



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

FOURTH SECTION

CASE OF LIPENCOV v. MOLDOVA

(Application no. 27763/05)

JUDGMENT

STRASBOURG

25 January 2011

FINAL

25/04/2011

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

In the case of Lipencov 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,

Ledi Bianku,

Mihai Poalelungi,

Vincent A. de Gaetano, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 4 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 27763/05) 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 Valentin Lipencov and Mrs Lilia Lipencov (“the applicants”), on 27 July 2005.

2. The applicants were represented by Ms N. Mardari, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicants alleged that the first applicant had been treated in an inhuman and degrading manner by police and that the authorities had failed to investigate their complaint. They further alleged that the conditions in which the first applicant had been detained were incompatible with Article 3 of the Convention. Additionally, they complained that the final part of the first applicant's detention had been unlawful, and that their home had been unlawfully searched by police.

4. On 21 November 2006 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 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1987, and is the son of the second applicant, who was born in 1966. They live in Chişinău. The first applicant was 17 years old at the time of the events giving rise to the present application. According to the second applicant, he has an intellectual impairment and has been medically supervised by a psychiatrist since childhood. In view of his condition, he received his schooling at home.

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

7. According to police records, the first applicant was arrested by police officers at 10 a.m. on 24 October 2004 after they were called to a private apartment building where the applicant had already been apprehended by some of the residents.

8. According to the applicants, he had been taken to the building forcibly by two persons of his acquaintance who had accosted him in the street some hours earlier and assaulted him. Their intention had been to push him from the roof of the building, but their presence had been detected by three of the residents. Believing that there was a robbery in progress, these men seized the first applicant and beat him. He had already sustained some injuries when the police arrived. The applicants maintained that he received a further beating from the police.

9. According to the Government, at the time of his arrest the first applicant was already under police suspicion of having committed a number of thefts. An ordinance had been issued against him charging him under Article 186(2) of the Criminal Code. As he had failed to present himself to the police to be informed of the charge, an ordinance to search for him was issued by a prosecutor on 22 October 2004. On the morning of 24 October the first applicant was caught in the act of theft inside an apartment building. As for his injuries, the Government speculated that these could have been caused by the persons who apprehended him, or may have been self-inflicted when the applicant had tried to conceal himself in a ventilation duct.

10. The applicants alleged that following his arrival at Ciocana police station, the first applicant was punched by police officers and beaten with rubber truncheons in an attempt to make him confess to a number of thefts. He was repeatedly sworn at and refused food, drink and access to the toilet. No medical treatment was provided for his injuries.

11. The second applicant stated that she came to the police station that same day to visit him and to give him food and clothes, but was not permitted to see him. The applicants maintained that the following day,

25 October, the first applicant was taken by the police to a marketplace for certain procedural acts. No lawyer was present. The applicant's other son witnessed this, and noted his brother's visible injuries. That afternoon, between 3 p.m. and 5.30 p.m., the first applicant was questioned by police officers in the presence of a lawyer as well as of the second applicant. During the interrogation, the first applicant complained of pain in his head and of strong nausea. It appeared to the second applicant that he had been badly beaten, and he was hungry. Despite his complaints, he was required to answer the questions put to him and was refused access to the toilet. After the interrogation he was returned to his cell, having received no medical assistance.

12. On the morning of 27 October 2004, the second applicant returned to the police station, expecting that her son would be released by 10 a.m., which marked the end of the 72-hour period during which he could be detained without a court order. She was denied access to the building. The first applicant was again taken to the marketplace for undisclosed purposes. He was brought back at 3.20 p.m. The second applicant, assisted by three lawyers from the Helsinki Committee for Human Rights in Moldova, requested the first applicant's release, which was initially refused. According to police records, he was eventually released at 4.30 p.m. that day.

13. The day after his release, the first applicant underwent a medical examination. This recorded a bruise covered with a red-brown crust measuring 2x1 centimetres on the right side of his head, and an adjacent one measuring 3x2 centimetres. A similar bruise measuring 2x0.7 centimetres was found in his right parietal region. Multiple oval bruises were found on his right, central and left lumbar region, covered by a brown crust and each measuring 7x0.8 centimetres. The doctor noted the first applicant's explanation of what happened to him (see paragraphs 8 and 10 above) and concluded that this was consistent with the injuries recorded. The applicant attended a hospital for treatment for eight days.

14. The second applicant made several written complaints to the authorities regarding the events set out above. On 26 October 2004 she complained to the Prosecutor General's Office and to the investigating judge of the ill-treatment of her son by the police. She referred to his intellectual disability and to the fact that he was a minor. On 5 November 2004 she lodged a complaint with the investigating judge and described the events of 27 October 2004. She referred, *inter alia*, to Articles 165 (1) and 166 (4) of the Code of Criminal Procedure (see below) and asked that those responsible for abusing her son be punished. On 9 November 2004 the second applicant complained to the Prosecutor General's Office that her apartment had been searched the previous day by the police, who had refused to identify themselves or show a search warrant. She requested that those responsible be identified and punished.

15. All of these complaints were investigated by prosecutor S. of the Ciocana prosecutor's office. He interviewed the applicants, other family members, the lawyer who attended the interrogation on 25 October, the applicants' neighbours, and the police officers involved. By a letter of 13 December 2004 the prosecutor informed the second applicant that he had decided not to initiate a criminal investigation since there was no evidence that the police had committed a crime. He added that "in view of the irregularities that have been allowed, a note was sent to the Ciocana police station".

16. On 28 December 2004 the second applicant challenged the prosecutor's decision before the investigating judge. In her complaint, she reiterated the circumstances of the case and submitted that the first applicant had been ill-treated by the police during his detention; that he had not been given any medical assistance even though he clearly needed it; that she had been refused access to him; that he had been detained for more than 72 hours contrary to the law; and that an unlawful search had taken place at the applicants' apartment on 8 November 2004. She criticised the prosecutor's answer as very general. Although he mentioned that the police had committed "certain irregularities", he had not explained what these were and had not provided a copy of the note sent to the Ciocana police station. Moreover, the prosecutor had not sent a reasoned decision, as required by law. The complaint referred to both the substantive and procedural obligations of the authorities under the Convention in respect of the first applicant's ill-treatment and the obligation to respect the inviolability of their home.

17. On 6 January 2005 the investigating judge of the Ciocana District Court rejected the complaint as unfounded. He found that the first applicant had been accused of a number of thefts and that all the investigative acts had been carried out within the framework of lawfully conducted criminal proceedings. Since the first applicant had failed to appear before the investigator after several summonses had been sent to him, it had been necessary to be compel his attendance at the police station. All procedural acts that had required authorisation had been properly authorised. Moreover, the prosecutor had fully and objectively verified the complaints concerning ill-treatment and had found no confirmation of the allegations.

18. That decision was final. It was sent to the second applicant on 21 January 2005 and reached her on 27 January 2005.

II. RELEVANT DOMESTIC LAW

19. The relevant domestic law has been set out in *Mancevschi v. Moldova* (no. 33066/04, § 26, 7 October 2008).

20. In addition, the relevant provisions of the Code of Criminal Procedure read as follows at the material time:

Article 165. Notion of short-time arrest

“1. Short-time arrest is the deprivation of liberty for a short period, but not exceeding 72 hours, in accordance with the law. ...”

Article 166. Grounds for short-time detention of a person suspected of a crime

... 4. Detention of a person in accordance with the present Article cannot exceed 72 hours from the moment when the deprivation of liberty started.”

III. RELEVANT NON-CONVENTION MATERIALS

21. The European Committee for the Prevention of Torture has visited Moldova several times, and has inspected Ciocana police station. The following extract, taken from the report of the visit of 27-31 July 2009, is relevant to the present case:

“29. The right of persons in police custody to have *access to a doctor* (including to one of their own choice), is still not expressly guaranteed by law. In the report on the 2007 visit, the CPT considered that the form of words in Section 64, paragraph 2, subparagraph 15 of the CCP (i.e. the right “to submit requests, including for independent medical assistance”) fell short of meeting the Committee's long-standing recommendation in this respect. Many persons who were in police custody in the context of the April 2009 events complained that, despite repeated requests for independent medical assistance, they had been refused such assistance. In some cases, police staff allegedly denied access to a doctor in order to obtain a confession or other statement from the injured detained persons concerned. Further, it appeared in a few cases of persons who had presented visible injuries that medical care had not been provided to them on the grounds that they had not specifically requested it. Such situations not only deprive detained persons of a safeguard which can play a significant role in the prevention of ill-treatment, but it may also have serious repercussions on the health of persons in police custody. Clearly, access to an independent doctor should not be left to the discretion of police officers.”

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION**

22. The applicants complained under Article 3 of the Convention of the first applicant's ill-treatment by the police during his detention and the authorities' failure to conduct a proper investigation into the complaints concerning ill-treatment. They also complained of the failure to give the first applicant medical assistance and of the very poor conditions in which

he was detained. The second applicant complained that her son's ordeal had caused her intense anguish. Article 3 reads as follows:

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

A. Admissibility

1. The parties' submissions

23. The Government submitted that the complaint about ill-treatment should be declared manifestly ill-founded since the applicants had not immediately complained of it, but had only raised it with the authorities in December 2004, thereby depriving them of the opportunity of investigating immediately. In their opinion, no relevant and conclusive evidence had been presented that would substantiate the allegation that the police had ill-treated the first applicant. The Government further argued that the applicants had failed to exhaust domestic remedies in relation to their complaint of inhuman and degrading conditions of detention. They could have complained under Articles 274 (6) and 313 of the Code of Criminal Procedure (CCP).

24. The applicants observed that the second applicant had submitted written complaints almost immediately, and that she had in fact made use of the remedy referred to by the Government, i.e. a complaint to the investigating judge, but that it had proved ineffective.

2. The Court's assessment

25. The Court finds, having regard to the various complaints filed by the second applicant from 26 October 2004 onwards, that the applicants did in fact raise their complaint of ill-treatment with the competent authorities, who dismissed it by a final decision. Domestic remedies have therefore been exhausted in this respect. Furthermore, in view of the medical evidence provided on the injuries sustained by the applicant, the complaint of ill-treatment cannot be considered manifestly ill-founded.

26. As for the complaint about the conditions in which the applicant was detained, the Court notes from the file that the applicants also raised various aspects of this, namely the failure to provide medical treatment to the first applicant, the restrictions placed on contact between the first and second applicants, restricted access to the toilet, and limited food and water. The Government's objections must accordingly be dismissed as regards these points too. The Court considers that these complaints involve questions of fact and law which are sufficiently serious to warrant an examination of the merits, and that no grounds for declaring them inadmissible have been established. It therefore declares them admissible.

27. The complaints under Article 3 have been made in the name of both applicants. The victim status of the first applicant is beyond question. The second applicant has described herself as an “indirect victim” who had been deeply worried about her son's welfare during the time he was detained, in view of his age and his disability. While not doubting that the events described above were a cause of anxiety and distress to her, the Court considers that it is only required to examine these complaints with respect to the first applicant (*Glass v. the United Kingdom*, no. 61827/00, § 72, ECHR 2004-II).

B. Merits

1. The parties' submissions

28. The applicants submitted that the first applicant was badly beaten by the police at the point of arrest and later at the police station, causing the injuries recorded by the doctor the day after his release. The police also humiliated him. This treatment had been compounded by the failure to provide any medical assistance, by restricting contacts with the second applicant and by the failure to provide adequate food and allow reasonable access to the toilet. The first applicant's age and vulnerable state were aggravating factors. The treatment he had endured was inhuman and degrading. Moreover, the authorities failed to conduct an effective investigation into the complaints of ill-treatment. They had instead reached a hasty and perfunctory conclusion for which no reasons were given.

29. The Government denied any responsibility on the part of the police for the first applicant's injuries, arguing that there was no plausible evidence to support the applicants' allegations. It was only after his release that the first applicant had sought to blame the police. The second applicant had not been directly informed of her son's arrest since he had given the name of another person that should be contacted. As for medical assistance, the Government indicated that this would have been provided had it been requested, but no such request was mentioned in the custody record. The Government further asserted that the second applicant's complaints had been the subject of an efficient and impartial investigation. The results of the investigation had led the competent authorities to conclude that there had been no wrongdoing on the part of the police.

2. *The Court's assessment*

(a) **The allegation of ill-treatment.**

(i) *Recapitulation of the relevant principles*

30. 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 most recently *Gäfgen v. Germany* [GC], no. 22978/05, § 87, ECHR 2010-...).

31. According to the Court's settled case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Gäfgen*, cited above, § 88, *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII; *Mouisel v. France*, no. 67263/01, § 37, ECHR 2002-IX; and *Jalloh v. Germany* [GC], no. 54810/00, § 67, 11 July 2006). The Court emphasises that, in respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention. It reiterates that the requirements of an investigation and the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals (*Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; *Tomasi v. France*, 27 August 1992, § 115, Series A no. 241-A).

32. Persons in custody are in a vulnerable position and the authorities are under an obligation to account for their treatment. The Court's case-law establishes that where an individual is harmed during detention, a strong presumption of ill-treatment will arise (*Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004). It is then for the State to provide a plausible explanation of the situation, failing which a clear issue will arise under Article 3 of the Convention (*Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

33. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*,

18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

(ii) Application of these principles to the present case

34. The medical evidence in this case, which the Government did not contest, showed that the first applicant suffered a severe beating (see § 13 above). In the view of the Court, the severity of this treatment was certainly such as to bring it within the scope of Article 3.

35. The issue to be determined is whether this ill-treatment is attributable to the police. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case (see, among other authorities, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). However, where allegations are made under Article 3 of the Convention, the Court must conduct a particularly thorough scrutiny (see *Ülkü Ekinçi v. Turkey*, no. 27602/95, § 135, 16 July 2002) and will do so on the basis of all the material submitted by the parties.

36. The Government denied any responsibility for the first applicant's injuries, arguing that all of these were sustained before arrest. The Court notes that there is nothing in the file to suggest that the first applicant resisted arrest. The three men who apprehended the first applicant also denied harming him, and confirmed that the police did not ill-treat him. They stated that he received a head wound when he tried to hide in a ventilation duct. The Court observes that this does not fully account for the injuries documented on the first applicant. At the same time, it accepts that some of the first applicant's injuries were sustained before the arrival of the police (see § 8 above). The origin and extent of those injuries are unclear, though. The statements made by the police and the three men suggest that most of the first applicant's injuries were inflicted by the two persons alleged to have brought him to the building in the first place. It does not appear however that the authorities took any steps to question these persons. The Court will revert to this point in considering the procedural aspect of Article 3.

37. Since the first applicant was not medically examined upon arrival at Ciocana police station, his physical condition at that point in time is not known. While some of his injuries, in particular the bruises on his back,

were consistent with his allegations of being struck by truncheons, the possibility that these were inflicted before his arrest cannot be excluded. The Court finds it impossible to establish whether or not the first applicant's injuries were caused as alleged. This calls into question the effectiveness of the investigation into the applicants' allegations, which the Court will consider below (see *Petru Roșca v. Moldova*, no. 2638/05, § 42, 6 October 2009).

38. Even though it has not been established that the first applicant was actively ill-treated by the police, the fact remains that despite his obvious signs of serious injury, he received no medical care or treatment during the whole period of detention. The Government merely stated in their observations that detainees have the right to request medical assistance, and that there was no record of the applicant having made any such request. The Court considers this a wholly inadequate response, all the more so given that the first applicant was a minor at the time. In this respect it refers to and endorses the criticism expressed by the CPT of the attitude taken at Ciocana police station towards detainees requiring medical attention (see § 21 above). The Court therefore considers that the first applicant was subjected to inhuman treatment.

39. In view of these findings, the Court does not consider it necessary to make further findings in relation to the other matters complained of, i.e. regarding contacts between the applicants during the period of detention, food and access to the toilet.

40. The Court concludes that the first applicant has been subjected to inhuman treatment in violation of Article 3 of the Convention.

(b) The authorities' investigation.

(i) Recapitulation of the relevant principles

41. According to the Court's settled case-law, where an individual raises an arguable claim that he has been subjected to ill-treatment by agents of the State unlawfully and in breach of Article 3 of the Convention, that provision, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. Such an investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Gäfgen*, cited above, § 117, with further references). The investigation into serious allegations of ill-treatment must be thorough, with the authorities making a serious attempt to find out what

happened (see *Assenov and Others v. Bulgaria*, 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, §§ 102 *et seq.*). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 104 *et seq.*, ECHR 1999-IV, and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

(ii) *Application of these principles to the present case*

42. In this case, the second applicant promptly raised with the competent authorities allegations of the ill-treatment of her son by police officers even before his detention ended, and drew their attention both to his age and to his intellectual impairment. Shortly afterwards, the results of the medical examination of the first applicant were made known. There was therefore a serious allegation of ill-treatment that called for investigation. This was carried out by a prosecutor, who began his work in a timely manner and concluded it within a matter of weeks. The Court notes from the prosecutor's decision of 10 December 2004 that he interviewed a considerable number of persons in the course of his investigation, including both applicants, three other members of the Lipencov family, the three men who had apprehended the first applicant, several police officers who had been involved in the first applicant's detention at some stage, and the lawyer who had attended the interrogation. The prosecutor also had a copy of the results of the medical examination.

43. The investigation did not succeed in establishing the circumstances in which the first applicant was assaulted. As already mentioned (see § 37 above) it does not appear that the two persons who allegedly accosted and assaulted him some hours earlier were questioned. The Court recalls that the obligation on the authorities under Article 3 to conduct an effective investigation into credible allegations of ill-treatment does not vary according to the status of the alleged perpetrators, i.e. State agent or private party. Such investigation must be capable of both identifying and punishing those responsible (*Macovei and Others v. Romania*, no. 5048/02, § 46, 21 June 2007). Although in this case the prosecutor's decision indicates that he took a relatively detailed approach to the situation, recording both the allegations of the applicants and the denials of the police, the Court considers that the conclusion that there was no evidence of a crime is inadequately reasoned. The prosecutor did not clearly explain why the police version of events should be accepted over that of the applicants. Furthermore, the cryptic reference to "irregularities" that occurred in relation to the first applicant's detention called, in light of the serious allegations made, for further explanation. The Court reiterates the

imperative of 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 (*Okkali v. Turkey*, no. 52067/99, § 65, ECHR 2006-XII (extracts)).

44. The deficiencies noted above were not cured by the subsequent challenge. The investigating judge did little more than assert the lawfulness and correctness of the police's behaviour in relation to the first applicant. The conclusion of the prosecutor was simply endorsed without any further reasoning.

45. The Court therefore finds that the domestic authorities did not fulfil their obligation to investigate thoroughly and effectively the first applicant's complaint of ill-treatment.

46. There has, accordingly, been a violation of Article 3 of the Convention in this respect also.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

47. The applicants complained of a violation of Article 5 of the Convention due to the first applicant's detention for a period longer than was authorised by law. 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;

A. Admissibility

48. The Government did not raise any objection to the admissibility of this complaint. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

49. The applicants complained that the first applicant was not released from police custody for over six hours after the expiry of the maximum period during which a person may be detained without a court order. The Government admitted that this was correct.

2. The Court's assessment

50. The Court finds that on 27 October 2004, the first applicant's detention ceased to be lawful at 10 a.m. Consequently, he was unlawfully deprived of his liberty from that moment until his release that afternoon. There has therefore been a violation of Article 5 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

51. The applicants complained of a violation of Article 8 of the Convention by reason of the unlawful search at their apartment and the failure to investigate properly their complaint concerning that search. They further complained that, in relation to the search on 2 November, that the warrant issued was both imprecise and contained errors. Article 8 reads as follows:

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

52. The Government stated that the applicants' home was searched twice, on 2 November and 21 November 2004, and provided copies of the relevant warrants and search reports. Regarding the applicants' allegation of an unauthorised search on 8 November, the Government enclosed copies of the statements given by the applicants' closest neighbours, neither of whom corroborated the applicants' allegation. The prosecutor had considered the complaint, but had found it to be groundless.

53. The applicants provided a copy of the second applicant's complaint about the alleged search, in which she had provided details of the incident.

They insisted that there had been a flagrant and abusive intrusion into their home.

54. The Court notes, first, that the applicants did not did not raise their complaint about formal irregularities in relation to the search conducted on 2 November 2004 at domestic level. This part of their complaint must therefore be declared inadmissible for failure to exhaust domestic remedies.

55. Regarding the search that allegedly took place on 8 November 2004, there is no firm evidence before the Court that it actually happened. While the second applicant gave a relatively detailed description of the alleged incident in her complaint to the Prosecutor General, there was no corroboration of this in the statements made by the persons living beside the applicants' apartment. One neighbour recalled a search at the beginning of November, which refers more plausibly to 2 November rather than 8 November, and did not mention any of the commotion described in the second applicant's complaint. The other neighbour stated that he had not heard anything. Although the applicants consider that the prosecutor treated their complaint in a superficial manner, the fact that the neighbours were interviewed soon afterwards indicates that he took some action on the complaint. The situation in the present case can therefore be distinguished from that in *H.M. v. Turkey*, no. 34494/97, §§ 28-29, 8 August 2006, in which the Court found a procedural violation of Article 8 on account of the Turkish authorities' failure to investigate properly that applicant's complaint of an illegal search of his home. The Court therefore considers that the applicants have not substantiated this complaint.

56. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicants claimed 4,000 euros (EUR) in respect of the non-pecuniary damage caused to the first applicant by the violation of Article 3, and EUR 2,000 in respect of non-pecuniary damage caused by the violation of Article 5. The applicants did not allege any pecuniary damage.

59. The Government did not comment on these claims.

60. Having regard to the substantive and procedural violations found under Article 3 of the Convention (see paragraphs 42 and 48 above), and the violation of Article 5 (see paragraph 52 above), the Court finds it appropriate to award the first applicant the sum of EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

61. The applicants also claimed EUR 1,680 in legal costs, their lawyer having billed them for 21 hours' work on their application at a rate of EUR 80 per hour.

62. The Government did not comment on this claim.

63. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 for the legal costs incurred by the applicants in bringing their case before the Court.

C. Default interest

64. 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. *Declares* inadmissible the complaint under Article 8, and the remainder of the complaint admissible;
2. *Holds* that there has been a substantive violation of Article 3 of the Convention in respect of the failure to provide medical treatment to the first applicant;
3. *Holds* that there has been a procedural violation of Article 3 in respect of the authorities' duty to investigate effectively the first applicant's allegations of ill-treatment by the police;
4. *Holds* that it is not necessary to examine the other complaints raised under Article 3;

5. *Holds* that there has been a violation of Article 5 of the Convention in relation to the first applicant;
6. *Holds*
 - (a) that the respondent State is to pay the first applicant, 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 the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, 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;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 25 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President