his head. Those incidents, seen against the medical background of the applicant, should have alerted the authorities to a sufficient degree to put in place a more adequate strategy capable of responding consistently and effectively to the applicant's serious mental illness.

85. The Court further notes the Government's arguments relating to the applicant's lack of therapeutic compliance (see paragraph 65 above). However, while it is mindful of the fact that the applicant was a vulnerable individual on account of his health condition and his detention, it considers that his cooperation is only one factor to be taken into account in assessing the effectiveness of the required treatment and that the duty to provide suitable care on the basis of individualised treatment lies primarily with the relevant authorities (see, *mutatis mutandis*, *Rooman*, cited above, § 164).

86. Having regard to the above, the Court considers that the Government's argument that the applicant received care corresponding to his needs is not factually accurate. On the contrary, all the evidence in the case file, in particular the fact that the applicant was frequently in a situation of inflicting self-harm, even when under specialised supervision (see paragraphs 40, 42 43, 45, 47 as well as 84, above), and the only measures taken repeatedly at prison level were to sanction him for disciplinary misdemeanours (see, in particular, paragraphs 22 and 24 above), would appear to indicate a failure on the authorities' behalf to correctly identify his medical needs and consequently to provide him with comprehensive therapeutic treatment and supervision, as required by his complex mental condition.

*(iv) Conclusion*

87. In view of all the foregoing considerations, the Court concludes that in the present case in view of the applicant's state of health and his disability, in so far as concerns the relevant period (see paragraph 8 above), the national authorities failed to implement and provide a coherent and appropriate therapeutic strategy capable of responding adequately to the applicant's medical needs, so as to avoid subjecting him to treatment contrary to Article 3 of the Convention.

88. There has accordingly been a violation of Article 3 of the Convention during the period from 6 December 2016 to the applicant's release on 16 June 2019.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. 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."

**Damage**

90. The applicant claimed 600 euros (EUR) per month of detention in respect of pecuniary damage, consisting of costs and expenses caused by the need to have a permanent personal assistant. He also claimed EUR 50,000 in respect of the non-pecuniary damage caused by his suffering during detention.

91. The Government argued that the claim in respect of pecuniary damage had not been substantiated. In any event, they submitted that the causal link between the alleged violation of the Convention and the pecuniary damage had not been proved. As regards the claim in respect of non-pecuniary damage, they deemed the amount claimed excessive.

92. The Court considers, on the one hand, that the applicant has not demonstrated the existence of a 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 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

**Costs and expenses**

93. The applicant did not submit any claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

**Default interest**

94. 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,

*Declares* the application admissible;

*Holds* that there has been a violation of Article 3 of the Convention concerning the failure of the authorities to implement and provide a coherent and appropriate therapeutic strategy capable of responding adequately to the applicant's medical needs during the period from 6 December 2016 to his release on 16 June 2019;

*Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 May 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Yonko Grozev

RegistrarPresident