

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

THIRD SECTION

# CASE OF ARCHIP v. ROMANIA

*(Application no. 49608/08)*

JUDGMENT

STRASBOURG

27 September 2011

**FINAL**

*27/12/2011*

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



**In the case of** Archip v. Romania**,**

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

Josep Casadevall, *President,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Mihai Poalelungi, *judges,*

and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 6 September 2011,

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

# PROCEDURE

1. The case originated in an application (no. 49608/08) 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 Constantin Archip ("the applicant"), on 8 October 2008.

2. The applicant was represented by Ms L. Bejenaru, a lawyer practising in Piatra Neamţ. The Romanian Government ("the Government") were represented by their Agent, Mr Răzvan-Horaţiu Radu.

3. The applicant alleged that he had been subjected to ill-treatment in violation of Article 3 of the Convention and that the authorities had not carried out a prompt and effective investigation of that incident.

4. On 12 January 2010 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 (Article 29 § 1).

# THE FACTS

5. The applicant was born in 1976 and lives in Podoleni.

# I. THE CIRCUMSTANCES OF THE CASE

## A. The incident of 7 November 2005

6. On 7 November 2005, at about 12 noon, the applicant went to Podoleni Town Hall to cash his monthly sickness benefit. Having noticed that the sum cashed was smaller than the amount he had received in previous months he expressed dissatisfaction to the mayor and the deputy mayor.

7. Unsatisfied with the explanations received, the applicant started to insult the civil servants working at the town hall. A few of the witnesses to the incident stated that the applicant was under the influence of alcohol. The applicant denied it.

8. As the applicant could not be calmed down, the mayor and the deputy mayor took him to the police station, which was situated close to the town hall.

9. The applicant alleged that the mayor had hit him at the police station. He did not submit any medical certificate in this connection.

10. On the ground that the applicant continued to behave aggressively and to address threats to those around him, the chief police officer, P.E., handcuffed him to a tree in the courtyard of the police station.

11. According to the applicant and several witnesses, he was kept handcuffed for about two hours and forty-five minutes. The Government averred that the handcuffing lasted one hour and forty-five minutes.

12. As the police station was located in the centre of the village, many inhabitants of the village passed by and saw the applicant handcuffed to the tree in the courtyard. One of them informed the press and the local television station. Reporters arrived at the scene and took pictures of the handcuffed applicant. The incident was covered by an article on 10 November 2005 in the local newspaper *Realitatea* called ‘The chief police officer of Podoleny molests a fellow citizen’.

13. Five months before the events in question, the applicant had had surgery on his left femur. According to the documents submitted by him, he was hospitalised in the orthopaedics section of Neamţ Hospital between 12 November and 2 December 2002 and between 30 May and 15 June 2005. At the time of the events he was suffering from coxarthrose (arthritis of the hip) and was receiving sickness benefit for that reason.

14. According to the applicant, being kept handcuffed outdoors for such a long time on a cold and wet November day worsened his medical condition. On the basis of a medical certificate issued on 16 January 2008 the applicant had been designated disabled (at medium level) by a medical board.

15. On the day the incident took place, police officer P.E. drafted a report stating that he had had to use force and the handcuffs in order to prevent the applicant from deliberately self-harming. He stated that he had kept the applicant handcuffed for twenty to thirty minutes and that he had stayed close to him all this time. However, his statement was contradicted by the statement of M.D., the former deputy mayor of the village, who testified that the applicant was alone and the police station was closed when he passed by the front of the building on 7 November 2005.

### B. The criminal proceedings initiated by the applicant

16. On 9 November 2005 the applicant lodged a criminal complaint with the Piatra Neamţ District Court against police officer P.E. and the mayor, accusing them of causing bodily harm and insulting behaviour.

17. By a judgment rendered on 20 January 2006, that court remitted the file to the prosecutor's office attached to the Neamţ County Court for investigation of the incident. It gave a new legal classification to the offences mentioned in the applicant's complaint, namely abuse of position and deprivation of liberty.

18. On 24 October 2006 the prosecutor's office attached to the Neamţ County Court decided not to open a criminal investigation, on the grounds that it was permissible to handcuff an aggressive person.

19. On 21 November 2005 the applicant lodged another criminal complaint against the chief police officer, the deputy chief police officer, the mayor and the deputy mayor. He accused them of deprivation of liberty (under Article 189 § 1 of the Criminal Code).

20. On 17 March 2006 the applicant made a statement at the prosecutor's office. He stated that he had not been hit by any of the defendants, as he had stated in his initial complaint. He added that he had been persuaded to lodge a criminal complaint by the previous mayor, by a member of the local council of the village, and by the president of an organisation fighting against corruption and for the protection of human rights (Asociaţia Naţională Impotriva Corupţiei, Abuzurilor şi Pentru Drepturile Omului – ANICADO). He also stated that he had been handcuffed for less than ten minutes and that it was legitimate, taking into account his own behaviour. He concluded by stating that he wanted to withdraw his complaint. Afterwards, during the proceedings before the courts, the applicant alleged that he had been forced to make that statement and that nothing in it was true.

21. By a decision delivered on 23 March 2006, the prosecutor's office attached to the Neamţ County Court decided not to open a criminal investigation. It held that police officer P.E. had taken the necessary measures in order to calm down the applicant, who was using coarse language and insulting the civil servants working at the town hall, and was

behaving in an especially insulting way towards the mayor of the village. It also held that handcuffing the applicant was in accordance with the provisions of Law no. 218/2002 regarding the organisation and functioning of the Romanian police ("the Police (Organisation and Functions) Act 2002"), and Order no. 130 of 10 September 2004 regarding the General Inspectorate of Police. It stated that the applicant had not been hit by any police officers.

22. Relying on Article 278[1] of the Code of Criminal Procedure, the applicant lodged complaints against the decisions of 23 March and 24 October 2006. The two complaints were joined by the chief prosecutor. On 11 June 2007 the chief prosecutor dismissed the complaints and upheld the previous decisions.

23. The applicant's complaint against the last prosecutor's decision was dismissed by the Neamţ County Court on 21 February 2008. It held that the immobilising of the applicant with handcuffs in the courtyard of the police station had been done in accordance with the applicable legislation, and had been necessary, taking into account the applicant's attitude.

24. An appeal on points of law lodged by the applicant was dismissed by the Bacău Court of Appeal on 17 April 2008, upholding the judgment of the Neamţ County Court.

### C Criminal proceedings instituted against the applicant with regard to the events of 7 November 2005

25. On 22 February 2006 the prosecutor's office attached to Piatra Neamţ District Court indicted the applicant for outrage against public morals and disturbance of public order under Article 321 § 1 of the Criminal Code.

26. By a judgement of 20 June 2006, the Piatra Neamţ District Court convicted the applicant as charged and sentenced him to one month's imprisonment, suspended. The judgment remained final, as the applicant did not lodge an appeal on points of law.

## II. RELEVANT DOMESTIC LAW

27. The definition of the offence of outrage against public morals and disturbance of public order was, at the material time, provided for by Article 321 of the Criminal Code and read as follows:

**Article 321**

> "Actions by a person who publicly acts or makes gestures, uses words or expressions, or behaves in any other way which is against public morals or which leads to public scandal, are punishable by imprisonment of between three months and two years or by a fine.

If the actions stipulated in paragraph 1 seriously disturb public order, the applicable penalty shall be imprisonment of between six months and five years."

28. The conditions regarding the use of handcuffs by police officers are provided for by the Police (Organisation and Functions) Act 2002. The relevant articles read as follows:

**Article 34**

(1) "In order to deter, prevent and neutralise aggressive behaviour by people who disturb public order and which cannot be brought to an end by other means, police can use protective shields, helmets, rubber truncheons (...) rubber bullet guns and handcuffs, dogs and other means of restraint which do not endanger life or cause serious bodily harm.

(2) The means referred to in the above paragraph may be used against people who:

a) behave in such a way as to threaten the physical integrity, health or property of others;

b) try to enter, enter or refuse to leave the premises of public authorities, political parties, institutions and public or private organisations, jeopardise in any way their integrity or security or prevent them from carrying out their normal activity;

c) Insult or attack those who are exercising public functions;

d) Offer resistance or fail to comply, in any way, with the orders of a police officer, but only if there is a legitimate fear that by their actions they could jeopardise the physical integrity or the life of that police officer.

(3) The use of the means described under the first paragraph must not exceed the level necessary to prevent or neutralise the aggressive behaviour."

**Article 36**

"The use of the means provided by Articles 34 and 35 is prohibited against women with visible signs of pregnancy, against persons with visible evidence of disability and against children, except in cases when they engage in armed attack or in a group, which poses a threat to the life or the integrity of one or more people."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

29. The applicant complained under Article 3 of the Convention that he had been ill-treated on 7 November 2005 and that the investigation of his

complaint had not been effective. The Court considers that the applicant's complaint should be examined under the substantive and procedural limbs of Article 3 of the Convention. This provision reads as follows:

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

## A. Admissibility

### *1. Submissions of the parties*

30. The Government argued that the applicant had not exhausted domestic remedies, since he had failed to take every legal action available under Romanian law in order to complain about his ill-treatment. In this respect, they averred that the applicant could have lodged a civil action for damages on the basis of Articles 998-99 of the Civil Code. They submitted that such a remedy was not only sufficiently certain in theory and practice but was also effective and accessible.

31. The applicant did not submit any observation in this respect.

### *2. The Court's assessment*

32. The Court reiterates that in cases where an individual has an arguable claim under Article 3 of the Convention, the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Selmouni v. France* [GC], no. 25803/94, § 79, ECHR 1999-V, and *Egmez v. Cyprus*, no. 30873/96, § 65, ECHR 2000-XII).

33. The Court has held on many occasions that this requirement cannot be satisfied solely by instituting civil proceedings (see, among others, *Krastanov* v. *Bulgaria*, no. 50222/99, § 60, 30 September 2004). It has also held that for complaints about treatment suffered in police custody, criminal proceedings are one of the means of obtaining redress (see, for example, *Parlak and Others v. Turkey* (dec.), nos. 24942/94, 24943/94 and 25125/94, 9 January 2001).

34. In the present case the Court notes that the applicant lodged a criminal complaint but it did not lead to the conviction of those who had allegedly subjected him to ill-treatment. In this respect, the Court reiterates that where several remedies are available the applicant is not required to pursue more than one and it is normally that individual's choice as to which (see, *mutatis mutandis, Hilal v. the United Kingdom*, no. 45276/99, ECHR 2001-II, and *Airey v. Ireland*, 9 October 1979, § 23, Series A no. 32). Consequently, the Court considers that the applicant cannot be required to avail himself of an additional legal avenue in the form of a civil action. It is

satisfied that the applicant has thus exhausted domestic remedies. Consequently, the Government's objection must be dismissed and the complaint declared admissible.

## B. Merits

### *1. Submissions of the parties*

35. The Government denied any ill-treatment of the applicant on 7 November 2005. They stated that it had been necessary to immobilise the applicant with handcuffs because of his aggressive behaviour. In this respect, they maintained that it was for such behaviour that the Bacău Court of Appeal had convicted the applicant of outrage against public morals and disturbance of public order, by a final decision rendered on 17 April 2007.

36. The Government further submitted that the applicant had been immobilised in accordance with the applicable law. They averred that the domestic courts considered that the police's reaction was proportional to the applicant's violent behaviour and that there were no elements that might cast any doubt on their assessment of facts and evidence before it. They also submitted that the present case is similar to *Berliński v. Poland* (nos. 27715/95 and 30209/96, 20 June 2002), where the Court found that the use of force against the applicant was not excessive, given the circumstances.

37. They maintained that the immobilisation of the applicant had not lasted two hours and forty-five minutes but one hour and forty-five minutes. They added that all this time police officer P.E. had been present and had stayed close to the applicant.

38. The Government also averred that the applicant did not submit any medical certificate or report proving that he had been subjected to ill-treatment. Therefore, they concluded that the applicant had not substantiated his allegations of ill-treatment.

39. They pointed out that the applicant's medical history revealed that he had been suffering from several health problems before the incident of 7 November 2005. They concluded that the applicant had not proved "beyond reasonable doubt" that he had been ill-treated, taking into account that no medical record pointed out any causal link between the medical problems he suffered and the incident of 7 November 2005.

40. Finally, the Government pointed out that the Romanian authorities had carried out a thorough and effective investigation, which had revealed that the applicant's allegations were totally unsubstantiated.

41. The applicant submitted that his medical condition had worsened as a direct consequence of the incident of 7 November 2005. Thus, he contended that after the incident he was qualified as disabled by a medical board.

42. In respect of the criminal proceedings initiated against him for outrage against public standards of behaviour, he contended that he had never been summoned and that he had only received the final decision, without having known of the existence of the trial.

43. He stressed that the statements of police officer P.E. during the proceedings were variable: thus, while in his first statement he had stated that he had handcuffed the applicant for ten minutes, in his next statement he had stated that it had been for one hour and finally he had admitted that it had lasted for more than two and a half hours.

44. The applicant submitted that being handcuffed in the courtyard of the police station for two hours and forty-five minutes in November had caused him not only physical but also mental suffering. He also alleged that handcuffing him had been an excessive and unnecessary measure in view of the actual circumstances.

*2. The Court's assessment*

**(a) Concerning the alleged ill-treatment**

45. The Court reiterates that Article 3 enshrines one of the fundamental values of a democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or organised crime, the Convention prohibits, in absolute terms, torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII).

46. Allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" –, but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

47. In the present case, the Court observes that the applicant's statement that he was kept handcuffed in the courtyard of the police station was not contested by the Government. All that was contested was the duration of the handcuffing; thus, while the Government maintained that the handcuffing lasted one hour and forty-five minutes, the applicant and several witnesses alleged that it lasted two hours and forty-five minutes.

48. The Court reiterates in that connection that where domestic proceedings have taken place, as in the present case, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts, and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no.269). Although the Court is not bound by the findings of

domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny.

49. The Court observes, and it is not in dispute between the parties, that the applicant had a recalcitrant attitude and addressed insults and threats to the mayor and the deputy mayor. The Court further observes that the Government's submissions indicate that, in the face of the applicant's refusal to calm down, the chief police officer and his deputy ordered the applicant to stop his unruly behaviour, but the applicant again refused to comply. The Court observes that, as has been established at the national level, the applicant's resistance to the order to calm down and go home consisted of threats and coarse language directed at the officers and the civil servants working at the town hall.

50. The Court accepts that in these circumstances the officer may have needed to take measures to prevent further disruption and calm the applicant down. The question before the Court is whether the use of force was in compliance with the requirements of Article 3 of the Convention.

51. The Court notes that the applicant centred his grievance on what he described as the gratuitous and humiliating use of handcuffs on him.

52. Therefore, it does not lose sight of the fact that for at least an hour and forty-five minutes the applicant remained handcuffed to a tree in the courtyard of the police station. It is apparent from the Government's submissions that the handcuffing was intended to help the police officer to calm the applicant down and restore order. The Court reiterates that the use of handcuffs or other instruments of restraint does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful detention and does not entail the use of force or public exposure exceeding what is reasonably considered necessary. In this regard, it is important to consider, for instance, the danger of the person's absconding or causing injury or damage (see *Raninen v. Finland*, 16 December 1997, § 56, *Reports of Judgments and Decisions* 1997-VIII, and *Mathew v. the Netherlands*, no. 24919/03, § 180, ECHR 2005). However, the manner in which the applicant is subjected to the measure in issue should not go beyond the threshold of a minimum level of severity envisaged by the Court's case-law under Article 3 of the Convention (see, *mutatis mutandis*, *Nevmerzhitsky v. Ukraine*, no. 54825/00, § 94, ECHR 2005–II).

53. The Court notes that the public nature of the treatment or the mere fact that the victim is humiliated in his own eyes may be a relevant consideration (see *Tyrer v. the United Kingdom*, 25 April 1978, § 32, Series A no. 26, and *Raninen*, cited above, § 56).

54. In the instant case, the Court considers that the manner in which the applicant was handcuffed to a tree in the courtyard of the police station located in the centre of the village, and thus visible to the public, was liable to arouse in him feelings of anguish and inferiority that were capable of humiliating and debasing him beyond what is reasonable. Moreover, the press and local television, informed about the incident by an inhabitant who had seen the applicant handcuffed, were present and taking pictures of him, aggravating the applicant's feeling of humiliation.

55. The Court observes that the applicant contended that the handcuffing had not only humiliated him but had also caused him severe physical pain. In this regard, the Court considers that handcuffing a person outdoors on a cold and wet day in November could cause intense physical pain, not only to a person suffering from coxarthrose, but also to a person in good health.

56. In addition, the Court also notes that according to Article 36 of the Police (Organisation and Functions) Act 2002, handcuffs may not be used against persons with visible evidence of disability. The disability of the applicant was obvious and was known to the police officers, the mayor and the deputy mayor, who were present at the police station when the applicant was handcuffed to the tree.

57. Therefore, it is questionable for the Court whether handcuffing him in such a place, exposed to the gaze of all the inhabitants of the village passing by, on a cold and wet day in late autumn, without taking into account his precarious state of health, and for such a long time, was conducive to the desired result, and whether the possibility of using other means was considered.

58. Even accepting that the applicant refused to comply with the police orders to calm down, the Court, having regard to the above considerations, cannot see on what basis the domestic authorities satisfied themselves that the force used against the applicant had not been excessive.

59. The Court therefore concludes that the State is responsible for a violation of Article 3 under its substantive limb on account of the inhuman and degrading treatment to which the applicant was subjected.

**(b) Concerning the alleged inadequacy of the investigation**

60. The Court reiterates that where an individual raises an arguable claim that he has been ill-treated by agents of the State 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 investigation (see, among others, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

61. An obligation to investigate is an obligation of means; not every investigation should necessarily 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, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

62. Any investigation into "arguable" allegations of ill-treatment must be thorough. That means that the authorities must 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 for their decisions (see *Assenov*, cited above, § 103 et seq.).

63. On the basis of the evidence in the present case, the Court has found that the respondent State is responsible under Article 3 for the ill-treatment of the applicant. The applicant's complaint in this regard is therefore "arguable". The authorities thus had an obligation to carry out an effective investigation into the circumstances in which the applicant was ill-treated (see *Krastanov v. Bulgaria*, cited above, § 58).

64. In this respect, the Court notes that the prosecuting authorities, who had been made aware that the applicant had been handcuffed, carried out a preliminary investigation which did not result in criminal proceedings against the perpetrators. The applicant's complaints against the refusal of the prosecutors to institute criminal proceedings were also examined by the domestic courts at two levels of jurisdiction. They confirmed the prosecutor's decisions, that the measures taken against the applicant were lawful.

65. In the Court's opinion, the issue is consequently not so much whether there was an investigation, since the parties did not dispute that there had been one, but whether it was conducted diligently, whether the authorities were determined to identify and take adequate action and if considered necessary to prosecute those responsible and, accordingly, whether the investigation was "effective".

66. Without providing many details about the actual circumstances and apparently without careful consideration of the facts and circumstances of the incident, the judicial authorities concluded that the applicant's handcuffing was lawful and necessary. They did not try to obtain explanations as to why the police officer did not pursue other means of calming down the applicant, who did not pose enough of a threat to the police officers and civil servants at the town hall to justify such extreme measures.

67. The Court notes some discrepancies capable of undermining the reliability and effectiveness of the investigation. Firstly, a thorough evaluation was not carried out with respect to the period of time the applicant spent handcuffed in the courtyard of the police station. Thus, while the chief police officer mentioned twenty to thirty minutes in his

report, the applicant and several witnesses stated that he had been handcuffed for two hours and forty-five minutes. The Government acknowledged that he had been handcuffed for one hour and forty-five minutes.

68. Furthermore, it was not made clear whether the chief police officer was present near the applicant while he was handcuffed or whether the applicant was alone and the police station was closed.

69. Although the chief police officer mentioned in his report of 7 November 2005 that the main reason for handcuffing the applicant was to prevent him from self-harming, no evidence was produced in this respect.

70. Moreover, the Court observes a selective and somewhat inconsistent approach to the assessment of evidence by the investigating authorities. It is apparent from the decisions submitted to the Court that the judicial authorities based their conclusions mainly on the report drafted by the chief police officer immediately after the incident and the statements given by the police officers and the mayor involved in the incident.

71. Having regard to the above-mentioned failings on the part of the Romanian authorities, the Court finds that the investigation into the applicant's allegations of ill-treatment was not thorough, adequate or effective. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 50,000 euros (EUR) in respect of pecuniary damage and 700,000 euros (EUR) in respect of non-pecuniary damage.

74. The Government contended that the applicant did not submit any conclusive evidence regarding the merits of the case. Therefore, they concluded that he had not proved the alleged pecuniary and non-pecuniary damage.

75. The Court rejects the claim in respect of pecuniary damage, as the applicant did not submit any documents to justify it. On the other hand, having regard to its findings concerning the applicant's complaint under Article 3 of the Convention, the Court considers that the applicant suffered

damage of a non-pecuniary nature which is not sufficiently redressed by the finding of a violation of his rights under the Convention.

76. For the foregoing reasons, having regard to the specific circumstances of the present case and its case-law in similar cases and deciding on an equitable basis, the Court awards EUR 10,000 under this head, plus any tax that may be chargeable on that amount.

### B. Costs and expenses

77. The applicant did not claim the reimbursement of any costs and expenses.

### C. Default interest

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

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the handcuffing of the applicant in the courtyard of the police station;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the absence of a thorough, adequate and effective investigation;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Romanian lei at the rate applicable on the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 September 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Santiago Quesada | Josep Casadevall |
| Registrar | President |