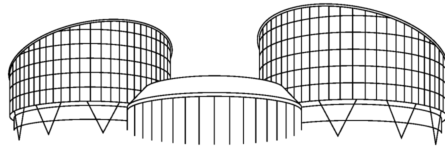

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF POPOVICIU v. ROMANIA

(Application no. 52942/09)

JUDGMENT

STRASBOURG

1 March 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Popoviciu v. Romania,

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

András Sajó, *President,*
Vincent A. De Gaetano,
Boštjan M. Zupančič,
Nona Tsotsoria,
Krzysztof Wojtyczek,
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 9 February 2016,

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

PROCEDURE

1. The case originated in an application (no. 52942/09) 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 Gabriel Aurel Popoviciu ("the applicant"), on 16 September 2009.

2. The applicant was represented by Mr D. Apostol, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Mrs C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant complained under Article 5 § 1 of the Convention that he had been unlawfully held for almost nine hours on the premises of the prosecuting authorities. Relying on Article 2 of Protocol No. 4 to the Convention he alleged a violation of his right to liberty of movement.

4. On 10 April 2012 the complaints concerning Articles 5 § 1 and 2 §§ 3 and 4 of Protocol No. 4 were communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in Bucharest.

A. The background of the case

6. In 2005 a businessman, G.B., lodged a criminal complaint against the applicant and the rector of the University of Agronomy concerning the sale of a 224-hectare plot of land located in Băneasa, near Bucharest. He claimed that the applicant had purchased the plot of land for significantly less money than its actual worth. He also alleged that the plot of land was not the property of the University but of the Romanian State.

7. On 14 February 2008 the General Prosecutor's Office decided not to start an investigation, for lack of evidence. However, on 31 July 2008 the Chief Public Prosecutor quashed this decision and relinquished its jurisdiction in favour of the National Anti-Corruption Prosecution Service ("the NAP").

8. On an unspecified date in March 2009 the NAP officer in charge of the inquiry made an accusation that he had been pressured to stop the investigation. According to his statements, two senior directors from the Ministry of the Interior, namely the head of the Ministry's Internal Protection and Intelligence Department and the head of the Anti-Corruption Department's Operation Division within the same Ministry, asked him to resolve the case quickly and to provide a favourable response.

9. On the basis of the NAP officer's testimony, the initial investigation concerning the applicant and the rector was extended to include the two senior directors from the Ministry of the Interior.

10. On 12 March 2009 the applicant was invited to NAP headquarters. He gave a statement.

B. The applicant's deprivation of liberty

11. On 20 March 2009 the NAP started a criminal investigation in respect of the applicant on the ground that he was an accomplice to an offence of abuse of position committed by the rector of the University of Agronomy.

12. On 23 March 2009 the NAP started another criminal investigation in respect of the applicant in connection with the offence of active bribery on account of the influence exercised on the NAP officer in charge of the inquiry.

13. On the same day the prosecutor issued orders to appear before the investigators against the applicant and five other co-defendants. In the order to appear issued against the applicant it was stated that the order's objective was to ensure that the applicant was heard in his capacity as a suspect ("*învinuit*") in connection with the offences of abuse of position and active bribery under Articles 248 and 255 in conjunction with Article 26 of the C.P.

14. On 24 March 2009, at about 3 p.m., the applicant was taken by police to NAP headquarters in accordance with an order to appear before the investigation body.

15. When the applicant arrived at NAP headquarters the questioning of one of his co-accused, S.I.C, was in progress and lasted until 7.50 p.m.

16. Subsequently, another co-accused, P.P.D., was questioned between 8.30 p.m. and 10.05 p.m.

17. Two lawyers chosen by the applicant were called and invited to NAP headquarters to assist him.

18. According to the Government's submissions, one of the applicant's lawyers arrived at NAP headquarters at 4 p.m. and the other at about 7.45 p.m.

19. The applicant stayed at the headquarters of the prosecuting authorities without being questioned until 10 p.m. According to his allegations, which have not been contradicted by the Government, he was not free to leave.

20. The Government did not contend that they had informed the applicant that he had been free to leave; on the contrary, in their written submissions to the Court they maintained that the applicant had remained at their disposal for questioning between 3 p.m. and 11.30 p.m.

21. Between 10 p.m. and 10.55 p.m. the applicant was informed of the charges against him and was heard by the investigators.

22. From 11 p.m. to 11.20 p.m. the prosecution authorities questioned another co-accused, A.I.N.

23. The applicant was kept at NAP headquarters until 11.30 p.m., when he was informed of the decision taken by the NAP on the same day concerning the charges against him and the other defendants.

24. The NAP charged the rector of the University of Agronomy with abuse of position with aggravated consequences, the applicant with complicity in abuse of position, and the two senior directors of the Ministry of the Interior with favouring the offender. By the same decision all the defendants were remanded in custody for twenty-four hours, the period of detention starting to run at 11.30 p.m.

C. The applicant's release

25. The next day, on 25 March 2009, at about 6.40 p.m., the NAP asked the Bucharest Court of Appeal to remand the applicant and the other two defendants in custody (the rector was released) for twenty-nine days, from 25 March 2009 until 22 April 2009.

26. On the same date, the Bucharest Court of Appeal, ruling as a single judge, dismissed the prosecution's request.

27. It ruled that keeping the applicant in pre-trial detention was not necessary. In this connection it stressed that the applicant had not evaded

criminal proceedings, but had complied with every summons from the prosecution service. It also stated that bringing the accused on the basis of an order to appear before the investigation body was not justified as he had never refused to come when summoned to the NAP. It concluded that there was no evidence that the release of the accused posed any specific threat to public order or would impede the criminal proceedings.

28. However, the court imposed on all of them a prohibition on leaving the country for thirty days, on the ground that there was reasonable suspicion that they had committed the offences with which they had been charged.

29. An appeal on points of law lodged by the NAP against this decision was dismissed by the High Court of Cassation and Justice on 1 April 2009. The High Court endorsed the decision of the Bucharest Court of Appeal, noting that the applicant's pre-trial detention appeared excessive, given that the applicant had no criminal record, had been of good standing in society, and there was no evidence in the file that he had evaded criminal proceedings. The court considered that the prohibition on leaving the country ensured the right balance between the general interest of society in the good administration of justice and the applicant's interest.

D. The repeated extensions of the prohibition on the applicant's leaving the country

30. By a decision delivered on 22 April 2009 the NAP extended the prohibition on the applicant's leaving the country for another thirty days, from 23 April to 22 May 2009. The reasons provided by the prosecutor for taking such a measure were that there was reasonable suspicion that the applicant had committed the offence, and that it was necessary to ensure the proper administration of justice.

31. The applicant contested the measure before the Bucharest Court of Appeal, arguing that the prosecutor's decision did not provide sufficient reasons for the extension of the restrictive measure, adding that he had willingly attended each time he had been summoned by the investigators. He stressed that the restriction on leaving the country had been imposed in 2009, but in connection with an offence that he had allegedly committed in 2002. He relied on the fact that he was an important businessman for whom freedom of movement outside the country was vital for conducting his business.

32. In his oral submissions before the court the prosecutor added that the restriction on the freedom of movement was justified by the necessity to ensure the speediness of the proceedings. The applicant replied that he had not been invited to the NAP to give a statement since 24 March 2009. He added that the speediness of the proceedings was in his own interest too,

because as a well-known businessman his reputation and integrity were being harmed as long as there were proceedings pending against him.

33. The measure was upheld by an interlocutory judgment rendered by the Bucharest Court of Appeal on 27 April 2009, which found that the reasons provided by the prosecutor were sufficient. It held that since there were no new circumstances which could change the applicant's situation there was no reason to revoke the preventive measure against him.

34. An appeal on points of law lodged by the applicant was dismissed by the High Court of Cassation and Justice as inadmissible on 8 May 2009. It held that the applicable law did not provide for an appeal on points of law against an interlocutory judgment by which a request for revocation of a preventive measure had been dismissed.

35. On 19 May 2009 the NAP again ordered the extension of the prohibition on the applicant's leaving the country for another thirty days. The reasoning of the decision was exactly the same as in the previous decision of 22 April 2009. The applicant challenged the measure before the Bucharest Court of Appeal. He stated that he needed to leave the country as he had been invited to a business meeting abroad.

36. By an interlocutory judgment of 1 June 2009 the Bucharest Court of Appeal ordered the revocation of the measure. It held that the applicant had not tried in any way to hinder the investigation or to leave the country, and that he was observing all the obligations imposed on him by the judicial authorities. It also stated that there was still reasonable suspicion that the applicant had committed the offence, but the revocation of the restriction would not impede the proper administration of justice. It concluded that although the imposition of a preventive measure should be justified by the necessity to ensure the proper administration of justice and to protect society by preventing the commission of new offences, in the instant case the NAP had not managed to explain why allowing the applicant to leave the country could have negative repercussions on the administration of justice. At the same time, it stressed that maintaining the restriction would not prevent the applicant from contacting all the parties in the case and influencing them.

37. The appeal on points of law lodged by the NAP was allowed by the High Court of Cassation and Justice on 9 June 2009. It dismissed the applicant's complaint, and upheld the NAP's decision to extend the restriction. It held that the restriction should be maintained because of the negative social impact caused by the offence committed by the applicant and the complexity of the case, which involved multiple procedural acts.

38. On 18 June 2009 the NAP extended the restriction on the applicant's right to leave the country for another thirty days. The applicant's complaint against the measure was allowed by an interlocutory judgment of the Bucharest Court of Appeal. The court held that there were no reasons to justify the maintenance of the preventive measure. It noted in this

connection that no procedural act had been carried out in the case since 21 May 2009, and the applicant, a well-known businessman, had been present whenever the investigators summoned him. An appeal on points of law lodged by the NAP was dismissed by the High Court of Cassation and Justice on 3 July 2009.

E. Further developments

39. On 19 May 2009 the applicant was invited to NAP headquarters and informed that he was charged with the offence of active bribery. The applicant refused to give a statement, availing himself of his right to silence. A report was drafted and signed by the applicant, his lawyer and the prosecutor on that occasion.

40. On 21 December 2012 the file was registered with the Bucharest Court of Appeal. According to the most recent information provided by the applicant, the criminal proceedings against him are still pending.

II. RELEVANT DOMESTIC LAW

41. The relevant provisions of the CCP, in force at the material time, concerning the commencement of the criminal proceedings, the parties and other participants in the criminal proceedings, read as follows:

Article 78
The witness

"Any person who has knowledge of a fact or circumstance that might be useful in establishing the truth in criminal proceedings may be heard as a witness."

Article 228 § 1
Opening of a criminal investigation

"The criminal investigation authority to which an application is made in accordance with any of the arrangements set forth in Article 221 shall order, by decision (*rezoluţie*), the opening of a criminal investigation where the content of that application or the preliminary investigation do not disclose any of the grounds not to prosecute as provided for in Article 10, with the exception of the ground set out under sub-paragraph (b)1."

Article 229
The suspect (învinuitul)

"The suspect is a person who is the subject of a criminal investigation, until such time as a prosecution is brought."

Article 235 §§ 1 and 2
Prosecution

"1. The prosecutor shall decide to prosecute [following a proposal by the criminal investigation authority] after having examined the case file.

2. If the prosecutor agrees with the proposal, he or she shall bring the prosecution by means of an order (*ordonanţă*)."

42. The order to appear before the courts (*mandatul de aducere*) was provided for by Articles 183 and 184 of the CCP. They read as follows:

Article 183

"(1) A person may be brought before [a] criminal-investigation body or [a] court on the basis of an order to appear, drawn up in accordance with the provisions of Article 176, if, having previously been summoned, he or she has not appeared, and his or her hearing or presence is necessary.

(2) An offender or a defendant may be brought [before the authorities] on the basis of an order to appear even before being summoned, if the criminal investigation body or the court considers that this measure is necessary for the determination of the case and gives reasons."

Article 184

"(1) [An] order to appear is enforced by the police.

(2) If the person specified in the order cannot be brought [before the authorities] because of illness or for any other reason, the police officer appointed to enforce the order shall mention this situation in an official report, which shall immediately be handed to the criminal investigation body or the court.

(3) If the police officer appointed to enforce the order to appear does not find the person specified in the order at the specified address, he shall investigate and, if unsuccessful [in locating the individual], shall draw up an official report including mention of the investigative activities undertaken.

(3^1) If the offender or the defendant refuses to accompany a police officer or tries to escape, he or she may be forced to obey the order."

43. Other relevant provisions of the Romanian Code of Criminal Procedure concerning restrictions on leaving the country during a criminal investigation read as follows:

Article 136

"(1) In cases concerning offences punishable by imprisonment, in order to ensure the good conduct of the criminal trial or to prevent the suspect or the defendant from fleeing during the criminal investigation, trial or during the execution of the sentence, one of the following preventive measures may be imposed on the person ...

(b) prohibition on leaving town;

(c) prohibition on leaving the country ...

(8) The measure to be taken shall be chosen taking account of its purpose, the severity of the crime, the health, age, [and any] previous convictions or other circumstances [of] the person against whom the measure is to be imposed."

Article 139

"(2) When there are no reasons to justify the maintenance of a preventive measure, that measure must be revoked automatically or upon request."

Article 144
Duration of police custody

"1. Police custody may last for a maximum of twenty-four hours. The period during which the person was deprived of liberty as a result of the administrative measure of being taken to the police premises must be deducted from the duration of the police custody, as provided for by Law no. 218/2002 on the organisation and functioning of the Romanian police.

2. The order for placement in police custody must state the date and time at which police custody began and the order for release must state the date and time at which police custody ended.

3. Where the criminal investigation authority considers pre-trial detention necessary, it shall make a reasoned request to the prosecutor within the first ten hours of police custody ... If the prosecutor considers that the statutory requirements have been met, he or she shall order the pre-trial detention within the time-limit set out in the first paragraph of Article 146.

4. Where the prosecutor has ordered police custody and considers that pre-trial detention is required, he or she must make the relevant order within ten hours of the commencement of the police custody, in accordance with Article 146."

Article 145[1]

"Prohibition on leaving the country consists in a prohibition imposed on an accused person or defendant, by a prosecutor during a criminal investigation, or by a court during a trial, not to leave the locality where he lives without the approval of the body that enforced this measure ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

44. The applicant complained that he had been deprived of his liberty on 24 March 2009 between 3 p.m. and 11.30 p.m. without any legal basis, in so far as no order for him to be placed in police custody had been issued for the first eight and a half hours of his detention at the NAP.

He relied on Article 5 § 1 of the Convention, which reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law ...

> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;"

A. Admissibility

45. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

46. The Government acknowledged that the applicant had been kept at the disposal of the investigators between 3 p.m. and 11.30 p.m. on 24 March 2009 on the basis of an order to appear.

47. The investigators had issued the order, taking into account that under Article 183 of the CCP a person might be brought before a prosecutor on the basis of an order to appear even without having been previously summoned, if an interview or his or her presence was considered necessary. They submitted that in the instant case the order to appear had been issued in order to ensure the applicant was heard in his capacity as accused.

48. The Government maintained that the applicant had needed to be at the investigators' disposal for the period required for him to be questioned. In this respect it should be taken into account that the applicant had not been the only accused person in the criminal investigation; four co-accused had been taken to NAP headquarters and questioned by the investigators at the same time.

49. The Government also contended that the applicant's hearing in the presence of his lawyers, before taking him into custody, had been necessary under Article 143 of the CCP. In this respect they submitted that the expedition of the formalities had been affected, among other factors, by the time of arrival of the applicant's chosen lawyers; thus, one of the applicant's lawyers arrived at NAP headquarters at 4 p.m. and the other at about 7.45 p.m.

50. Lastly, the Government pointed out that the applicant had not been deprived of liberty, but his freedom of movement had been restricted for the purposes of the pending investigation, with a view to establishing the facts. They concluded by pointing out that in the event that the Court found that

the applicant had been deprived of his liberty, this should be considered to fall within the ambit of Article 5 § 1 (c) of the Convention.

51. The applicant submitted that the fact that he had been taken to the NAP by police on the basis of an order to appear had not been justified. He alleged that such a measure was normally taken against individuals who refused to cooperate with investigating bodies, while he had gone to the NAP each time he had been invited.

52. The applicant further submitted that depriving him of liberty was not in compliance with Articles 183 and 184 of the CCP. He contended that the authorities had not provided any reasons why they had issued this order against him, although they were required to do so by Article 183 § 2 of the CCP.

53. The applicant disagreed with the Government's allegation that the expedition of these formalities had been affected by the time of arrival of his defence lawyers at the NAP headquarters. He argued that he had not asked to be assisted by two lawyers of his choosing. In fact he had asked to be assisted by one lawyer, D.A., the same lawyer who was representing him before the Court. His lawyer had arrived at NAP headquarters at 4 p.m.

2. *The Court's assessment*

(a) The period to be taken into account

54. The Court notes that it is not disputed between the parties that the applicant was taken to NAP headquarters at about 3 p.m. on 24 March 2009 on the basis of an order to appear before an investigating body. The Court also notes that the prosecutor remanded the applicant in custody for twenty-four hours, starting from 11.30 p.m. The order remanding him in police custody did not take into account the period of eight and a half hours spent by him on the premises of the prosecuting authorities as required by Article 144 § 1 of the CCP. Accordingly, the Court concludes that the measure complained of started at about 3 p.m. on 24 March 2009 and lasted until 11.30 p.m. on the same day.

(b) Whether the applicant was deprived of liberty

55. In order to determine whether the applicant was deprived of liberty, the starting point must be his or her specific situation, and account must be taken of a whole range of criteria, such as the type, duration, effects and manner of implementation of the measure in question (see *Guzzardi v. Italy*, 6 November 1980, § 92, Series A No. 39, and *Mogoş v. Romania* (dec.), no. 20420/02, 6 May 2004). The difference between deprivation and restriction of liberty is merely one of degree or intensity, and not one of nature or substance (see *Austin and Others v. the United Kingdom* [GC], nos. 39692/09, 40713/09 and 41008/09, § 57, 15 March 2012).

56. The characterisation or lack of characterisation given by a State to a factual situation cannot decisively affect the Court's conclusion as to the existence of a deprivation of liberty (see *Creangă v. Romania* [GC], no. 29226/03, § 92, 23 February 2012). Thus, the fact that the respondent Government considered that the applicant had not been arrested and detained does not mean that the applicant was not deprived of his liberty.

57. In the present case on 24 March 2009 the applicant was subjected to an order to appear delivered by the prosecutor. Within the meaning of the CCP an order to appear is not a preventive measure, such as police custody or preventive detention. The applicant claimed, and the Government have not disputed, that the applicant had spent eight and a half hours in a waiting room at NAP headquarters before an order remanding him in custody was issued.

58. In their written submissions the Government contended that the applicant had not been deprived of liberty but that his liberty had merely been restricted because the element of coercion was missing. In this respect the Court notes that according to its established case-law, coercion is a crucial element in its examination of whether or not someone has been deprived of his or her liberty within the meaning of Article 5 § 1 of the Convention (see, for example, *Foka v. Turkey*, no. 28940/95, §§ 74-79, 24 June 2008, and *M.A. v. Cyprus*, no. 41872/10, §§ 186-193, ECHR 2013 (extracts)). However, in the present case the applicant did not volunteer to go to NAP headquarters. He was escorted there by police officers and, once inside, he was no longer free to leave.

Even taking into account the fact that the applicant was not handcuffed, placed in a locked cell, or otherwise physically restrained while on the NAP premises during the period in question, it would be unrealistic to assume that he was free to leave, particularly bearing in mind that he had been brought before the prosecution authorities in order to be questioned and his questioning did not start until 10 p.m. Moreover, in their written submissions the Government did not contest that the applicant had remained at their disposal until 10 p.m., as the purpose of the order to appear issued on his behalf had been to question him.

59. The Court therefore considers that the applicant was under the authorities' control throughout the entire period, and concludes that he was deprived of his liberty within the meaning of Article 5 § 1 of the Convention.

(c) Whether the applicant's deprivation of liberty was compatible with Article 5 § 1 of the Convention

60. The Court must now determine whether the applicant was deprived of his liberty between 3 p.m. and 11.30 p.m. on 24 March 2009 "in accordance with a procedure prescribed by law" within the meaning of Article 5 § 1 of the Convention.

61. Where the “lawfulness” of detention is in issue, including the question of whether “a procedure prescribed by law” has been followed, the Convention refers essentially to national law, and lays down the obligation to conform to the substantive and procedural rules of national law (see *Medvedyev and Others v. France* [GC], no. 3394/03, § 79, ECHR 2010).

62. While it is normally in the first place for the national authorities, notably the courts, to interpret and apply domestic law, the position is different in relation to cases where failure to comply with the law entails a breach of the Convention. This applies in particular to cases in which Article 5 § 1 of the Convention is at stake; the Court must then exercise a certain power to review whether national law has been observed (see *Baranowski v. Poland*, no. 28358/95, § 50, ECHR 2000-III). In particular, it is essential in matters of deprivation of liberty that the domestic law define clearly the conditions for detention and that the law be foreseeable in its application (see *Zervudacki v. France*, no. 73947/01, § 43, 27 July 2006, and *Creangă,* cited above, §101).

63. The Court notes that in the present case the legal basis for depriving the applicant of his liberty was Articles 183 and 184 of the Romanian Code of Criminal Procedure, in force at the relevant time.

64. According to Article 183 § 1, an individual could be brought before a criminal investigation body or a court on the basis of an order to appear, if, having previously been summoned, he or she had not appeared and his or her hearing or presence was necessary. The applicant contended that he had complied with every summons issued by the prosecution service before 24 March 2009, while the Government failed to submit any evidence to the contrary. In this respect the Court notes that only twelve days before the investigating authorities issued the order to appear to the applicant, the applicant had given a statement in connection with the same investigation following his summons by the prosecutor (see paragraph 10 above).

65. The Court further notes that pursuant to Article 183 § 2 of the same code, an offender or a defendant could exceptionally be brought before the courts on the basis of an order to appear even before being summoned, if the criminal investigation body or the court considered that this measure was necessary for the determination of the case, and provided reasons why.

66. In this respect the Court observes that the prosecutor’s order of 23 March 2009 issued on the basis of Article 183 § 2 of the Romanian Code of Criminal Procedure did not contain any reason justifying the measure. The Court therefore concludes that by omitting to specify the reasons on which it was based the prosecutor’s order failed to conform to the rules applicable to domestic criminal procedure (see *Ghiurău v. Romania*, no. 55421/10, § 85, 20 November 2012).

67. Furthermore, the Court doubts whether the applicant’s deprivation of liberty and his transfer to the NAP office under police escort were necessary to ensure that he gave a statement as an accused. In this connection, the

Court notes that the criminal file in respect of the applicant's case was opened in 2008 and the applicant had obeyed the summons for questioning issued by the police in his name. In addition, the Court notes that the judge of the Bucharest Court of Appeal who ordered the applicant's immediate release on 25 March 2009 stated that taking the applicant to NAP headquarters on the basis of an order to appear had not been justified by his prior refusal to go to the NAP (see paragraph 27 above).

68. Moreover, the Court notes that at the time the prosecutor issued the order to appear the applicant had already been formally named as a suspect in connection with the offences of abuse of position and active bribery (see paragraphs 11 and 12 above). According to the Government, when the applicant arrived at NAP headquarters he was informed about the two criminal investigations opened against him and that he was entitled to be assisted by a lawyer of his choice.

69. As the applicant was undeniably considered to be a suspect, the lawfulness of his deprivation of liberty must be examined under Article 5 § 1 (c) of the Convention.

70. Under Romanian law there are only two preventive measures entailing a deprivation of liberty: police custody and pre-trial detention (see *Creangă*, cited above, § 107 and *Valerian Dragomir v. Romania*, no. 51012/11, § 79, 16 September 2014). In the present case, however, neither of those measures was applied to the applicant before 11.30 p.m. on 23 March 2009.

71. Having regard to the foregoing, the Court considers that the prosecutor had sufficiently strong reasons to justify the applicant's deprivation of liberty for the purpose of the investigation and that Romanian law provided for measures to be taken in that regard, namely placement in police custody or pre-trial detention (see *Creangă*, cited above, § 109). However, the prosecutor decided to keep the applicant at his disposal for questioning on the basis of an order to appear and not to place him in police custody until 11.30 p.m.

72. The Court is conscious of the constraints arising in a criminal investigation, and does not deny the complexity of the proceedings instituted in the instant case. However, with regard to liberty, the fight against corruption cannot justify recourse to arbitrariness and areas of lawlessness in places where people are deprived of their liberty (see *Creangă*, cited above, § 108).

73. Accordingly, the Court considers that the above circumstances disclose that the applicant was not deprived of his liberty in accordance with a procedure prescribed by domestic law, which renders the deprivation of the applicant's liberty from 3 p.m. to 11.30 p.m. on 24 March 2009 incompatible with the requirements of Article 5 § 1 of the Convention.

74. There has therefore been a violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 4 TO THE CONVENTION

75. The applicant complained that the prohibition on leaving the country imposed on him by the Bucharest Court of Appeal on 25 March 2009 had violated his right to freedom of movement guaranteed by Article 2 of Protocol No. 4 to the Convention, which reads as follows:

> "... 2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

76. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

77. The applicant submitted that the prohibition on leaving the country imposed on him on 25 March 2009 had been unjustified and disproportionate. In this respect he contended that he had been present before the investigating authorities each time he had been summoned and there were no reasons to believe that he would change his attitude.

He also alleged that the extension of the measure until 3 July 2009 had not been based on sufficient reasons.

78. The Government noted that the applicant had not lodged an appeal on points of law against the decision of 25 March 2009 by which the Bucharest Court of Appeal had imposed the prohibition on his leaving the country.

79. While not disputing that the measure represented an interference with the applicant's freedom of movement, the Government stated that the measure was provided by law, followed the legitimate aim of ensuring the proper administration of justice, and was proportionate to the aim pursued, in so far as it had served exclusively as a temporary preventive measure to ensure the applicant's appearance before the investigators.

The Government further stressed the complex nature of the proceedings against the applicant, the number of witnesses to be heard and the need for the applicant to be present to be confronted with witnesses and his

co-defendants. They also pointed out that the applicant had tried to hinder the investigation by bribing the officer in charge.

80. Lastly, the Government submitted that the prohibition on the applicant's leaving the country had lasted only three months and eight days.

2. *The Court's assessment*

81. The Court reiterates that Article 2 of Protocol No. 4 guarantees to any person the right to leave any country for any other country of the person's choice to which he or she may be admitted. Any measure restricting that right must meet the requirements of paragraph 3 of that Article (see, among others, *Gochev v. Bulgaria*, no. 34383/03, § 44, 26 November 2009, and *Nalbantski v. Bulgaria*, no. 30943/04, § 60, 10 February 2011).

82. Any measure restricting that right must be lawful, pursue one of the legitimate aims referred to in the third paragraph of the above-mentioned Convention provision, and strike a fair balance between the public interest and the individual's rights (see *Baumann v. France*, no. 33592/96, § 61, ECHR 2001-V; *Riener v. Bulgaria*, no. 46343/99, § 109, 23 May 2006; and *Bulea v. Romania*, no. 27804/10, § 57, 3 December 2013).

(a) Whether there was an interference

83. The prohibition on leaving Romania constituted an interference by a public authority with the applicant's right to leave the country, as guaranteed by Article 2 § 2 of Protocol No. 4 to the Convention.

84. It must be established, therefore, whether or not the interference was lawful and necessary in a democratic society for the achievement of a legitimate aim.

(b) Lawfulness

85. The Court notes that in the instant case the measure was based on the express terms of Article 145^1 of the CCP (see paragraph 43 above).

(c) Legitimate aim

86. The Court is satisfied that the interference with the applicant's rights under Article 2 of Protocol No. 4 pursued the legitimate aim of securing his availability for trial, and hence the maintenance of public order. It remains to be determined whether the measure was necessary in a democratic society.

(d) Proportionality

87. The Court observes that the applicant was charged with two offences punishable by imprisonment. It is not the Court's task to determine whether, in a case of this type, the obligation not to leave the country was *per se* a

proper preventive measure. It is not in itself questionable that the State may apply various preventive measures restricting the liberty of an accused in order to ensure the efficient conduct of a criminal prosecution (see *Fedorov and Fedorova v. Russia*, no. 31008/02, § 41, 13 October 2005).

88. The Court has previously found in a series of cases that such an obligation imposed on the applicants was disproportionate in cases where the duration of an obligation not to leave the territory of the respondent State varied between more than five years (see *Prescher v. Bulgaria* no. 6767/04, § 47, 7 June 2011) and more than ten years (see *Riener*, cited above, § 106).

On the other hand, in cases where this obligation was imposed for periods varying between four years and three months and four years and ten months, the Court, having also had regard to other specific circumstances of each case, did not find the restriction of the applicants' freedom of movement disproportionate (see *Fedorov and Fedorova*, cited above, §§ 42-47, and *Antonenkov and Others v. Ukraine*, no. 14183/02, §§ 62-67, 22 November 2005).

89. In the present case the preventive measure was applied to the applicant for a period of three months and eight days, the length of the restriction being substantially shorter than in all the above-cited cases.

90. The Court considers however that the comparative duration of the restriction in itself cannot be taken as the sole basis for determining whether a fair balance was struck between the general interest in the proper conduct of the criminal proceedings and the applicant's personal interest in enjoying freedom of movement. This issue must be assessed according to all the special features of the case (see *Miażdżyk v. Poland*, no. 23592/07, § 35, 24 January 2012). The restriction may be justified in a given case only if there are clear indications of a genuine public interest which outweighs the individual's right to freedom of movement (see *Hajibeyli v. Azerbaijan*, no. 16528/05, § 63, 10 July 2008).

91. In this respect, the Court notes that the preventive measure against the applicant was imposed by a court in proceedings which provided all appropriate procedural safeguards. In addition, the applicant had the opportunity to challenge the application of the preventive measure before the courts, pleading that the measure had prevented him from pursuing his business, which involved travel abroad.

92. At the same time, according to the documents submitted by the parties, the domestic courts thoroughly analysed the applicant's submissions, and found that the continued restriction of the applicant's freedom of movement was justified in the specific circumstances of his case. The main reason relied on each time by the NAP and the courts in maintaining the restriction was that there was a reasonable suspicion that the applicant had committed the offence with which he had been charged and that revoking it would impede the proper administration of justice.

93. In addition the Court considers that the complex nature of the proceedings against the applicant, which involved extensive evidence, could justify for a limited period of time the prohibition on the applicant's leaving the country so that his immediate presence could be ensured if necessary. In this connection the Court notes that on 19 May 2009 the applicant was invited to NAP headquarters to be notified and heard in connection with the offence of active bribery (see paragraph 39 above).

94. As the authorities are not entitled to maintain restrictions on individuals' freedom of movement for lengthy periods without a periodic reassessment of their justification (see *Riener*, cited above, § 124), in the applicant's case such a reassessment took place every thirty days. The prohibition on leaving the country was successively extended on 22 April, 19 May and 18 June (see paragraphs 30, 35 and 38 above).

95. The Court notes finally that the domestic courts lifted the preventive measure imposed on the applicant when they considered that it was no longer necessary for the proper administration of justice, although the criminal proceedings against him were still pending (see paragraph 38 above).

96. In view of the above, the Court considers that given in particular the duration of the prohibition and the periodic reviews of the measure by the judicial authorities, there was no violation of Article 2 of Protocol No. 4 to the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

97. Lastly, the applicant complained under Article 5 § 1 of the Convention that the order for his detention for twenty-four hours issued on 23 March 2009 did not provide sufficient reasons for his deprivation of liberty. Under Article 5 § 4 of the Convention the applicant complained that he had not had time to prepare his defence concerning the restrictive measures against him.

98. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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

100. The applicant claimed 100,000 euros (EUR) in respect of pecuniary damage, representing revenue lost as a consequence of the prohibition on his leaving the country. He also claimed EUR 1,000,000 in respect of non-pecuniary damage, on account of the prejudice to his public image by the media coverage of his criminal case.

101. The Government contended that there was no causal link between the claimed pecuniary damage and the alleged breach of the Convention. Moreover, the applicant did not submit any evidence to substantiate his claims. As regards the applicant's claim in respect of non-pecuniary damage, the Government contended that the amount claimed by the applicant was excessive, and that the mere acknowledgment of a violation of the Convention would represent in itself a just satisfaction.

102. The Court does not discern any 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 4,500 in respect of non-pecuniary damage.

B. Costs and expenses

103. The applicant did not claim any amount for costs and expenses incurred before the domestic courts and the Court.

C. Default interest

104. 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 5 § 1 of the Convention concerning the applicant's deprivation of liberty for the period between 3 p.m. to

11.30 p.m and the complaint under Article 2 of Protocol No. 4 to the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been no violation of Article 2 of Protocol No. 4 to the Convention;

4. *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 4,500 (four thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at 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 1 March 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Andras Sajó
Deputy Registrar	President