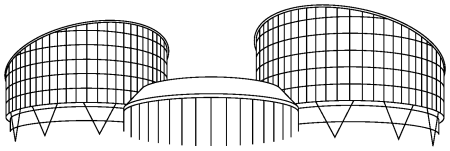

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

DECISION

Application no. 42219/07
Răzvan Mihai GHERGHINA
against Romania

The European Court of Human Rights, sitting on 9 July 2015 as a Grand Chamber composed of:

Dean Spielmann, *President*,
Josep Casadevall,
Guido Raimondi,
Mark Villiger,
Ineta Ziemele,
Elisabeth Steiner,
Ján Šikuta,
Päivi Hirvelä,
Luis López Guerra,
Ledi Bianku,
Nona Tsotsoria,
Kristina Pardalos,
Paul Mahoney,
Aleš Pejchal,
Johannes Silvis,
Ksenija Turković,
Iulia Antoanella Motoc, *judges*,

and Johan Callewaert, *Deputy Grand Chamber Registrar*,

Having regard to the above application lodged on 20 September 2007,

Having regard to the partial decision of 6 March 2012,

Having regard to the decision of 14 January 2014 by which the Chamber of the Third Section to which the case had originally been assigned relinquished its jurisdiction in favour of the Grand Chamber (Article 30 of the Convention),

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the third-party comments submitted by the International Disability Alliance, the European Disability Forum and the Romanian National Disability Council,

Having regard to the parties' oral submissions at the hearing on 12 November 2014,

Having deliberated in private on 12 November 2014 and 9 July 2015, decides as follows:

THE FACTS

1. The applicant, Mr Răzvan Mihai Gherghina, is a Romanian national who was born in 1982 and lives in Bașcov-Valea Ursului. His application to the Court was lodged on 20 September 2007. He was successively represented before the Court by his aunt, Ms T. Radi, and, after 4 May 2012, by Interights and Mr C. Cojocariu, a lawyer practising in Orpington (United Kingdom). At the hearing on 12 November 2014 the applicant was also represented by Mr H.A. Rusu and Mr J. Damamme, counsel.

2. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs. At the hearing they were also represented by Ms I. Popa and Mr D. Dumitrache, counsel.

A. The circumstances of the case

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

4. In 2001 the applicant had an accident in which he suffered spinal injuries resulting in severe locomotor impairment of the lower limbs. He was treated in hospital from 19 August to 28 September 2002 and from 11 August to 26 October 2003. The doctors found that he had paraplegia, as well as exostosis (abnormal proliferation of bone tissue) of one rib.

5. In the months following the accident, the applicant had to use a wheelchair to move about. The Disability Assessment Commission issued a certificate attesting that he had a severe disability, which meant that he was legally entitled to the services of a personal assistant.

6. Subsequently, his aunt, a professional medical assistant, took him into her home and implemented his motor rehabilitation programme, thereby assuming the role of his personal assistant; as a result his physical condition improved and he gradually became able to move about without a wheelchair on flat surfaces, either assisted by the people around him or supporting himself on handrails. Since 2005 he has been able to drive a vehicle that has been specially adapted in view of his locomotor impairments.

1. The applicant's attempts to study for a higher-education degree

7. On the date of his accident, the applicant was enrolled as a first-year student in management and marketing at Constantin Brâncoveanu University in Piteşti, a private university accredited by the Ministry of Education and Research with some 3,000 students and several branches across the country.

8. The parties' accounts differ in part as to the circumstances surrounding the applicant's studies at this and other Romanian universities.

(a) The applicant's studies at Constantin Brâncoveanu University, Piteşti

(i) The applicant's version of events

9. While the applicant was studying at Constantin Brâncoveanu University in Piteşti (from 2001 to 2008), most lectures and seminars took place in a building (building A) which was inaccessible to people with restricted mobility because there was a long flight of stairs at the entrance and no lift to the upper floors.

10. The applicant's mother went to the university on several occasions between 2001 and 2006 to ask the dean when he intended to make the buildings accessible to disabled people. The dean promised her that building B would be accessible by the start of the 2006/07 academic year. In the meantime, he gave permission for the applicant to sit examinations at home and, by verbal agreement, exempted him from the compulsory attendance requirements for lectures and seminars.

11. At the end of the 2006/07 academic year, the dean stopped allowing the applicant to sit examinations at home. The faculty management offered the applicant only one option for continuing his studies, namely repeating his third year under the distance learning programme (*cursuri fără frecvenţă*). This change of programme proposed by the university made no difference to the applicant's situation: he still had to sit his examinations at home and study on his own, without any contact with other students or the academic staff. Realising that he was not deriving any real benefit from the distance learning programme offered by the university, the applicant dropped out of the course. He then tried to find another solution that would be better suited to his needs and expectations.

(ii) The Government's version of events

12. Work was begun in 2007 to provide access routes for people with restricted mobility, following the enactment of Law no. 448/2006 on protection and promotion of the rights of people with disabilities. In addition, the university offered the applicant various solutions taking into account his particular circumstances throughout his time there, thus enabling him to continue his studies after his accident. In particular, it granted him several extensions of his first year of studies (the applicant was

enrolled on the first year of his course for 2001/02, 2002/03 and 2003/04), exempted him from attending compulsory lectures and seminars and allowed him to sit examinations at home.

13. In 2004/05 the applicant was enrolled as a second-year student at the same university. He again sat the examinations in the presence of a lecturer who came to his home at his request, and passed twelve of the thirteen modules for the year.

14. In 2005/06 the applicant was enrolled on the third year of the course, subject to a requirement to pass the modules he had not completed for the previous years. For the 2006/07 academic year, the university suggested that he transfer to the distance learning programme (*cursuri fără frecvenţă*), which it felt would be better suited to his needs in view of his mobility impairments. The applicant agreed and was transferred to the programme on 29 September 2006. At the end of the year he again sat examinations in the presence of a lecturer who came to his home at his request, but he passed only two modules.

15. At the end of the fourth year of the course (2007/08), on which he was enrolled despite not having achieved a total of nineteen modules, the applicant did not make a request for lecturers to come to his home so that he could sit his examinations. Accordingly, having failed to accumulate sufficient credits to complete this year of the course, he was excluded from the university by a decision of 15 September 2008.

(b) The applicant's studies at the Ecological University of Bucharest

(i) The applicant's version of events

16. In September 2010, having heard that the law faculty of the Ecological University of Bucharest had an access ramp, the applicant enrolled to study there after receiving assurances from the university authorities that the premises were accessible for people with restricted mobility. However, he discovered in practice that although disabled access to the ground floor was indeed possible via a ramp, the lift to the rooms on the other floors of the building was so narrow that wheelchair users could not be accompanied by their personal assistant. In addition, the buildings where the lectures took place did not have accessible toilets for people with restricted mobility, which meant that he had to go home whenever he needed the toilet.

17. Since the student halls of residence at the Ecological University of Bucharest were not equipped for people with restricted mobility, the applicant had no option but to rent an expensive flat in Bucharest city centre for him and his aunt, who as his personal assistant accompanied him wherever he went.

18. The daily journey from the applicant's flat to the university was very difficult, as the public transport facilities and pavements were generally not adapted to the needs of people with restricted mobility.

19. These various obstacles caused him to feel humiliated and mentally and physically exhausted, and eventually he stopped attending classes and went back to live in his home town.

(ii) The Government's version of events

20. Improvements to make the law faculty of the Ecological University of Bucharest accessible to people with restricted mobility were started in 2007 and completed in 2008.

21. Following an inspection of the university in 2012, the administrative authority responsible for monitoring compliance with accessibility requirements noted in its report that sanitary facilities accessible to disabled people were in the process of being installed.

22. The reason why the applicant was excluded from the university at the end of the 2010/11 academic year was that he had not paid all the enrolment fees.

(c) The applicant's studies at the State University of Piteşti

(i) The applicant's version of events

23. Before enrolling at the State University of Piteşti, the applicant received assurances from the university authorities that the buildings were accessible and that the university was willing to find solutions accommodating his specific needs. However, on starting the course he discovered that the laboratories of the psychology faculty and the psychological counsellor's office were on the upper floors and thus completely inaccessible to people with restricted mobility as there were no lifts in the building. Furthermore, to enter the building he often had to enlist the help of bystanders to carry him inside.

24. In letters dated 1 November 2011 and 21 March 2012 the applicant asked the university rector to take measures to ensure that he could pursue his studies on an equal footing with the other students. In the letters he pointed out that despite the assurances he had received from the university authorities when enrolling on his course, most lectures and seminars took place in buildings to which he had no access. He noted in particular that the ramp that was supposed to provide access to the entrance of building S was unusable because it was obstructed by concrete blocks and weeds, and that another ramp between two of the faculty buildings was likewise impracticable because it was too steep and did not have a handrail. He added that because of these barriers, he had had to ask other students to carry him in his wheelchair to the lecture rooms; the furniture in the lecture rooms was itself unsuitable as he was unable to reach the desks from his

wheelchair to take notes during lectures. He also complained that there were no dedicated parking spaces for students with restricted mobility and that he was unable to use the special parking spaces in the courtyard, since these were reserved for university staff.

25. On 22 June 2012 the applicant again wrote to the rector, criticising the lack of an effective system for displaying information, from which he could have ascertained the buildings in which his examinations and classes were to be held, and which lectures and seminars he could attend because they were in accessible locations. He complained that no measures had been taken to help him catch up with the lectures he had missed through no fault of his own. He stated that he could no longer bear to be told that some locations were inaccessible to him because of the lack of suitable facilities accommodating his disability, adding that he did not wish to relive the same humiliation he had experienced on account of his condition at the other universities he had previously attended.

26. At the end of the 2011/12 academic year the applicant was excluded from the university without prior warning, on the grounds that he had not accumulated sufficient credits in the examinations to be able to progress to the second year of his course.

(ii) The Government's version of events

27. In 2011 the State University of Piteşti enrolled the applicant, at his request, on the first year of a psychology degree.

28. To examine the letters which the applicant had sent to the rector and reply to the various points he had raised (see paragraph 24 above), the State University of Piteşti set up a panel of three lecturers. In a letter dated 19 April 2012 the panel informed the applicant that two access ramps had been completed, a third was in the process of being installed and a lift providing access to the upper floors of building I at the university would be available within a year or two. They noted that some of the compulsory activities for psychology students unfortunately had to take place in rooms on the upper floors of the building, these being the only rooms with the necessary specialist equipment. They pointed out that the university had taken steps towards installing a network to provide videoconferencing access (via Skype) to the activities in question, a facility which would be available to the applicant. They also stated that they would examine the applicant's question concerning parking difficulties and advised him to seek permission from the university authorities to use the parking spaces reserved for staff, stating his reasons for the request. Lastly, they indicated that they were looking into ways of ensuring that the lecture rooms were equipped with furniture accommodating his disability so that he could take notes in better conditions.

29. The applicant was excluded from the university at the end of the 2011/12 academic year because he had not accumulated sufficient credits to progress to the second year.

30. The Government cited the example of another disabled student who had successfully completed his degree at the same university in 2007, and of two other disabled students who were currently studying there.

2. The applicant's access to other buildings for public use and further action taken by him

31. The applicant stated that the courts and public authorities responsible for examining any complaints by disabled people – in particular, the buildings housing the Piteşti Court of First Instance (*judecătoria*) and County Court – had themselves been inaccessible to people with restricted mobility at the time of his fruitless attempts to study for a higher-education degree.

32. The applicant provided the Court with a number of statements made in a non-judicial context by disabled people living in Romania, describing the difficulties they had faced, particularly when attempting to pursue higher education. A.B., for example, mentioned in a statement dated April 2014 that she had had to abandon her studies at the University of Piteşti because of the lack of access ramps. M.T. noted in a statement in 2014 that throughout the seven years during which she was enrolled as a student at Ovidius University of Constanţa, access to the university premises had been restricted by a barrier, followed by a flight of stairs with an excessively steep access ramp next to it (she needed two other people to help her up the ramp, one pulling her wheelchair and the other pushing it). The lectures had taken place on the second floor, which was not accessible by lift. She had had to be carried upstairs to the lecture rooms by other students because the lecturer had refused to move the class to one of the ground floor rooms even though they were available, claiming that the overhead projector was too heavy. M.T. stated that when she had reported this problem to the dean of the faculty, he had declined responsibility and she had been shuttled from one person to another.

P.B., who had a severe locomotor disability and had graduated from the psychology faculty of Ovidius University of Constanţa, mentioned in a statement dated April 2014 that in the absence of any access ramps and lifts, she had had to rely on the assistance of other students to enter the buildings and go to the lecture rooms.

33. The Government acknowledged that the Piteşti Court of First Instance and County Court had not been fitted with an access ramp for people with restricted mobility at the time of the applicant's attempts to study for a higher-education degree. In a letter of 14 May 2012 the president of the Court of First Instance had stated that, because of a long flight of stairs and a slope exceeding the maximum permitted gradient, wheelchair

access to the ground floor or upper floors of the building was impossible. The Government further noted that following his accident, the applicant had instituted several sets of proceedings in the domestic courts, either alone or with the assistance of a lawyer, for example to challenge a decision not to prosecute a person he had accused of fraud, or to claim damages from an insurance company.

B. Relevant domestic law and practice

1. National legislation on protection of people with disabilities

(a) The Constitution

34. Article 16 of the Constitution provides that all Romanian citizens are equal before the law, without any special privileges or discrimination. Article 50 guarantees special protection for people with disabilities.

(b) Government Emergency Ordinance no. 102/1999

35. Government Emergency Ordinance no. 102/1999 of 29 June 1999 on special protection of people with disabilities, which entered into force on 1 July 1999, provided in Article 11 that buildings of public institutions, buildings used for cultural, sports and recreational purposes, housing built from public funds, public transport facilities, telephone booths and access routes were to be equipped in such a way as to allow unrestricted access for people with disabilities. The appropriate renovation work was to be carried out in stages:

– by 31 December 2003, work to ensure unrestricted access to buildings for public or cultural use, sports or recreational facilities, shops, restaurants, head offices of public service providers and public highways was to be completed;

– by 31 December 2005, local public services had to have installed audible and visual signal systems at pedestrian crossings, and appropriate signs on public highways and in public transport vehicles;

– by 31 December 2010, all public transport vehicles had to have been made accessible to people with disabilities.

Implementation of the special protection measures for disabled people was to be organised, coordinated and supervised by the State Secretariat for People with Disabilities, a central public authority reporting to the Government (Article 3 of the Ordinance). However, there were no specific provisions or procedures governing how interested parties could apply to that authority or to the courts.

36. Government Emergency Ordinance no. 102/1999 was subsequently amended and supplemented on several occasions. Law no. 343/2004 specified that Article 11 of the Ordinance now required both public and private buildings to ensure unrestricted access for people with disabilities. It

made non-compliance with Article 11 of the Ordinance a minor offence punishable by a fine.

(c) Law no. 448 of 6 December 2006

37. Government Emergency Ordinance no. 102/1999 was repealed by Law no. 448 of 6 December 2006 on protection and promotion of the rights of people with disabilities, which entered into force on 18 December 2006. Article 61 of this Law provides:

> "1. Buildings for public use, access routes, residential premises built from public funds, public transport vehicles and stations, taxis, railway passenger coaches and platforms at principal stations, car parks, public streets and highways, public telephones and information and communication facilities shall be brought into line with the statutory provisions in order to ensure access for people with disabilities.
>
> 2. Heritage buildings and historic monuments shall be adapted in keeping with their architectural characteristics.
>
> 3. The costs of the work shall be borne, as appropriate, from the budget of the central or local public authorities or from private equity companies' own resources."

Article 63 of the Law sets 31 December 2007 as the deadline for local authorities to make the necessary improvements to pedestrian crossings on public streets (in particular by indicating their presence through tactile paving), and 31 December 2010 as the deadline for providing unrestricted access to public transport (for example, by ensuring the accessibility of public transport vehicles, parking areas near public transport facilities, and principal stations).

38. Chapter IX of Law no. 448/2006, entitled "Responsibility", reads as follows:

Article 99

> "1. The following acts shall constitute minor offences and shall be punished as such:
>
> (a) failure to comply with the provisions of Article 13 § 1, Articles 16-18 and Articles 61-67 of the Law ..., punishable by a fine of between 3,000 and 9,000 lei; ...
>
> 2. The establishment of the minor offence provided for in paragraph 1 (a) [above] and the imposition of the corresponding fine shall be carried out by an official of the National Authority for Disabled Persons duly authorised by the Authority's president.
>
> ...
>
> 4. The amounts received in fines shall be paid to the State budget.
>
> 5. The provisions of this Article shall be supplemented by Government Ordinance no. 2/2001 on the legal regime for minor offences, approved by Law no. 180/2002, as subsequently amended and supplemented."

2. Relevant provisions of the Civil Code and Code of Civil Procedure

(a) The Civil Code

39. At the material time the provisions of the Civil Code on liability in tort and the effects of obligations were worded as follows:

Article 998

"Any act committed by a person that causes damage to another shall render the person through whose fault the damage was caused liable to make reparation for it."

Article 999

"Everyone shall be liable for damage he has caused not only through his own acts but also through his failure to act or his negligence."

Article 1073

"An obligee shall be entitled to performance of the obligation and, failing that, to the payment of damages."

Article 1075

"Any obligation to act or refrain from acting shall give rise to an obligation to pay damages in the event of its non-performance by the obligor."

Article 1077

"If an obligation to act is not honoured, the obligee may be entitled to perform it himself, at the obligor's expense."

40. Similar provisions are to be found in the new Civil Code, which entered into force on 1 October 2011 (Article 1349 on liability in tort and Articles 1527 and 1528 on the performance of obligations).

(b) Code of Civil Procedure

41. At the material time the provisions of the Code of Civil Procedure governing the possibility of requesting interim measures in cases of emergency were worded as follows:

Article 581

"1. The court may order interim measures in cases of emergency, to preserve a right that would be impaired in the event of a delay, to prevent imminent and irreparable damage, or to remove any obstacles that might arise at the enforcement stage.

2. A request for an interim measure must be lodged with the court with jurisdiction to determine the merits of the case.

3. An order [for an interim measure] may be delivered even in the absence of the parties ... The court shall examine the request as a matter of urgency and priority. The public delivery of its decision may be adjourned for no more than twenty-four hours, and the statement of reasons for the order shall be issued no later than forty-eight hours after delivery.

4. The order shall be provisional and enforceable. ...”

3. Relevant provisions of the Administrative Proceedings Act (Law no. 554/2004)

42. The relevant provisions of the Administrative Proceedings Act (Law no. 554/2004) are worded as follows:

Article 1

“Anyone who considers that a public authority has harmed his rights or legitimate interests as a result of an administrative measure or a failure to respond within the statutory time-limit to a request he has submitted to it may ask the competent administrative court to set aside the measure, recognise the right or legitimate interest in question and afford redress for the damage he has sustained. The legitimate interest may be either private or public.”

Article 2

“For the purposes of this Act: (i) an unjustified refusal to respond to a request occurs when an authority, acting *ultra vires*, expressly states that it does not intend to respond to a person’s request; (ii) *ultra vires* means a breach by the public authorities, in exercising their discretion, of the limits of their statutory competence or of citizens’ rights and freedoms.”

Article 8

“1. Anyone who considers that an administrative measure has harmed his statutory rights or legitimate interests, who is not satisfied with the action taken on a complaint filed by him [with the competent authorities], or who does not receive a reply to a request within the time-limit specified in Article 2 § 1 (h) [thirty days from the registration of the request unless otherwise specified by law], may apply to the administrative courts to have the measure entirely or partially set aside and to be awarded compensation for any losses and, where appropriate, non-pecuniary damage. Anyone who considers that his rights or legitimate interests have been harmed as a result of a failure to respond to a request within the statutory time-limit, an unjustified failure to respond to a request or a refusal to take an administrative measure necessary for the exercise or protection of a right or legitimate interest may apply to the administrative courts.”

4. Examples of proceedings instituted by disabled people complaining of lack of access to buildings for public use

43. In March 2014 the Government asked thirteen of the fifteen courts of appeal in Romania, as well as the High Court of Cassation and Justice and the Bucharest County Court, to provide them with examples of the domestic courts’ practice regarding similar issues to those raised in the case brought before the Court by Mr Gherghina. The majority of these courts stated that they did not have any examples of domestic practice in relation to such issues.

44. The following paragraphs summarise three examples submitted by the Government (see paragraphs 65-67 below) of proceedings arising from

actions brought at domestic level by individuals complaining that public highways and certain buildings in Romania were not accessible to disabled people.

(a) Proceedings concerning alleged inaction on the part of the public authorities (Ms E.P.)

45. On 5 October 2005 Ms E.P., who had become paraplegic following an accident, brought an action in the Vâlcea County Court against the Romanian State through the ANPH (the public authority responsible for matters concerning special protection of people with disabilities), complaining that it had refused without any justification to secure her rights under Article 11 of Government Emergency Ordinance no. 102/1999 and to engage in the process of making public areas accessible so that she could use them as she was entitled to do by law. In particular, she sought an order from the court requiring the State to make provision for disabled access to buildings housing public institutions and to public highways, and to pay her 10,000,000 euros (EUR) in compensation for the non-pecuniary damage she claimed to have sustained as a result of all the barriers she had encountered since 1 January 2004, by which date the accessibility improvements should have been completed.

46. In a judgment of 10 November 2009 the Civil Division of the Vâlcea County Court acknowledged that Ms E.P.'s access to certain buildings and to public highways was impossible or very difficult, a state of affairs that had had adverse consequences for her health. On the basis of Articles 998 and 999 of the Civil Code as in force at the time, it ordered the State, the Vâlcea County Buildings Inspectorate, the ANPH, the Bucharest State Buildings Inspectorate, the Craiova Regional Buildings Inspectorate and the Vâlcea Directorate General for Social Assistance and Child Protection to pay Ms E.P., jointly and severally, the sum of 42,363 Romanian lei (RON) in compensation for the pecuniary and non-pecuniary damage she had sustained.

47. That judgment was upheld in a judgment of 17 March 2010 by the Piteşti Court of Appeal and in a final judgment of 24 March 2011 by the Civil Section of the High Court of Cassation and Justice.

(b) Proceedings in the national courts concerning alleged inaction on the part of a private legal entity – a shopping centre (Ms S.L.)

48. On 8 February 2011 Ms S.L. brought an action in the Bucharest Court of First Instance (Civil Division) against a shopping centre, seeking an order requiring it to make provision for disabled parking spaces conforming to the requirements of Law no. 448/2006. She also sought compensation for non-pecuniary damage.

49. In a judgment of 4 July 2012 the court dismissed Ms S.L.'s application for an order requiring the creation of special parking spaces,

observing that at least since the date on which it had inspected the site (20 February 2012), the parking spaces for disabled people complied with the requirements of Law no. 448/2006. In addition, finding that the conditions for liability in tort were satisfied in that no disabled parking facilities had been in place at the time when Ms S.L. had applied to it, the court ordered the shopping centre, in accordance with Articles 998 and 999 of the Civil Code, to make good the non-pecuniary damage sustained by the claimant, which it assessed at RON 2,000. The judgment was subject to appeal. According to the Government, it has become final.

(c) Proceedings concerning the failure of an association of co-owners to make the communal areas of a block of flats accessible (Ms N.V.)

50. On 17 June 2013 Ms N.V., a disabled person, made an urgent application to the Galaţi Court of First Instance (Civil Division) for an order requiring the association of co-owners of the block of flats where she lived to make the communal areas of the building accessible by moving the front door and removing a doorstep, both of which were currently hindering her access to the building. She submitted that she was suffering from illness and needed to make regular visits to different doctors and be kept under strict medical supervision. She asked that the adjustments be carried out as a matter of urgency on an interim basis until the merits of the case were determined in a separate action she had brought against the same association.

51. After the court found against her (in a judgment of 23 July 2013), she appealed. In a final judgment of 10 October 2013 the Galaţi County Court allowed her appeal and ordered the co-owners' association to move the front door and remove the doorstep at the entrance to the building. It specified that these measures were provisional and would remain applicable only until the Galaţi Court of First Instance had given its decision on the merits of the case.

52. While the proceedings were pending in the Galaţi County Court, the respondent co-owners' association had argued that the accessibility requirements set forth in Law no. 448/2006 could not be relied on against it since it was not a public authority and therefore did not have standing to defend the claim. The court replied that the summary nature of urgent proceedings did not permit it to embark on an analysis of this issue, which should instead be addressed by the Galaţi Court of First Instance when examining the merits of the case. The proceedings on the merits resulted in a judgment of 18 December 2014 in which the court dismissed Ms N.V.'s action against the co-owners' association as ill-founded. Ms N.V. appealed against that judgment, and the proceedings are still pending.

5. Domestic legislation and practice concerning higher education

53. The preamble to the National Education Act (Law no. 1/2011) lays down general principles to the effect that the purpose of the national education system is to ensure the free, full and harmonious development of individuals, so that they can form their own independent personality and a set of values enabling them to flourish and fulfil their potential, and to take part in and integrate into community life.

54. Article 139 of the Act provides that university studies may take the following forms:

(a) full-time courses (*cursuri de zi*), where students are present every working day of the week to attend classes and/or take part in research work and have direct contact with lecturers or research supervisors at the university;

(b) part-time courses (*cursuri cu frecvenţă redusă*), where activities requiring direct contact at the university between students and lecturers or research supervisors are arranged periodically in blocks, being supplemented by other study methods characteristic of distance learning;

(c) distance learning courses (*cursuri fără frecvenţă*), which typically involve the use of electronic communication techniques and information technology and are based on self-study and self-assessment, supplemented by tutorial guidance.

55. Article 118 provides that all forms of discrimination in the education system are prohibited. Disabled students are entitled to have the use of access routes accommodating their disabilities in all university buildings and premises; they must be able to take part in academic, social and cultural activities under normal conditions.

56. The practice of the domestic courts indicates that a decision to exclude a student from a university is treated as an "administrative measure" within the meaning of Article 1 of Law no. 554/2005, and may be challenged in the administrative courts, which have jurisdiction to set aside such a decision (see, for example, the judgment of 17 May 2012 of the High Court of Cassation and Justice (Administrative Disputes Section), the final judgment of 10 September 2008 of the Buzău County Court and the final judgment of 16 January 2008 of the Craiova Court of Appeal).

COMPLAINTS

57. The applicant complained, under Article 2 of Protocol No. 1, that it was impossible for him to pursue his university studies in or near to his home town, because of the lack of facilities accommodating his disability in the buildings housing the lecture rooms. Relying in substance on Article 14 of the Convention, he also claimed to be the victim of discrimination on the

ground of his physical disability. He argued that this state of affairs prevented him from taking the degree course of his choice with a view to securing employment and a decent standard of living.

58. In his application form the applicant also relied on Articles 2 and 5 of the Convention. He alleged that the lack of facilities accommodating his disability had led to his being confined to his home and deprived of the opportunity to develop relations with the outside world. Submitting that he had been mentally and psychologically traumatised by his lack of access to university and to other buildings for public use, he complained that he had been forced to spend many years alone in his home, away from society, and argued that his loneliness and the lack of information provided to him had caused him feelings of insecurity.

THE LAW

PRELIMINARY OBSERVATION

59. In its partial decision of 6 March 2012 the Chamber held that the applicant's complaints under Articles 2 and 5 of the Convention would be more appropriately examined under Article 8, read separately or in conjunction with Article 14 (see *Gherghina v. Romania* (dec.), no. 42219/07, § 28, 6 March 2012). The Grand Chamber does not find it necessary to call into question the Chamber's approach in this regard. It reiterates that since the Court is master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by an applicant or a government (see, among other authorities, *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I; *Tarakhel v. Switzerland* [GC], no. 29217/12, § 55, ECHR 2014; and *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 43, ECHR 2012).

60. Accordingly, the relevant provisions in relation to the applicant's complaints are the following:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14

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

Article 2 of Protocol No. 1

"No person shall be denied the right to education. ..."

I. PRELIMINARY OBJECTION OF NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

1. The Government

61. The Government contended that the applicant had not made use of the remedies available to him under domestic law. Referring to *Vučković and Others v. Serbia* (preliminary objection) [GC], no. 17153/11 and 29 other cases, 25 March 2014), they submitted that the Romanian legal system provided for a wide range of administrative and judicial remedies that were fully accessible to anyone wishing to assert his or her rights.

62. In their written observations the Government stated that the applicant could have obtained redress for the situation complained of by applying to the authorities responsible for monitoring compliance with the accessibility requirements laid down in the special legislation on protection of people with disabilities. Thus, they submitted that the applicant should have filed a complaint with the Directorate General of Social Assistance and Child Protection (whose task was to coordinate and evaluate efforts to protect disabled people's rights), the Ministry of Labour, Family Affairs, Social Protection and Elderly People (which included a Directorate for the Protection of People with Disabilities, with responsibility for coordinating social protection activities at national level, devising strategies and protection standards and monitoring the implementation of the relevant legal requirements), the State Buildings Inspectorate (responsible for reviewing compliance with the legal requirement to make improvements to buildings for public use), or the Social Inspection Agency (a specialised body of the central government). The Government asserted that if these authorities found that a particular situation did not comply with the statutory accessibility requirements, they could either set deadlines for ensuring compliance or impose a fine, together with an obligation to remedy the shortcomings observed; follow-up visits were conducted to ensure that this obligation was honoured.

63. At the hearing the Government added that although Government Emergency Ordinance no. 102/99 and Law no. 448/2006 did not expressly

provide for a complaints procedure open to individuals, the authorities responsible for ensuring compliance with the legal requirements were under an obligation to respond to all requests, complaints, applications or proposals made by citizens. They pointed out that if the applicant had complained to the authorities of a failure to observe the requirements laid down in the special legislation on protection of disabled people and had received no reply, or an inadequate reply, within a time-limit of thirty days, he would have been entitled to apply to the administrative courts under Article 1 of the Administrative Proceedings Act (Law no. 554/2004).

64. The Government further submitted that an action in the administrative courts would also have constituted an appropriate remedy in the present case for challenging the decisions by which the applicant had been excluded from the various universities at which he had been successively enrolled. They contended that if the courts had set those decisions aside, the applicant would have been entitled to a review of his academic circumstances by the authorities of the universities concerned.

65. Next, the Government argued that if administrative remedies had not produced the desired outcome for the applicant, he could have turned to the civil courts, as Romanian civil law offered remedies which were capable of directly affording redress for the situation complained of. In support of their argument, the Government cited Articles 1073 and 1077 of the Civil Code as in force at the material time, which, taken together with the provisions of Government Emergency Ordinance no. 102/1999 or Law no. 448/2006 (depending on the time of the applicant's application to the civil courts), could have formed a legal basis for bringing a court action of this kind with a view to securing compliance with the accessibility requirements laid down in the special legislation. Citing the example of the judgment of 10 October 2013 in which the Galaţi County Court had ordered an association of co-owners of a block of flats, in urgent proceedings, to take interim measures to ensure that a disabled person living in the building had suitable access to it (see paragraph 51 above), they argued by instituting proceedings of that nature, the applicant could have secured an order for the higher-education institutions he had attended to take practical measures to provide him with access to their buildings.

66. The Government added that in so far as the applicant claimed to be the victim of an unlawful act resulting from inaction or an omission on the part of entities with a legal obligation to take action to ensure accessibility, he could have relied on the provisions of the Civil Code concerning liability in tort. As an example of domestic practice, they cited the final judgment of 24 March 2011 in which the High Court of Cassation and Justice had awarded compensation to a person with paraplegia who had instituted judicial proceedings at national level (see paragraphs 46 and 47 above).

67. The Government then cited the judgment of 4 July 2012 in which the Bucharest Court of First Instance had held a shopping centre liable in tort

for failing to adapt its public car park to the needs of disabled people, and ordered it to pay damages to the person who had brought the action (see paragraph 49 above).

68. In reply to the allegations of discrimination made by the applicant in his complaints to the Court, the Government observed that he could have filed a complaint with the National Council for Combating Discrimination (CNCD), followed, if appropriate, by an application to the courts. They pointed out that when examining similar complaints to those raised by the applicant, the CNCD had decided either to impose a fine or to issue a warning, depending on the seriousness of the discriminatory acts it had found. They added that under Government Ordinance no. 137/2000, allegations of discrimination could be brought directly before the national courts by means of an ordinary action. By bringing such an action, the applicant could have had the discriminatory situation brought to an end and been awarded damages.

69. The Government submitted in more general terms that the applicant could not justify his passive attitude by claiming that he had been too vulnerable to avail himself of domestic remedies. They observed that at different times in his life, he had, without any apparent difficulty, pursued other types of administrative and judicial procedures provided for by domestic law (see paragraph 33 *in fine* above). They accordingly submitted that there had been no insurmountable obstacle, whether legal or factual, to his doing likewise in relation to the complaints forming the subject of the present application.

2. The applicant

70. In the applicant's submission, his complaints before the Court had primarily required a sufficiently speedy preventive remedy compelling the universities to define and adopt measures as a matter of urgency to ensure his immediate integration into the education process. However, the Government had not shown that any such remedy with reasonable prospects of success had been available in domestic law.

71. The applicant argued that although they had referred to several potential remedies, the Government had provided only three examples of cases in which individuals complaining of accessibility problems had obtained some form of redress, whereas Law no. 448/2006 had been in force for more than eight years and the question of the accessibility of buildings for public use affected tens of thousands of people.

72. In particular, the applicant doubted the relevance of the example cited in paragraph 65 above, which concerned minor adjustments relating to the accessibility of the communal areas of a residential building. He further noted that at the end of the proceedings in that particular case, the person concerned had obtained only interim measures remaining to be confirmed in the proceedings on the merits, which were still pending.

73. With regard to the proceedings resulting in the final judgment of the High Court of Cassation and Justice of 24 March 2011 (see paragraphs 46 and 47 above), the applicant observed that they had given rise to only a modest award of damages to the claimant. Citing in particular the cases of *Di Sarno and Others v. Italy* (no. 30765/08, 10 January 2012), *Đorđević v. Croatia* (no. 41526/10, ECHR 2012) and *Lăutaru v. Romania* (no. 13099/04, 18 October 2011), he submitted that the Court had already held that the mere possibility of obtaining financial compensation was not sufficient in itself to afford appropriate redress where applicants were seeking to put a stop to particular conduct. He also pointed out that the proceedings referred to by way of example had lasted six years and could not therefore be regarded as an effective remedy in such a vital field as that of the right to education.

74. Arguing that Law no. 448/2006 had removed all deadlines for compliance with the obligation to make buildings for public use accessible, and observing that the performance of this obligation was subject to the allocation of public funds (for public entities) or the existence of sufficient private resources (for private entities), the applicant contended that this made it very difficult to establish fault on the part of entities that did not comply, and thus to bring an action in tort. He pointed out in this connection that under Romanian law, civil liability in tort was subjective in nature, requiring proof that the individual or legal entity in question had been at fault. He further noted that the Government had provided only one example of domestic practice, namely a judgment of a first-instance court delivered on 4 July 2012 (see paragraph 49 above), and contended that this example in itself did not demonstrate that there had been an established practice at the material time.

75. The applicant submitted that the dearth of case-law relating to accessibility was due to the fact that Law no. 448/2006 was unclear and incomplete in that it did not lay down the accessibility requirements in precise terms and thus did not constitute a satisfactory basis for a finding of liability. He argued that the Law mentioned a large number of public and private stakeholders in the accessibility process without explaining how, or against whom, individuals could bring a court action.

76. At the hearing the applicant submitted that none of the universities he had attended had made provision for any special procedures applicable to students with disabilities. Relying on various statements by disabled students concerning the many obstacles they had faced in pursuing their studies (see paragraph 32 above), he criticised the lack of any regulations or secondary legislation at national level making it possible to anticipate or integrate the needs of this particular group in the education process, for example by means of reasonable accommodation. He thus concluded that the remedies mentioned by the Government were ineffective in practice.

77. With regard to the administrative authorities referred to by the Government, the applicant argued that none of them had the power to give orders. Furthermore, the administrative authorities had only rarely imposed fines or issued warnings, despite having made some alarming observations when carrying out on-site visits. Lastly, the examples of responses given to complaints by other disabled people showed that the discretion enjoyed by these authorities compromised the quality of their intervention.

78. As to the possibility of bringing an action under anti-discrimination legislation, the applicant contended that the mechanism for combating discrimination established by Government Ordinance no. 137/2000 was riddled with gaps and shortcomings, rendering this remedy ineffective. He argued that neither the physical inaccessibility of buildings for public use nor the refusal to make reasonable accommodation were among the criteria that could give rise to a finding of discrimination at national level. He accordingly submitted that the possibility for victims of discrimination to apply directly to the courts by means of an ordinary action to have the discriminatory situation brought to an end was purely theoretical.

79. The applicant added that the buildings housing the Piteşti Court of First Instance and County Court had not been accessible to people with disabilities during the time of his attempts to pursue his university studies after his accident, and that this lack of accessibility had made it more difficult in practice to make use of any potential remedies.

80. Lastly, he submitted that, in view of the fact that the law did not lay down any time-limits for completing the work and a large number of stakeholders were involved – public and private entities owning or using buildings intended for public use, the local authorities which had to finance work to make public buildings accessible, and the ANPH and the Social Inspection Agency, which were tasked with coordinating, supervising and implementing the requirements laid down by law – it would be unreasonable and impractical to expect individuals to engage in multiple lengthy and costly proceedings against the many public service providers concerned.

3. The third parties

81. Emphasising the importance of the right to education, the third parties observed that this right was recognised by the international community not only as a right in itself but also as a means of realising all the other fundamental rights. They submitted that a loss of educational opportunities for people with disabilities caused immeasurable damage not only in academic terms (the persons concerned being prevented from obtaining particular degrees) but also in social terms, in that this was likely to hinder the inclusion and participation in society of those affected, and the development of their personality.

82. In the light of recent developments in international law, the third parties submitted that the national authorities could no longer avoid the issue or delay honouring their obligation to progressively ensure the accessibility of buildings for public use and, when dealing with an individual case, to provide reasonable accommodation with a view to securing the enjoyment of the rights guaranteed by the European Convention on Human Rights on the basis of equality for all.

B. The Court's assessment

1. General principles established in the Court's case-law

83. It is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. The Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. It should not take on the role of the Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined in the Convention are respected and protected at domestic level. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged violation. The rule is therefore an indispensable part of the functioning of this system of protection (see *Vučković and Others*, cited above, § 69).

84. States are exempted from answering before an international body for their acts until they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among many other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports* 1996-IV, and *Vučković and Others*, cited above, § 70).

85. The obligation to exhaust domestic remedies therefore requires applicants to make normal use of remedies which are available and sufficient in respect of their Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others*, cited above, § 66, and *Vučković and Others*, cited above, § 71). To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II; *Vučković and Others*, cited above, § 74; and *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004).

86. Nevertheless, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Akdivar and Others*, cited above,

§ 67, and *Vučković and Others*, cited above, § 73). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to pursue it (see *Akdivar and Others*, cited above, § 71; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009; and *Vučković and Others*, cited above, § 74).

87. The Court has, however, also frequently underlined the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (see *Ringeisen v. Austria*, 16 July 1971, § 89, Series A no. 13; *Akdivar and Others*, cited above, § 69; and *Vučković and Others*, cited above, § 76). It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Akdivar and Others*, cited above, § 69, and *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 286, ECHR 2012 (extracts)).

88. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. The availability of a remedy said to exist, including its scope and application, must be clearly set out and confirmed or complemented by practice or case-law (see *McFarlane v. Ireland* [GC], no. 31333/06, §§ 117 and 120, 10 September 2010, and *Mikolajová v. Slovakia*, no. 4479/03, § 34, 18 January 2011). Such case-law must in principle be well established and date back to the period before the application was lodged (see, among other authorities, *Sürmeli v. Germany* [GC], no. 75529/01, § 110, ECHR 2006-VII; *Norbert Sikorski v. Poland*, no. 17599/05, § 115, 22 October 2009; and *Zutter v. France* (*dec.*), no. 197/96, 27 June 2000), subject to exceptions which may be justified by the particular circumstances of the case.

89. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact used, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances exempting him or her from this requirement (see *Akdivar and Others*, cited above, § 68; *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, § 69, ECHR 2010; and *Vučković and Others*, cited above, § 77).

2. Application of these principles in the present case

(a) Nature of the remedies that should have been available to the applicant in the present case

90. The complaints raised by the applicant in the present case relate mainly to his inability to pursue his academic studies under the same conditions as the other students, on account of the lack of suitable facilities accommodating his locomotor impairments in the buildings housing the lecture rooms.

91. The Court considers that for the remedies referred to in the present case to be deemed "effective" for the purposes of Article 35 § 1 of the Convention, they must have been capable, primarily, of preventing or putting a swift end to the alleged violations and, secondarily, of affording adequate redress for any violation that had already occurred. If the only remedies available to litigants are of a compensatory nature and can lead solely to a retrospective award of pecuniary compensation, the rights which the respondent State has undertaken to safeguard by virtue of Article 2 of Protocol No. 1 – which requires any State that has set up higher-education institutions to ensure effective access to them (see the *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits), 23 July 1968, §§ 3-4, Series A no. 6, and *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 137, ECHR 2005-XI) – are at risk of becoming illusory.

92. This means, with reference to the present case, that the applicant needed, first and foremost, to be able to avail himself of a remedy capable of leading to the swift adoption of decisions requiring the universities concerned to install suitable facilities for people with locomotor impairments or to make reasonable accommodation to enable him to continue his studies. As a secondary consideration, he needed to have reasonable prospects of obtaining redress for any non-pecuniary or pecuniary damage he might have sustained through being unable to pursue his university studies under the same conditions as other students.

93. The Court's task is to determine whether, in the light of the parties' submissions and all the circumstances of the case, domestic remedies satisfying the requirements set out above were available both in theory and in practice at the material time, and if so, whether the applicant did everything that could reasonably be expected of him to exhaust them.

(b) The different remedies referred to by the Government

(i) Court order

94. The Government submitted that the applicant could have secured an order, in civil proceedings, for the universities concerned to install access ramps and facilities accommodating his needs. The applicant disputed this,

arguing that the lack of examples of national practice in this area indicated that the outcome of such proceedings would have been uncertain in the absence of a sufficiently clear and foreseeable legal basis in domestic law.

95. The Court observes that since 1999 the respondent State has put in place a special legislative framework requiring the various public institutions to make their premises accessible to people with disabilities. The range of entities covered by this accessibility requirement has gradually expanded, and since 2004 all public service providers, whether in the public or private sector, have been under an obligation to make their premises accessible to disabled people. Alongside this special legislation, domestic law includes general provisions – contained in the Civil Code – entitling an obligee to demand the performance of an obligation to take particular action and, failing that, to be awarded damages (Article 1075 of the Civil Code as in force at the material time). The Civil Code also provides that if an obligation to act is not honoured, the obligee may be entitled to ensure its performance himself or herself, at the obligor's expense (Article 1077 of the Civil Code – see paragraph 39 above).

96. The Court concludes from the foregoing that a reading of the general provisions of the Civil Code in conjunction with the special provisions of Government Emergency Ordinance no. 102/1999 or Law no. 448/2006 concerning the substantive obligations of the various public and private institutions could have constituted a sufficiently certain and foreseeable legal basis for the examination of a claim seeking to remedy any shortcomings in terms of accessibility.

97. Domestic law also includes provisions of a procedural nature empowering a court to order interim measures in urgent proceedings, with a view to preserving a right that is liable to be impaired or preventing imminent and irreparable damage. On the basis of these provisions, any interested party may make an application for interim measures to the court with jurisdiction to determine the merits of the case. The court is required to examine such an application as a matter of urgency and to respond to it by means of an enforceable judgment (see paragraph 41 above). Accordingly, an application made on this basis could have afforded the applicant prompt redress for his complaints in the present case.

98. The Court notes, lastly, that the examples of domestic practice supplied by the Government, in particular the judgment of the Galaţi County Court (see paragraph 51 above), indicate that the remedy cited by them had reasonable prospects of success. In the case brought before the Galaţi court, a person in a comparable situation to the applicant obtained an order for the association of co-owners of the block of flats where she lived to take urgent action to make the communal areas of the building accessible. Admittedly, the measures were provisional and remained to be confirmed following the examination of the merits of the case, but the judgment in which the court ordered them was nevertheless final and enforceable.

99. The Government also produced a final judgment of the Bucharest Court of First Instance showing that individuals in a comparable or similar situation to the applicant are entitled to bring complaints before the civil courts if they consider that particular institutions have discharged their accessibility obligations in an unsatisfactory or inadequate manner (see paragraph 49 above). The Court cannot speculate as to what the ruling of the court in question would have been if the shortcoming complained of before that court had not been remedied by the time of its decision. Nevertheless, there is nothing in the material available to the Court to suggest that the Court of First Instance, which had carried out an on-site visit to assess the claimant's allegations, would not have ordered the entity in question to take measures to remedy the shortcomings it had noted, in addition to paying a fine.

100. Although most of the examples provided by the Government date from after the application in the present case (contrast, among other examples, *Sürmeli*, cited above, § 110; *Norbert Sikorski*, cited above, § 115; and *Zutter*, cited above), the Court considers that the Government have shown to a sufficient extent (see paragraphs 44-52 and 65-67 above) that the remedy which they accused the applicant of failing to use cannot be disregarded on the grounds that it was unavailable or ineffective.

Contrary to the applicant, who submitted that the dearth of available examples concerning these matters signalled a lack of foreseeability and clarity in domestic law, the Court considers that the absence of a well-established body of domestic case-law predating the application in the present case can be explained by the fact that the remedy referred to by the Government – which was not a new or special remedy – has rarely been used, which is hardly surprising as this is a relatively recent branch of domestic law that has emerged alongside the trend towards increased protection of the rights of disabled people in international law and practice concerning both these rights and States' corresponding obligations.

101. The Court reiterates that in a legal system in which fundamental rights are protected by the Constitution and the law, it is incumbent on the aggrieved individual to test the extent of that protection and allow the domestic courts to apply those rights and, where appropriate, develop them in exercising their power of interpretation (see, *mutatis mutandis*, *A, B and C v. Ireland* [GC], no. 25579/05, § 142, ECHR 2010). In the present case, if the applicant had any doubts about the possibility of obtaining a court order, it was for him to dispel those doubts by applying to the domestic courts.

102. The fact is, however, that the applicant failed to apply to the civil courts for an order requiring the universities concerned to install an access ramp and other facilities accommodating his needs. The Court cannot find any other circumstances that could have exempted him from making use of this remedy.

103. Since the Government stated that there were several domestic remedies that the applicant could have pursued, the Court will next examine whether any of the others would also have been effective.

(ii) Action in tort

104. The Government argued that the applicant should have brought an action in the civil courts, on the basis of the provisions of the Civil Code governing liability in tort at the relevant time, with a view to obtaining an order for the universities concerned to make good any damage he had sustained. The applicant submitted in reply that this remedy would not have had reasonable prospects of success, given that Law no. 448/2006 had removed the deadlines for completing accessibility improvements, a development which in his view made it very difficult to establish fault on the part of entities not meeting this requirement.

105. The Government provided the Court with two examples of domestic practice, one concerning non-compliance with accessibility requirements prior to the entry into force of Law no. 448/2006 and the other concerning shortcomings after the Law had come into force (see paragraphs 46, 47 and 49 above).

106. The Court reiterates that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to make use of that remedy (see, for example, *Van Oosterwijck v. Belgium*, 6 November 1980, § 37, Series A no. 40, and *MPP Golub v. Ukraine* (dec.), no. 6778/05, ECHR 2005-XI). On the contrary, by applying to the appropriate court, the applicant would have created an opportunity for the development of domestic case-law on this subject, which would potentially have been beneficial to anyone else in a similar or comparable situation. The Court thus concludes that the reasons put forward by the applicant to justify not bringing an action in tort are unconvincing.

(iii) Remedies in respect of the successive decisions to exclude the applicant from university

107. The Court observes that although he was excluded on several occasions from the universities at which he was enrolled, the applicant never appealed against the university authorities' decisions to exclude him. However, the settled practice of the national courts at the relevant time indicates that a decision by a university to exclude a student was regarded as a unilateral administrative measure that could, as such, be challenged in the administrative courts, which were fully empowered to set it aside where appropriate (see paragraph 56 above).

108. The applicant did not avail himself of this opportunity offered to him by domestic law. Bearing in mind, however, that in at least two cases (see paragraphs 15 and 26 above) he was excluded because he had not

accumulated sufficient credits to complete his year of the degree course, he could have argued on those occasions that the shortfall was largely due to the fact that the universities concerned had not provided him with access to their buildings and services despite their obligation to do so by virtue of Government Emergency Ordinance no. 102/1999 and Law no. 448/2006, both as amended. The applicant could thereby have had the decisions to exclude him set aside and been reinstated at the university, and might also have been awarded credit for what he had studied in previous years. He could thus have had his academic circumstances reviewed by the university authorities, in accordance with the general principles of equality and non-discrimination governing access to higher-education institutions at national level.

109. Having regard to the particular circumstances of the present case, the Court considers that this remedy was effective for the purposes of Article 35 § 1 of the Convention.

110. In any event, it has to be acknowledged that between 2001 and 2006 Constantin Brâncoveanu University in Piteşti allowed the applicant to take advantage of various *ad hoc* measures through which the university authorities sought to overcome the difficulties he was likely to face until the work on installing access ramps and other special facilities had been completed. He did not contest these measures, either at the time they were taken or at a later stage when he came to believe that they did not meet his needs.

111. For these reasons, the Court concludes that the arguments put forward by the applicant to justify not challenging the decisions to exclude him from university are unconvincing.

112. Having regard to the conclusions it has reached in paragraphs 102, 106 and 111 above, the Court does not consider it necessary to give any further attention to the other possible domestic remedies referred to by the Government. It will, however, examine whether the circumstances relied on by the applicant in paragraphs 79 and 80 above could have exempted him from the obligation to avail himself of the remedies which were available to him and would have been effective (see *Sejdovic*, cited above, § 55).

(c) Other circumstances capable of exempting the applicant from the obligation to exhaust domestic remedies

113. The Court observes that the buildings housing the Piteşti Court of First Instance (*judecătoria*) and County Court were themselves not equipped to accommodate the needs of people with disabilities at the time of the applicant's fruitless attempts to study for a higher-education degree (see paragraph 33 above). However, these circumstances could not have prevented the applicant from applying to the courts in writing or through a representative, such as a lawyer or his aunt, who acted as his personal assistant (see, *mutatis mutandis*, *Farcaş and Others v. Romania* (dec.),

no. 67020/01, §§ 48-54, 10 November 2005). Indeed, this is precisely what he did on other occasions (see paragraph 33 *in fine* above), and he has not advanced any argument before the Court that could justify his failure to take similar action in relation to the complaints forming the subject of the present application. The Court therefore concludes that the inaccessibility of the buildings housing the courts in question did not form an insurmountable obstacle preventing the applicant from making use of all the effective domestic remedies that were open to him.

114. The applicant argued, lastly, that since the law did not lay down any time-limits for completing work to ensure the accessibility of buildings for public use and since a large number of stakeholders were involved, it would be unreasonable and impractical to expect individuals to engage in multiple lengthy and costly proceedings against the many public service providers concerned. The Court once again reiterates in this connection that it is a fundamental principle that the protection machinery established by the Convention is subsidiary to the national systems safeguarding human rights, and this is especially true with regard to claims which, as in the present case, relate to matters of economic and social policy entailing public expenditure; States have limited resources, and the national authorities are, in principle, better placed than an international court to determine how they are to be allocated, taking into account local needs and conditions (see, *mutatis mutandis*, *Mółka v. Poland* (dec.), no. 56550/00, ECHR 2006-IV, and *Sentges v. the Netherlands* (dec.), no. 27677/02, 8 July 2003).

(d) Conclusion

115. The Court therefore finds that no grounds for excluding the application of Article 35 § 1 of the Convention have been established. In conclusion, it considers that the applicant did not provide the national courts with the opportunity which is in principle intended to be afforded to Contracting States by Article 35 of the Convention, namely the opportunity to prevent or put right Convention violations through their own legal system (see, among other authorities, *Guzzardi v. Italy*, 6 November 1980, § 72, Series A no. 39, and *Cardot v. France*, 19 March 1991, § 36, Series A no. 200). Accordingly, the Government's objection of failure to exhaust domestic remedies must be upheld.

116. It follows that the application must be rejected as inadmissible pursuant to Article 35 §§ 1 and 4 *in fine* of the Convention.

II. OTHER PRELIMINARY OBJECTIONS

117. The Government also submitted that the applicant did not have victim status for the purposes of Article 34 of the Convention, and that Article 8 of the Convention, read separately or in conjunction with Article 14, was not applicable to the facts of the case. Having regard to the

conclusion it has reached above, the Court considers that it is not necessary to examine these other preliminary objections.

For these reasons, the Court, by a majority,

Declares the remainder of the application inadmissible.

Johan Callewaert	Dean Spielmann
Deputy to the Registrar	President