



## Publication in the media of personal information from former mayor's criminal case file violated his right to respect for private life

In today's **Chamber judgment**<sup>1</sup> in the case of **Apostu v. Romania** (application no. 22765/12) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, and

**a violation of Article 8** (right to respect for private and family life, the home and the correspondence)

The case concerned the pre-trial detention conditions of a former mayor accused of corruption and his allegation that part of the case file was leaked to the media.

The Court found in particular that Mr Apostu's right to respect for his private life had been violated as a result of documents in his criminal case file being leaked to the press. The Court found that the State had failed to provide safe custody of the information in its possession or offer Mr Apostu any means of redress once the leak had occurred.

### Principal facts

The applicant, Sorin Apostu, is a Romanian national who was born in 1968 and is currently in detention in Romania. He is the former mayor of Cluj-Napoca.

In November 2011 Mr Apostu was summoned by the prosecuting authorities who had launched a criminal investigation against him, his wife and three businessmen on suspicion of corruption, and placed in pre-trial detention. The investigation against Mr Apostu was subsequently extended to trading in influence, complicity in and incitement to forgery. The criminal proceedings against him remain pending. His pre-trial detention has been regularly extended by the courts and his requests for release dismissed on account of the nature and severity of the corruption-related offences of which he stands accused as well as the risk that, if released, he might obstruct the course of justice by intimidating witnesses.

Information from the investigation file was published in several newspapers before Mr Apostu was committed for trial. Newspaper articles quoted extracts from intercepted telephone conversations, including conversations with people who were not involved in the criminal proceedings, as well as publishing documents from the prosecution file. Press articles also referred to aspects of Mr Apostu's private life which were unconnected to the criminal proceedings against him.

### Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Apostu complained in particular about the conditions of his detention in Cluj police station detention facility between November 2011 and January 2012 and in Gherla and Rahova prisons in various short periods from

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

January to March 2012. He notably alleged that he had been subjected to overcrowding, as well as inadequate heating, lighting and hygiene. Under Article 8 (right to respect for private and family life, the home and the correspondence), Mr Apostu complained that excerpts from the prosecution file against him – in particular his private telephone conversations intercepted by the authorities' telephone tapping – were leaked to the media and then published in November and December 2011.

The application was lodged with the European Court of Human Rights on 13 April 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorra), *President*,  
Luis **López Guerra** (Spain),  
Ján **Šikuta** (Slovakia),  
Dragoljub **Popović** (Serbia),  
Johannes **Silvis** (the Netherlands),  
Valeriu **Grițco** (the Republic of Moldova),  
Iulia Antoanella **Motoc** (Romania),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

### Article 3

The Court found that there had been a violation of Article 3 of the Convention in respect of the conditions of Mr Apostu's detention. The personal space available to him was, for the most part, appropriate. However, Mr Apostu had been deprived of the ability to maintain adequate personal hygiene whilst in prison. Furthermore the Court was not convinced that the cells in Rahova and Gherla prisons, where Mr Apostu had been kept for several weeks in early 2012, had been adequately heated. As a result the Court found that the physical conditions of his detention had caused him harm that exceeded the unavoidable level of suffering inherent in detention and had thus reached the minimum level of severity necessary to constitute degrading treatment within the meaning of Article 3.

### Article 8

The Court observed that the publication of recorded conversations in the press revealed information about Mr Apostu's private affairs which cast him in an unfavourable light and gave the impression, before the case had been examined, that he had committed crimes. Furthermore some of the published conversations were strictly private and had little or no connection with the criminal charges against Mr Apostu.

The Court noted that the essence of the complaint was the fact that the authorities had allowed information to leak to the press, rather than its subsequent publication. Therefore the Court did not consider the Government's reference to the possibility of a complaint against the journalists or media companies to be relevant to the case. The Court noted that once the information had been published Mr Apostu had no means to take immediate action to defend his reputation as the merits of the case were not under examination by a court and thus the accuracy or interpretation of the recorded conversations could not be challenged. Nor did he have the means to lodge a complaint against the authorities for the leak and in the absence of a clearly identified source of the leak it would have been too burdensome for the applicant to have pursued a civil complaint under the general tort law in force.

The Court noted that the publication of information from the prosecution file neither advanced the criminal prosecution nor met a pressing social need. The leak was therefore not justified. The Court observed that criminal case files are, for good reason, subject to judicial control, but this control is lost if the information is leaked to the press.

The Court concluded that the State had failed in its obligation to provide safe custody of the information in its possession in order to secure Mr Apostu's right to respect for his private life, and likewise had failed to offer any means of redress once the breach of his rights had occurred. The Court therefore found that there had been a violation of Article 8.

### Just satisfaction (Article 41)

The Court dismissed Mr Apostu's claim for just satisfaction as he had submitted his claim outside the time limit set by the Court.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.