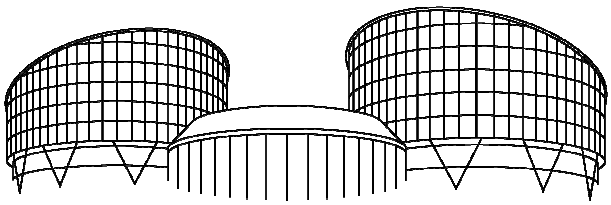

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FOURTH SECTION

CASE OF VALERIU AND NICOLAE ROŞCA v. MOLDOVA

(Application no. 41704/02)

JUDGMENT

STRASBOURG

20 October 2009

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 Valeriu and Nicolae Roşca v. Moldova,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Giovanni Bonello,
Ljiljana Mijović,
David Thór Björgvinsson,
Ledi Bianku,
Mihai Poalelungi, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 29 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 41704/02) 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 two Moldovan nationals, Mr Valeriu Roşca and Mr Nicolae Roşca ("the applicants"), on 6 and 28 November 2002.

2. The applicants were represented by Mr F. Nagacevschi, from Lawyers for Human Rights, a non-governmental organisation based in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicants alleged, in particular, that they had been ill-treated while in police detention in order to compel them to make self-incriminating statements; that there had been delays in the examination of their complaints of ill-treatment; that they had been subjected to inhuman and degrading conditions of detention; that they had had no access to a lawyer of their choice during their initial detention; and that they had not had an effective remedy in respect of their complaints concerning ill-treatment.

4. The application was allocated to the Fourth Section of the Court. On 16 May 2008 the President of that Section decided to communicate 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 applicants, Mr Valeriu Roşca (V.R.) and Mr Nicolae Roşca (N.R.), are Moldovan nationals who were born in 1960 and 1978 respectively and live in Cotiujenii-Mari.

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

A. The applicants' arrest and alleged ill-treatment

7. On 1 August 2000 I.C. complained to the Ialoveni police that he had been abducted and robbed by unidentified assailants.

1. The applicants' alleged ill-treatment on 11 May 2001

8. On 11 May 2001 both applicants were arrested by officers from the Centru District Police Station in Chişinău. According to the applicants, no reasons were given for their arrest, during which they both were beaten by the arresting officers.

9. The applicants claim that at the police station they again received blows and kicks over a period of several hours. They were later taken to the General Police Directorate in Chişinău, where they were pressured to confess to crimes they had not committed. Following their refusal, they were each beaten, then handcuffed on the floor, where they received truncheon blows to the soles of their feet and electric shocks.

10. As a result of the ill-treatment, N.R. wrote a self-incriminatory statement, but did not sign it, as a form of protest. The applicants were subsequently moved back to the Centru District Police Station, where the investigator offered them documents to sign under threat of further ill-treatment.

2. The applicants' alleged ill-treatment on 13 June 2001

11. On 13 June 2001 the applicants were taken to Ialoveni Police Station. As was later explained by the Ialoveni police officers, this was necessary in order to verify the applicants' possible involvement in the crime against I.C. described above. On the same day the CPT delegation visited the police station. N.R. informed the CPT about ill-treatment at the Centru District Police Station and the General Police Directorate.

12. The applicants state that after the departure of the CPT delegation, they were taken to an office and ill-treated for hours on end, with truncheon

blows to the soles of their feet and to their heads, in order to make them confess to crimes they had not committed.

13. On 14 June 2001 the CPT delegation returned to Ialoveni Police Station and saw N.R., who had complained of ill-treatment the day before.

14. On 15 June 2001 three officers from the Ministry of Internal Affairs visited N.R., who repeated his complaints of ill-treatment at the Centru District Police Station, the General Police Directorate, and Ialoveni Police Station. Both applicants were then taken to the Centru District Police Station and later to the General Police Directorate.

15. The applicants claim that as a result of their ill-treatment they partly lost their hearing and have frequent headaches and pain.

16. The applicants complained of ill-treatment in all three establishments in which they had been detained, but the prosecution refused to initiate criminal investigations in respect of all but one of the complaints, that relating to ill-treatment at Ialoveni Police Station. None of the police officers was suspended and some allegedly put pressure on the applicants and their families to withdraw their complaints.

17. On 15 June 2001 a police inspector, Colonel P.D., submitted a report to the Minister of Internal Affairs, describing the visit of the CPT to Ialoveni Police Station and the findings made on 14 June 2001, namely that the conditions of detention and medical care there were inadequate and that a person detained there, identified as Mr Roşca, had been found to have suffered serious bodily harm. P.D. proposed that the person concerned be transferred as a matter of urgency to a secure location and offered access to a lawyer and that a report be drawn up in compliance with the recommendations.

18. On 18 June 2001 the applicants were taken, in the absence of their lawyers, to a doctor to determine the degree of damage to their health. The doctor found injuries to various parts of their bodies, including haematomas ranging from 6 cm x 2 cm to 12 cm x 3 cm, which were characterised by the doctor as “slight injuries”.

19. Also on 18 June 2001 P.D. reported to the Minister of Internal Affairs on “the results of examining information regarding the torture of detainees at [Ialoveni Police Station]”. The report stated that the applicants had complained to the CPT of ill-treatment by officers from Ialoveni Police Station. The preliminary investigation established the names of three police officers who had dealt with the applicants' case there and those of another six officers involved in the case at the Centru District Police Station in Chişinău. On questioning, all the officers had denied ill-treating the applicants. Since medical reports showed slight injuries to both applicants and since the inconsistencies between the various pieces of evidence could only be explained after a full investigation, P.D. recommended the initiation of criminal proceedings against all nine police officers and investigators involved.

20. On 20 June 2001 the Deputy Minister of Internal Affairs asked the Prosecutor General's Office to initiate a criminal investigation into the case.

21. In a report to the Minister of Internal Affairs on an unknown date, the commanding officer at Ialoveni Police Station denied any ill-treatment of the applicants. He mentioned that they had made no request for access to a lawyer.

3. The investigation and criminal proceedings regarding the alleged ill-treatment on 13 June 2001

22. On 20 July 2001 the Prosecutor General's Office initiated a criminal investigation into the applicants' alleged ill-treatment. On the same day another investigation was initiated into the alleged negligence of the commanding officer at Ialoveni Police Station. The cases were later joined. On 23 October 2001 the investigation into the applicants' ill-treatment on 11 May 2001 in the Centru District Police Station was discontinued for lack of evidence. In response to the applicants' complaint, on 24 March 2002 the Prosecutor General's Office reiterated the decision of 23 October 2001. It appears that the applicants did not challenge either decision in court.

23. On 20 August 2001 a further medical report was issued after a fresh examination of N.R. The expert was asked whether the injuries which N.R. had sustained could have been caused by falling, or hitting objects in the cell. The report did not exclude this as an alternative explanation for the injuries.

24. On 2 November 2001 the prosecution submitted the case against the police officers from Ialoveni police station for examination by the trial court.

25. A certificate issued on 3 December 2002 by the governor of Prison no. 13 in Chişinău, where V.R. was detained, confirmed that V.R. was being treated for the consequences of brain damage and asthenic-depressive syndrome and mentioned an injury he had allegedly received to his head in 1999.

26. On 23 June 2003 the Centru District Court acquitted three officers accused of abuse of power for unlawfully beating the applicants. The court noted the CPT report, which stated that the delegates had examined the applicants and “found certain bodily injuries”. However, it found that it could not rely on the CPT report because, under procedural rules, only medical reports by specialist doctors could serve as a basis for a criminal conviction. Since the CPT report had not been made during the criminal investigation but was annexed to the file by the victims, it could not be relied on. The same could be said of the reports by P.D. (see above). The court did not comment on the medical reports dated 18 June 2001.

27. Two of the officers were convicted of negligence for failing properly to register I.C.'s complaint in 2000 and attempting to solve the alleged offence beyond the ambit of a proper criminal investigation. The applicants'

claims for compensation for pecuniary and non-pecuniary damage sustained as a result of ill-treatment were rejected as unfounded.

28. In his appeal of 18 July 2003 N.R. complained, *inter alia*, of the court's failure to convict the officers of torture. He also pointed out that both he and V.R. had identified the police officers at an identity parade as the persons who had tortured them and that none of the officers could explain the origin of the injuries they had sustained while in detention. He referred to the statements of several fellow detainees in Ialoveni Police Station who confirmed that they had seen V.R. being taken in good health out of the cell only to return later with clear signs of ill-treatment. These witnesses denied seeing anybody in the cell hurt themselves. N.R. referred to the absence, in the criminal file against both applicants, of any reference to the applicants' participation in procedural steps at Ialoveni Police Station. This confirmed, in his view, that they had not been taken to that station for any lawful purpose. He finally referred to the civil action lodged by him and V.R. within the criminal proceedings. He questioned the application of the amnesty law to accused persons who had not compensated the victims of their crime, a state of affairs which he submitted was contrary to the law. V.R. lodged a similar appeal. In the prosecutor's appeal it was mentioned that each applicant had been offered photographs of the entire staff of Ialoveni Police Station for identification purposes and both had identified the police officers who had ill-treated them.

29. On 15 January 2004 the Chişinău Court of Appeal partly quashed the judgment given at first instance. It acquitted the two officers who had been convicted of negligence by the lower court, finding that it had not been their duty to register I.C.'s complaint. The court upheld the remainder of the lower court's judgment, finding in particular that it had been right to reject the applicants' complaint of ill-treatment. It considered that the statements made by the applicants were untrue because the description of their injuries in the medical reports did not coincide with their own description of the manner in which they had sustained the injuries and because “they could use their statements as a means of defence in the criminal proceedings in which they were accused of serious crimes”. Moreover, the CPT report and other related documents did not prove that the applicants had been ill-treated specifically by the officers accused in the case and thus could not be used as a basis for a conviction.

30. The applicants' lawyer lodged an appeal on points of law, relying on the various documents in the file and seeking the conviction of the accused for exceeding their authority through ill-treatment.

31. On 29 June 2004 the Supreme Court of Justice rejected the applicants' appeal on points of law, but allowed an appeal by the prosecutor, in which the latter sought the conviction of the two accused. It ordered the rehearing of the case by the Chişinău Court of Appeal.

32. On 26 January 2005 the Chişinău Court of Appeal quashed the district court's judgment in so far as it had acquitted the three officers of ill-treatment. It adopted a new judgment convicting all three officers of manifest abuse of authority (Article 185 (2) of the Criminal Code – see "Relevant domestic law" below). Each officer was sentenced to three years' imprisonment and disqualification from working in a law-enforcement agency for two years. The court also decided to suspend the enforcement of the judgment, with one year's probation, finding that the officers were relatively young, had families, had not been previously convicted and were viewed positively in society.

33. On 27 April 2005 the Supreme Court of Justice upheld that judgment. It found that the material in the file, including the CPT report, the witness statements and the medical reports proved beyond doubt that the three officers had ill-treated the applicants.

34. The applicants submitted copies of newspaper interviews with members of the Moldovan branch of Amnesty International and the President of the Moldovan Bar Association asserting that ill-treatment was routinely used in certain law-enforcement agencies, especially the police and investigators, in order to obtain self-incriminating statements and the conviction of innocent persons.

B. Conditions of detention

35. In a letter to the Court dated 15 September 2003, the applicants submitted that they had been detained in inhuman and degrading conditions both in the General Police Department situated at no. 6 Tighina St. and, from 28 June 2001, in Prison no. 3 in Chişinău (also known as Prison no. 13). In respect of the latter place of detention, they referred, in particular, to severe overcrowding (twenty prisoners in a 25 sq. m cell and up to ten prisoners detained for hours in closed 1-2 sq. m. boxes in courthouses while awaiting court hearings, without food, water or access to a toilet); thick cigarette smoke and strong odours from the open-plan toilet, coupled with a lack of ventilation; a lack of fresh water during most of the day; very limited access to daylight owing to the thick netting on the window; damp; inedible food; and inadequate medical assistance.

36. The applicants also alleged that their correspondence had been censored and their contact with the outside world severely limited while they were in the detention centre at no. 6 Tighina St. in Chişinău.

II. RELEVANT MATERIALS

A. Relevant domestic law and practice

37. The relevant provisions of the Criminal Code, applicable at the relevant time, read as follows:

Article 36: General principles of sentencing

"The court shall pass sentence in strict compliance with the provisions of the General Part of the present Code and within the limits of the Article in the Special Part of the present Code which lays down the penalty for the offence committed. In passing sentence, the court shall rely on its legal consciousness and shall take into account the nature and degree of social danger caused by the offence, the defendant's character and any circumstances of the case which mitigate or aggravate responsibility."

Article 37: Mitigating circumstances

"When passing sentence the following shall be considered mitigating circumstances:

1. the fact that the offender averted the harmful effects of the crime, provided voluntary compensation for the harm or remedied the damage;

2. the offence resulted from a combination of difficulties of a personal or family order;

3. the offence was committed under threat or coercion, or as a result of economic or work-related difficulties or other forms of dependence;

4. the offence was committed under the influence of a strong emotional reaction provoked by an unlawful act on the part of the victim;

5. the offence was committed in order to fend off a socially dangerous attack, even if the limits of legitimate defence were exceeded;

6. the offence was committed by a minor;

7. the offence was committed by a pregnant woman;

8. sincere repentance or voluntary surrender;

9. active contribution to the solving of the crime.

In passing sentence the court may also consider other circumstances to be mitigating circumstances."

Article 38: Aggravating circumstances

"In passing sentence, the following shall be considered aggravating circumstances:

1. the offender has previous convictions.

Depending on the nature of the previous offence [or offences], the court shall have the power not to consider it an aggravating circumstance;

2. the offence was committed by an organised group;

3. the offence was committed for financial or other base motives;

3/1. the offence was committed on account of [the victim's] national identity, or racial hatred or contempt;

4. the offence had serious consequences;

5. the offence was committed against a minor, or an elderly or vulnerable person;

6. the offence was committed by a person responsible for protecting public order;

7. the instigation of minors to commit or involvement of minors in the commission of an offence;

8. the offence involved particular cruelty or the debasement of the victim;

9. the offence was committed during a natural disaster;

10. the offence caused a generalised danger;

11. the offence was committed through the abuse of another person's financial, work-related or other position of dependence;

12. the offence was committed under the influence of alcohol. The court shall have the power not to consider this an aggravating circumstance, depending on the nature of the offence;

13. the offence was committed by a person who had been released pending trial under a personal guarantee during the period of the guarantee or within a year after its expiry."

Article 43: Conviction with suspended sentence

"If, taking into account the circumstances of the case and the character of the convicted person, the court reaches the conclusion that it is not reasonable for him or her to serve the punishment in the form of deprivation of liberty for a certain period, it may order suspension of the sentence, in which event it will indicate in the sentence the reasons for its decision. In such cases, the court shall order that the sentence will not be served if, during the probation period set by the court, the convicted person does not commit a new offence and complies with the obligations imposed by the court for the duration of the probation period.

The probation period shall be for between one and five years. ...”

Article 101/1: Torture

“Actions which intentionally cause pain or severe physical or moral 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 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.”

38. 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”.

39. The relevant provisions of Law no. 1545 (1998) on compensation for damage caused by the illegal acts of the criminal investigation organs, prosecution and courts have been set out in *Sarban v. Moldova* (no. 3456/05, § 54, 4 October 2005).

40. In the case of *Belicevecen v. the Ministry of Finance* (no. 2ra-1171/07, 4 July 2007) the Supreme Court of Justice found that a person could claim damages on the basis of Law no. 1545 (1998) only if he or she

had been fully acquitted on all the charges against him or her. Since Mr Belicevecen had been found guilty in respect of one of the charges brought against him, he could not claim any damages.

B. Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT)

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

> "24. Particular attention should be paid to the case of a detained person met at Ialoveni EDP. During the first interview, this man did not exhibit any lesions or marks. When he was seen at a further interview the following day, a medical examination by one of the delegation's doctors revealed in the left temple area, a 1 cm long wound covered with crusts, and in the left kidney region a 8 x 3 cm bluish red haematoma. Both soles of the feet were very painful on palpation and hard, especially in the heel area. These lesions and signs are consistent with his allegations that in the evening of the previous day, after the delegation's departure, he had been struck several times on the head with a piece of hard rubber by police officers in an EDP office, and that after being forced to kneel on a chair with his wrists handcuffed in front of him, he had been beaten on the soles of his feet and the left kidney region during questioning.
>
> Since the person expressed fears that he would suffer further ill-treatment after the delegation's departure, the latter asked the Interior Ministry's liaison officer for immediate steps to be taken to secure his protection and for an inquiry to be undertaken into the treatment of persons in custody in this EDP. The individual concerned was transferred to the EDP of the capital and received a forensic medical examination in the presence of his lawyer. The internal investigation carried out during the visit by the Ministry of Internal Affairs also showed that another person held in the same EDP had made allegations of physical ill-treatment before the persons in charge of the investigation. This person also underwent a forensic medical examination. By letter dated 5 November 2001, the Moldovan authorities have indicated that legal proceedings have been initiated by the Prosecution Service under Article 182, paragraph 5 of the Penal Code (abuse of power/abuse of office). An investigation has been opened and the file will shortly be transferred to court.
>
> The CPT has taken note of this information with interest and would like to be informed in due course of the decision of the court.
>
> 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."

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

"24. The CPT would like to be informed of the court's decision, following the prosecutor's request, concerning the case mentioned in the relevant paragraph.

We inform you that the criminal case (mentioned in paragraph 24 of the 2001 Report), based on Article 185 § 2 of the Criminal Code 'Abuse of authority or *ultra vires* acts' is still at an investigatory stage.

...

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."

C. The United Nations Istanbul Protocol

43. The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) was submitted to the United Nations High Commissioner for Human Rights on 9 August 1999. The "Istanbul Principles" subsequently received the support of the United Nations through resolutions of the United Nations Commission on Human Rights and the General Assembly. It is the first set of guidelines to have been produced for the investigation of torture. The Protocol contains full practical instructions for assessing persons who claim to have been the victims of torture or ill-treatment, for investigating suspected cases of torture and for reporting the investigation's findings to the relevant authorities.

The principles applicable to the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment are to be found in Annex 1 of the Manual, the relevant parts of which read as follows:

"The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment (hereafter referred to as torture or other ill-treatment) include the following: clarification of the facts and establishment and acknowledgment of individual and State responsibility for victims and their families,

identification of measures needed to prevent recurrence and facilitation of prosecution or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

States shall ensure that complaints and reports of torture or ill-treatment shall be promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission, investigations by impartial medical or other experts. ...

The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. ... Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation and shall be entitled to present other evidence.

...

A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, this report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation, and, as appropriate, indicate steps to be taken in response.

Medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and in particular shall obtain informed consent before any examination is undertaken. The examination must follow established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

The medical expert should promptly prepare an accurate written report. This report should include at least the following:

(a) The name of the subject and the name and affiliation of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house); and the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those

accompanying the prisoner, threatening statements to the examiner) and any other relevant factors;

(b) A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the time when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;

(c) A record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;

(d) An interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and further examination should be given;

(e) The report should clearly identify those carrying out the examination and should be signed.

..."

THE LAW

44. The applicants complained under Article 3 of the Convention of ill-treatment by the police and investigators on 11 May 2001 in the Centru District Police Station and of the prosecution's refusal to initiate a criminal investigation into their alleged ill-treatment on that date. They also complained, under the same Article, of ill-treatment on 13 June 2001 in Ialoveni Police Station and of delays in the proceedings regarding their complaints of ill-treatment on that date. Article 3 of the Convention reads:

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

45. The applicants further complained under Articles 3 and 8 of the Convention of inhuman conditions of detention, as well as of censorship of their correspondence. The relevant part of Article 8 of the Convention reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence."

46. The applicants also complained that they had not been assisted by lawyers at the initial stage of the proceedings and had not had access to a lawyer during the first days of their detention, contrary to Article 6 of the Convention. The relevant part of Article 6 of the Convention reads as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time ..."

47. The applicants further complained under Article 13 of the Convention of the lack of effective remedies in respect of their complaints of ill-treatment and the failure to investigate them. Article 13 of the Convention 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."

48. The applicants lastly complained under Article 17 of the Convention. Article 17 reads as follows:

> "Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

I. ADMISSIBILITY

49. The Government submitted that following the conviction of the three police officers accused of ill-treating the applicants, the latter could no longer be considered victims of a violation of their rights guaranteed under Article 3 of the Convention. The applicants disagreed, referring to the leniency of the penalties.

50. The Court considers that this issue is closely related to the merits of that complained under Article 3 of the Convention. It will therefore examine this objection together with the arguments concerning the complaint under Article 3.

51. The Government also argued that the applicants had not exhausted the available domestic remedies since they had not brought court actions for damages in respect of the unlawful acts of the law-enforcement authorities, in accordance with Law no. 1545 (1998).

52. The applicants submitted that since they had not been acquitted of the crimes of which they had been accused, that law did not apply to their situation, as was proved by the case of *Belicevecen* (see paragraph 40 above).

53. The Court observes that it has already dismissed a similar objection raised by the Government in *Sarban* (cited above, § 59), finding that only an acquittal allowed a person to claim damages under that law. The case of *Belicevecen* (see paragraph 40 above) reinforces that conclusion. The applicants in the present case submitted that they had not been acquitted and the Government did not dispute that. In any event, the Court reiterates that applicants are not required to make use of more than one available remedy,

and it is not contested that they claimed damages as aggrieved parties in the criminal proceedings against the police officers, claims which were dismissed by the courts (see paragraph 27 above). It follows that this objection is to be dismissed.

54. The Court also notes that the applicants complained of their alleged ill-treatment on 11 May 2001 at the Centru Police Station and the General Police Department in Chişinău. However, the materials submitted by the applicants do not contain any evidence of ill-treatment before 13 June 2001. Moreover, the CPT noted in its report that during its visit to Ialoveni Police Station on 13 June 2001 it had found no traces of violence on the person whom it had visited again the following day (see paragraph 41 above). In the light of the report by Colonel P.D. (see paragraph 17 above), the Government's reply to the CPT report (see paragraph 42 above) and the reference to that report in the domestic court judgments convicting the three police officers (see paragraphs 26, 29 and 33 above), the Court concludes that paragraphs 24 and 25 of the 2001 CPT report concerned the applicants. Accordingly, the Court concludes that the complaint concerning ill-treatment before 13 June 2001 is manifestly ill-founded and therefore inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

55. The applicants complained under Article 6 of the Convention that they had not been allowed to see a lawyer during their initial detention at the police stations in Chişinău and Ialoveni, and that this had prevented them from challenging the court order for their detention pending trial. However, the Court notes that the applicants did not show that their case had been prejudiced as a result of the above alleged breaches. Accordingly, the complaint under Article 6 of the Convention is manifestly ill-founded and therefore inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

56. The Court notes, however, that the applicants complained that they had been unable to challenge their detention orders in the absence of advice from a lawyer. It therefore considers that this complaint should be examined under Article 5 § 4 of the Convention. While the applicants did not specify what they considered to be their initial detention, they referred to the events of June 2001 in respect of this complaint. The Court observes that the application in the present case was lodged on 6 and 28 November 2002, more than six months from the events of June 2001. It follows that the applicants' implicit complaint under Article 5 § 4 was lodged outside the time-limit set by Article 35 § 1 of the Convention and must be rejected as inadmissible pursuant to Article 35 § 4 of the Convention.

57. The Court also notes that the applicants initially complained under Articles 8, 13 and 17 of the Convention, referring essentially to the same issues as those raised under Article 3 of the Convention. In their subsequent observations they did not pursue these complaints. The Court will therefore not examine them.

58. The Court considers that the applicant's complaints under Article 3 of the Convention (except for ill-treatment before 13 June 2001) raise questions of law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring them inadmissible have been established. The Court therefore declares these complaints admissible. In accordance with its decision to examine the admissibility and merits together (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

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

59. The applicants submitted that they could still be considered victims of the ill-treatment, despite the conviction of the three police officers. Given the intensity and the aim of the ill-treatment to which they had been subjected (namely, to extract confessions), it had to be recognised as torture, within the meaning of Article 3. They argued that the investigation into their ill-treatment had been slow (having lasted for almost four years), contrary to the procedural requirements of Article 3 of the Convention. They also submitted that the authorities had not complied with their positive obligations under Article 3 of the Convention, namely to ensure the preventive effect of legislation prohibiting ill-treatment. In particular, the officers had been sentenced to the minimum penalty provided for by law and even that penalty had been suspended, so that they had never been deprived of their liberty. Moreover, the officers had not been convicted of torture, but of the less stigmatising offence of abuse of power.

60. The Government submitted that after the conviction of the three police officers the applicants could no longer claim to be victims of a violation of Article 3 of the Convention. They also contended that the investigation into the applicants' ill-treatment had been thorough and prompt, and had resulted in the identification of those responsible and their conviction by the courts.

61. As for ensuring the preventive effect of the prohibition of ill-treatment, the Government submitted that the offence with which the police officers had been charged was classified as one of “medium gravity” under the Criminal Code. Only “grave and extremely grave” offences were considered dangerous and, as found by the medical examination, the

applicants had suffered only slight injuries, which could not be considered to amount to torture. Finally, Article 185 § 2 of the Criminal Code provided for an additional penalty of disqualification from occupying certain functions or engaging in certain activities for a period of one to five years. The officers had been disqualified for two years, which was thus not the smallest penalty and ensured the necessary preventive effect of the law.

2. Conditions of detention

62. The applicants complained that they had been detained in inhuman and degrading conditions in Prison no. 3 (also known as Prison no. 13 – see paragraph 35 above). They referred to various reports by the CPT and domestic authorities, confirming a general lack of funding for the prison system and the resulting insufficiency of food, poor hygiene and other threats to the health of detainees.

63. The Government disagreed and submitted that the national norm of 2 sq. m. per person had been observed, as had other norms concerning, for example, food, hygiene, heating, access to natural light and medical assistance.

B. The Court's assessment

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

64. The Court notes that it is not in dispute between the parties that the applicants were ill-treated by officers at the Ialoveni police station on 13 June 2001. It observes that the applicants were subjected, *inter alia*, to *falaka* (see paragraph 41 above). The Court recalls that beating a person's soles, or *falaka*, is a practice which is always intentional and can only be regarded as torture (see *Corsacov v. Moldova*, no. 18944/02, § 65, 4 April 2006, and *Levința v. Moldova*, no. 17332/03, § 71, 16 December 2008). It follows that there was a violation of the applicant's right not to be subjected to ill-treatment, contrary to the substantive requirements of Article 3 of the Convention in the present case.

In the light of the fact that the officers responsible for the ill-treatment were eventually convicted and sentenced, it is necessary to determine whether the applicants can still claim to be victims of the violation of Article 3. In verifying this, the Court will determine whether the authorities discharged their obligations under Article 3, notably whether they had carried out an effective investigation into the applicants' ill-treatment and whether by convicting and sentencing the three officers the respondent State satisfied the positive obligations imposed on it by that provision.

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

65. 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; see also the Istanbul Protocol, paragraph [43] above). 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)."

66. In respect of the investigation of the applicants' allegations, the Court notes that the authorities became aware of the applicants' ill-treatment on 14 June 2001, when the CPT informed them about it. As a result, on 15 June 2001 the applicants were visited by officers of the Ministry of Internal Affairs (see paragraph 14 above) and Colonel D.P. reported about their ill-treatment on the same day (see paragraph 17 above).

67. The Court notes that despite all these numerous and consistent reports that the applicants had been ill-treated, they were taken to a doctor only on 18 June 2001, on the fourth days after the authorities had become aware of the problem (see paragraph 18 above). That delay, as rightly pointed out by the applicants, allowed their wounds to partly heal and resulted in the doctor's finding of only "slight injuries" on their bodies.

68. Furthermore, even after the medical report had confirmed that the applicants had been ill-treated, and following a request, on 21 June 2001, by the Ministry of Internal Affairs to initiate a criminal investigation (see

paragraph 20 above), the investigation did not start until a month later, on 21 July 2001.

69. The Court lastly observes that the findings of the CPT, the medical report and the witness statements offered an abundant source of evidence. In the light of that initial evidence, and as follows from the domestic judgments, it appears that the courts did not face a very difficult case in terms either of establishing the facts or of solving complex legal issues. This is supported by the fact that by November 2001 the prosecution had already finished the investigation and sent the case for examination by the trial court (see paragraph 24 above).

70. The Court considers that the delay in bringing the applicants to a doctor in order to confirm their ill-treatment, as well as the delay in initiating a criminal investigation did not correspond to the requirement of promptness of an investigation, within the meaning of Article 3 of the Convention.

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

71. 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)."

72. The Court notes that in the present case the three officers convicted of ill-treating the applicants were sentenced to three years' imprisonment and disqualification from working in a law-enforcement agency for two years. That term of imprisonment was the minimum penalty allowed by law (see paragraph 37 above). It is for the domestic courts passing sentence to set the penalty which they consider is most appropriate to ensure the educational and preventive effect of the conviction. The courts did so in the present case, and explained the reason for the leniency of the sentence by reference to the accused's relatively young age, lack of previous convictions, and the fact that they had families and were viewed positively in society (see paragraph 32 above). Under the domestic law the courts had to take into account both mitigating and aggravating circumstances. However, the courts were silent about a number of apparently applicable aggravating circumstances (expressly mentioned in Article 38 of the Criminal Code – see paragraph 37 above). In particular, none of the officers showed any signs of remorse, having denied throughout the proceedings any ill-treatment on their part.

73. The Court also notes that even the minimum sentence imposed on the officers was suspended with one year's probation, so that the officers did not spend any time in prison. Moreover, they were not suspended from their positions during the investigation (contrary to the recommendations of the Istanbul Protocol – see paragraph 43 above).

74. Lastly, and equally importantly, 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. In the present case, the CPT found (see paragraph 24 of the 2001 CPT report, cited in paragraph 41 above) that the person examined on 14 June 2001 had been beaten on the soles of his feet (*falaka*), and noted that another person had also been ill-treated there at the same time. The Court already established that those two persons were the applicants (see paragraph 54 above). The Court recalls that beating a person's soles, or *falaka*, is a practice which is always intentional and can only be regarded as torture (see *Corsacov* cited above, § 65, and *Levinţa* cited above, § 71). 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 another type of offence (abuse of power), is insufficient to ensure the preventive effect of the legislation passed specifically to address the problem of ill-treatment.

75. The Court also notes the position adopted by the Ministry of Internal Affairs which, even after it became aware of the applicants' case during the CPT visit, stated that it was "not aware of concrete cases of recourse to inhuman methods of interrogation of persons detained by the police" (see paragraph 41 above). It further observes the acknowledged absence of efforts to develop modern methods of investigation (see paragraph 42 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 paragraphs 38 and 41 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.

(c) Conclusion concerning the respondent State's obligations in connection with the applicants' ill-treatment

76. The Court concludes that the investigation into the applicants' ill-treatment was not "prompt" within the meaning of Article 3 of the Convention. It also finds that the proceedings against the three police officers, including the leniency of the sentence imposed and the failure to prosecute them under the legal provisions specifically enacted to address the problem of torture, did not ensure a sufficient deterrent effect to prevent such acts in the future (see *Okkalı*, cited above, § 75).

There has thus been a violation of Article 3 of the Convention in the present case.

77. In such circumstances, and independently of the dismissal of the applicants' claim for damages (see paragraph 27 above), the Court finds that they can still claim to be victims of a violation of Article 3. Accordingly, the Government's preliminary objection is dismissed.

2. Conditions of detention

78. The Court notes that the applicants' description of their conditions of detention largely corresponds to the findings of the CPT concerning Prison no. 13 in Chişinău during the period from 2001 to 2004 (findings cited, for instance, in *Becciev v. Moldova*, no. 9190/03, §§ 31 and 32, 4 October 2005). According to the applicants, and this was not contested by the Government, they were detained in Prison no. 3 until March 2004. The Court notes that the applicants were therefore detained for at least some time in the same conditions as those described in the above-mentioned case of *Becciev*. Moreover, conditions of detention in that prison did not improve significantly, even by 2005 (see, for instance, *Modarca v. Moldova*, no. 14437/05, §§ 37, 38 and 60-69, 10 May 2007).

79. Since it has found a violation of Article 3 in the above-mentioned cases concerning the same prison and since the applicants' description of conditions is essentially the same, and is partly confirmed by the Government (concerning overcrowding, see paragraph 63 above), the Court finds a violation of Article 3 of the Convention in respect of the conditions of the applicants' detention in the present case.

II. 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. Damage

81. The applicants claimed EUR 25,000 each for non-pecuniary damage caused to them. They submitted that their case showed a complete disregard for the law and human rights by police officers and a cover-up and complete leniency by the investigators and judges who had examined the case against those officers. Moreover, not only had the applicants been tortured, but they had spent several years in inhuman and degrading conditions of detention.

82. The Government disagreed and submitted that in the absence of a violation of any Article of the Convention the applicants could claim no compensation. In any event, the Government argued that the amount claimed by the applicants was exaggerated, as compared with awards made by the Court in similar cases.

83. The Court considers that the applicants must have been caused a certain amount of stress and anxiety, notably because they were subjected to torture in order to obtain confessions and then detained in inhuman conditions, while the officers who had ill-treated them were never imprisoned or even suspended during the investigation. The leniency of the penalty applied to the officers must have only added to the applicants' suffering. In the light of the facts of the case, and deciding on an equitable basis, the Court awards EUR 15,000 to each of the applicants.

B. Costs and expenses

84. The applicants claimed a further EUR 2,125 for legal costs and expenses incurred before the Court.

85. The Government contested the amount and argued that it was excessive.

86. The Court awards the applicants EUR 2,000 jointly for legal costs and expenses.

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 loss of victim status by the applicants;

2. *Declares* admissible the complaints under Article 3, and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants' ill-treatment and the State's failure both to comply with their procedural obligations to investigate the applicants' ill-treatment and to ensure the imposition of deterrent sentences on those responsible, as well as in respect of the inhuman conditions of detention;

4. *Dismisses* the Government's preliminary objection;

5. *Holds*

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

(i) EUR 15,000 (fifteen thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros) jointly in respect of costs and expenses, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President