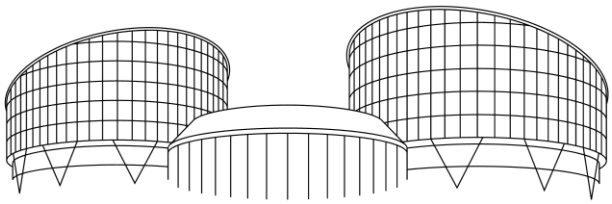

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF PĂDUREŢ v. MOLDOVA

(Application no. 33134/03)

JUDGMENT

STRASBOURG

5 January 2010

FINAL

05/04/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Paduret v. Moldova,

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

Nicolas Bratza, *President*,
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Mihai Poalelungi, *judges*,
and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 1 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 33134/03) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moldovan national, Mr Aurel Pădureţ ("the applicant"), on 25 August 2003.

2. The applicant, who had been granted legal aid, was represented by Mr Ş. Uritu, Mr A. Briceag and Mrs D. Străisteanu, at the time all working for the Helsinki Committee for Human Rights in Moldova, a non-governmental organisation based in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that he had been ill-treated while in detention and that the authorities had failed to carry out an effective investigation into his ill-treatment within a reasonable time, allowing the perpetrators to escape all responsibility.

4. On 13 May 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and lives in Bozieni.

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

7. At the time of the events, the applicant was a student at the State University in Tiraspol located in Chişinău.

1. The applicant's arrest and alleged ill-treatment

8. On 3 February 2000 P. complained to the Centru Police Station in Chişinău that he had been robbed on 27 December 1999 by three unidentified persons. He suspected that one of those persons was the applicant.

9. A criminal investigation was initiated. On 31 March 2000 a student of the police academy, A.P., knocked at the applicant's door at approximately 7.30 in the morning. Having opened the door, the applicant was forced to follow A.P. out to the street, where he was forced into a car belonging to P. Another student from the police academy, A.R., was waiting in the car.

10. According to the applicant, he received blows from A.P. and A.R. all the way to the Centru Police Station. Upon his arrival at the station, the applicant was taken up to office no. 508. The applicant alleges that he was ill-treated in that office by A.P. and A.R. and by another plain-clothed person, whose identity he did not know at the time. He made this complaint to the prosecution.

11. The applicant was invited to confess to having robbed P. When he refused, A.P. and A.R. tied his hands and feet together behind his back and he was suspended on a metal bar placed on two adjacent tables (a position called “swallow” akin to “Palestinian hanging”). He then received truncheon blows to the soles of his feet and was kicked and punched in various parts of his body. A gas mask was put on his face and cigarette smoke was blown into the air access tube, causing him to suffocate. That tube was later attached to his penis. His captors also inserted a glass bottle into his anus three times. At one time he lost consciousness.

12. Later on that day the applicant was taken to a prosecutor's office. In view of clear signs of ill-treatment on the applicant's body, the prosecutor ordered a medical examination to establish whether he had been ill-treated.

13. According to the applicant, the investigator responsible for the criminal investigation into P.'s complaint was officer O. This officer had never delegated any power of investigation or arrest to any other officer, including officers C., A.P. and A.R..

14. On 3 April 2000 the applicant was examined by a group of forensic doctors, who found that he had been injured. In particular, he had a black eye and a bruise on his chest of 10 x 7 cm, and had suffered head trauma and anal damage. The doctors excluded the possibility that the injuries could have been sustained as a result of a fall. Later that day he was admitted to hospital with a diagnosis of head trauma.

15. On the same date the criminal investigation against the applicant was discontinued, but he was allegedly not informed about it until much later, on an unspecified date.

16. In a statement made on 12 April 2000 A.P. mentioned, *inter alia*, that while the applicant was being questioned a person who was not part of the police force, R.B., was also present. No violence had been used against the applicant, who had been arrested on the orders of investigator C.

2. Investigation into the applicant's alleged ill-treatment and trial of A.P. and A.R.

17. On 15 June 2000 a criminal investigation was initiated against A.P. and A.R.

18. The applicant underwent two more medical examinations, on 28 June and 24 July 2000, which confirmed the injuries caused to him. The last examination concluded that it could not be excluded that the applicant had caused the injuries himself.

19. On 21 September 2000 an investigator decided to discontinue the criminal case against A.P. and A.R. for lack of evidence. On 29 November 2000 the applicant complained to a prosecutor about the discontinuation, noting that he had not been informed of it until he insisted on receiving an update on 21 November 2000. On 1 December 2000 the prosecutor annulled the investigator's decision.

20. According to an order issued by the Minister of Internal Affairs on 26 August 1999, police academy students A.P. and A.R. had been temporarily authorised to act as police inspectors until 1 March 2000. On 25 December 2000 inspector C. was reprimanded for ordering A.P. and A.R. to arrest the applicant on 31 March 2000, despite being aware that they were no longer authorised to act as police inspectors, actions which led to bodily harm being caused to the applicant.

21. On 30 December 2000 a prosecutor decided to discontinue the criminal proceedings against A.P. and A.R. under Article 185 (2) of the Penal Code (abuse of authority, see paragraph 41 below) for lack of evidence and opened an investigation under article 116 (2) of the Penal Code for unlawful deprivation of the applicant's liberty (see paragraph 41 below).

22. On 20 February 2001 a prosecutor decided to discontinue the investigation against A.P. and A.R. under Article 116 (2) of the Penal Code and to initiate an administrative investigation against them for causing

minor injuries to the applicant. On 23 March 2001 the Centru District Court annulled that decision and sent the case file to the prosecution for re-qualification of the acts committed by A.P. and A.R. under the provisions of the Penal Code.

23. On 11 April 2001 the prosecutor annulled his decision of 30 December 2000 and sent the case file to the investigator for further investigation.

24. On 28 April 2001 the prosecutor decided that the actions of A.P. and A.R. came within the ambit of Articles 101 and 207 of the Penal Code (beating an usurpation of powers respectively, see paragraph 41 below). On 8 May 2001 the applicant asked the Prosecutor General's Office for a re-qualification of the acts from beating to torture, as provided by Article 101/1 of the Penal Code (see paragraph 41 below). The applicant emphasised that he had been caused suffering with the aim of forcing him to confess to a crime which he had not committed. This could only be characterised as torture. On 14 May 2001 he made a similar complaint to the prosecutor in charge of the case.

25. A.P., A.R. and their lawyers failed to appear at the court hearing on 28 May 2001. At the next hearing on 4 June 2001, the applicant's lawyer asked the court to re-qualify the acts committed by A.P. and A.R. from beating to torture. This request was rejected since the prosecution was responsible for such a re-qualification.

26. Further court hearings were held on 13 and 20 June, 9, 17 and 20 July, 17 and 26 September 2001. After the hearing of 26 September 2001 the applicant was arrested by the police on the orders of officer Adajii, who was a witness for the defence in the case against A.P. and A.R. The applicant lodged a separate complaint in respect of this arrest with the Court. The applicant also submitted that he had been openly insulted and intimidated in court by A.P. and A.R., who often came armed to court hearings, and by other police officers.

27. On 8 October 2001 the applicant lodged a civil action against A.P. and A.R. within the criminal proceedings.

28. On 27 November 2001 R.B. was called to court as a witness for the defence. The applicant identified R.B. as the plain-clothed person who had ill-treated him in office no. 508 alongside A.P. and A.R. He asked the prosecution and court to charge R.B. with the crime of torture, together with A.P. and A.R. On 29 November 2001 the applicant's lawyer made a similar request. The lawyer complained that the investigators had not made sufficient efforts to verify the involvement of the third person in the applicant's ill-treatment, referring to the consistent submissions the applicant had made since his first complaint about the participation of a third person in the events. They received no reply and no investigation was initiated in respect of R.B.

29. On 22 April 2002 the Centru District Court found A.P. and A.R. guilty as charged and sentenced them to two years' imprisonment, suspended for one year. The applicant was awarded 1,235 Moldovan lei (MDL, equivalent to 102 euros (EUR)), to be paid by A.P. and A.R.

30. In response to a request by the Helsinki Committee of Human Rights in Moldova, on 14 May 2002 the Ministry of Internal Affairs confirmed that A.P. and A.R. had not been suspended from their positions during the investigation against them, based on the principle of presumption of innocence.

31. The applicant and the accused appealed. On 29 October 2002 the Chişinău Regional Court allowed the applicant's appeal and awarded him MDL 11,058 (EUR 826) in respect of pecuniary and non-pecuniary damage. The applicant and the accused appealed.

32. On 26 December 2002 and 16 and 30 January 2003 the defence lawyer did not appear in court. The hearings were postponed each time.

33. On 6 February 2003 the Court of Appeal annulled the lower courts' judgments and sent the case file for re-examination by the first-instance court, finding that the accused could not be tried for usurpation of powers.

34. Further hearings were scheduled for 20 March, 14 and 29 April, 13 May, 1 and 23 June, 5, 20 and 27 July and 2 August 2003. All except one of these hearings were postponed due to the absence of the prosecutor or the defence attorney.

35. On 26 March 2003 the Centru District Court sent the case file to the prosecution for re-qualification of the acts committed by the accused. According to the applicant, he was not informed about the course of the proceedings after that date.

36. On 7 April 2003 the applicant's lawyer asked the prosecution to qualify the acts of the accused as torture. Having received no reply, she repeated the request on 25 August 2003 and subsequently complained to the Centru District Court that there had been no response from the prosecution. On 18 September 2003 a similar request was made to the same court. On 8 October 2003 the Centru District Court found that the prosecution had failed to respond to the applicant's lawyer's requests, for no reason. It ordered the prosecution to give an answer.

37. In August 2004 A.R. died. The applicant made numerous unsuccessful attempts to access the criminal file. He was not informed about the course of the proceedings.

38. On 10 June 2005 the Centru District Court acquitted A.P. of the charge of usurping police powers. He was sanctioned administratively and fined MDL 1,000 (EUR 65). The applicant was awarded MDL 2,263 (EUR 147) in damages.

39. On 8 December 2005 the Chişinău Court of Appeal partly quashed that judgment. The court found A.P. guilty under Article 101 of the Penal Code (see paragraph 41 below), but relieved him from criminal

responsibility due to the expiry of the five-year limitation period applicable in his case. The court awarded the applicant MDL 15,000 (EUR 997).

40. That judgment was upheld by the Supreme Court of Justice on 30 May 2006. The judgment was final.

II. RELEVANT DOMESTIC LAW AND OTHER MATERIALS

1. Relevant provisions of domestic law

41. The relevant provisions of the Penal Code, applicable at the relevant time, read as follows:

"Article 46. Limitation period for criminal responsibility.

A person cannot incur criminal responsibility if the following periods of time have expired from the date of committing the crime:

...

(3) five years from the date when the crime was committed for crimes which, under the present Code, are punishable with deprivation of liberty of up to five years;

(4) ten years from the date when the crime was committed for crimes which, under the present Code, are punishable with more than five years of deprivation of liberty."

"Article 101. Beating or committing other violent acts.

Causing physical or mental and emotional suffering through beating and other violent acts, if they did not result in damage mentioned under Articles 95 and 96 of the present Code,

- shall be punished with deprivation of liberty for a period of up to three years. ..."

"Article 101/1. Torture.

Actions which intentionally cause pain or severe physical or mental and emotional suffering to a person, especially with the aim of obtaining from that person or from a third party information or confessions, punishing an act which that person or a third party has committed or is suspected of having committed, or intimidating or putting pressure on such a person or on a third party, or for any other reason based on a form of discrimination, regardless of the ground, when such pain or suffering is caused by an agent of a public authority or by any other person acting in an official capacity or is, expressly or implicitly provoked or condoned by such an agent, with the exception of pain or suffering which results exclusively from lawful sanctions and is inherent in such sanctions or is caused thereby,

- shall be punished with deprivation of liberty for a period of between three and seven years"

“Article 116. Unlawful deprivation of liberty.

Unlawful deprivation of liberty,

- shall be punished with deprivation of liberty for a period of up to a year.

The same action, if it has endangered the victim's life or health, or if it has caused physical suffering,

- shall be punished with deprivation of liberty for a period of one to five years.”

“Article 185. Abuse of authority or *ultra vires* acts.

Abuse of authority or *ultra vires* acts, that is, acts by a public official which manifestly exceed the limits of the rights and powers given by law, shall, if they cause substantial damage to a public interest or to the rights and lawful interests of natural and legal persons,

- be punished with either deprivation of liberty for a period of up to three years, or a fine of between 30 and 100 times the minimum salary, or with removal from office, in all cases accompanied by disqualification from occupying certain functions or engaging in certain activities for a period of up to five years.

Abuse of authority or *ultra vires* acts, accompanied by acts of violence or the use of a weapon or by acts of torture and which harm the victim's personal dignity,

- shall be punished with deprivation of liberty for a period of three to ten years, and disqualification from occupying certain functions or engaging in certain activities for a period of up to five years.”

“Article 207. Usurpation of the powers or title of a public official.

Usurpation of the powers or title of a public official, and the carrying out of socially dangerous acts on that basis,

- shall be punished with deprivation of liberty for a period of up to two years or with a fine of up to thirty times the minimum salary.”

42. The Code of Ethics and Deontology for the Police was adopted on 10 May 2006 (Law no. 481, in force since 18 May 2006). According to that Code, it is prohibited to ill-treat and to tolerate or encourage ill-treatment and inhuman or degrading treatment or punishment “regardless of the circumstances”.

2. Other relevant materials

43. At its thirtieth session (8-9 May 2003) devoted to the consideration of reports submitted by States Parties to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the United

Nations Committee Against Torture examined the initial report submitted by the Republic of Moldova (document CAT/C/32/Add.4 30 August 2002).

In paragraph 72 of that report the Moldovan Government stated:

> "Another example of illegal actions is the case of the citizen Paduret - a student at the State University in Tiraspol, evacuated to Chisinau - who was arrested by police and brought to the police station of the Centre district charged with committing an offence. He was beaten, tortured and later released. A case was brought by the General Magistracy, but it was filed and disposed of without informing the suspect. The Helsinki Committee made a complaint to the General Magistracy and the file was reopened, but the expedition of the file to the court is delayed."

44. The relevant parts of the CPT report concerning its visit to Moldova from 10 to 22 June 2001 read as follows:

> "25. As indicated in paragraph 13 above, in response to the deterioration in the situation, the delegation invoked Article 8, paragraph 5 of the Convention to request the Moldovan authorities to carry out, without further delay, a thorough and independent inquiry into the methods used by operational police units throughout the country during the questioning of detained persons. In their letter dated 5 November 2001, the Moldovan authorities simply indicate that 'the Ministry of Interior declares that it is not aware of concrete cases of recourse to inhuman methods of interrogation of persons detained by the police' and recalls the procedures in force in case of complaints of ill-treatment. Such a position is, in the view of the Committee, clearly untenable, considering all the information gathered during the 2001 visit.
>
> With reference to Article 3 of the Convention, the CPT urges the Moldovan authorities to carry out without delay the aforementioned investigation and to inform the Committee, within three months of transmission of the report on the 2001 visit, of the results thereof."

45. The relevant parts of the response submitted on 26 June 2002 by the Moldovan Government to the 2001 CPT report read as follows:

> "28. The CPT would like comments from the Moldovan authorities concerning the development of modern methods of investigation.
>
> In this respect, regretfully, no progress has been achieved.
>
> 29. The CPT would like to obtain information on the progress achieved in drafting a Code of Deontology for the police.
>
> To our great regret, no progress was achieved in this respect."

THE LAW

46. The applicant complained under Article 3 of the Convention of ill-treatment while in detention and about the authorities' failure to carry out an effective investigation and to punish those responsible for his ill-treatment.

Article 3 reads as follows:

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

47. The applicant also complained under Article 5 of the Convention of his unlawful arrest and detention on 31 March 2000.

The relevant part of Article 5 reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

... (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

48. He further complained that the length of the criminal proceedings against A.P. and A.R. had been excessive, contrary to Article 6 of the Convention. The relevant part of Article 6 reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

49. The applicant finally complained of a violation of Article 13 of the Convention because he had been awarded only a small amount of compensation, because the authorities did not ensure prompt investigation and punishment of A.P. and A.R., and because the law ceased to provide for punishment for torture after June 2003. Article 13 reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

I. ADMISSIBILITY

50. The Court notes that in his initial application the applicant complained of violations of his rights guaranteed under Articles 5, 6 and 13 of the Convention. However, in his subsequent observations he did not refer to these complaints. In such circumstances, the Court considers that it is unnecessary to examine these complaints.

51. The Government submitted that the applicant had abused his right of individual petition by failing to inform the Court of the judgment of 8 December 2005, which had awarded him MDL 15,000 in compensation. In any event, he could no longer claim to be a victim of a violation of his rights guaranteed by the Convention in view of the compensation awarded to him and the conviction and sentencing of the perpetrators.

52. The applicant disagreed, stating that he had not yet obtained the entirety of the sum awarded, since the bailiff had allowed A.P. to pay in instalments by transferring to the applicant 25% of his monthly salary until

full payment. On 26 April 2007 the bailiff decided to ask A.P.'s employer, the Ministry of Internal Affairs, to enforce the sentence against A.P. There was no mention in the decision of any attempt to locate property belonging to A.P. On 25 June 2007 that decision was sent to the Ministry. The applicant received the first payment in October 2007, a year and a half after the final court judgment awarding him compensation. Moreover, due to the length of the investigation and proceedings against A.P., the authorities effectively allowed him to escape responsibility. Finally, the applicant submitted that he had informed the Court in due time of the judgment of 8 December 2005. This was also clear from the facts of the case, which had noted both that judgment and the judgment of the Supreme Court of Justice which subsequently upheld it (see paragraphs 39 and 40 above).

53. The Court notes that the applicant informed it of the relevant developments, which were mentioned in the statement of facts communicated to the respondent Government. The objection concerning the alleged abuse of the right of petition must therefore be rejected.

54. As for the objection concerning the loss of victim status, the Court considers that it raises issues closely related to the merits of the complaint lodged under Article 3 of the Convention. It will therefore examine this preliminary exception together with the merits of the case.

55. The Court considers that the applicant's complaint under Article 3 of the Convention raises questions of law which are sufficiently serious that its determination should depend on an examination of the merits. No grounds for declaring it inadmissible have been established. The Court therefore declares this complaint admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. The submissions of the parties

56. The applicant submitted that he had been ill-treated by officers A.R. and A.P., as well as a third officer who remained unidentified. As a result of the lengthy investigation and court proceedings, and by incorrectly applying a shorter limitation than that provided for by law, the authorities allowed A.P. to escape criminal responsibility. The applicant had therefore not obtained sufficient satisfaction and could continue to claim that he was a victim of a violation of Article 3 of the Convention. Moreover, the prosecuting and judicial authorities had taken all possible steps to delay the proceedings and to shield the police officers from responsibility. The applicant allegedly received threats from anonymous persons to withdraw his complaint. On 26 September 2001 he was allegedly arrested following

an order of officer Adajii, who had been called as a defence witness by A.R. and A.P.

57. None of the perpetrators was suspended from his position during the proceedings and A.P. continues to work as a police officer. The preventive effect of his conviction was thus non-existent, since it did not even prevent A.P. from continuing to work for the police and since the case in fact provided an example of impunity for ill-treatment by the police. The award made in the applicant's favour was not only small in the light of the seriousness of the violations of his rights, but he obtained only a small part of it in instalments, which did not suffice even for his medical expenses and to pay his lawyer.

58. The Government submitted that the applicant's ill-treatment had been the subject of a thorough investigation which resulted in the identification and punishment of the perpetrators. The punishment received by the police officers was proportionate to the seriousness of the crimes which they had committed. Moreover, Moldovan law distinguished between petty crimes, crimes of average gravity, as well as serious, very serious and exceptionally serious crimes. Since the crime committed by the police officers was considered an average level one, the punishment of two years' imprisonment passed on 22 April 2002 constituted an appropriate punishment. The quashing of that judgment had been the result of a desire by the domestic courts to observe the accused's rights under Article 6 of the Convention to have a fully reasoned judgment.

59. The expiry of the limitations period for criminal responsibility was the sole reason for discontinuing the proceedings against A.P. Moreover, he was still ordered to pay MDL 15,000 in compensation to the applicant. The sentence adopted by the courts reached its preventive goal by educating A.P. not to commit such a crime again and by showing the rest of society that crimes were not tolerated.

B. The Court's assessment

60. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII).

1. The applicants' ill-treatment and the authorities' positive obligations under Article 3 of the Convention

61. The Court notes that it is not in dispute between the parties that the applicant was ill-treated by officers A.R. and A.P. on 31 March 2000. Criminal proceedings were initiated against A.R. and A.P., which were discontinued because of the death of A.R. and the expiry of the limitations period in respect of A.P. Given the nature of the acts against the applicant and degree of his suffering (see paragraphs 11 and 14 above), his ill-treatment can only be considered as torture within the meaning of Article 3 of the Convention. A violation of that provision will be found unless the authorities fully redressed the damage caused to the applicant and discharged their positive obligations under Article 3 concerning the investigation and punishment of those responsible for the ill-treatment.

(a) The investigation of the applicants' ill-treatment

62. The Court observes that in the case of *Batı and Others v. Turkey* (nos. 33097/96 and 57834/00, ECHR 2004-IV (extracts)) it held:

> "133. ... Where an individual has an arguable claim that he has been tortured while in the hands of agents of the State, the notion of an 'effective remedy' entails, in addition to the payment of compensation where appropriate and without prejudice to any other remedy available in domestic law, a thorough and effective investigation. The kind of investigation that will achieve those purposes may vary according to the circumstances. However, whatever the method of investigation, the authorities must act as soon as an official complaint has been lodged. Even when strictly speaking no complaint has been made, an investigation must be started if there are sufficiently clear indications that torture or ill-treatment has been used (see, among other authorities, *Özbey v. Turkey* (dec.), no. 31883/96, 8 March 2001[...]). The authorities must take into account the particularly vulnerable situation of victims of torture and the fact that people who have been subjected to serious ill-treatment will often be less ready or willing to make a complaint (see *Aksoy v. Turkey*[, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI,] pp. 2286-87, §§ 97-98).
>
> ...
>
> 136. It is beyond doubt that a requirement of promptness and reasonable expedition is implicit in this context. A prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, among other authorities, *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001, and *Özgür Kılıç v. Turkey* (dec.), no. 42591/98, 24 September 2002). While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, it may generally be regarded as essential for the authorities to launch an investigation promptly in order to maintain public confidence in their adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts (see, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 72, ECHR 2002-II)."

63. Turning to the facts of the present case, the Court notes that the prosecutor ordered a forensic doctor to examine the applicant on the day on which he had been ill-treated, 31 March 2000 (see paragraph 12 above). Despite that order, the applicant was taken to the doctor only on 3 April 2000 (see paragraph 14 above). The domestic authorities and the Government did not offer any explanation for that delay. This is inconsistent with the obligation to carry out a prompt investigation as there is a risk that evidence of ill-treatment disappears as time goes by and the injuries heal.

64. Moreover, after the applicant's ill-treatment was confirmed by the forensic doctor on 3 April 2000, a criminal investigation was not initiated against A.R. and A.P. until 15 June 2000 (see paragraph 17 above). Again, no explanation was offered for that delay of more than two months.

65. According to the applicant one more person, whose identity was initially unknown, had participated in his ill-treatment on 31 March 2000. A.P. himself confirmed at an interview that another person was present while the applicant was "interviewed" (see paragraph 16 above). Subsequently, the applicant recognised R.B. as the third person who ill-treated him on 31 March 2000 and requested that charges be brought against that person. However, the applicant received no reply to that request and no investigation was carried out (see paragraph 28 above).

66. In addition, the applicant was not kept informed of the course of the investigation against A.R. and A.P. For instance, he was not promptly informed of the discontinuation of those proceedings on 21 September 2000 and found out about it only after insisting to obtain an update on 21 November 2000 (see paragraph 19 above).

67. The Court finally notes that the investigation and the criminal proceedings against the perpetrators lasted for almost six years between 15 June 2000 and 26 March 2006.

68. It follows that the investigation in the present case was initiated with an unexplained delay and was, together with the criminal proceedings, very lengthy; the applicant was not kept informed of its progress and there was no investigation into the allegation that one more person, R.B., had ill-treated the applicant. The Court considers that each of the above shortcomings was incompatible with the procedural obligations assumed by Member States under Article 3 of the Convention.

69. It follows from the above that the applicant can continue to claim to be a victim of a violation of his rights and the Government's preliminary objection must therefore be rejected.

(b) Preventive effect of the prohibition of ill-treatment

70. The Court observes that in the case of *Okkalı v. Turkey* (no. 52067/99, § 65, ECHR 2006-XII (extracts)) it held:

> "... the procedural requirements of Article 3 go beyond the preliminary investigation stage when ... the investigation leads to legal action being taken before the national courts: the proceedings as a whole, including the trial stage, must meet the requirements of the prohibition enshrined in Article 3. This means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished. This is essential for maintaining the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in unlawful acts (see, *mutatis mutandis, Öneryıldız [v. Turkey* [GC], no. 48939/99, § 96, ECHR 2004-XII])."

71. In the present case, the applicant claimed that the authorities had taken steps to shield the perpetrators from responsibility and had done little to compensate him for the suffering caused to him.

72. The Court notes that none of the three persons accused of ill-treating the applicant was convicted of that crime. While one of them died and could thus not be convicted, the allegation against R.B. was never examined by the investigators or the courts, while A.P. was relieved of all responsibility by the application of the limitations period.

73. In this latter respect the Court reiterates its case-law, according to which (see *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004):

> "where a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost importance for the purposes of an "effective remedy" that criminal proceedings and sentencing are not time-barred and that the granting of an amnesty or pardon should not be permissible. The Court also underlines the importance of the suspension from duty of the agent under investigation or on trial as well as his dismissal if he is convicted (see Conclusions and Recommendations of the United Nations Committee against Torture: Turkey, 27 May 2003, CAT/C/CR/30/5)."

74. In the present case, the domestic courts found that the applicant had been ill-treated, and the Government characterised the applicant's ill-treatment as torture in its own report to the United Nations Committee Against Torture (see paragraph 43 above). The medical reports confirmed that he had been caused head trauma and anal damage, consistent with his claim that he was beaten and raped with a glass bottle. All these actions were carried out with the purpose of extracting a confession. For the Court, these acts can only be considered torture within the meaning of Article 3 of the Convention. In such circumstances, the failure to initiate criminal proceedings under Article 101/1 of the Criminal Code (torture), without any explanation as to the choice of a less serious type of offence (Article 101 – causing bodily harm), is insufficient to ensure the preventive effect of the legislation passed specifically to address the problem of ill-treatment.

The Court believes that the preventive effect of legislation passed specifically in order to address the phenomenon of torture can only be ensured if such legislation is applied whenever the circumstances so require, as they did in the present case.

75. Moreover, A.P. was never suspended from his position. The investigation and court proceedings lasted for a long time, which was the sole reason for the limitations period becoming applicable. Moreover, in the light of Article 46 of the Criminal Code (see paragraph 41 above), Articles 101 and 101/1 carried limitations periods of five and ten years respectively. Thus, by refusing to apply Article 101/1 of the Criminal Code to the present case (see the next paragraph), the domestic authorities applied a shorter (five-year) limitations period and allowed A.P. to escape criminal responsibility. In any event, no limitation period should apply to acts of ill-treatment by a State agent (see paragraph 73 above).

76. The Court also notes the position adopted by the Ministry of Internal Affairs which, even after it became aware of the findings of the CPT, stated that it was "not aware of concrete cases of recourse to inhuman methods of interrogation of persons detained by the police" (see paragraph 44 above). It further observes the acknowledged absence of efforts to develop modern methods of investigation (see paragraph 45 above) and a substantial delay in adopting a Code of Ethics for the police (which was adopted almost four years after the CPT inquired about it, see paragraph 45 above).

77. The Court notes with great concern the Government's assertion that in Moldova torture was considered an "average-level crime", to be distinguished from more serious forms of crime and thus warranting reduced sentences (see paragraph 58 above). Such a position is absolutely incompatible with the obligations resulting from Article 3 of the Convention, given the extreme seriousness of the crime of torture. Together with the other shortcomings mentioned in paragraphs 72-76 above, this confirms the failure of the Moldovan authorities to fully denounce the practice of ill-treatment by the law-enforcement agencies and adds to the impression that the legislation adopted to prevent and punish acts of ill-treatment is not given full preventive effect. This conclusion is reinforced by the fact that A.P. continues to work for the police and by the very small amount of damages which he has had to pay, in instalments, despite the lack of any evidence that the bailiff attempted to find any property which A.P. may own. As such, the case gives the impression not of preventing any future similar violations, but of being an example of virtually total impunity for ill-treatment by the law-enforcement agencies.

(c) Conclusion

78. The Court finds that not only was the applicant subjected to torture while in police custody, but that the authorities had failed to offer sufficient redress by failing to properly investigate within a reasonable time his ill-treatment, as well as to ensure the preventive effect of the law.

Therefore, the Government's preliminary objection concerning the applicant's alleged loss of victim status must be dismissed.

79. There has, accordingly, been a violation of Article 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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. Non-pecuniary damage

81. The applicant claimed EUR 20,000 in compensation for non-pecuniary damage caused to him. He submitted that he had been suffering as a result of his ill-treatment and continued to have health problems despite his young age, and that there had not been an effective investigation, also that he had been threatened and obstructed in the course of the criminal proceedings against the perpetrators. The sum awarded to him domestically (MDL 15,000, the equivalent of EUR 997 at the time), was completely disproportionate to his suffering and the delay and small increments in which he receives even that sum only added to his humiliation.

82. The Government submitted that in the absence of a violation of any articles of the Convention the applicant could not claim compensation. In any event, the amount claimed was exaggerated and abusive. By contrast with other cases referred to by the applicant, in the present case the domestic courts found a violation of his rights and awarded him compensation.

83. The Court reiterates that it has found not only that the applicant has been ill-treated by police officers, in violation of the State's obligation under Article 3 of the Convention to prevent such treatment, but also in respect of the quality of the investigation into the applicant's ill-treatment and of the domestic authorities' failure to ensure the preventive effect of the law prohibiting ill-treatment. It finds that the manner in which the authorities treated the applicant during and after the criminal proceedings against two of the perpetrators, and the absence of any form of investigation of the alleged participation of a third officer, only added to the applicant's sufferings. In the light of the above, the Court fully accepts his claim.

B. Costs and expenses

84. The applicant claimed EUR 3,150 for legal costs. He referred to an itemised list of the hours spent by his three lawyers working on the case,

according to which they had worked for 35 hours at an hourly rate of EUR 90. He also included a copy of the recommendation made by the Moldovan Bar Association on 29 December 2005, according to which lawyers were advised to charge between EUR 40 and 150 per hour or EUR 1,000 to 15,000 per case when they participated in proceedings before international courts.

85. The Government submitted that no compensation for costs and expenses was due to the applicant because he had not submitted a copy of his contract with the lawyers. They challenged the number of hours worked on the case and considered that the hourly fee was exaggerated.

86. In the present case, regard being had to the itemised list submitted by the applicant and the complexity of the case, the Court awards EUR 2,500 for costs and expenses, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable.

C. Default interest

87. 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. *Joins to the merits* the Government's preliminary objection concerning the applicant's victim status;

2. *Declares* admissible the complaint under Article 3 of the Convention and *dismisses* the Government's preliminary objection;

3. *Holds* that there has been a violation of Article 3 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months [from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention], EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage and EUR 1,650 (one thousand six hundred and fifty euros) for costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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;

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

Done in English, and notified in writing on 5 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President