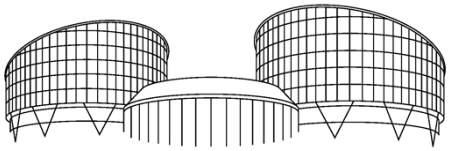

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF TORAN AND SCHYMIK v. ROMANIA

(Application no. 43873/10)

JUDGMENT

STRASBOURG

14 April 2015

FINAL

14/07/2015

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

In the case of Toran and Schymik v. Romania,

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

Josep Casadevall, *President,*
Luis López Guerra,
Ján Šikuta,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 24 March 2015,

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

PROCEDURE

1. The case originated in an application (no. 43873/10) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two German nationals, Mr Adrian Toran ("the first applicant") and Mr Albert Ernst Schymik ("the second applicant"), on 20 July 2010.

2. The applicants were represented by Mr A. Fanu Moca, a lawyer practising in Timişoara. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. The applicants alleged that the material conditions of their detention in the Timiş police station detention facility and in Timişoara and Rahova prisons had breached their rights guaranteed by Article 3 of the Convention. They further complained under Article 6 § 1 of the Convention of the unfairness of their trial, in particular on account of the use of undercover agents.

4. On 8 February 2012 the application was communicated to the Government. The German Government, to whom a copy of the application was transmitted under Rule 44 § 1 (a) of the Rules of Court, did not exercise their right to intervene in the proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are German nationals born in 1979 and 1978 respectively. They are currently serving prison sentences in Germany, following their conviction by the Romanian authorities for drug trafficking, as described below.

A. Criminal proceedings against the applicants

6. At the time of the impugned events, S.R.B., one of the applicants' acquaintances, was in police custody accused of drug-related offences. In the context of a covert operation, S.R.B. agreed to contact the applicants by phone in order to arrange a drug transaction. It appears that following several phone conversations between S.R.B. and the first applicant, the latter agreed to deliver 5,000 Ecstasy pills to Romania.

7. On 9 November 2007 the prosecutor in charge of investigating S.R.B.'s case issued an order (*ordonanta*) in which he authorised the intervention of three undercover agents, namely D.D., N.A. and L.C., who were mandated to purchase 6,000 Ecstasy pills with the assistance of S.R.B. The justification given for such an intervention was that, based on S.R.B.'s statements, there existed a strong indication that individuals as yet unknown to the police intended to commit the offence of drug trafficking. The undercover agents were necessary in the operation because the individuals in question "belonged to a drug-dealing network which acted very cautiously, taking a lot of precautions in their activities and relying exclusively on highly trustworthy persons".

On the same date, the prosecutor authorised the undercover agents N.A. and L.C. to be provided with 35,000 euros (EUR), to be taken from the special funds of the police, with the purpose of using it to purchase the drugs.

8. On the night of 9 to 10 November 2007 the applicants entered Romania and met S.R.B. in a petrol station in Timişoara. Subsequently, they requested to be directed to a mechanical workshop, where they asked to be left alone. S.R.B. was asked to wait for their phone call before returning to the garage with the money for the drugs.

9. The applicants' activity of removing the drugs from hidden compartments under the front passenger seat of the vehicle was video recorded by the investigators, based on an authorisation issued by the court on 25 October 2007.

After more than an hour, the applicants called S.R.B. to return to the garage together with the buyers, who were the undercover agents. One of

them, N.A., handed over EUR 35,000, and the second applicant verified the authenticity of some of the bank notes with a special pencil.

At the same time, the applicants presented the drugs, packed in zip-locked plastic bags, to the undercover agents. The investigators then intervened in order to ensure that the applicants were caught *in flagrante delicto*.

10. On the same day the applicants were placed in custody in the detention facility of the Timiş police station, in connection with drug-trafficking charges.

11. In his statement given before the prosecutor on 10 November 2007, the first applicant declared that he and the second applicant had come to Romania for personal reasons, namely to visit relatives. He claimed that they had intended to spend the night at the home of S.R.B., a friend of theirs, and that they had no knowledge of the content of the plastic bags found in the garage.

The second applicant refused to give any statements, claiming that he was overwhelmed by the situation.

On 5 December 2007 the first applicant specified before the prosecutor that when they had been in the garage, the two individuals who had entered with S.R.B. had taken some plastic bags out of another car that was parked in the garage, and had placed them on a table. A third person who had come in later had taken out some money and asked him and the second applicant to count it, without indicating why.

12. In his statement given before the prosecutor on 10 November 2007 in the presence of his lawyer, S.R.B. admitted that he had agreed to cooperate with the police in order to benefit from the provisions of Law no. 143/2000 granting certain benefits to those who contributed to or facilitated the identification of perpetrators of crime; he had therefore told the police that he had knowledge of a group of people who was involved in the international trafficking of Ecstasy pills. With the permission of the prosecutor, he then contacted the first applicant on the phone; the latter agreed to bring to Romania 5,000 Ecstasy pills for the price of 40,000 EUR. Several other phone calls were made in order to arrange the details of the transaction, which took place on the night of 9 to 10 November. S.R.B. confirmed that the phone calls and his being taken out of custody for the operation had been approved by the prosecutor.

13. On 6 March 2008 the applicants and S.R.B., were charged with drug-related offences.

14. During the proceedings before the first-instance court, namely until the hearing of 4 February 2009 (see paragraph 16 below), the applicants pleaded not guilty, claiming that they had had no knowledge of the plastic bags, which they believed had been placed in the garage by the three persons who had accompanied S.R.B., in order to set them up.

Up until the same hearing, S.R.B., legally assisted by Mr Fanu Moca Adrian and his substitute lawyer, Mr S.D., maintained the statements he had given before the investigating authorities.

15. At the hearing of 16 October 2008 the court watched the video recordings made on the night of 9 to 10 November 2007, in the presence of the applicants, S.R.B. and their respective lawyers. The recordings were not contested and their authenticity was not questioned.

16. At the hearing of 4 February 2009, the applicants, then represented by lawyer S.D., changed their plea and claimed that they had been pushed to commit the offence by the investigators, who had acted as *agents provocateurs*. They invoked in their defence the Court's case-law in relation to police entrapment, namely *Teixeira de Castro v. Portugal* (9 June 1998, *Reports of Judgments and Decisions* 1998-IV) and *Ramanauskas v. Lithuania* ([GC], no. 74420/01, ECHR 2008).

The applicants contended that they had first declined S.R.B.'s proposal, but had finally agreed to deliver the drugs to Romania in order to help S.R.B., who had claimed that he had been facing financial difficulties. The first applicant stated that he had been called by S.R.B. on a daily basis for one month. Each time he had refused S.R.B.'s proposal, and each time the latter had increased his offer, namely from 3 euros per pill initially to the final price of 8 euros per pill.

At the same hearing, S.R.B. also changed his statement and alleged that he had been coerced by the police to act as he had. He stated that during the telephone negotiations, the investigating authorities had asked him to increase both the quantity of pills requested and their price so that the first applicant would accept the transaction. He claimed that he had known the applicants as drug consumers, but not as drug dealers. He mentioned that some of the conversations he had had with the first applicant on a mobile phone had been recorded.

17. On 19 March 2009 the Timiş District Court sentenced the applicants to fifteen years' imprisonment for drug trafficking. In its ruling, the court relied on the video recordings made on the day on which the applicants had been caught red-handed by Timiş police officers, as well as on the statements given by witnesses, including S.R.B. and the undercover agents.

The court ruled that the procedure used by the applicants to conceal the drugs showed that they were experienced in international trafficking of narcotic drugs and had sought to make a significant profit, while the operation to catch them red-handed could not be considered as entrapment. The court found that the method used by the applicants to hide the drugs in the cavities of the front passenger seat of the vehicle and the large quantity of drugs that they managed to transport across several borders showed that they were not unfamiliar with drug trafficking.

The court held that S.R.B.'s change of testimony could not be taken into account, as there was no other evidence to corroborate it and it contradicted his previous testimonies.

18. The applicants appealed against that judgment.

19. On 18 June 2009 the Timişoara Court of Appeal heard the applicants and S.R.B. They all maintained their previous statements according to which S.R.B., coerced by the police, had incited the applicants to commit the crime.

20. At the hearing, the applicants also submitted a request that the prosecution make available the recordings of the telephone conversations between S.R.B. and the first applicant, or at least a list of those conversations and of the telephones used. The applicants argued that the recordings proved on the one hand that S.R.B. had been coerced to cooperate with the police and on the other hand that there had been a high degree of incitement in the negotiations in order to persuade them to accept the deal.

The court allowed the request.

On 14 July 2009 the prosecutor's office attached to the High Court of Cassation and Justice submitted that such recordings did not exist because the court had not been requested to authorise the recording of the phone conversations. Furthermore, according to the indictment, it was S.R.B. who had asked to be allowed to contact the applicants, under the supervision of the prosecutor, in order to take advantage of the lenient conditions prescribed in section 16 of Law no. 143/2000.

21. By its judgment of 21 October 2009, the appellate court upheld the lower court's judgment.

The court stated that the authorities had been legally entitled to bring to the attention of S.R.B. the benefits of cooperating with the police by virtue of section 16 of Law 143/2000, a reduction of his sentence.

The applicants' allegation that they had been entrapped was refuted by the court, which noted that the international case-law they had invoked was not applicable. In the case of *Teixeira,* the undercover agent and the collaborator had dealt with the applicant in person, while in *Ramanauskas* the applicant had been contacted by the agent claiming to be an acquaintance of the collaborator, whereas in the present case the applicants had never been contacted by the undercover agents, since S.R.B. had taken the initiative to ask to be allowed to make contact with the applicants in order to benefit from section 16 of Law no. 143/2000.

Furthermore, in the present case the applicants had freely chosen to travel to Romania with the drugs. Nothing had prevented them from refusing S.R.B.'s proposal.

22. The applicants further appealed against that judgment. They maintained before the High Court of Cassation and Justice that they had been entrapped, having been incited to sell drugs by S.R.B. He in turn had

been forced to incite them to do so by the investigators, who had promised him a reduction in his sentence.

The applicants also denounced the use of the undercover officer N.A., who had sought, through S.R.B., to purchase the drugs.

23. By a judgment of 28 January 2010, the High Court of Cassation and Justice, taking into account as a mitigating factor the applicants' lack of a previous criminal record, partly allowed the appeal and reduced their sentences to seven years' imprisonment. The High Court upheld the lower courts' reasoning in dismissing the entrapment pleas. It held that S.R.B., interested in the reduction of his sentence, had collaborated with the police and contacted the applicants in order to buy drugs; however, the applicants had had the opportunity to refuse the transaction proposed by him. Therefore, the court considered that the applicants' pleas of entrapment were unfounded.

B. Conditions of detention

24. As from 10 November 2007, the applicants were remanded in custody in the Timiş police station detention facility. According to the Government, the applicants were placed in separate cells measuring 12 square metres, which they shared with five other inmates.

On 11 March 2008 the applicants were transferred to Timişoara Prison. The Government submitted that the cells in which the applicants had been placed measured 21 square metres, and were shared by a total of nine inmates.

On 7 December 2009 the applicants were transferred to Rahova Prison, where they were placed in cells measuring 19.58 square metres with ten beds.

On 29 July 2010 the applicants were transferred to Giurgiu Prison, where they remained until 28 July 2011 (the first applicant) and 17 August 2011 (the second applicant), when they were transferred to the Giurgiu Police Inspectorate in order to be transferred to serve the remainder of their sentence in Germany.

The Government pointed out that the applicants had had access to clean sanitary facilities as well as to hot and cold water, in accordance with a specific schedule.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

25. Excerpts from the relevant legal provisions concerning the rights of detainees, namely Law no. 275/2006, and from the relevant parts of the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") on prison

conditions, are given in the case of *Iacov Stanciu v. Romania* (no. 35972/05, §§ 115-17 and 125-29, 24 July 2012).

26. Article 68 of the Romanian Code of Criminal Procedure reads as follows:

Article 68

"1. It is forbidden to use violence, threats or other means of coercion, as well as inducements, in order to obtain evidence.

2. It is also forbidden to incite a person to commit or continue committing a criminal offence for the purpose of obtaining evidence."

27. The relevant parts of Law no. 143/2000 on combating the illegal trafficking and consumption of drugs read as follows:

Article 1

"In the present Act the terms and expressions below shall have the following meaning:

...

(k) Undercover agents: police officers specifically designated to carry out, with the prosecutor's authorisation, investigations with a view to collecting data regarding the existence of the offence and the identification of the offender and precursory acts, under another identity than their real one. Such authorisation shall be conferred for a limited time only."

Article 16

"A person who has committed one of the offences stipulated in art. 2-10, and who during the criminal investigation denounces and facilitates the identification and establishment of the criminal liability of other persons who have committed drug-related offences, shall benefit from a reduction in his sentence by one half within the limits prescribed by the law."

Article 21

"1. The prosecutor may authorise the use of undercover agents to determine the facts, identify the offender and obtain evidence where there is good reason to believe that a criminal offence as defined in the present Act has been perpetrated or is about to be committed."

Article 22

"1. Police officers from the special units who act as undercover agents, as well as persons acting with them, shall be allowed to procure drugs, base and compound chemical substances with the prosecutor's prior authorisation, with a view to discovering criminal activities and identifying the persons involved in such activities.

2. The results of the actions of the police officers and persons acting with them referred to in paragraph 1 may constitute evidence."

28. The Council of Europe's texts on the use of special investigative techniques are set out in *Ramanauskas*, cited above, §§ 35-37.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

29. The applicants complained of overcrowding, of unhygienic conditions (lack of hot water for showers) and very high temperatures in the summer and low temperatures in winter while in detention in the Timiş police station detention facility, and in Timişoara and Rahova prisons. They further complained of poor conditions in Giurgiu Prison in respect of the unsatisfactory food and the limited access to cold water during the summer.

They 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."

30. The Government contested that argument.

A. Admissibility

1. The parties' submissions

31. The Government raised a preliminary objection of non-exhaustion of domestic remedies, in so far as the applicants had not complained to the authorities about the conditions of their detention.

32. The applicants disagreed.

2. The Court's assessment

33. The applicants' complaints concern the material conditions of their detention and, in particular, overcrowding and poor sanitary facilities in the period from 10 November 2007 until their transfer from Giurgiu Prison with a view to being transferred to Germany (see paragraph 24 above).

34. In recent judgments concerning similar complaints the Court has already found that, given the specific nature of this type of complaint, the legal actions indicated by the Government did not constitute effective remedies (see *Lăutaru v. Romania*, no. 13099/04, § 84, 18 October 2011, and *Radu Pop v. Romania*, no. 14337/04, § 80, 17 July 2012).

It therefore rejects the Government's plea of non-exhaustion of domestic remedies.

35. The Court further notes that in respect of Giurgiu Prison the applicants complained exclusively of their limited access to cold water during the summer and the absence of meat in their diet. In their observations submitted before the Court on 17 September 2012, they claimed that "the most miserable conditions of detention were in Giurgiu Prison", without giving any other details.

The Government submitted that while in Timişoara Prison, the applicants had requested a vegetarian regime and that their request had been granted. No similar complaint or any other complaint regarding the daily menu (with or without meat) was lodged while the applicants were in Giurgiu Prison. The Government also submitted that the applicants had had access to hot and cold water, in accordance with a specific schedule.

In the light of the above and in so far as the applicants' complaints concerning the conditions of detention while at Giurgiu Prison are substantiated, the Court considers that they must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

36. The remainder of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

37. The applicants submitted that the conditions of their detention in the Timiş police station detention facility, as well as in the Rahova and Timişoara prisons, were inadequate. They alleged that they had been placed in overcrowded cells and had been deprived of hygienic conditions.

38. The Government, referring to their description of the detention conditions submitted before the Court, contended that the domestic authorities had taken all necessary measures to ensure adequate conditions of detention, and that the applicants' complaint was groundless.

2. The Court's assessment

39. The Court refers to the principles established in its case-law regarding conditions of detention (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, §§ 90-94, ECHR 2000-XI and *Artimenco v. Romania*, no. 12535/04, §§ 31-33, 30 June 2009). It reiterates, in particular, that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3; the assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *Kudła*, cited above, § 91).

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

21 December 2010, and *Budaca v. Romania*, no. 57260/10, §§ 40-45, 17 July 2012).

Moreover, the Court has already found violations of Article 3 of the Convention on account of the material conditions of detention in Romanian detention facilities, including Timişoara Prison and Bucharest-Rahova Prison, especially with respect to overcrowding and lack of hygiene (see, for example, *Iacov Stanciu*, cited above, § 179; *Ionuţ-Laurenţiu Tudor v. Romania*, no. 34013/05, § 51, 24 June 2014; *Geanopol v. Romania*, no. 1777/06, § 66, 5 March 2013; and *Blejuşcă v. Romania*, no. 7910/10, § 45, 19 March 2013).

41. In the case at hand, the Government have failed to put forward any argument that would allow the Court to reach a different conclusion.

42. Moreover, the applicants' submissions in respect of the overcrowded and unhygienic conditions correspond to the general findings by the CPT in respect of Romanian prisons (see paragraph 25 above).

43. In the light of the above, the Court considers that the conditions of the applicants' detention in the Timiş police station detention facility, as well as in Timişoara and Rahova prisons, caused them suffering which exceeded the unavoidable level of suffering inherent in detention and which attained the threshold of degrading treatment proscribed by Article 3.

44. There has accordingly been a violation of Article 3 of the Convention in respect of the three penal institutions.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

45. The applicants complained that they had been convicted of a drug-related offence committed only upon incitement by *agents provocateurs,* which had rendered the proceedings unfair. In addition, the applicants argued that they had not been given the opportunity to prove their defence because certain evidence had not been brought to court by the prosecution, in breach of their right to adversarial proceedings.

The applicants relied on Article 6 § 1 of the Convention, which reads as follows:

Article 6 § 1

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...".

A. Admissibility

46. The Court notes that these 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

1. The parties' submissions

(a) The applicants

47. The applicants argued that they had been incited to commit the offence that had led to their conviction – namely to transport from Germany to Romania 5,000 Ecstasy pills which were subsequently sold to an undercover agent – by the investigators who had exerted pressure on S.R.B. They argued that it had been S.R.B. who had initiated contact with them and that they had only "offered to help" because S.R.B. had told them that he had been experiencing financial difficulties.

The applicants claimed that the police had instigated and influenced the course of events by providing S.R.B., who was in detention at the time, with the means to contact the applicants on the phone and then by giving him the money for the drugs transaction.

48. The applicants further alleged that they had not been given the opportunity to prove their innocence because certain evidence had not been presented. In particular, they had requested that the recordings of the telephone conversations between S.R.B. and the first applicant be made available. They argued that those recordings would have proved that the offence would not have been committed had it not been for the police entrapment.

(b) The Government

49. The Government disputed that there had been any sort of incitement by the police.

Firstly, the police had had no back-up information regarding the applicants. The Government emphasised that S.R.B. had initiated contact with the applicants and that the police had facilitated communication between S.R.B. and the applicants by allowing S.R.B. to use a telephone and by giving him the money for the drugs transaction, in the context set out in Article 16 of Law no. 143/2000.

The Government argued that although the applicants had no criminal record, they had demonstrated familiarity with that type of criminal activity in view of the large quantity of drugs introduced into the country and the manner in which they had transported and delivered them. According to the Government, the video tape of the events in the garage showed the applicants' skills in hiding the drugs in the vehicle. The Government also mentioned that both of the applicants worked for a car company and were thus well acquainted with the structure of the vehicle used to transport the drugs.

50. The Government pointed out that the domestic courts had rejected the applicants' claims of entrapment based on a thorough analysis of the

facts of the case and a correct application of the European Court's case-law in similar cases. The proceedings had been adversarial, in compliance with all the requirements of Article 6 of the Convention.

2. The Court's assessment

(a) General principles

51. The Court reiterates that the admissibility of evidence is primarily a matter for regulation by national law and, as a rule, it is for the national courts to assess the evidence before them. The Court, for its part, must ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, among other authorities, *Teixeira de Castro*, cited above, § 34). In this context, the Court's task is not to determine whether certain items of evidence were obtained unlawfully, but rather to examine whether such "unlawfulness" resulted in the infringement of another right protected by the Convention (see *Ramanauskas*, cited above, § 52).

52. More particularly, the Convention does not preclude reliance, at the preliminary investigation stage and where the nature of the offence may warrant it, on sources such as anonymous informants. However, the subsequent use of such sources by the trial court to found a conviction is a different matter and is acceptable only if adequate and sufficient safeguards against abuse are in place, in particular a clear and foreseeable procedure for authorising, implementing and supervising the investigative measures in question (see *Ramanauskas*, cited above, § 53).

53. Furthermore, while the use of undercover agents may be tolerated provided that it is subject to clear restrictions and safeguards, the public interest cannot justify the use of evidence obtained as a result of police incitement, as to do so would expose the accused to the risk of being definitively deprived of a fair trial from the outset (see *Teixeira de Castro*, cited above, §§ 35-36 and 39; *Vanyan v. Russia*, no. 53203/99, §§ 46-47, 15 December 2005; and *Ramanauskas*, cited above, § 54).

54. Police incitement occurs where the officers involved – whether members of the security forces or persons acting on their instructions – do not confine themselves to investigating criminal activity in an essentially passive manner, but exert such an influence on the subject as to incite the commission of an offence that would otherwise not have been committed, in order to make it possible to establish the offence, that is, to provide evidence and institute a prosecution (see *Teixeira de Castro*, cited above, § 38; *Ramanauskas*, cited above, § 55; and *Burak Hun v. Turkey*, no. 17570/04, § 42, 15 December 2009).

55. In view of the importance of the above principles, the Court has held that where an accused asserts that he was incited to commit an offence, the criminal courts must carry out a careful examination of the material in the

file, since for the trial to be fair within the meaning of Article 6 § 1 of the Convention, all evidence obtained as a result of police entrapment must be excluded (see *Ramanauskas,* cited above, § 60). This was especially true where the police operation had taken place without a sufficient legal framework or adequate safeguards.

56. Lastly, where the information disclosed by the prosecution authorities does not enable the Court to conclude whether the applicant was subjected to police incitement, it is essential that the Court examine the procedure whereby the plea of incitement was determined in each case in order to ensure that the rights of the defence were adequately protected, in particular the right to adversarial proceedings and to equality of arms (see *Edwards and Lewis v. the United Kingdom* [GC], nos. 39647/98 and 40461/98, §§ 46-48, ECHR 2004-X).

(b) Application of these principles to the case in hand

57. The Court observes that in contesting the fairness of the proceedings, the applicants put forward two arguments. Firstly, they alleged that their convictions had been the result of entrapment by S.R.B., who had been pressurised by the police to incite them to close the drug deal. Secondly, they claimed that at trial they had been unable effectively to plead incitement as their defence because the recordings of the telephone conversations between the S.R.B. and the first applicant had not been made available.

58. The Court notes that the applicants had no previous convictions, and had become known to the police only from S.R.B.'s statements, given while under arrest.

Nevertheless, the Court has previously ruled that the applicants' behaviour could be indicative of pre-existing criminal activity (see *Shannon v. the United Kingdom* (dec.), no. 67537/01, ECHR 2004-IV).

In this respect, the Court notes that at short notice, following telephone discussions between the first applicant and S.R.B., the applicants procured and transported a considerable quantity of drugs over several borders. On arrival in Romania, they asked to be directed to a garage where, as revealed by the video tapes, they proceeded to remove the drugs from hidden compartments in the car. The applicants had come prepared and checked whether the money they were to receive for the drugs was counterfeit (see paragraphs 9 to 10 above).

The Court cannot but conclude that the domestic courts were justified in holding that the manner in which the applicants proceeded during the operation indicated a familiarity with that type of transaction.

59. The matter to be considered further is the extent of police involvement in the operation.

The Court notes that S.R.B. was allowed to contact the applicants on the phone while he was under arrest, and that the money for the transaction was

provided by the police, following authorisation given by the prosecutor. The whole operation, including the use of undercover agents, had been authorised by the prosecutor in a reasoned decision (*ordonanță*), which complied with the provisions of the domestic law (see paragraphs 7 and 27 above).

Even though such activity may suggest that the police influenced the course of events, the Court considers that the relevant factor to be determined is whether the police may be said to have joined the criminal activity rather than to have initiated it (see *Milinienė v. Lithuania*, no. 74355/01, § 38, 24 June 2008). In that respect, the Court finds that the actions of the police to follow up S.R.B.'s testimony that other people were involved in drug trafficking by facilitating communication between S.R.B. and the applicants and by providing him with money for the transaction remained, on balance, within the bounds of undercover work, rather than that of *agents provocateurs* (see also *Sequeira v. Portugal* (dec.), no. 73557/01, ECHR 2003-VI).

60. The Court will nonetheless consider whether the applicants were able to raise the issue of incitement effectively.

The Court notes that throughout of the proceedings, the applicants were represented by counsel; they were heard and re-heard by the domestic courts, which also questioned the undercover agents, took evidence from the witnesses and viewed in public sessions the video recording, which was never contested by the applicants.

The appellate court granted the applicants' request for the recordings of the telephone conversation between S.R.B. and the first applicant to be made available in evidence. The prosecutor's response, according to which no such recordings existed in so far as there had been no authorisation to record those conversations, was not contested and the courts accepted it.

Concerning the statements given by S.R.B., the Court notes that while he initially admitted, in the presence of his counsel, having taken the initiative to cooperate with the police, subsequently – namely at the hearing of 4 February 2009 – he changed his testimony and stated that the police had coerced him to act as he had (see paragraph 16 above). However, the Court notes that that change of testimony was dismissed by the domestic courts, in so far as it was not consistent with the other evidence on file.

All the domestic courts refuted the applicants' submissions of entrapment in detailed and reasoned judgments with reference to the Court's case-law (see paragraphs 17, 21 and 23 above). In their rulings, the courts relied to a considerable extent on the video recording of the applicants in the workshop, proving the applicants' familiarity with drugs transactions, but also on the witnesses' statements given before the courts in the presence of the applicants and their lawyers.

61. In view of the above, the Court finds that the applicants had a full opportunity to challenge the authenticity and accuracy of the evidence

against them. It sees no reason to question the domestic courts' assessment or, on the basis of its own examination of the material before it, to reach a different conclusion.

62. In conclusion, the Court considers that the police did not act as *agents provocateurs* and that the domestic courts investigated sufficiently the allegations of incitement.

There has accordingly been no violation of Article 6 § 1 of the Convention on this account.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

63. Lastly, in their letter sent to the Court on 9 August 2011, the applicants complained about the excessive length of the criminal proceedings instituted against them.

The Court notes that this complaint was lodged outside the six-month time-limit set out in Article 35 §§ 1 of the Convention and must therefore be rejected as inadmissible.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The first applicant claimed 169,484 euros (EUR) and the second applicant claimed 126,000 euros (EUR) in respect of pecuniary damage, as compensation for loss of earnings. They further claimed EUR 170,000 and EUR 192,000, respectively in respect of non-pecuniary damage for the mental suffering caused by their detention.

66. The Government argued that that the applicants' detention was the consequence of their conviction, for which no breach of the Convention could be found. The Government further considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage alleged by the applicants.

67. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by the applicants; it therefore rejects this claim.

The Court has found a violation of Article 3 in the present case. In these circumstances, it considers that the applicants' suffering and frustration cannot be compensated for by a mere finding of a violation. Making its

assessment on an equitable basis, the Court awards each applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicants made no claims under this head.

C. Default interest

69. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 3 of the Convention concerning the conditions of detention in the Timiş police station detention facility as well as in Timişoara and Rahova prisons, as well as the complaint under Article 6 of the Convention regarding the fairness of the proceedings admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been no violation of Article 6 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay each applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State;
   (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;

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

Done in English, and notified in writing on 14 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Josep Casadevall President