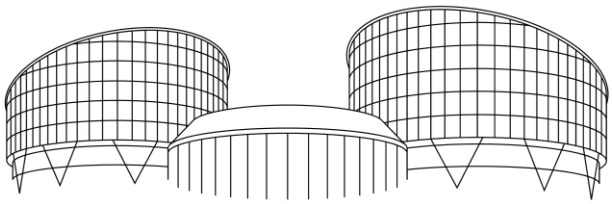

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF PANAITESCU v. ROMANIA

(Application no. 30909/06)

JUDGMENT

STRASBOURG

10 April 2012

FINAL

10/07/2012

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

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

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Ineta Ziemele,
Luis López Guerra,
Nona Tsotsoria,
Mihai Poalelungi, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 20 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 30909/06) 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 Ştefan Panaitescu ("the applicant"), on 16 June 2006.

2. The applicant was represented by Ms F. L. Romosan, a lawyer practising in Oradea. The Romanian Government ("the Government") were represented by their Agent, Ms I. Cambrea, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, a breach of his rights guaranteed by Articles 2 and 3 of the Convention.

4. The applicant's son, Mr Alexandru Leonard Panaitescu, informed the Court by a letter of 16 April 2007 that his father had passed away and, by a letter of 10 February 2010, that he as his father's legal heir wished to pursue the proceedings. For practical reasons Mr Ştefan Panaitescu will continue to be called "the applicant", although his heir is now regarded as having this status (see *Dalban v. Romania* [GC], no. 28114/95, § 1, 28 September 1999).

5. On 14 December 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

6. As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mr Mihai Poalelungi to sit as *ad hoc* judge (Article 26 § 4 of the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

7. Mr Ştefan Panaitescu ("the applicant") was a Romanian national, born in 1944, who lived in Alejd, Bihor County. On 3 December 2006, he died and the application was continued by his son Mr Alexandru Leonard Panaitescu.

A. Civil actions seeking the acknowledgement and enforcement of the right to free medication and free medical assistance under Law no. 189/2000

8. On 8 May 2002, the applicant filed an action against the Bihor County Pensions Office seeking the annulment of a decision denying him the benefit of Law no. 189/2000, which provided for damages and certain facilities for persons persecuted by the Romanian authorities between 6 September 1940 and 6 March 1945 on ethnic grounds.

By a decision of 3 June 2002, the Oradea Appeal Court found for the applicant, ordering the defendant to award him the benefits provided for in the above-mentioned Law. The decision became final on 28 January 2003.

Accordingly, on 2 April 2003 the commission responsible for the enforcement of Law no. 189/2000 issued a new decision confirming the applicant's status as a refugee and consequently as a beneficiary of that Law from 1 April 2001; the decision confirmed that, *inter alia*, the applicant was entitled to obtain priority free medical assistance and medicines, both when hospitalised and as an outpatient.

9. On 20 April 2005, the applicant was diagnosed with cancer and on 4 May 2005, he underwent surgery at Oradea State Hospital for the removal of a tumour on the right kidney. Following medical tests, it was established that the tumour had reached stage III and that the lung was also affected. According to the applicant, although he was hospitalised in the oncology ward, the medical staff failed to administer him specific oncological treatment and he was administered only perfusions with vitamins and normal saline solution.

10. In these circumstances, the applicant approached the Cluj Napoca Oncological Institute.

On 16 September 2005, by a letter addressed to Oradea Hospital, Dr A.U., an oncologist from the Cluj Napoca Oncological Institute, confirmed a partial remission of the illness in the applicant's case, and therefore recommended that he continue being treated with Avastin and Roferon, which he had started at his own expense in July 2005. This recommendation was later reiterated in a letter of 12 January 2006, in which

Dr. A.U also acknowledged that the Avastin medicine, which had been administered to the patient twice a week from 1 July 2005, had been "procured and paid for in full by Mr. Panaitescu during the entire period of treatment".

11. However, as he could not afford to continue indefinitely bearing the costs of the treatment, which was financially burdensome, the applicant notified the Bihor Health Insurance Service (*Casa Judeţeană de Asigurări de Sănătate Bihor* – "the CAS") and the Bihor Public Health Office (*Direcţia de Sănătate Publică Bihor*) accordingly on 22 and 18 August 2005 respectively and sent numerous requests to the National Health Insurance Service (*Casa Naţională de Asigurări de Sănătate* - "the CNAS"), seeking to be granted the recommended drugs free of charge.

On 27 September 2005, through a local bailiff, he filed a notification with the CNAS requesting, on the basis of the relevant legislation and supporting documents, that funds be made available for the drugs recommended by his oncologist, namely Roferon and Avastin. The notification read as follows in its relevant part:

> "I ask you to take into consideration that in case of failure to grant my request, you will incur civil and criminal liability for causing my death .... The director of the Bihor Public Health Office, Dr M.A., has confirmed to me that you have rejected my request. This fact is irrefutable proof of your guilt. ... Considering the urgent nature of the case, I request a solution within a maximum of ten days, any delay causing irreversible trauma, and after the expiry of that term, I shall be obliged to apply for an injunction in this regard and to initiate criminal proceedings because any refusal is tantamount to murder. I enclose the documents certifying my right and your obligation according to the Law governing the organisation of CNAS, the sole institution able to guarantee my right to life on the State's behalf."

The applicant addressed numerous other petitions to the relevant institutions, including the Government of Romania, but to no avail.

12. In addition, "in order to illustrate the distress he was suffering" the applicant informed the Court that since he was unable to pay for the drugs, he had applied to the Hamburg University Clinic, on the basis of a recommendation made by Dr A.U., to be included in the experimental trials of Bayer Concern for a new drug called Nexavar. On 18 May 2006, the applicant signed a contract with the aforesaid institution and started receiving treatment with Nexavar, which obliged him to be present at the clinic once every two months. No other information regarding the execution of that contract was submitted.

B. Actions to oblige the CNAS and the CAS to provide him with specific treatment

13. On 10 November 2005 the applicant brought a liability action against the CNAS and the CAS, requesting the Oradea Court of Appeal to order the defendants to provide him with the medicines Roferon and

Avastin free of charge and with priority for the period recommended by his doctors, as well as with any other drugs prescribed by his doctors; he also asked to be reimbursed the cost of the drugs already paid for by him from July 2005 to date. He requested the court to notify the relevant institutions that their failure to do so would have the civil and criminal consequences of putting his life at risk.

By a judgment of 12 December 2005, the Oradea Appeal Court allowed the applicant's claims. On the basis of medical documents and an opinion which attested to a remission of the illness after the use of the drugs Avastin and Roferon taken together, the court ordered the CNAS and the CAS to provide the applicant with the two requested drugs free of charge and with priority for the period recommended by the doctors, together with any other medicines prescribed by the doctors; it also ordered them to reimburse the applicant the cost of the medicines prescribed by the doctors borne so far by the applicant himself.

The court dismissed the CNAS's defence that according to Government Decision no. 235/2005 the applicant could not be provided with Avastin free of charge, in so far as the drug Avastin was not on the list of drugs available to outpatients and therefore could not be subsidised from the National Health Insurance Fund ("the FNUASS"). The court argued that any list of medicines is susceptible of being amended all the time; otherwise, the use of any new drug proved to have positive effects on the evolution of cancer would be impossible for at least one or two years after it became available owing to administrative barriers and logistical formalities meant to ensure that its cost could be reimbursed by the FNUASS; this delay would have only negative repercussions for the health of the population. Furthermore, the court held that in so far as in the applicant's case there was no other drug available as a replacement for Avastin, and considering that failure to use it would have repercussions for the evolution of his illness, the State authorities should have made it possible to have Avastin rapidly included on the list of reimbursable drugs.

14. The CNAS and the CAS contested that judgment before the High Court of Cassation and Justice, mainly arguing that the first-instance court was asking them to reimburse the applicant the cost of medicines that were not included on the list of reimbursable drugs. For the same reason, Avastin could not be provided free to the applicant.

On 19 April 2006, the High Court of Cassation and Justice dismissed the appeal and upheld the first-instance court's judgment. The court held that the appellants' contention that the applicant had been treated free of charge with Intron A (the equivalent of Roferon) from November 2005 until April 2006 was not supported by evidence and, in any event, that period did not cover the entire time during which the applicant should have been provided with medication free of charge.

At the same time, noting that the Avastin had already been approved by the National Medicines Agency in June 2005, the court considered that nothing prevented the appellants to have initiated legal procedures to have Avastin included on the list of reimbursable medicines starting with that moment, especially having in mind that no other equivalent of Avastin with similar therapeutical effects was included on that list.

15. On 23 May 2006 the applicant wrote to the CAS requesting the urgent enforcement of that final judgment, arguing that the remission of the illness had ceased and the illness had even worsened on account of the delays caused by the passivity of the State authorities. He also invoked Article 2 of the Convention, requesting the protection of his right to life.

16. By a letter of 5 September 2006 the applicant informed the Court that the judgment had not been enforced; moreover, he submitted that the CAS had no intention of complying with the final judgment, as proved by the fact that they had contested its enforcement and also lodged an extraordinary appeal, requesting that it be set aside (see paragraphs 17-18 below).

He further stated that the drug Roferon had been replaced by Intron, which he had stopped taking in September 2006 as it caused side effects and because the medical tests showed that the cancer had spread since he had been taking that drug. The applicant also informed the Court that on 1 August 2006 the ordinary treatment with cytostatics had been stopped with no explanation.

The applicant also submitted the results of medical tests carried out during his treatment with Avastin and Roferon, dated 16 September 2005, which confirmed that the disease was in partial remission, and blood test results dated 3 March 2006, after the treatment had ceased, which allegedly attested to an aggravation of the illness.

17. On 6 June 2006, the CAS contested the enforcement of the judgment of 12 December 2005, which had become final on 19 April 2006, alleging that the institution could not provide the applicant with the requested medicine, since it was not entitled to buy and sell drugs and medicine. Moreover, their relationship with pharmacies was one of cooperation, and not one of subordination, consequently they could not oblige them to provide the requested medicines to the applicant free of charge.

Concerning the applicant's pecuniary claims, the CAS considered that although the evidence submitted by the applicant proved that some medication had been bought from abroad, the amounts of money paid were unspecified, and thus they were not able to make any payment in that regard. The CAS also asked that the enforcement of the disputed judgment be suspended pending the contestation proceedings.

18. The applicant's son informed the Court that those proceedings had ended on 22 March 2010, when the contestation was dismissed in a final judgment; the CAS submitted that the pecuniary claims had become

time-barred, while the obligation to provide the applicant with the medicine in question had been left without any object following the applicant's death.

The CAS also informed that their extraordinary appeal against the disputed judgment (see paragraph 16 above) had also been dismissed by the High Court of Cassation and Justice

No copy of any judgment allegedly given in these proceedings was submitted.

II. RELEVANT DOMESTIC LAW

19. Law no. 189/2000 provides for damages for persons persecuted on ethnic grounds who are refugees from the territories occupied during the Second World War. Section 5 (a) provides that persons whose cases are regulated by sections 1 and 3 "shall benefit from priority free medical care and drugs, both as outpatients and when hospitalised."

20. Government decision no. 627/2005 amends decision no. 235/2005 regarding the approval for the year 2005 of the list of drugs from which insured persons being treated as outpatients, with or without a personal contribution, could benefit on the basis of a medical prescription. The persons concerned by the special laws, who were entitled to free medication paid for by the National Health Insurance Fund, were entitled to full reimbursement of the cost of all the medicines included on the list. Avastin was not included on the list.

THE LAW

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

21. The applicant complained that the State institutions, by "cynically and abusively" refusing to enforce the final court decisions granting him the appropriate medical treatment for his terminal disease free of charge, put his life at risk, which also constituted inhuman treatment, in breach of Articles 2 and 3 of the Convention.

In so far as relevant, the Articles relied on by the applicant read as follows:

Article 2

> "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. ..."

Article 3

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

A. Admissibility

22. The Government contested the applicant's allegations.

23. The Court notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

24. Having regard to the circumstances of the present case, and more particularly to the applicant's death pending the proceedings before this Court, the complaints will be examined firstly from the standpoint of Article 2 of the Convention, before an assessment is made of whether it is necessary to address them under Article 3 also (see *Gagiu v. Romania*, no. 63258/00, § 54, 24 February 2009).

1. The parties' submissions

25. The Government relied on the information submitted by the CNAS and the CAS, which revealed that the applicant had been provided with free medication, namely Intron A, identical to Roferon, for the periods between November 2005 and April 2006 and May and October 2006. Besides Intron A, the applicant had received other medication free of charge from 1 December 2005 until his death, such as Preductal, Enalapril, Betaloc, Ampiciline, Trimetazidine, Neorecormon, Controloc, Tramadol etc. He had also, while hospitalised, received appropriate medical care.

In so far as Avastin had been included on the list of reimbursable drugs only from December 2006, it had not been possible to grant it to the applicant free of charge before that date.

The Government thus contended that the State's obligation to protect the applicant's health by providing him with the required medical services and appropriate free medication had been fulfilled.

Furthermore, there was no link between the applicant's death and the acts or omissions of the State authorities, the applicant not having provided any medical document to support such a finding.

Moreover, according to the Court's case-law, where a Contracting State has made adequate provision for securing high professional standards among health professionals and the protection of the lives of patients, the Court does not accept that matters such as error of judgment on the part of a

health professional or negligent coordination among health professionals in the treatment of a particular patient are sufficient of themselves to call a Contracting State to account from the standpoint of its positive obligations under Article 2 of the Convention to protect life (see, among many others, *Byrzykowski v. Poland*, no. 11562/05, § 104, 27 June 2006).

Having regard to the fact that most of the medical treatment recommended by the doctors had been provided free of charge to the applicant for the above-mentioned periods of time, his complaint that he had been submitted to inhuman and degrading treatment was not substantiated.

The applicant's complaints under Articles 2 and 3 were therefore ill-founded.

26. The applicant contended that the two drugs recommended by the specialist doctors, namely Roferon and Avastin, which were essential for successful treatment, needed to be administered concomitantly, and not alternately; this issue had been confirmed by medical correspondence attesting to a remission of the disease in the applicant's case as a result of the concomitant administration of both drugs for a specific period of time.

Therefore, although Intron A had been administered to the applicant free of charge, albeit not for the whole duration of the treatment and only after strenuous efforts on his behalf, it had not had the expected positive effects inasmuch as it had not been permanently combined with Avastin. As the latter drug had not been provided to the applicant by the State authorities, he had procured it at his own expense for as long as he could afford it, namely for only a few months (July to December 2005), since Avastin was an expensive medicine.

In view of the medical documents, which proved that there had been a remission of the disease following the concomitant administration of both drugs recommended by the doctors, and having regard also to the domestic courts' judgments upholding the applicant's right to be granted those medicines free of charge, the causal link between the applicant's death and the State authorities' failure to comply with their obligations was self-evident. Furthermore, the authorities' wrongful refusal to enforce the judgments, in spite of the fact that they were aware of the applicant's deteriorating health, had subjected him to deep psychological suffering in breach of Article 3 of the Convention.

2. The Court's assessment

27. The Court observes that the first sentence of Article 2 imposes a positive obligation on Contracting Parties. The States' obligation to protect the right to life is not limited to refraining from taking life intentionally and unlawfully but also implies the duty to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III).

28. The Court has accepted that it cannot be excluded that the acts and omissions of the authorities in the field of health care policy may in certain circumstances engage their responsibility under Article 2. However, where a Contracting State has made adequate provision for securing high professional standards among health professionals and the protection of the lives of patients, it cannot accept that matters such as error of judgment on the part of a health professional or negligent co-ordination among health professionals in the treatment of a particular patient are sufficient of themselves to call a Contracting State to account from the standpoint of its positive obligations under Article 2 of the Convention to protect life (see *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V, and *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII).

29. The Court reiterates that its approach to the interpretation of Article 2 is guided by the idea that the object and purpose of the Convention as an instrument for the protection of individual human beings requires its provisions to be interpreted and applied in such a way as to make its safeguards practical and effective (see, for example, *Yaşa v. Turkey*, 2 September 1998, § 64, *Reports of Judgments and Decisions* 1998-VI).

30. In the instant case the complaint before the Court is that the national authorities did not do all that was expected of them, not only by the applicant, but also by the domestic courts (see paragraphs 13-14 above), who ordered them to provide the applicant with the necessary medication to treat the disease which finally led to his death.

The Court's task is, therefore, to determine whether, given the circumstances of the case, the State did all that could have been required of it to prevent the applicant's life from being avoidably put at risk by timely providing him with appropriate health care (see, *mutatis mutandis*, *L.C.B.*, cited above, § 36). In its assessment of this issue, the Court considers that it must be guided by the due diligence test, since the State's obligation in that respect is one of means, not of result. Notably, the mere fact of a deterioration of the applicant's state of health, could not suffice, as such, for a finding of a violation of the State's positive obligations under Articles 2 or 3 of the Convention, if, on the other hand, it can be established that the relevant domestic authorities have in timely fashion resorted to all reasonably possible medical measures in a conscientious effort to hinder development of the disease in question (see, *mutatis mutandis*, *Aleksanyan v. Russia*, no. 46468/06, § 139, 22 December 2008).

31. The Court firstly notes that on the basis of Law no. 189/2000 the applicant was entitled to free medication and medical assistance, to be provided to him with priority. This right was acknowledged by the domestic courts in the proceedings culminating in the judgment of 3 June 2002 and then confirmed by the commission that issued the decision of 2 April 2003 recognising the applicant's entitlement to the relevant rights from 1 April 2001 (see paragraph 8 above).

The same right was confirmed in the proceedings lodged by the applicant in 2005 in connection with the recommended anticancer treatment. The domestic courts, both at first instance and on appeal, held in favour of the applicant and ordered the defendants, State authorities, to provide him with the prescribed anticancerous medication and reimburse him any costs that he had incurred for such medicine; furthermore, the courts dismissed the defendants' argument according to which Avastin had not been provided because it was not on the list of reimbursable medicines, having regard also to the fact that the drug had not been replaced by any equivalent one.

32. It follows that, in the present case the applicant's access to free medical care, as he was entitled, was more than once hindered, as he needed to make constant and repeated efforts to be granted the requisite anticancerous medical treatment free of charge. For a while, he bore the cost of the treatment, despite the final judgments conferring on him the right to be granted the prescribed medicines free of charge and with priority.

The delayed and partial enforcement of the judgment of 12 December 2005 ordering the State authorities to grant him free of charge the drugs recommended by his doctors coincided with a deterioration in his health, especially once the applicant could no longer afford to bear the cost of the treatment personally. This deterioration culminated in the death of the applicant, on 3 December 2006.

33. In the light of the foregoing, the Court considers that the applicant's reasons to request something which the medical experts had prescribed him and for which he did not have to pay, according to the domestic courts' ruling, could not be said to have been whimsical.

34. The Court further notes that in spite of the fact that the applicant was entitled to be provided with medicines free of charge, that right was repeatedly contested, mainly on bureaucratic grounds (see also paragraphs 13-14 above), with the result that he was not able to properly pursue his prescribed treatment; furthermore, in spite of the fact that the domestic courts found no justification for State authorities' conduct, the required treatment was still not provided to the applicant in due time, as required by the gravity of his illness.

35. The Court further considers in this connection that, just as it is not open to a State authority to cite lack of funds or resources as an excuse for not honouring a judgment debt (see, *mutatis mutandis*, *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III), the same principle applies *a fortiori* when there is a need to secure the practical and effective protection of the right protected by Article 2, a right fundamental in the scheme of the Convention.

36. Hence, while being aware of the serious and complex nature of the illness the applicant was suffering from, the Court cannot ignore that, according to the available medical information, the recommended drugs proved to have positive effects for as long as they were administered, and

that the doctor noted a "partial remission of the illness" while the treatment was taken; is why the Court considers that the State authorities were or ought to have been aware of the need for appropriate treatment in the applicant's case, in the lack of which a real and immediate risk to the applicant's life existed. This aspect was also revealed by the domestic courts' conclusions. Yet, the authorities failed to take timely measures within the scope of their powers that might have been, and indeed were, expected of them, as confirmed by the judgment of 12 December 2005, to avoid that risk. Therefore, the Court cannot rule out that the State's failure to provide the applicant with appropriate medical treatment has contributed to an aggravation of his disease.

37. The Court thus holds that in the very particular circumstances of the present case, the State failed to prevent the applicant's life from being avoidably put at risk by not providing him the appropriate health-care as ordered by the national courts, in breach of its procedural obligations under Article 2 of the Convention.

38. Having regard to the facts of the case, the submissions of the parties and its finding of a procedural violation of Article 2 (see paragraphs 34-37 above), the Court considers that it has examined the main legal questions raised in the present application. It concludes, therefore, that there is no need to examine whether there has also been a violation of Article 3 of the Convention (see, for example, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; and *Gagiu*, cited above, § 73).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The applicant also complained under Article 14 of the Convention of discrimination, comparing his case to that of other beneficiaries of the special laws, such as police officers, prosecutors, magistrates, State officials, and parliamentarians, whose rights were always respected since they were considered substantially more important than he was. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

40. The Court finds that the applicant has failed to substantiate his allegation that he was subjected to discriminatory treatment on the ground of his social status. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. In respect of pecuniary damage, the applicant claimed 52,832 Euros (EUR), representing the money he had already paid for procuring the necessary medication (roughly EUR 5,000) and the money he would have paid if he had obtained Avastin for twelve months at his own expense (EUR 48,000). The applicant further claimed EUR 850,000 in respect of non-pecuniary damage.

43. The Government did not contest the amount claimed in respect of pecuniary damage, inasmuch as it was supported by documents and related to money already paid by the applicant for procuring the medicines from July to December 2005. As regards non-pecuniary damage, the Government considered that the amount claimed was unjustifiably high and asked for an assessment on an equitable basis in accordance with the case-law of the Court in the matter.

44. The Court does not consider the alleged pecuniary damage to be fully substantiated, but it does not find it unreasonable to suppose that the applicant certainly incurred costs that were directly due to the violation found. It also takes the view that, as a result of the violation found, the applicant undoubtedly suffered non-pecuniary damage that cannot be repaired merely by the finding of a violation.

Consequently, having regard to the circumstances of the present case seen as a whole, and deciding on an equitable basis, the Court awards the applicant EUR 20,000 in respect of the pecuniary and non-pecuniary damage sustained, plus any tax that may be chargeable.

B. Costs and expenses

45. The applicant did not claim the reimbursement of any costs and expenses.

C. Default interest

46. 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 complaints under Articles 2 and 3 of the Convention admissible and the remainder of the application inadmissible;

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

3. *Holds* that there is no need to examine the complaint under Article 3 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay Mr Alexandru Leonard Panaitescu, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand Euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage, to be converted into the national currency at the rate applicable on the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President