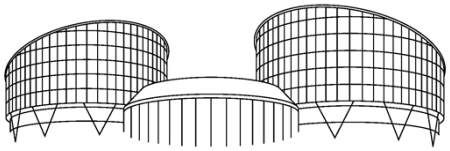

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF NENCIU v. ROMANIA

(Application no. 65980/13)

JUDGMENT

This version was rectified on 21 February 2017 under Rule 81 of the Rules of Court

STRASBOURG

17 January 2017

This judgment is final but it may be subject to editorial revision.

In the case of Nenciu v. Romania,

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

Paulo Pinto de Albuquerque, *President,*
Iulia Motoc,
Marko Bošnjak, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*
Having deliberated in private on 6 December 2016,

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

PROCEDURE

1. The case originated in an application (no. 65980/13) 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 Laurențiu Eduard Nenciu ("the applicant"), on 4 October 2013.

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

3. On 24 June 2014 the application was communicated to the Government.

THE FACTS

4. The applicant was born in 1966 and is currently detained in Giurgiu Prison.

5. On 24 June 1999 the Călăraşi County Court convicted the applicant of burglary, rape and murder and sentenced him to twenty five years' imprisonment. In application of Article 71 of the Criminal Code, his right to vote and to be elected was withdrawn during detention.

6. The decision became final on 25 February 2000 when the Supreme Court of Justice dismissed the appeal on points of law lodged by the applicant.

7. The applicant is currently serving his prison sentence in Giurgiu Prison where he has been held since 21 January 2009.

A. The applicant's account of the conditions of detention

8. The applicant described the conditions of his detention as follows:

- there was no water during summer days;
- he was placed with smokers (in the court-room and for few days during detention) although he did not smoke;
- the windows were covered with bars and thick galvanised wire which rendered the ventilation of the cell impossible;
- he was transported to court hearings in small dirty vans, with no ventilation or natural light;
- from 2009 until the date of the last information received (22 July 2014) he had been held with five other inmates in a 17.65 sq. m cell infested with bugs.

B. The Government's account of the conditions of detention

9. Based on the documents presented by the Prison Administration, the Government explained that during his stay in Giurgiu Prison the applicant had occupied the following cells, all non-smoking:

- cells nos. A305, A306, A328, B232, C109, C116, C126, C127, C215, C216, C225, E1.22, E3.7, E3.12, E3.24, E3.26, E3.32, E4.5, E4.14, E4.25, E4.27, E5.32, E10.8, E10.11 which each measured 17,65 sq. m and which he shared with a maximum of five other detainees, between 26 January 2009 and 5 August 2010, between 12 August and 6 September 2010, between 7 March and 28 April 2011, between 20 May and 22 August 2011, between 29 August 2011 and 3 February 2012, between 9 February and 2 April 2012, between 7 May and 23 July 2012, between 2 August and 13 September 2012, between 4 October 2012 and 4 March 2013, between 11 March and 11 April 2013, between 18 and 29 April 2013, between 7 May 2013 and 7 February 2014 and between 21 February and 22 July 2014.
- cells nos. C317, C333, C336 and E3.19 which each measured 9.66 sq. m and which he shared with another person, between 21 and 26 January 2009, between 6 September and 10 October 2010, between 12 and 20 May 2011 and between 7 and 21 February 2014.

10. The sanitary annexe measured 2.7 sq. m and was provided with a sink, a shower cabin, shelves, mirror and a toilet. All rooms had windows and ventilation. The detainees collected the trash and cleaned the cells twice every day.

11. The inmates received the hygiene products from the prison administration and had access to warm water twice every week. Access to drinking water was unlimited.

12. The information submitted by the Prison Administration concerned conditions of detention only until 22 July 2014.

13. According to the Government, from 21 February 2014 onwards the applicant had been sharing the cells with a maximum of four other persons, in compliance with the decision adopted on 31 January 2014 by the Giurgiu District Court (see paragraph 15 below).

C. The applicant's complaints to the post-sentencing judge

14. The applicant complained repeatedly to the post-sentencing judge (Law no. 275/2006 on the execution of sentences; hereinafter "Law no. 275/2006") about the conditions of his detention.

15. By two decisions of 29 August and 21 November 2013 the post-sentencing judge for Giurgiu Prison noted that the applicant was no longer held with smokers. The judge also considered that because of the large number of inmates held in that Prison, it was impossible to ensure more personal space for the applicant. He also concluded that in so far as the inmates were responsible for cleaning their cells, the presence of bugs was not the authorities' fault, but that of the prisoners. The applicant appealed against these two decisions. On 31 January 2014 the Giurgiu District Court ordered the Giurgiu Prison administration to ensure the applicant 4 sq. m of personal space, as provided by law.

16. The applicant also complained before the post-sentencing judge for Slobozia Prison, that while he was held in there, from March to May 2013, he was again placed in cells with smokers. On 7 October 2013 the post-sentencing judge dismissed the request as having been lodged after the expiry of the ten-day time-limit provided for by Law no. 275/2006. The decision was upheld by the Slobozia District Court on 10 March 2014.

17. Ruling on a similar complaint lodged by the applicant about his stay in a cell with smokers from 8 to 11 March 2013 in Rahova Prison, the post-sentencing judge for this prison decided, on 19 March 2013, that no measure could be imposed on Rahova Prison as the applicant was no longer there. He also noted that the applicant could bring a separate claim for compensation before the civil courts.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

18. The applicant complained of the inadequate conditions of his detention. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

19. The Government argued that the applicant's conditions of detention had improved in compliance with the decision of 31 January 2014 (see paragraph 15 above) and that therefore he could no longer claim to be a victim of a violation of Article 3 after 7 February 2014.

20. The applicant contended that the decisions rendered by the post-sentencing judge remained practically ineffective given the structural problems in the Romanian prison system. He made reference to reports by the Association for the Defence of Human Rights – the Helsinki Committee (APADOR-CH) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

21. The Court considers that the argument raised by the Government is closely linked to the merits of the complaint. It therefore joins it to the merits of the case.

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

B. Merits

23. The Court refers to the principles established in its case-law regarding inadequate conditions of detention (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, §§ 90-94, ECHR 2000-XI, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 139-165, 10 January 2012). It reiterates in particular that a serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions are "degrading" from the point of view of Article 3 and may disclose a violation, both alone or taken together with other shortcomings (see, amongst many authorities, *Karalevičius v. Lithuania*, no. 53254/99, §§ 37-39, 7 April 2005, and *Ananyev and Others*, cited above, §§ 145-147).

24. In the leading case of *Iacov Stanciu v. Romania* (no. 35972/05, §§ 171-187, 24 July 2012), the Court already found a violation in respect of issues similar to those in the present case. Moreover, the Court already held in a number of cases that the detention conditions in Giurgiu Prison, where the applicant has been and is currently detained, breached the safeguards of Article 3 of the Convention (see, notably, *Serce v. Romania*, no. 35049/08, § 45, 30 June 2015, and *Cucu v. Romania*, no. 22362/06, §§ 79 and 82, 13 November 2012, with further references).

25. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of these complaints. Having regard to its case-law

on the subject, the Court considers that in the instant case the applicant's conditions of detention were inadequate for most of his stay, both before and after the decision of 31 January 2014.

26. Accordingly, the Court dismisses the Government's preliminary objection and finds that there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL NO. 1 TO THE CONVENTION

27. The applicant complained about his automatic disqualification from exercising his right to vote. He relied on 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

28. The Government pointed out firstly that the restrictions on the applicant's right to vote had been instituted by the decision of 25 February 2000 (see paragraphs 5 and 6 above) and argued that the six-month time-limit for lodging this complaint with the Court had started running from that date. Moreover, they noted that several elections had occurred since that date – parliamentary elections of 2000, 2004, 2008 and 2012, and the European parliamentary elections of 2007 and 2009 – and that the applicant could not vote on those occasions either. In their view, the fact that he had not complained about his disenfranchisement for those elections showed that he had lacked interest and that his complaint was thus purely vexatious.

29. Secondly, the Government argued that the applicant should have complained before the domestic courts about the ban on his voting rights. He could have done so by relying directly on the Court's case-law, notably the judgment adopted in *Sabou and Pîrcălab v. Romania* (no. 46572/99, 28 September 2004), which also concerned a blanket restriction of rights during detention and which brought a change in the manner in which the domestic courts imposed such restrictions.

30. The applicant contested these arguments.

31. The Court reiterates that in a recent case it has rejected a similar objection related to the six-month rule and the alleged vexatious nature of the complaint, on the ground that the disenfranchisement provision produced a continuing state of affairs against which no domestic remedy was in fact available to the applicant, and which could end only when the provision in question was no longer in force or when it was no longer

applicable to the applicant (see *Brânduşe v. Romania (no. 2)*, no. 39951/08, § 38, 27 October 2015; see also *Anchugov and Gladkov v. Russia*, nos. 11157/04 and 15162/05, § 77, 4 July 2013). Moreover, casting a vote being a right and not an obligation in the respondent State, no negative consequences can be inferred from the applicant's choice not to participate in certain elections (see *Brânduşe*, cited above, § 39).

32. Moreover, given the circumstances, the Court considers that it would be excessive to require the applicant to lodge an application with the domestic courts. It notes in this respect that there is no evidence brought by the Government that such a complaint would be effectively heard by those courts. The case *Sabou and Pîrcălab*, cited above, concerned an absolute ban on the parental rights not on the voting rights. The domestic case-law in that particular field had only changed after the adoption of that judgment, on 28 September 2004 (see *Iordache v. Romania*, no. 6817/02, § 60, 14 October 2008). There is no information available about how that judgment might have affected other restrictions, such as the one examined in the present case. Therefore, its impact for the applicant, who had been sentenced before September 2004 to a different type of restriction, remains unproven.

33. Lastly, it was not until 5 November 2007 that the High Court of Cassation and Justice advised the domestic courts to assess in each case individually the necessity of the withdrawal of the right to vote (see *Brânduşe*, cited above, § 13). This recommendation, which became mandatory on 18 July 2008, does not apply to past decisions and the Government failed to show how the applicant could have benefited from it.

34. For these reasons, the Court dismisses the Government's objections.

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

B. Merits

36. The applicant complained about his automatic and complete disenfranchisement and argued that his case was identical to that of *Cucu* (judgment cited above).

37. The Government contested these arguments, averring, principally, that this disenfranchisement had been applied according to the law.

38. The Court reiterates that Article 3 of Protocol No. 1 guarantees subjective rights, including the right to vote and to stand for election. It further notes that the rights guaranteed by this Article are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (see *Scoppola v. Italy (no. 3)* [GC], no. 126/05, §§ 81-82, 22 May 2012).

39. The Court has established in *Hirst v. the United Kingdom (no. 2)* ([GC], no. 74025/01, § 82, ECHR 2005-IX), that when disenfranchisement affects a group of people generally, automatically, and indiscriminately, based solely on the fact that they are serving a prison sentence, irrespective of the length of the sentence and irrespective of the nature or seriousness of their offence and their individual circumstances, it is not compatible with Article 3 of Protocol No. 1.

40. These principles were reaffirmed by the Grand Chamber in the case of *Scoppola*, in particular the incompatibility with Article 3 of Protocol 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*, cited above, §§ 96, 108 and 109).

41. In several cases against Romania, the Court has found a similar restriction to be incompatible with the requirements of Article 3 of the First Protocol in so far as, according to Romanian law as it was applied by the domestic courts at that time (which is also relevant for the present case), all convicted prisoners serving prison sentences received a secondary penalty in the form of a general, automatic and indiscriminate restriction on the right to vote (see, notably, *Calmanovici v. Romania*, no. 42250/02, §§ 152-154, 1 July 2008, and *Cucu*, cited above, § 110-112).

42. The circumstances of the present case are identical to those examined by the Court in *Calmanovici*, *Cucu*, and *Brânduşe* cited above, as the disenfranchisement was imposed as a direct consequence of incarceration, without an individual assessment by the courts of the applicant's individual situation.

43. The Court notes the change in the interpretation of the legislation in question brought about by the decision adopted by the High Court of Cassation and Justice on 5 November 2007 (see paragraph 33 above and *Pleş v. Romania* (dec.), no. 15275/10, § 14, 8 October 2013). However, this new approach did not benefit the applicant who remained unable to vote in elections.

44. For these reasons, the Court concludes that there has been a violation of Article 3 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

47. The Government considered that the finding of a violation should constitute sufficient compensation for the alleged non-pecuniary damage. If the Court wished to make an award, the Government asked it to take into account the sums awarded in similar cases.

48. Having regard to all the circumstances of the present case, the Court accepts that the applicant must have suffered non-pecuniary damage because of the conditions of his detention, which cannot be compensated solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 14,400 in respect of non-pecuniary damage, plus any tax that may be chargeable thereon. No additional award is made for the violation of Article 3 of Protocol No. 1 to the Convention (see *Brânduşe*, cited above, § 53).

B. Costs and expenses

49. The applicant also claimed EUR 2,885 for the costs and expenses incurred before the Court. More specifically, EUR 2,585 in lawyer's fees, to be paid directly to the lawyer's account, and EUR 300 for technical support and various correspondence costs incurred by the APADOR-CH, to be paid directly to that organisation's account. The applicant submitted a contract signed by his representative and a detailed document indicating the number of hours worked in preparing the case. He also submitted an agreement signed with the APADOR-CH whereby the latter committed to offer technical support and to pay the correspondence fees incurred before the Court.

50. The Government argued that the applicant had failed to demonstrate that the alleged costs had been necessary and actually incurred.

51. 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 *Cobzaru v. Romania*, no. 48254/99, § 110, 26 July 2007). 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.

52. In the present case, having regard to the above criteria and to the itemised list submitted by the applicant, the Court considers it reasonable to award the applicant the sum of EUR 2,585 in respect of lawyer's fees, to be paid directly into the bank account indicated by the applicant's representative.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits and *dismisses* the Government's objection concerning the lack of victim status;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's conditions of detention;

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 the applicant, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 14,400 (fourteen thousand and four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,585 (two thousand five hundred and eighty five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the applicant's representative;[1]
   (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* the remainder of the applicant's claim for just satisfaction.

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1. Rectified on 21 February 2017: the text was "EUR 2,585 (two thousand five hundred and eighty five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;"

Done in English, and notified in writing on 17 January 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Paulo Pinto de Albuquerque
Deputy Registrar	President