



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

THIRD SECTION

CASE OF BISIR AND TULUS v. MOLDOVA

(Application no. 42973/05)

JUDGMENT

STRASBOURG

17 May 2011

FINAL

17/08/2011

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

In the case of Bisir and Tulus v. Moldova,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

Mihai Poalelungi,

Kristina Pardalos, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 12 April 2011,

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

PROCEDURE

1. The case originated in an application (no. 42973/05) 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 four Moldovan nationals, Mr Ivan Bisir, Mr Ivan Tulus, Ms Svetlana Bisir and Ms Elena Tulus (“the applicants”), on 28 November 2005. The first and the second applicants are also Bulgarian nationals.

2. The applicants were represented by Mr V. Oltu and Ms D.I. Straisteanu, lawyers practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicants alleged, in particular, breaches of Articles 3, 5, 8 and 13 of the Convention.

4. On 1 February 2010 the Court decided to give notice of the application to the Government. On the same date the Bulgarian Government were informed of their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1(b), but they did not communicate any wish to avail themselves of this right. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are two married couples who were born in 1968, 1966, 1970 and 1969 respectively and live in Chişinău.

6. On 3 June 2005 all the applicants were attending a wedding party. At 9.30 p.m. the wedding party was interrupted by masked police officers who arrested the first and second applicants. The applicants were informed later that they had been arrested on suspicion of forging a contract and swindling a large amount of money from a third company.

7. Later in the evening, between approximately 12 midnight and 3 a.m., masked police officers conducted a search of the applicants' houses. On unspecified dates the third and fourth applicants contested the legality of the search arguing that it had been carried out in breach of the law. They complained that the searches had been conducted during the night and that the police officers had not had a court order indicating what they were authorised to search for. The complaint was finally dismissed by the Supreme Court of Justice on 11 October 2005.

8. In the days following the applicants' arrest the prosecutor's office issued a press statement in which it was said that the first and second applicants were members of a criminal gang.

9. On 6 June 2005 a judge from the Râscani District Court issued a detention warrant for the first and second applicants for a period of thirty days. The reasons relied upon by the judge were that the applicants were suspected of having committed a serious offence punishable with more than two years' imprisonment and that they could abscond or obstruct the investigation.

10. The applicants' lawyers appealed arguing, *inter alia*, that there was no reasonable suspicion that the first and second applicants had committed a criminal offence. In any event, there were no reasons to believe that the applicants, who had families and children, would abscond or hinder the investigation.

11. The appeals were dismissed by the Court of Appeal and the first two applicants' detention was extended several times on similar grounds until 11 November 2005. All the *habeas corpus* requests made by the applicants were dismissed up until that date.

12. In the meantime the first and second applicants were detained in the detention facility of the Centre for Fighting Economic Crime and Corruption ("the CFECC"). On a few occasions the first applicant was taken to a prison hospital as a result of a hunger strike and health problems. He was also seen on several occasions by independent doctors. On 12 October 2005 the first applicant was seen by a doctor of his choice who concluded

that he would need to be programmed for repeated surgery to his back. The second applicant was detained for fifty-three days in solitary confinement in a room which was poorly lit and had only a small window. According to him, his sight diminished by at least ten per cent as a result.

13. At one point in July 2005 both applicants requested to be transferred temporarily to another detention facility and their request was granted on 5 August 2005. On 26 September 2005 the applicants asked for cable television to be installed in their cells. This request was not granted on the ground that the applicants had been moved in the meantime to another detention facility. The applicants requested permission to receive numerous visits from family and lawyers which appear to have been granted.

14. On 6 September 2005 while the first applicant was being detained in a prison hospital, several police officers conducted a search of his cell. When the first applicant asked for the reason for conducting the search, he was allegedly kicked in the abdomen and then in the back, where he had recently had surgery, and lost consciousness. He was then dragged out of the cell and left lying in the corridor. After regaining consciousness and trying to stand up he was kicked and punched again and lost consciousness two more times. The first applicant's account of the events was confirmed by his cellmate, who wrote an affidavit to the applicant's lawyer to that effect. The Government disputed the allegations concerning the first applicant's ill-treatment by the police and submitted that his injuries had either been self-inflicted or sustained as a result of his falling over.

15. On 7 September 2005 the first applicant lodged a complaint of ill-treatment with the prosecutor's office.

16. Two medical reports dated 7 and 29 September 2005 indicated that the first applicant had multiple bruises and scratches on his forehead, chest, stomach, arms and back. The medical report concluded that the injuries had been caused by blows from a small, blunt object, possibly as a result of being beaten on 6 September 2005.

17. On 14 October 2005 the prosecutor's office dismissed the applicant's complaint of ill-treatment. The applicant appealed to the Râscani District Court, which, on 23 December 2005, upheld the appeal and ordered the prosecutor's office to re-examine the case. The District Court found, *inter alia*, that the prosecutor's office had failed to question the first applicant's cellmate and other persons present at the search of 6 September 2005.

18. On 9 February 2006 the prosecutor's office asked a forensic medicine institute to determine whether the injuries present on the first applicant's body after the incident of 6 September 2005 could have been caused by falling over and whether the injuries to his hands could have been caused by handcuffs. On the same date the forensic medicine institute replied that it was possible that the injuries to the first applicant's back, forehead and arms had been caused by his fall. Some of the injuries to his

wrists had been caused by the handcuffs while others and the bruises on his stomach could have been self-inflicted since the area had been accessible to the applicant's hands.

19. On 10 February 2006 the prosecutor's office again dismissed the first applicant's complaint of ill-treatment after having questioned the police officers who had participated in the search of the first applicant's cell on 6 September 2005. All the officers stated that the first applicant had lost consciousness after the beginning of the search and fallen over. Relying on the forensic report of 9 February 2006 the prosecutor's office concluded that the injuries to the applicant's back and forehead and the scratches on one of his arms had been caused by his fall. It further concluded that the scratches on the applicant's elbows and the bruises on his stomach had been self-inflicted, while the scratches on his wrists had been caused by the handcuffs.

20. On 24 October 2006 the prosecutor's office decided to drop the criminal charges against the first and second applicants for lack of evidence of their guilt.

II. RELEVANT DOMESTIC LAW

21. The relevant provisions of Law no. 1545 on compensation for damage caused by illegal acts of criminal investigation bodies, prosecution authorities and courts, read as follows:

Article 1

(1) Individuals and legal entities are entitled to compensation for non-pecuniary and pecuniary damage caused by:

- a) unlawful arrest, detention, indictment, or conviction;
- b) unlawful search carried out during an investigation or trial, confiscation or restriction of property, dismissal from employment, or other procedural acts that limit individual rights;
- c) unlawful administrative arrest, community service order or fine;
- d) the carrying out of investigative measures in breach of lawful procedure;
- e) unlawful seizure of accounting or other documents, money or stamps, or freezing of bank accounts.

(2) The damage caused shall be fully compensated, irrespective of the degree of culpability of the agents of the criminal investigation bodies, prosecution authorities and courts.

Article 4

A person shall be entitled to compensation in accordance with the present law when one of the following conditions is met:

- a) the pronouncement of an acquittal judgment;
- b) the dropping of charges or discontinuation of an investigation on the ground of rehabilitation;
- c) the adoption of a decision by which an administrative arrest is cancelled on the grounds of rehabilitation;
- d) the adoption by the European Court of Human Rights or by the Committee of Ministers of the Council of Europe of a decision in respect of damages or in respect of a friendly settlement agreement between the victim and the representative of the Government of the Republic of Moldova before the European Court of Human Rights. The friendly settlement agreement shall be approved by the Government of the Republic of Moldova;...

22. Article 128 of the Code of Criminal Procedure provides that it is forbidden to carry out searches during the night except in cases of *flagrante delicto*.

THE LAW

23. The first and the second applicants complained under Article 3 of the Convention that the conditions of their detention had amounted to inhuman and degrading treatment and that the authorities had failed to provide them with appropriate medical care while in detention. The first applicant also complained of having been ill-treated while in detention and of the authorities' failure to properly investigate his complaint in that regard. Article 3 of the Convention reads as follows:

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

24. The first and second applicants further complained that their detention on remand had not been based on "relevant and sufficient" reasons and that the prosecutor's office had denied them access to the materials of the case file. The relevant part of Article 5 § 3 reads:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

25. The first and second applicants complained in a letter of 10 April 2006 under Article 6 § 2 of the Convention that their right to be presumed innocent had been breached. Article 6 § 2 reads as follows:

“2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

26. The same applicants further complained under Article 8 of the Convention that police officers had carried out unlawful searches of their apartments. In the same letter of 10 April 2006 they also complained that they had not had the right to receive visits from their families during detention. 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.”

27. Lastly, the applicants argued that they had had no effective remedies by which to complain about the alleged violations of Articles 3, 5 and 8, in breach of Article 13 of the Convention which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority”

I. ADMISSIBILITY OF THE CASE

A. The complaint under Article 3 concerning inappropriate medical care and poor conditions of detention

28. The first and second applicants complained that they had not received appropriate medical care while in detention. They also complained of the poor conditions of detention; however, only the second applicant substantiated his complaint by submitting that he had been held for more than fifty days in solitary confinement in a room which was poorly lit and that, as a result, his eyesight had diminished by at least ten per cent.

29. In reply to this complaint the Government submitted that the applicants had not exhausted available domestic remedies and submitted copies of various hand-written requests made by the first two applicants and their lawyer to the prison administration (see paragraph 13 above), the authenticity of which was not contested by the applicants.

30. The Court notes that even assuming that the applicants exhausted domestic remedies, the complaints are ill-founded. The first applicant was examined by independent doctors of his choice and received treatment in a prison hospital. The conclusion of an independent doctor of 12 October 2005 that he was in need of a repeated surgery to his back was not followed

up because the applicant was released soon after. In any event, it does not appear from the doctor's conclusion that the first applicant's state necessitated urgent surgery. The first applicant failed to adduce evidence in support of his allegation that he was in need of any other urgent medical treatment which was not provided to him (*I.D. v. Moldova*, no. 47203/06, § 37, 30 November 2010). In so far as the second applicant is concerned, the Court notes that he did not substantiate in any way the complaint of inappropriate medical care provided to him and it is not clear from his submissions or from the documents submitted by him whether he was in need of any medical care.

31. As to the quality of the conditions of detention, the Court notes that despite being represented before the Court by two lawyers, the first applicant did not substantiate in any way his complaint of poor conditions of detention. The second applicant did not adduce any evidence to show that he or his lawyer had made any requests or complaints to the prison administration concerning his solitary detention or the poor lighting of his cell. In view of the fact that he had made numerous other requests to the prison administration, including to have cable television in his cell (see paragraphs 13 and 29 above), the Court is not persuaded that he was genuinely dissatisfied with his conditions of detention at the material time, namely, with his solitary confinement and the lighting of his cell.

32. Accordingly, the Court concludes that this complaint under Article 3 of the Convention is manifestly ill-founded and therefore inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

B. Complaints under Articles 5 and 8 of the Convention submitted by the first and second applicants

33. The first and second applicants complained that their detention had not been based on relevant and sufficient grounds and that the prosecutor's office had denied them access to the materials of the case file pertaining to the proceedings under Article 5. They also complained under Article 8 of the Convention of the unlawful search of their homes.

34. The Government objected, stating that the first and second applicants had failed to inform the Court that the charges against them had been dropped and maintained that they had failed to exhaust domestic remedies which had become available to them after the charges had been dropped. In particular, it had been open to them to initiate proceedings under Law no. 1545 and claim compensation for the alleged breaches.

35. The first and second applicants objected and argued that Law no. 1545 was not an effective remedy because the merits of their complaints under Articles 5 and 8 had already been considered by the domestic courts at the time of the examination of their *habeas corpus* requests. They also submitted that in the cases of *Sarban v. Moldova*

(no. 3456/05, 4 October 2005) and *Ostrovar v. Moldova* (no. 35207/03, 13 September 2005) the Court had found the remedy under Law no. 1545 to be ineffective.

36. The Court observes that in the case of *Topa v. Moldova* ((dec.), no. 25451/08, 14 September 2010), in respect of a complaint under Article 5 § 3 of the Convention, it held that Law no. 1545 provided an effective framework of redress which the applicant had failed to exhaust after acquittal and, consequently, declared the application inadmissible. The effectiveness of the remedy under Law no. 1545 was confirmed in the case of *Mătăsară and Savițchi v. Moldova* (no. 38281/08, § 75, 2 November 2010), where the Court dismissed the applicants' complaints under Article 5 for failure to initiate civil proceedings under that law. In so far as the cases of *Ostrovar* and *Sarban* are concerned, they have to be distinguished from the present case because the applicants in those cases were not acquitted and, therefore, it was not open to them to initiate proceedings under Law no. 1545.

37. In the present case, the Court does not find any compelling reasons to depart from its recent findings in the cases of *Topa* and *Mătăsară and Savițchi*. Moreover, it notes that under Law no. 1545, it was open to the first and second applicants to also claim compensation for the allegedly unlawful searches of their homes. Since the first and second applicants failed to do this, their complaints under Articles 5 § 3 and 8 must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

C. The complaints under Article 6 § 2 and under Article 8 of the Convention concerning the denial of the right to receive visits from family

38. The first and second applicants complained of a breach of their right to be presumed innocent by the prosecutor's office immediately after their arrest of 3 June 2005. In particular, they submitted that immediately after their arrest the prosecutor's office had issued a press statement in which the applicants were presented as members of a criminal gang. The applicants also complained that during the first period of detention, until 21 July 2005, they had been denied the right to receive visits from their families.

39. The Court observes that the object of the six-month time-limit under Article 35 is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with within a reasonable time and that past decisions are not continually open to challenge. Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts

or measures complained of (see *D.P. and J.C. v. the United Kingdom* (dec.), no. 38719/97, 26 June 2001).

40. Turning to the facts of the present case, the Court notes that the applicants made these complaints for the first time in their letter dated 10 April 2006 (see paragraph 26 above). There is nothing to suggest that the applicants were in any way hindered by the authorities from complaining before that date. Consequently the complaints have been lodged more than six months after the alleged breach took place and must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

D. The complaint under Article 13

41. The applicants complained under Article 13 taken in conjunction with Articles 5 and 8 that there were no effective remedies in Moldova by which to complain of a lack of reasons for the first and second applicants' detention and of the unlawfulness of the search of the applicants' homes. The Court notes that it was open to the applicants under Moldovan law to lodge *habeas corpus* requests (see paragraphs 10 and 11 above) and to challenge the lawfulness of the search in courts (see paragraph 7 above), which they did. The fact that the applicants were not successful in the proceedings does not automatically trigger the lack of effectiveness of the remedies within the meaning of Article 13 of the Convention (see *Straisteanu and Others v. Moldova*, no. 4834/06, § 69, 7 April 2009). Accordingly, the Court concludes that this complaint is also manifestly ill-founded and therefore inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

E. The remaining complaints

42. The Government submitted that the applicants failed to exhaust the remedy provided for by Law no. 1545 and that, therefore, they lacked victim status. The Court considers this as a non-exhaustion problem rather than a victim status issue and notes that Law no. 1545 does not provide any cause of action to victims of ill-treatment or torture. Nor was it open under its provisions to the third and fourth applicants to complain of a breach of their right to respect for their homes. Accordingly, the Government's objection must be rejected.

43. The Court considers that the remaining complaints under Article 3 (about the first applicant's ill-treatment), Article 8 (about the search of the third and the fourth applicants' homes) and Article 13 taken in conjunction with Article 3 (about the lack of effective remedies in respect of the first applicant's ill-treatment) of the Convention raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and that no grounds for declaring them

inadmissible have been established. The Court therefore declares them admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Submissions of the parties

44. The first applicant submitted that he had been ill-treated by police officers during the search of his cell on 6 September 2005. The applicant also contended that the prosecutor's office had failed to properly investigate his complaint.

45. The Government submitted that the first applicant had not been ill-treated during his detention. This had been proved by the statements of police officers who had conducted the search and who had denied any accusation of ill-treatment. According to the Government, the authorities conducted an effective investigation into the applicant's complaint of ill-treatment and established that a part of the applicant's injuries had been caused by his fall, another part had been self-inflicted while the rest had resulted from the use of handcuffs.

B. The Court's assessment

1. General principles

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

47. Where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment (see *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004). It is incumbent on the State to provide a plausible explanation of how the injuries were caused, failing

which a clear issue arises under Article 3 of the Convention (see *Selmouni*, cited above, § 87).

48. 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).

49. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other agents of the State, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such investigation 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, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

50. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Asenov and Others*, cited above, § 103 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 *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq., 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.

2. Application of the above principles to the present case

51. Turning to the facts of the present case, the Court notes that the first applicant sustained numerous injuries on 6 September 2005 while in detention. According to the medical reports in the Court’s possession the

first applicant had multiple bruises and scratches on his forehead, chest, stomach, arms and back.

52. It is the Government's opinion that some of the injuries were self-inflicted and others were caused by a fall. This position is based on the forensic report of 9 February 2006 which did not establish the origin of the first applicant's injuries but rather speculated that some of them could theoretically have been self-inflicted and that others could theoretically have been caused by a fall (see paragraph 18 above). In addition, the Government's position is also based on the account of events given by the accused police officers.

53. The Court notes in the first place that the nature of the injuries to the first applicant's body is consistent with his and his cellmate's account of the events. In spite of this the applicant and his cellmate, who was also present during the search, were not questioned during the investigation. Instead, the investigators entirely relied on the accounts of the police officers accused of ill-treatment, accepting them without question.

54. Moreover, the Court is not convinced by the reasons given by the Government and considers that they have failed to provide a plausible explanation as to how the first applicant's injuries were caused. A mere theoretical possibility that the first applicant's injuries were self-inflicted or that he obtained them as a result of a fall is not sufficient to rebut the strong presumption against the Government in the absence of evidence to the contrary.

55. In the light of the above and on the basis of all the materials before it, the Court considers that the Government have not provided a plausible explanation for the first applicant's injuries and concludes that they were the result of inhuman and degrading treatment while in police custody. Accordingly, there has been a violation of Article 3 of the Convention.

56. Having regard to the deficiencies identified in the investigation (see paragraph 53 above), the Court also concludes that the State authorities failed to conduct a proper investigation into the applicant's allegations of ill-treatment. Thus, there has also been a violation of Article 3 of the Convention under its procedural head.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

57. The third and fourth applicants complained that the search of their homes on 4 June 2005 constituted an interference with their right to respect for their home which had not been in accordance with the law, had not pursued a legitimate aim and had not been necessary in a democratic society.

58. The Government did not make any submissions in respect of the merits of this complaint.

59. The Court considers that the entry of police officers onto the premises of the applicants' homes constituted an interference with their right to respect for home. An interference will contravene Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and furthermore is "necessary in a democratic society" in order to achieve the aim (see the following judgments: *Silver and Others v. the United Kingdom*, 25 March 1983, § 84, Series A no. 61; *Campbell v. the United Kingdom*, 25 March 1992, § 34, Series A no. 233; *Calogero Diana v. Italy*, 15 November 1996, § 28, *Reports* 1996-V; and *Petra v. Romania*, 23 September 1998, § 36, *Reports* 1998-VII).

60. The expression "in accordance with the law" not only necessitates compliance with domestic law, but also relates to the quality of that law (see *Halford v. the United Kingdom*, § 49, *Reports* 1997-III). The Court reiterates that domestic law must indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities so as to ensure to individuals the minimum degree of protection to which citizens are entitled under the rule of law in a democratic society (see *Domenichini v. Italy*, § 33, *Reports* 1996-V).

61. The Court notes that the search of the applicants' homes was carried out during the night of 4 June 2005 between 12 midnight and 3 a.m. Article 128 of the Code of Criminal Procedure provides that it is forbidden to carry out searches during the night with the exception of cases of *flagrante delicto*. Since it was not contended by the Government that the search of the third and fourth applicants' homes fell under the exception provided for in Article 128 of the Code of Criminal Procedure, the Court considers that the interference complained of was not "in accordance with the law" within the meaning of Article 8. Accordingly, there is no need to examine whether the interference pursued a legitimate aim and was "necessary in a democratic society".

62. The Court therefore finds that there has been a violation of Article 8 of the Convention in respect of the third and fourth applicants' right to respect for their home.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

63. The first applicant complained that he had had no effective remedies in respect of his complaint under Article 3 of the Convention concerning ill-treatment by the police.

64. The Court considers that this complaint raises essentially the same issues as those examined in paragraphs 53 and 56 above and that no separate issue arises under Article 13 taken in conjunction with Article 3 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The first and second applicants claimed 30,000 euros (EUR) each for non-pecuniary damage. The third and fourth applicants claimed EUR 10,000 each, also for non-pecuniary damage.

67. The Government contested the claim and argued that it was ill-founded and excessive.

68. Having regard to the violations found above and the fact that all the complaints in respect of the second applicant have been declared inadmissible, the Court considers that an award of compensation for non-pecuniary damage is justified in this case only in respect of the first, third and fourth applicants. Making its assessment on an equitable basis, the Court awards EUR 15,000 to the first applicant, EUR 1,200 to the third applicant and EUR 1,200 to the fourth applicant.

B. Costs and expenses

69. The applicant's lawyers claimed EUR 34,373 for the costs and expenses incurred before the domestic courts and before the Court. They submitted a detailed time-sheet.

70. The Government contested this amount and argued that it was excessive and unsubstantiated.

71. The Court observes that in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred and are reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

72. In the present case, regard being had to the itemised list submitted by the applicants, the above criteria, the complexity of the case and the fact that the majority of the complaints were declared inadmissible, the Court awards the applicants EUR 1,200 for costs and expenses.

C. Default interest

73. 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

1. *Declares* by a majority the complaints under Article 3 of the Convention taken alone and in conjunction with Article 13 in respect of the first applicant and under Article 8 of the Convention in respect of the third and fourth applicants admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a substantive and a procedural violation of Article 3 of the Convention on account of the first applicant's ill-treatment by police officers on 6 September 2005;
3. *Holds* by six votes to one that there has been a violation of Article 8 of the Convention in respect of the third and fourth applicants;
4. *Holds* unanimously that no separate issue arises in respect of the complaint under Article 13 of the Convention taken in conjunction with Article 3 of the Convention;
5. *Holds* by six votes to one
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
 - (i) Mr I. Bisir EUR 15,000 (fifteen thousand euros) for non-pecuniary damage;
 - (ii) Ms S. Bisir EUR 1,200 (one thousand two hundred euros) for non-pecuniary damage;
 - (iii) Ms E. Tulus EUR 1,200 (one thousand two hundred euros) for non-pecuniary damage;
 - (iv) the applicants' representatives EUR 1,200 (one thousand two hundred euros) for costs and expenses;
 - (b) that the above amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable; and
 - (c) 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* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President