



Degrading conditions of detention

In today's Chamber judgment in the cases of [Marcu v. Romania](#) (application no. 43079/02), [Cucolaş v. Romania](#) (no 17044/03) and [Coman v. Romania](#) (no 34619/04), which are not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, and

a violation of Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy), **in conjunction with Articles 3 and 8** in the **Marcu** case.

The cases mainly concerned poor conditions of detention.

Principal facts

In the first case, the applicant, Valentin **Marcu**, is a Romanian national, who was born in 1962 and lives in Quakenbrück (Germany). In May 2000 he was remanded in custody on suspicion of attempted murder with aggravating circumstances. In May 2002 he was sentenced to ten years' imprisonment, with, as a complementary sentence, the withdrawal of his parental rights in respect of his two children, under Article 64 (d) of the Criminal Code. Between 2000 and 2004 Mr Marcu was held mainly at Bucharest-Jilava Prison. During his detention he regularly enquired about his children (who were left alone by their mother for two years, when they were 10 and 11). In September 2002 the authorities informed Mr Marcu that the children had left Romania with their mother. He was released on licence in September 2006.

In the second case, the applicant, Mr **Cucolaş**, is a Romanian national who was born in 1973 and lives in Bucharest. In April 2000 he was remanded in custody on suspicion of forgery in connection with the forging of customs receipts used for the fraudulent registration of vehicles. In December 2002 he was sentenced in a final judgment to 13 years' imprisonment. Between 2000 and 2004 he was held mainly in the prisons of Botoşani, Bucharest Jilava and Poarta Albă and in the Suceava police remand centre. He was released on licence in December 2006.

In the third case, the applicant is Remus **Coman**, who was born in 1975. On 8 May 1997 he was remanded in custody on a murder charge. On 21 October 1997 he was sentenced by Buzău County Court to 20 years' imprisonment. Since 2005 he has been in Focşani-Mândreşti Prison. He alleges that he has been harassed and insulted by other inmates and by prison staff on account of his Roma ethnic origin.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Mr Marcu, Mr Cucolaş and Mr Coman all complained that in the above-mentioned custodial facilities they had been held in unacceptable conditions. Various aspects of those conditions were in dispute between them and the Romanian Government. Their allegations particularly concerned overcrowding and poor hygiene. They argued among other things – alternatively or cumulatively – that they had been held in cells with little space in which there were far too many prisoners for the number of beds, dirty mattresses, insects, little access to water (which was moreover unhealthy), one shower a week for a very short time, insufficient heating in winter and excessive heat in summer, cell-mates who smoked and/or who had contagious diseases, very limited access to light and fresh air, and poor quality food. The Government provided explanations which mainly challenged or relativised those complaints. However, the prison overcrowding appears to be confirmed by the documents they submitted.

The applicants complained to the authorities a number of times, but without success, about the conditions of their detention. Mr Coman pointed out, however, that he had never complained of the harassment he had suffered for his Roma origin (that being the reason why the matter was inadmissible before the Court, for non-exhaustion of domestic remedies – Article 35 of the Convention, admissibility conditions).

Complaints, procedure and composition of the Court

Relying on Article 3, Mr Marcu, Mr Cucolaş and Mr Coman complained mainly about the conditions in which they were detained. Mr Marcu also relied on Articles 8 and 13 in support of his complaints, among others, that his parental responsibility had been withdrawn and that he had had no effective remedy in Romania by which to lodge his complaints under Articles 3 and 8.

The applications were lodged with the European Court of Human Rights on 13 November 2002, 17 April 2003 and 1 June 2004.

Each of these judgments was given by a Chamber of seven, composed as follows:

Josep **Casadevall** (Andorra), *President*,
 Elisabet **Fura** (Sweden),
 Corneliu **Bîrsan** (Romania),
 Boštjan M. **Zupančič** (Slovenia),
 Alvina **Gyulumyan** (Armenia),
 Egbert **Myjer** (the Netherlands),
 Luis **López Guerra** (Spain) in the cases of Marcu v. Romania and Coman v. Romania,
 and
 Ineta **Ziemele** (Latvia) in the case of Cucolaş v. Romania, *Judges*,

and also Santiago **Quesada**, *Section Registrar*.

Decision of the Court

Article 3 (prohibition of inhuman or degrading treatment)

The Court reiterated that Article 3 required States to ensure that prisoners were detained in conditions which were compatible with respect for their human dignity, that the manner and method of the execution of the measure did not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being were adequately secured.

Those requirements had not been met in any of the three cases.

As regards Mr **Marcu's** detention in Bucharest-Jilava Prison, the Court based its examination both on the parties' arguments (which were in dispute) and on the reports available to it, describing the conditions of detention in that prison. It observed that the reports of visits by the Council of Europe's Committee for the Prevention of Torture (CPT) in February 1999 and by the Office of the [Human Rights Commissioner](#) in September 2004 had unanimously described the conditions as "squalid" or "alarming", with run-down installations. Like the CPT, the Court could not overlook the fact that the unhygienic conditions were made worse by significant overcrowding, as was also apparent from the information provided by the Government. Moreover, it was not in dispute that Mr Marcu had been confined to his cell for most of the day, with only a very brief walk outside and access to a shower just once a week. That situation in itself raised an issue under Article 3. There was nothing to indicate an intention to humiliate or degrade Mr Marcu, but that did not rule out a violation of Article 3.

As regards Mr **Cucolaş**, according to the information from the Government, he had had less than 2 sq.m. of personal space in the Suceava police remand centre and in Poarta Albă prison, and only 1.2 sq.m. in Bucharest-Jilava prison. In addition, he had had about 3 sq.m. of personal space in Botoşani prison. Between June 2000 and August 2002 he had been held in a cell where there were 54 beds for 65 to 70 inmates. Similarly, in Bucharest-Jilava prison, from August 2002 to February 2003, he had been held in a cell where there were 30 beds for 44 inmates, on average.

As regards Mr **Coman's** detention in Focşani-Mândreşti Prison, the Court observed that according to information in two reports by a local NGO and confirmed by the Government, he had been held for at least four years in a cell with less than 2 sq.m. of personal space.

In the cases concerning Mr Cucolaş and Mr Coman, the Court further noted that the domestic courts had recognised the systemic nature of the problem of prison overcrowding in Romania for the period concerned, as had letters from the prison authorities, which contained the same findings in respect of two of the facilities concerned by the applicants' cases. The Court also took the view that the applicants' allegations about the deplorable hygiene, in particular concerning access to drinking water and showers, cell ventilation, dirty mattresses and poor-quality food, were most plausible and reflected the realities described by the CPT in its various reports on its visits to Romanian prisons.

In each of those cases the Court found that there had been a violation of Article 3.

Other complaints by Mr Marcu

As to the question whether, under Romanian law, Mr Marcu had had a remedy by which he could obtain redress for the poor conditions in which he had been held (Article 13), the Court found that the Romanian Government had not convincingly demonstrated that. Neither the provisions of domestic law nor the court decisions that they had presented had expressly concerned the issue of material conditions of detention.

There had therefore been a violation of Article 13 in conjunction with Article 3.

Concerning the question whether the withdrawal of parental authority, as a complementary sentence, had infringed Mr Marcu's right to respect for his family life, and whether he had had an effective remedy by which to complain about that in Romania (Articles 8 and 13), the Court observed that it had already found that the automatic application of a total and absolute prohibition on the exercise of parental rights, under the relevant legislation, without any scrutiny by the courts in respect of the type of offence committed or the best interests of the children, was not admissible under the Convention. That measure had been imposed on Mr Marcu without any finding by the

Romanian courts that Mr Marcu had been negligent in his duty to care for his minor children or that he had ill-treated them. Nor had the courts used the actual facts of the case to explain the application of the measure. They had not assessed the children's interests or Mr Marcu's alleged unworthiness when they prohibited him from exercising his parental rights. As regards the effects of that measure, the Court observed that in September 2002 the children had left Romania with his ex-wife without his being informed and certainly without his approval.

There had therefore been a violation of Article 8 and of Article 13 in conjunction with Article 8.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Romania was to pay: Mr Marcu 15,600 euros (EUR) in respect of non-pecuniary damage; Mr Cucolaş 8,000 EUR in respect of pecuniary damage, with EUR 1,360.75 in total to be paid to his representatives for costs and expenses; and Mr Coman EUR 8,000 in respect of non-pecuniary damage.

The judgments are available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.