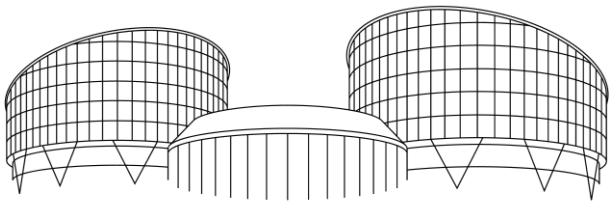

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF CUCU v. ROMANIA

(Application no. 22362/06)

JUDGMENT

STRASBOURG

13 November 2012

FINAL

13/02/2013

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

In the case of Cucu v. Romania,

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

Josep Casadevall, *President,*
Egbert Myjer,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 16 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 22362/06) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Viorel Cucu ("the applicant"), on 6 April 2006.

2. The applicant was represented by Nicoleta Popescu, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Răzvan Horaţiu Radu.

3. As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mrs Kristina Pardalos to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

4. On 27 October 2009 the President of the Third Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (former Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977. He lives in Bucharest.

6. On 21 November 2001 the Bucharest Appeal Court found the applicant guilty of robbery and two traffic offences and sentenced him to eleven years' imprisonment.

7. He started serving his sentence in Jilava Prison, where he was detained from 28 February 2001 to 4 March 2002; from 27 April 2002 to 23 January 2003; from 28 January to 3rd July 2003; and from 20 February 2006 to 4 December 2008. He also served a part of his sentence in Giurgiu prison from 3rd July 2003 to 26 February 2005; from 5 March 2005 to 11 February 2006; and from 25 February to 23 April 2009.

8. The further circumstances on the applicant's conditions of detention are in dispute between the parties.

A. Conditions of detention

1. The applicant's account

9. The applicant complained about the conditions of his detention, summarised below, in both Jilava and Giurgiu prisons.

He regularly complained thereof and about the disciplinary measures taken against him to the delegate judge, who dismissed most of his complaints.

For instance, in a decision of 23 March 2007, the delegate judge to Jilava Prison rejected the applicant's complaints that he did not fully benefit from the rights granted to him by the Regulations implementing Law no. 275/2006, adopted by Decree no. 1897/2006, on the ground, *inter alia*, that the legal force of the regulations was inferior to that of the law, and that therefore the prison administration was under no obligation to grant detainees rights which were not provided for by Law no. 275/2006 itself.

(a) Jilava Prison

10. The cell lacked basic hygiene, it was infested with lice, bugs and rats, the blankets were in a poor condition and the mattresses were dirty. Although the cell was very small and it was only big enough for two to three people, there were nine beds and twelve inmates in the cell (sometimes even fourteen to fifteen).

11. The cell window was very small and the cell lacked natural light. Due to the size of the window, the cell was not properly ventilated. The air was even more difficult to breathe as his cellmates were smokers, and the applicant was thus exposed to smoke almost all day long.

12. As the sanitary facilities were separated from the rest of the cell only by a makeshift partition, the smell was unbearable.

13. The water was undrinkable.

14. In addition, the applicant alleges that his daily walk schedule was not observed and that his access to cultural and educational activities was limited.

(b) Giurgiu Prison

15. The conditions were similar to those in Jilava Prison: the cell was overcrowded and lacked basic hygiene; also, there were no educational and cultural activities and the walk schedule was not observed.

16. He was detained alone in a cell for more than eight months, from July 2003 to February/March 2004. During that period he had no contact with the outside world, his rights to receive visits or parcels and to make phone calls were heavily restricted, the window could not be opened and he could only go out for walks on the roof of the prison building, handcuffed, and in a group of no more than five or six prisoners.

17. On 19 March 2004 the applicant was categorised as "dangerous" and treated as such, including during his transfer from Jilava Prison to Giurgiu Prison. This measure was regularly renewed. However, the applicant considered that the decisions to categorise him as dangerous had lacked any factual basis and pointed out that since 29 March 2003 he had not committed any act of indiscipline and had integrated very well into prison life.

18. Being categorised as a dangerous prisoner had serious consequences. His rights to receive visits, parcels and correspondence were restricted, and sometimes even withdrawn.

The applicant frequently had to file actions with the courts each time there was a restriction of his right to receive parcels and correspondence; most of his complaints about that were allowed by the domestic courts. However, the decision to categorise him as dangerous had other consequences: it prevented him from participating in a number of activities in the prison, and even restricted his movement; for instance, his hands were handcuffed behind his back whenever he was moved, which proved very painful.

19. Generally, the prison staff had a hostile attitude towards him.

20. On 4 July 2004 he was taken from Giurgiu Prison to Giurgiu County Court for a hearing. He did not receive any food or water until he was taken back to Giurgiu Prison.

2. The Government's account

(a) Jilava Prison

21. The Government submitted in their observations that in general, the conditions in Jilava Prison were adequate. In 2001 and 2002 there had been a problem with the overcrowding of the cells, but as of 2003 the situation had improved, and in each cell the number of detainees corresponded to the number of beds at the most. Each cell had power supply, natural light and natural ventilation through the windows. In summer time, the cell doors remained open, being closed off only by grids for better ventilation.

22. Each cell was equipped with tables, chairs, benches and a hallstand. The cells were cleaned by the prisoners, the necessary materials being provided by the prison administration. Disinfestation services were provided by professionals at least once every three months. The sanitary facilities were cleaned every morning with disinfectants. Whenever necessary, the cells were cleaned with disinfectants. Every week, upon request, the clothing of the detainees was washed.

23. Drinking water was permanently available. The quality of the water was checked monthly by a company under contract with the prison administration; according to the reports of that company, the water was drinkable.

24. The applicant was detained in cells nos. 203, 304, 307, 210, 208, 405, 404, 401, 403, 412.

During 2001-2003 the applicant was entitled to a daily thirty-minute walk; after Law no. 275/2006 entered into force in July 2006, he was entitled to a three-hour walk. In 2006 and 2007 the applicant also took part in educative programmes.

25. The fact that the applicant was registered as a detainee with an increased degree of risk did not restrict his right to receive packages, visits, or correspondence; however, appropriate security measures were taken when granting these rights.

Moreover, the applicant complained dozens of times both about the security measures and the way they interfered with his rights, as well as about the improper conditions of his detention. The delegated judge often granted the applicant's appeals concerning disciplinary sanctions against him. The appeals concerning his registration as dangerous and the material conditions of detention were dismissed, on the ground that no breach of law could be found. For instance, on 25 May 2007, the applicant's complaints about the improper material conditions in his cell and about the lack of medical treatment by a dentist were dismissed by the delegate judge. He found, upon examination of the information submitted to him by Jilava Prison administration, that the conditions of the applicant's detention did not amount to inhuman or degrading treatment and that, although there was no dentist in Jilava Prison, a competition for hiring a dentist in that prison was being organised by the Ministry of Justice. The delegated judge concluded that no breach of Law no. 275/2006 could be found.

(b) Giurgiu Prison

26. The cells in the prison had two or six beds, and were equipped in compliance with the law. Each detainee had an individual bed and a bedroll.

27. The two-bed detention cells measured 10.24 square metres, access to natural light and ventilation through four windows, and were equipped with one sink with utensils, one television stand, one table, one 220V lamp and one night watch light.

28. The six-bed detention rooms measured 21.76 square metres, access to natural light and ventilation through six windows, and were equipped with one sink with utensils, one television stand, three tables, one bench, a hallstand, one 220V lamp and one night watch lamp.

29. The sanitary facility was separated from the detention room and conformed to hygiene standards and privacy requirements. The detention rooms and water for twice weekly baths were heated by the prison's own power station. Drinking and non-drinking water was provided by the Giurgiu city supply network and was checked periodically.

30. The applicant was registered as a detainee with an increased degree of risk, and therefore security measures were taken when according his rights. For instance, his daily walk took place in one of the eight courtyards specially designed for very dangerous detainees, located on block C.

31. Between July 2003 and March 2004 the applicant was detained alone in a cell equipped in a similar way to the other cells. After March 2004 the applicant shared his cell with another detainee. The daily programme was respected by the prison administration, his rights to visits and packages were observed, and he was even able to participate in the football games organised by the penitentiary authorities.

32. The applicant's registration as a detainee with an increased degree of risk was well-founded and repeatedly prolonged throughout his detention in Giurgiu Prison. The applicant complained dozens of times about his conditions of detention, including material conditions, lack of medical treatment and restrictions to his rights as a result of his registration as dangerous.

The delegated judge often granted the applicant's appeals concerning disciplinary sanctions against him. The appeals concerning his registration as dangerous and the material conditions of detention were dismissed, on the ground that no breach of law could be found.

B. The events of 10, 11 and 14 November 2005

1. The applicant's criminal complaint of ill-treatment

33. The circumstances surrounding the events on 10 and 11 November 2005 are in dispute between the parties.

34. The applicant alleged that on 10 and 11 November 2005, while in Giurgiu Prison, he had been beaten by members of the Giurgiu Prison intervention squad wearing balaclavas. His requests to be examined by a forensic doctor immediately after the violent incidents had been ignored. He further alleged that he had immediately duly informed the prison authorities about the violent behaviour of the members of the intervention squad.

35. The Government submitted in their observations that on 10 November 2005, upon his return from a court hearing, the applicant had

asked to be taken to the prison store room to pick up some personal effects. The officers had informed him that his request would be granted only after all the formalities applicable to detainees returning from court to their cells had been complied with. Unhappy that his request had not been granted immediately, the applicant had become violent, and while he was being taken to the detention room, he had managed to undo his handcuffs and hit C.C., one of the members of the intervention unit, in the face. The incident was settled calmly and the applicant was placed in his cell without further difficulty. The next day C.C. had been taken to a doctor, who had established that he had "a minor head injury of level 0-1", which required nine days of medical treatment.

36. The applicant also alleged that on 14 November 2005, during the morning call, he had been hit and insulted by a supervising officer, N.I., and two members of the intervention unit.

37. After the incidents on 10, 11 and 14 November 2005, the applicant lodged with the Prosecution Office attached to the Giurgiu District Court a criminal complaint against the following prison officers:

a) C.C. and other members of the intervention unit, for hitting him on the evening of 10 November 2005 upon his return from a court hearing;

b) S.C., S.V., C.C. and other members of the intervention unit for allegedly beating, threatening and insulting him on 11 November 2005;

c) prison warden I.N. for allegedly insulting and hitting him during the morning call on 14 November 2005.

38. On 24 November 2005 the applicant was brought before the Giurgiu District Court concerning his request that the prison administration's decision to grade him as a "dangerous detainee" be revoked (see paragraph 18 above). During the hearing, he complained that he had been repeatedly beaten in Giurgiu Prison by State agents and that his body still bore bruises, and that he suffered pain in the right rib cage. He also indicated that he had filed complaints with the prosecutor and the prison administration, asking to see a doctor, but that he had received no answer.

The court took note of the criminal complaints lodged by the applicant and forwarded them to the prosecutor for further investigation. It also ordered the Giurgiu Prison administration to allow a doctor to see the applicant in order to have a medical certificate drawn up in relation to his allegations of ill-treatment.

39. Following the Giurgiu District Court's order, the applicant was examined by a doctor the next day, on 25 November 2005. A forensic medical report was drawn up, indicating multiple bruises in the area of the applicant's thighs and lower legs, which were deemed to still require some two to three days' medical treatment. The report also stated that the bruises could have been caused on 10 or 11 November 2005 by impact with hard objects.

40. On 12 December 2005 the Prosecution Office indicted the applicant for assault on a State agent, for having hit C.C. on 10 November 2005 (see paragraphs 46 et seq. below).

41. On 31 October 2006 the Prosecution Office decided not to open criminal proceedings against I.N. in relation to the alleged incident on 14 November 2005, on the ground that the complaint had not been substantiated. The prosecution established that the only witness who had supported the applicant's version of events, S.M., had not been an eye-witness; he had only heard screams and shouting involving the applicant and I.N from his cell. The other witnesses, who had been sharing the cell with the applicant, had not seen anything.

42. The decision not to open criminal proceedings against I.N. was upheld by the higher prosecutor on 22 January 2007.

43. On 20 March 2008 Giurgiu County Court upheld the decision not to open proceedings. The court reached this decision upon examination of the file produced by the prosecution, without any evidence being administered or any witnesses being heard.

44. On 12 December 2006 the Prosecution Office decided not to open criminal proceedings in relation to the alleged incidents of 10 and 11 November. The prosecutor established that on 10 November 2005, due to the fact that the applicant had been denied a particular request, he had succeeded in freeing one hand from his handcuffs and hitting one of the agents of the special intervention unit, C.C., in the face. The intervention squad had managed to immobilize the applicant. The prosecutor considered that the forensic certificate drawn up on 25 November 2005 could not constitute evidence showing that the injuries had been inflicted by I.N. and C.C., since there was a possibility that those injuries had been inflicted during the immobilization of the applicant. The prosecutor further indicated that the statements made by those witnesses who were also detainees were subjective, due to the fact that they had been the applicant's fellow inmates; moreover, they had presented the facts differently.

45. The decision not to open criminal proceedings in relation to the alleged incidents of 10 and 11 November 2005 was upheld by the higher prosecutor on 7 February 2007.

46. On 11 February 2008 the Giurgiu District Court upheld the decision of 7 February 2007. The court reached its decision upon examination of the file produced by the prosecution, without administering evidence or hearing witnesses.

The court found that the witnesses did not confirm the applicant's allegations. In particular, those witnesses in Giurgiu Prison who had seen the applicant being hit by agents wearing balaclavas were unable to provide the names of those agents, while other witnesses had no knowledge at all of the said events. The court found the statement by an inmate, S.M., to the effect that one of the two agents wearing balaclavas who had beaten the

applicant had been C.C., unconvincing on the ground that the agents' faces had been covered by the balaclavas. The court further found, with respect to the forensic medical certificate, that "the mere existence of those bruises does not indicate the respondents' guilt."

47. On 15 May 2008 Giurgiu County Court upheld the decision of 11 February 2008, finding that the applicant's allegations had not been fully substantiated. The court reached its decision upon examination of the file produced by the prosecution. It concluded that despite a number of witnesses confirming the occurrence of incidents between the applicant and the prison wardens in Giurgiu Prison, none of those witnesses had identified the applicant's aggressors as the defendants indicated by the applicant.

2. Criminal complaint against the applicant for assault on a State agent

48. On 12 December 2005 the Prosecution Office indicted the applicant for assault on a State agent, for having hit C.C. on 10 November 2005. After questioning witnesses to the incident on 10 November 2005 and in the light of the medical certificate issued on 11 November 2005, indicating that C.C. had needed eight to nine days of medical care, the prosecutor established that the applicant had voluntarily hit C.C. on 10 November 2005.

49. Before the Giurgiu District Court the applicant claimed that he had not hit C.C. on 10 November 2005. He contended that while he had been vehemently protesting against the guards' refusal to take him to the store room, two members of the intervention squad had approached him and hit him. During his attempts to defend himself from the blows, one of the agents might have accidentally been hurt. He claimed, however, that he had not behaved aggressively and had not resisted the immobilisation manoeuvres. He relied on the statements of all the witnesses to the incident, which had shown that he had not acted violently when the agents had attempted to immobilize him. He further stressed that numerous witnesses had stated that the State agents had assaulted him, and pointed to the incoherency of the statements of the agents who claimed that he had voluntarily hit C.C.

He finally asked the court to hear evidence from all witnesses to the incident, inmates and State agents.

50. On 22 May 2006 the Giurgiu District Court convicted the applicant of assault on a State agent, C.C., sentenced him to seven years' imprisonment and, as required by Article 71 of the Criminal Code read in conjunction with Article 64 a) of the Criminal Code, deprived him of his right to vote as an additional penalty.

The court firstly noted that the inmates who had witnessed the incident of 10 November 2005 had withdrawn the statements they had made to the prosecutor in which they had indicated that the applicant had hit C.C. Before the court, they had stated that those statements had been made under

duress. They submitted to the court that it was the applicant who had been assaulted by the State agents.

The court found those statements irrelevant, on the ground that they merely proved an alleged provocation by the State agents, and did not exculpate the applicant from the injuries he had caused to C.C. The court further found that those injuries had been caused with intent, as the statements given by the State agents questioned in the court showed.

51. Following an amendment of the Criminal Code on certain sentences, an appeal by the applicant was allowed on 18 June 2007 by the Giurgiu County Court, with regard to the prison sentence only, which was reduced to one year. The decision was upheld by the Bucharest Court of Appeal on 7 January 2008.

C. The right to receive visits from P.N.M.

52. On 29 April 2004 the Giurgiu prison administration informed the applicant that his common-law wife, P.N.M., was not allowed to visit him, since the prison records indicated that he was married to another woman. Her name was therefore not put on the list of people allowed to visit the applicant.

53. On 18 March 2005, relying on Government Ordinance no. 56/2003, the applicant challenged the refusal of the Giurgiu Prison administration to allow him visits from P.N.M. with the Giurgiu District Court. By a decision of 31 March 2005 the court found for the applicant and ordered the decision in question to be quashed and the applicant to be entitled to visits from P.N.M. The decision became final.

54. The prison records do not indicate that there were visits from P.N.M. after the judgment of 31 March 2005. They do, however, indicate that he was visited by members of his family on a regular basis.

55. Whether the decision of 31 March 2005 was enforced or not is in dispute between the parties.

The applicant claimed that the decision of 31 March 2005 had not been enforced and that P.N.M. had not been put on the list of people allowed to visit him. He did not provide, however, specific information as to any attempts by P.N.M. to visit him after 31 March 2005.

In their observations, the Government claimed that, on the contrary, after the decision of 31 March 2005, P.N.M. did not ask to visit the applicant.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL DOCUMENTS

A. Relevant domestic law

56. The domestic legislation on the execution of sentences, in particular Law no. 23/1969 and Emergency Ordinance no. 56/2003 ("Ordinance no. 56/2003") are described in *Petrea v. Romania*, no. 4792/03, §§ 21-23, 29 April 2008.

On 20 October 2006 Law no. 275/2006 on the execution of sentences entered into force, which replaced Law no. 23/1969 and Ordinance no. 56/2003.

Article 38 of Law no. 275/2006 provides the right of a detainee to complain to the delegate judge about any measure taken by the prison administration which infringes the rights granted to him by that Law. The decision taken by the delegate judge is subject to appeal before the District Court.

No provision of Law no. 275/2006 deals with the structural quality of the place of detention or the space provided to detainees.

57. The relevant provisions of the Code of Criminal Procedure concerning complaints about decisions by the prosecutor are set out in *Dumitru Popescu v. Romania (no. 1)*, no. 49234/99, §§ 43-45, 26 April 2007).

58. The relevant provisions of the Criminal Code providing the automatic withdrawal of the right to vote and to be elected during the execution of a prison sentence, read as follows:

Article 64 – Additional penalties

"Disqualification from exercising one or more of the rights mentioned below may be imposed as an additional penalty:

(a) the right to vote and to be elected to bodies of a public authority or to public elective office;

..."

Article 71 – Secondary penalty

"The secondary penalty shall consist in disqualification from exercising all the rights listed in Article 64.

(2) A life sentence or any other prison sentence shall automatically entail disqualification from exercising the rights referred to in the preceding paragraph from the time at which the conviction becomes final until the end of the term of imprisonment or the granting of a pardon waiving the execution of the sentence ..."

59. In a decision of 5 November 2007 (following an appeal in the interests of the law) which became mandatory on the date of its publication in the Official Gazette on 18 July 2008, the High Court of Cassation and

Justice advised the domestic courts to interpret Article 71 § 2 of the Criminal Code in the light of the Convention, and thus assess in each case the necessity of the withdrawal of the right to vote.

60. The Government submitted copies of various decisions given by the domestic courts applying Ordinance no. 56/2003 and Law no. 275/2006. These decisions deal mainly with complaints by detainees which challenged before the national courts various disciplinary measures, or related to the regime of imprisonment, the right to correspondence or medical care.

The Government also submitted two cases, one concerning a complaint about poor sanitary installation and lack of observance of a shower schedule, and one concerning a complaint regarding overcrowding, lack of air, and the presence of ill inmates. Both of them were dismissed by the domestic courts on the ground, *inter alia*, that they "did not regard any of the rights provided by Law no. 275/2006".

B. Council of Europe Reports

61. Following a visit to Romania by the Commissioner for Human Rights from 13 to 17 September 2004, a report was published on 29 March 2006, providing information on Bucharest-Jilava Prison. The report describes the conditions of detention in this facility as "particularly difficult" and the situation as "alarming". It further described the facilities as "outdated, windows unable to filter the cold and furniture from another era".

62. The relevant findings and recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") are described in the cases *Brăgădireanu v. Romania*, no. 22088/04, §§ 73-75, 6 December 2007, and *Artimenco v. Romania* (no. 12535/04, §§ 22-23, 30 June 2009).

63. With regard to Jilava Prison, excerpts from the CPT's findings following the visits of 1999 and 2006 are given in the case of *Eugen Gabriel Radu v. Romania* (no. 3036/04, §§ 14-17, 13 October 2009). In particular, the CPT expressed concern about the restricted living space, as the number of detainees exceeded more than twice the prison's capacity, the shortage of beds, the lack of adequate separation between the toilets and the living space in the cells, and qualified the conditions as "lacking privacy" and "an affront to human dignity".

64. Following visits in June 2006 to several prisons in Romania, the CPT published a report on 11 December 2008, in which it stated, *inter alia*:

> "70. (...) the Committee is gravely concerned that the lack of beds remains an ongoing problem not only in the establishments visited, but also at the national level, and has been since the first visit to Romania in 1995. It is high time that major steps are taken to put an end to this unacceptable situation. The CPT calls upon the

> Romanian authorities to take decisive priority action to ensure that that each inmate housed in a prison has a bed.
>
> However, the Committee welcomes the fact that shortly after the visit in June 2006, the official standard of living space per inmate in the cell was increased from 6 m3 (which amounted to an area of about 2 square metres per detainee) to 4 m2 or 8 m3. The CPT recommends that the Romanian authorities take the necessary steps to meet the standard of 4 m² of living space per inmate in shared cells in all prisons in Romania".

65. With respect to the practice of prison administrations employing special intervention units, in its report of 2006 the CPT found that special intervention units wearing masks were dispatched to surveillance departments in order to control violent and/or unmanageable and rebellious detainees. According to the CPT, the presence of such units creates an oppressive atmosphere, whereas the wearing of masks makes it difficult to identify a potential suspect if and when an allegation of ill-treatment is made. The CPT recommended that members of the special intervention units should be forbidden from wearing masks in the exercise of their duties in a prison environment, irrespective of the circumstances. The CPT further recommended that the Romanian authorities remind the members of the special intervention units that all forms of ill-treatment against detainees (including verbal provocation and insults) are unacceptable and are to be severely sanctioned, and that the use of force in order to control violent and/or recalcitrant prisoners must be limited to occasions when it is strictly necessary.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S DETENTION

66. The applicant complained about the conditions of his detention in Jilava and Giurgiu prisons, in particular, overcrowding and poor hygiene. He also complained that he had been detained in solitary confinement between July 2003 and March 2004. He invoked Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. The Government's objection under the six-month rule with regard to the applicant's solitary confinement between July 2003 and March 2004

67. The Government raised the objection of non-observance of the six-month rule with regard to the claim that from July 2003 until March 2004 the applicant had been detained in an isolation room in Giurgiu Prison. They emphasized that this was a singular event which had occurred during a specific period of the applicant's detention, and was not a continuous situation.

68. The applicant did not make any observations in this connection.

69. The Court reiterates that Article 35 § 1 of the Convention permits it to deal with a matter only if the application is lodged within six months of the date of the final decision in the process of exhaustion of domestic remedies, and reiterates that in cases where there is a continuing situation, the six-month period runs from the cessation of that situation (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004).

The Court has already ruled that complaints which have as their source specific events which occurred on identifiable dates cannot be construed as referring to a continuing situation (see *Camberrow MM5 AD v. Bulgaria*, (dec.), no. 50357/99, 1 April 2004).

70. In the present case, the Court notes that the applicant complains about the fact that he was kept in solitary confinement between July 2003 and March 2004. He did not claim that that treatment continued afterwards. It follows that his detention in solitary confinement cannot be regarded as a continuous situation.

Since the applicant lodged his complaint with the Court only on 6 April 2006, that is, more than six months after the solitary confinement ended, in March 2004, the Court allows the Government's objection.

It follows that this part of the complaint has been lodged late and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

2. The Government's objection of non-exhaustion of domestic remedies

71. The Government raised a preliminary objection of non-exhaustion of domestic remedies, in so far as the applicant did not challenge the delegate judge's ruling on the conditions of his detention in compliance with Law no. 275/2006. Referring to the cases of *Petrea v. Romania* (no. 4792/03, 29 April 2008), *Măciucă v. Romania* (no. 25763/03, 26 May 2009) and *Stan v. Romania* (decision of 20 May 2008), the Government argued that Ordinance no. 56/2003 and Law no. 275/2006 provided an adequate and effective remedy in accordance with the Court's jurisprudence.

72. The applicant disagreed and argued that poor detention conditions were a systemic problem throughout the Romanian prison system, and that Law no. 275/2006 did not provide an effective remedy for that situation.

Furthermore, even if Law no. 275/2006 allowed, in theory, the delegate judge to examine a complaint by a detainee about the material conditions of his or her detention and to reach the conclusion that the complaint was substantiated, such a decision could not effectively amount to a change in the situation, since it would not result in the detainee being placed in a less crowded cell or in a cleaner or better ventilated cell.

73. The Court notes that the applicant's complaint concerns the material conditions of his detention relating, *inter alia*, to overcrowding and poor sanitary facilities. It recalls that in numerous cases raising similar issues it has already found that, in the case of complaints about conditions of detention relating to structural issues such as overcrowding or dilapidated installations, given the specific nature of this type of complaint, the legal actions suggested by the Romanian Government, based on Ordinance no. 56/2003 and on Law no. 275/2006, did not constitute effective remedies (see, among others, *Petrea*, cited above, § 37; *Eugen Gabriel Radu v. Romania*, no. 3036/04, § 23, 13 October 2009; *Iamandi v. Romania*, no. 25867/03, § 49, 1 June 2010; *Cucolaş v. Romania*, no. 17044/03, § 67, 26 October 2010; *Ogică v. Romania*, no. 24708/03, § 35, 27 May 2010; *Dimakos v. Romania*, no. 10675/03, § 38, 6 July 2010; and *Goh v. Romania*, no. 9643/03, §§ 43 to 45, 21 June 2011).

In particular, the Court notes that Law no. 275/2006 does not provide either for a certain quality of detention facilities nor for a minimum space of living for a detainee (see paragraph 56 above).

Furthermore, none of the domestic decisions submitted by the Government (see paragraph 60 above) support their allegation that a legal action based on the above-mentioned provisions could have afforded the applicant immediate and effective redress for his complaint.

In any event, the Court notes that the applicant complained about the conditions of his detention on numerous occasions (see paragraphs 9, 25 and 32 above), and that his complaints were dismissed by the delegated judge, who found no breach of Law no. 275/2006.

74. It therefore rejects the Government's plea of non-exhaustion of domestic remedies in respect of the applicant's complaint concerning the material conditions of detention in Jilava and Giurgiu prisons.

75. Finally, the Court notes that the applicant's complaint concerning the material conditions of his detention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

76. The Government contended that the applicant enjoyed adequate living conditions while in detention.

77. The applicant maintained his allegations.

78. The Court refers to the principles established in its case-law regarding the conditions of detention (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI; *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II; *Peers v. Greece*, no. 28524/95, §§ 70-72, ECHR 2001-III; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; *Karalevičius v. Lithuania*, no. 53254/99, 7 April 2005; *Ostrovar v. Moldova*, no. 35207/03, § 89, 13 September 2005; and *Alver v. Estonia*, no. 64812/01, 8 November 2005).

79. The Court observes that it has already found violations of Article 3 of the Convention in similar cases, on account of the material conditions of detention in Jilava and Giurgiu prisons, especially with respect to overcrowding and lack of hygiene (see, among others, *Bragadireanu v. Romania*, no. 22088/04, § 92-98, 6 December 2007; *Măciucă v. Romania*, no. 25763/03, §§ 24-27, 26 May 2009; *Jiga v. Romania*, no. 14352/04, §§ 65-66, 16 March 2010; *Iamandi v. Romania*, no. 25867/03, §§ 59-62, 1 June 2010; *Marcu v. Romania*, no. 43079/02, §§ 62-64, 26 October 2010; and *Flamînzeanu v. Romania*, no. 56664/08, § 98, 12 April 2011).

80. In the present case, the Court notes that the applicant's description of the detention facilities in both Giurgiu and Jilava prisons, in particular overcrowding, damaged mattresses and inappropriate sanitary facilities, have not been contested by the Government. The applicant's description corresponds to the findings by the Commissioner for Human Rights of the Council of Europe and the CPT in respect of Romanian prisons (see paragraphs 61-65 above).

Moreover, it is undisputed that at least until July 2006 the applicant was confined in his cell most of the day, and was able to take a walk in the prison yard for only a very limited time.

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

Even though in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court concludes that the conditions of his detention in Jilava and Giurgiu prisons caused him suffering that exceeded the unavoidable level of suffering inherent in detention and that attained the threshold of degrading treatment proscribed by Article 3.

82. There has accordingly been a violation of Article 3 of the Convention in so far as the conditions of the applicant's detention are concerned.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF ILL-TREATMENT

83. The applicant complained under Article 3 of the Convention that he had been subjected to ill-treatment by State agents while imprisoned in

Giurgiu Prison and that the authorities had not carried out an effective investigation into those allegations. He invoked Article 3 of the Convention, which reads as follows:

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

A. Admissibility

84. The Court notes that the 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

85. The Government contended that judicial authorities had carried out a proper investigation and that the prosecutor had questioned all those who had any knowledge of the events, regardless of whether they were prison wardens, members of the special intervention squad or detainees. The inquiry carried out by the prosecutor had made it possible to identify the individuals involved, despite the fact that the members of the special intervention unit had been wearing balaclavas. However, the evidence collected did not support the assertion that the applicant had suffered treatment infringing Article 3 while in the hands of State's agents.

86. The applicant disagreed. He submitted that he had duly complained to the authorities that he had been beaten by members of the special intervention squad wearing balaclavas, and complained that the investigation into those allegations had been purely formal. Relying on the Court's judgment in the case of *Bursuc v. Romania* (no. 42066/98, § 80, 12 October 2004), the applicant considered that the Government had not managed either to give a plausible explanation as to the events of 10 to 11 November 2005 or even to cast a doubt on his allegations. He furthermore argued that he was in the sole custody of State agents and therefore was not in a position to gather all the necessary elements of proof. However, had an effective investigation been carried out in his case, the authorities could have rebutted his allegations, which they had not.

He further pointed out that the medical evidence gathered in his case had not been taken into consideration by the investigating authorities.

2. The Court's assessment

(a) General principles

87. The Court reiterates that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Gladyshev v. Russia*, no. 2807/04, § 51, 30 July 2009; *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX).

88. To fall under Article 3 of the Convention ill-treatment must attain a minimum level of severity. The standard of proof relied upon by the Court is that "beyond reasonable doubt" (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Gladyshev*, cited above, § 52; *Oleg Nikitin v. Russia*, no. 36410/02, § 45, 9 October 2008; and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

89. The Court also recalls that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

90. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II; *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III; and *Mikheyev v. Russia*, no. 77617/01, § 107, 26 January 2006).

91. The investigation of arguable allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical certificates capable of providing a full and accurate record of the injuries

and an objective analysis of the medical findings, in particular as regards the cause of the injuries. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *Mikheyev*, cited above, § 108, and *Nadrosov v. Russia*, no. 9297/02, § 38, 31 July 2008).

92. Lastly, notwithstanding its subsidiary role in assessing evidence, the Court reiterates that where allegations are made under Article 3 of the Convention, the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000, and *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007).

(b) Application of the above principles in the present case

93. Turning to the facts of the present case, the Court notes that the applicant's complaints concerned three distinct incidents which allegedly occurred on 10, 11 and 14 November 2005. After the alleged beatings, the applicant was examined by a doctor, who recorded in a forensic report of 25 November 2005 that the applicant had bruises in the area of his thighs and lower legs, requiring two to three days' medical treatment, and that these bruises had probably been produced on 10 or 11 November 2005 (see, *a contrario*, *Barbu Anghelescu v. Romania no. 2* (dec.), no. 2871/02, 26 February 2008).

94. The Court notes that the Government do not deny that the applicant sustained injuries to his person in November 2005 during his time in custody. However, they suggest that the injuries could have been caused during the violent incident of 10 November 2005.

The Court for its part finds it impossible to establish on the basis of the evidence before it whether or not the applicant's injuries were caused with intent as alleged, by the members of the intervention squad. The evidence referred to above supports both the applicant's and the Government's case. However it would observe at the same time that the difficulty in determining whether there was a plausible explanation for the applicant's injuries or whether there was any substance to his allegations of ill-treatment rests with the failure of the authorities to investigate effectively his complaints (see *Veznedaroğlu v. Turkey*, no. 32357/96, § 31, 11 April 2000). The Court will now examine this matter further.

95. The Court notes that the applicant filed criminal complaints with the authorities to the effect that on 10, 11 and 14 December 2005 he had been hit by members of the special intervention unit employed by Giurgiu Prison. He substantiated his complaints with a medical report of 25 November 2005 indicating bruises on his thighs and legs which could have been produced around 10-11 November 2005.

The applicant's claim was, therefore, shown to be "arguable", and the domestic authorities were placed under an obligation to carry out "a

thorough and effective investigation capable of leading to the identification and punishment of those responsible".

96. On 12 December 2006 the prosecutor refused to institute criminal proceedings against the State agents accused of having inflicted the injuries, on the ground that there was "a possibility" that the bruises on the applicant's body had been produced while members of the intervention squad were immobilizing him during the incident on 10 November 2005. The prosecutor found that neither the medical certificate nor the statements by other detainees could be taken into account, since the medical certificate failed to establish that the bruises had been inflicted by State agents, and the detainees were also deemed to be subjective since they were the applicant's fellow inmates. Furthermore, the prosecutor considered that the detainees' statements to the effect that the applicant had been hit on numerous occasions, and in particular around 10, 11 and 14 November 2005, showed some discrepancies. The prosecutor found that the statements naming particular State agents as having hit the applicant were unreliable, since, due to the use of balaclavas, the members of the intervention unit were impossible to identify.

That decision was upheld by a final decision of 15 May 2008 of the Giurgiu County Court, which found that the applicant's allegations had not been fully substantiated.

97. The Court is concerned by the fact that no attempt whatsoever was made by the investigating authorities to establish the cause of the injuries the applicant sustained while he was in detention. The mere mention that there was a possibility that the injuries on the applicant's body could have been produced otherwise than alleged is far from capable of satisfying the requirement that an "effective investigation" be carried out into allegations of ill-treatment. This failure alone is sufficient to render the entire investigation ineffective (see *Samoylov v. Russia*, no. 64398/01, § 37, 2 October 2008).

The Court also refers to the findings of the CPT and considers that a proper investigation was especially important in the present case, where the authorities employed agents wearing balaclavas and who had no other distinguishing features, making it very difficult, if not impossible, for the detainees to identify them.

98. Finally, the Court observes that the applicant was medically examined only after the court before which he appeared ordered it on 24 November 2005, that is, some two weeks after the alleged ill-treatment and despite the criminal complaints lodged by the applicant immediately after the incident (see paragraphs 37 to 39 above). The Court notes that the authorities did not provide an explanation for the delay.

99. Having regard to the above, the Court concludes that the State authorities failed to conduct a proper investigation into the applicant's allegations of ill-treatment.

100. Accordingly, there has been a violation of Article 3 of the Convention under the procedural limb.

III. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 8 OF THE CONVENTION

101. The applicant complained under Articles 6 § 1 and 8 of the Convention that the final court decision of 31 March 2005 ordering the Giurgiu Prison administration to allow him to receive visits from his common-law wife P.N.M. had not been enforced and that this had infringed his right to respect for his family life.

102. The Government contended, on the contrary, that after the decision of 31 March 2005, P.N.M. did not ask to visit the applicant.

103. The Court notes that the applicant's complaints are unsubstantiated, since he did not provide any information or document in support of his allegation that P.N.M. attempted to visit him after 31 March 2005 (see paragraphs 54 and 55 above).

104. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No.1 TO THE CONVENTION

105. The applicant further complained that the automatic withdrawal of his voting rights amounted to a violation of Article 3 of Protocol No. 1 to the Convention, which reads as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

A. Admissibility

106. The Court notes that the 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

107. The Government admitted that the temporary withdrawal of the right to vote represented an interference with Article 3 of Protocol No.1. However, the measure was provided for by law, in particular Article 71 of

the Criminal Code, read in conjunction with Article 64 a) of the Criminal Code, which requires the automatic withdrawal of the right to vote in case of an imprisonment sentence, and was necessary in a democratic society.

The Government argued that in any event, despite the mandatory character of the above provisions of the Criminal Code, the domestic courts were advised by the High Court of Cassation and Justice, in a decision of 5 November 2007, following an appeal in the interests of the law, to make an extensive interpretation of Article 71 of the Criminal Code and to assess in each case the necessity of the withdrawal of the right to vote, even when an imprisonment sentence was pronounced.

108. The applicant submitted that, pursuant to the domestic relevant provisions of the Criminal Code, the withdrawal of the rights to vote of persons sentenced to imprisonment was mandatory and automatic.

109. The Court recalls that the rights guaranteed by Article 3 of Protocol No. 1 to the Convention are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law; a general, automatic and indiscriminate restriction on the right to vote applied to all convicted prisoners serving sentences is incompatible with that Article (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, §§ 58 and 82, ECHR 2005-IX).

These principles were reaffirmed by the Grand Chamber in the case of *Scoppola v. Italy (no. 3)*, in particular the incompatibility with Article 3 of Protocole No. 1 of such a general and automatic restriction, irrespective of the length of the sentence and irrespective of the nature or gravity of the offence and the individual circumstances of the convicted prisoners (*Scoppola v. Italy (no. 3)* [GC], no. 126/05, §§ 96, 108 and 109, 22 May 2012).

110. Turning to the instant case, the Court notes that the relevant provisions of the Criminal Code require the automatic withdrawal of the right to vote in case of a prison sentence (see above paragraph 58).

While acknowledging the decision of 5 November 2007 of the High Court of Cassation and Justice put forward by the Government, the Court observes that this decision became mandatory for courts only in July 2008, after the applicant's conviction and sentencing (see above paragraph 59).

The Giurgiu District Court sentenced the applicant on 22 May 2006 to seven years' imprisonment and ordered the right to vote to be withdrawn as an automatic penalty, without carrying out any proportionality assessment (see paragraph 50 above). Both the Giurgiu County Court and the Bucharest Court of Appeal upheld the automatic penalty of withdrawal of the right to vote (see paragraph 51 above).

111. The Court has already found in respect of Romania a violation of Article 3 of Protocol No. 1 on account of an automatic withdrawal of the right to vote as a secondary penalty to a prison sentence and of the lack of

competence of the courts to proceed with a proportionality test on that measure (see *Calmanovici v. Romania*, no. 42250/02, § 153, 1 July 2008).

Nothing in the present case allows the Court to reach a different conclusion.

112. In the light of the above, the Court concludes that in the present case there has been a violation of Article 3 of Protocol No. 1 to the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. 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

114. The applicant claimed 40,000 Euros (EUR) in respect of non-pecuniary damage.

115. The Government submitted that if the Court were to find a violation, the finding of such a violation would constitute in itself sufficient just satisfaction.

116. The Court notes that it has found a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in Jilava and Giurgiu prisons and the failure to carry out an effective investigation into his alleged ill-treatment whilst in State custody. It has also found a violation of Article 3 of Protocol No. 1 to the Convention.

Under these circumstances, the Court considers that the pain, humiliation and frustration caused to the applicant cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 13,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

117. Providing documentary evidence in support of his claims, the applicant also claimed EUR 7,359.16 for the costs and expenses incurred before the Court as follows: EUR 7,059.16 for lawyer's fees and EUR 300 for costs and expenses related to the proceedings before the Court, namely, technical support and mailing.

118. The Government opposed the award of the sums claimed for costs and expenses on the ground that they were excessive and unsubstantiated.

119. The Court reiterates that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII, and *Boicenco v. Moldova*, no. 41088/05, § 176, 11 July 2006). In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Court may reject the claim in whole or in part.

120. The evidence submitted to the Court shows that the applicant's representative, Ms N. Popescu, incurred costs and expenses relating to the matters found to constitute the violations.

Ruling on an equitable basis, and taking account of the number and complexity of issues dealt with and of the work needed to produce the documents and observations filed on the applicant's behalf, the Court awards the applicant EUR 4,000, to be paid directly to the applicant's representative, Ms N. Popescu.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 of the Convention with regard to the material conditions of detention in Jilava and Giurgiu prisons and to the allegations of ill-treatment, and Article 3 of Protocol No. 1 to the Convention admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention with respect to the conditions of detention in Jilava and Giurgiu prisons;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the failure of the authorities of the respondent State to investigate the applicant's complaint of ill-treatment;

4. *Holds* that there has been a violation of Article 3 of Protocol No. 1 to the Convention;

5. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into the national currency at the rate applicable at the date of settlement:

(i) EUR 13,000 (thirteen thousand euros) to the applicant in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount;

(ii) EUR 4,000 (four thousand euros) in respect of costs and expenses, to be paid into a bank account indicated by the applicant's representative;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President