



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

THIRD SECTION

CASE OF IPATE v. MOLDOVA

(Application no. 23750/07)

JUDGMENT

STRASBOURG

21 June 2011

FINAL

21/09/2011

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

In the case of Ipate 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 Santiago Quesada, *Section Registrar*,

Having deliberated in private on 17 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 23750/07) against the Republic of Moldova, lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan national, Mr Nichita Ipate (“the applicant”), on 3 May 2007.

2. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that he had been ill-treated while in detention and that there had been no effective investigation into his allegation of ill-treatment.

4. On 20 January 2010 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 1 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Chişinău.

1. The applicant's alleged ill-treatment

6. According to the applicant, he was in pre-trial detention in Prison no. 13 in Chişinău (previously known as Prison no. 3) when he was approached on 2 May 2006 by a prison officer and requested to move to cell 121. The applicant refused to do so until he was given an explanation for the reason for his transfer.

7. On 3 May 2006 three officers approached him and requested him to follow them. As they reached cell 121 he was ordered to go into that cell, which was empty. He refused, asking for an explanation from the prison administration, but was then allegedly assaulted by the officers, helped by two other staff members, who punched and kicked him and hit him with rubber truncheons, then banged his head against the wall, causing him severe pain. They swore at him and told him that they were fed up with his complaints about various alleged violations of his rights. When he could no longer resist, he was pushed into cell 121, where he ran to the window and broke it, took a piece of glass and slit his wrist in the hope that that would stop the ill-treatment and would ensure a visit from a doctor. However, the assailants continued to beat him up in the cell, and then took him to a psychiatrist.

8. According to the Government, the applicant refused all medical assistance on 3 May 2006. According to the applicant, he refused assistance from the doctors of Prison no. 13, who were his attackers' colleagues and could not be trusted to be independent and impartial in their findings.

9. On 4 May 2006 the applicant complained to the governor of Prison no. 13 that he had been ill-treated by prison staff and asked to be seen by medical experts and by representatives of Amnesty International. He declared himself to be on hunger strike until those visits took place. On the same day, the prison administration informed the Ministry of Justice that the applicant was on hunger strike and of the reasons for that form of protest, namely a request to be visited by Amnesty International and a medical expert.

10. On 5 May 2006 the applicant's complaint of ill-treatment was registered with the Prosecutor General's Office.

11. On 12 May 2006 the applicant stopped his hunger strike, informing the prison administration that the reason was his poor state of health. He referred to the failure to allow him to be seen by a medical expert or Amnesty International. On the same day, the prison administration informed the Ministry of Justice that the applicant had stopped his hunger strike.

12. Also on 12 May 2006 the applicant complained to the Ministry of Justice that he had been ill-treated. In reply, the head of the Prison Department of the Ministry of Justice informed the applicant that his complaint had been examined and found to be untrue. In fact, owing to his refusal to comply with the lawful order to move to cell 121, he had been taken there after being handcuffed.

13. On 15 May 2006 the applicant was transferred to Criuleni police station so that he could attend a hearing of his criminal case on 18 May 2006 in that town. Excerpts from his medical file from his stay in that prison included the following statements:

On 16 May 2006: multiple cuts on his left hand; the applicant complains of pain in the thoracic region and the back; need for an examination by a traumatology doctor and a neurologist and for an X-ray of the thoracic region.

On 21 May 2006: the patient declares that three weeks ago he was ill-treated by the staff of Prison no. 3 in Chişinău, when he was kicked in the ribs and liver. At present he complains of pain in the region of ribs nos. V-IX on the right side, with greater pain when breathing in or during physical effort. Recommendation: X-ray of the thoracic region in order to exclude broken bones.

On 26 May 2006: the applicant complains of pain in the left leg, where there is a brownish-grey haematoma measuring 14 x 7cm. On the left hand there is a haematoma measuring 3 x 2 cm and a moderately severe graze measuring 3.2 x 0.2 cm covered with a brown-red crust under the skin.

14. During the court hearing on 18 May 2006 the applicant complained of ill-treatment on 3 May 2006 and asked to be seen by a medical expert to have his injuries confirmed. The court decided to request the doctor from the Criuleni police station to examine the applicant. It also instructed the applicant to ask for a medical examination at Prison no. 13 on his return there.

15. On 30 May 2006 the applicant made another complaint of ill-treatment to the Prosecutor General's Office. He mentioned, *inter alia*, his request to be seen by a medical expert, which had been refused. He also stated that he had at least seven witnesses who could confirm his statements.

16. According to excerpts from the applicant's medical file in Prison no. 13, on 3 May 2006 a medical report was produced which stated "the applicant categorically refused to undergo a medical examination". On 30 June 2006 another medical report was produced, which stated that the applicant had six cuts on his hand.

17. According to documents submitted by the Government, the applicant is considered a violent person prone to conflicts with the prison administration and other detainees, due to which conduct he has been disciplined on many occasions. One such disciplinary measure was applied in February 2006, after the applicant had attacked another detainee. All other disciplinary measures concern the events of 3 May 2006 and thereafter. In their subsequent observations, the Government acknowledged that a number of the decisions to discipline the applicant had been overturned, on procedural grounds, by the courts.

2. *Investigation of the applicant's allegations of ill-treatment*

18. On 15 August 2006 the prosecutor's office informed the applicant that on 14 August 2006 it had decided not to initiate criminal proceedings concerning his complaint of ill-treatment, since no crime had been committed.

19. On 4 December 2006 Criuleni District Court overturned the prosecutor's decision of 14 August 2006 and ordered a re-examination of the case by the prosecutor. The court found, *inter alia*, that the prosecutor had not heard detainees identified by the applicant as having witnessed the ill-treatment. Moreover, no request had been made to Criuleni police station for the medical documents concerning the injuries noted on the applicant's body when he was transferred to that prison on 15 May 2006.

20. On 2 February 2007 the prosecutor adopted another decision, refusing to initiate a criminal investigation into the applicant's alleged ill-treatment. He noted that the applicant's complaint had been received on 28 July 2006. He relied on the medical documents produced in Prison no. 13, which did not confirm the applicant's allegation of ill-treatment on 3 May 2006. He also referred to the fact that the applicant was considered hostile to the prison administration, for which attitude he had been punished many times. Moreover, his resistance to the lawful orders of the prison staff on 3 May 2006, during which he had threatened the lives of prison staff, was the subject of an ongoing criminal investigation.

21. On 3 May 2007 the applicant asked the governor of Prison no. 13 for the video recording of the events of 3 May 2006. He submitted that he had made similar requests on 18 September, 30 October and 13 November 2006, but had received no response.

22. On 8 June 2007 Rîșcani District Court quashed the decision of 2 February 2007, finding that the prosecutor had disregarded the court decision of 4 December 2006 by failing to ask for the medical documents and not hearing the witnesses identified by the applicant. Moreover, the applicant had submitted transcripts of court hearings during which those witnesses had confirmed the applicant's statements concerning ill-treatment. The court ordered a re-examination of the case by the prosecutor.

23. On 13 July 2007 the prosecutor adopted another decision, refusing to initiate a criminal investigation into the applicant's alleged ill-treatment. The prosecutor relied on the same arguments as those in his decision of 2 February 2007. In addition, he referred to two witnesses (A.F. and I.C.) who had declared that they and others had been asked by the applicant to sign a petition declaring that they had witnessed his ill-treatment. They had not seen any ill-treatment, but had signed "to do him a favour". Since the applicant was being examined by a psychiatric panel, it had been impossible to obtain further details from him.

24. On 15 November 2007 Rîșcani District Court rejected the applicant's complaint and upheld the decision of 13 July 2007. The court

found that the prosecutor had fully investigated the circumstances of the case by interviewing members of the staff of Prison no. 13 and examining the applicant's medical reports from that prison. Also, two witnesses (referred to in the previous paragraph) stated that they and everybody else in the cell had signed the petition supporting the applicant to do him a favour, but they had not seen any ill-treatment. One of them added that he had been in a cell near cell 121 and had heard screams, which had made him think that the applicant had been ill-treated, but he had not witnessed any ill-treatment. As for the alleged ill-treatment at Criuleni police station, that had already been investigated in a previous case and did not need to be investigated again.

25. Moreover, the applicant was considered hostile to the prison administration, an attitude for which he had been punished many times. In addition, his resistance to the lawful orders of the prison staff on 3 May 2006, during which he had threatened the lives of prison staff, was the subject of an ongoing criminal investigation.

26. On 2 May 2007 the applicant complained to the governor of Prison no. 13, asking for access to the video recordings made on 3 May 2006. In reply he was informed that such video materials were routinely destroyed thirty to forty-five days after the day of filming.

3. Criminal proceedings against the applicant concerning the events of 3 May 2006

27. On an unknown date after the events on 3 May 2006 mentioned above, a prosecutor initiated criminal proceedings against the applicant for threatening officers of Prison no. 13 with violence. That case was joined with another case against the applicant, in which he was accused of murder.

28. During court hearings on 1 December 2006 and 16 and 18 January 2007 six witnesses were heard, who had been detainees in Prison no. 13 at the time of the events. Witness M.I. stated that he had been detained in cell 123b near cell 121, and had seen the applicant being kicked while on the ground by several prison staff members. He did not hear the applicant swear or throw anything; he had only been shouting at them to stop beating him and asking to be seen by the prison governor. Some ten detainees in his cell signed a petition in which they confirmed the applicant's ill-treatment. Thereafter the prison staff started intimidating them. M.I. was personally threatened to induce him to declare that he had not seen anything.

29. Witness V.Gh. was detained in Criuleni police station when the applicant was detained there in a neighbouring cell. He could see the applicant when the latter was taken to the toilet, half naked, and saw that the applicant had several "apple-size" haematomas on his body.

30. Witness P.I. stated that on 3 May 2006 he was returning together with other detainees from outside the prison under escort and saw a detainee on the floor of cell 121, covered in blood, and being kicked by five or six

prison officers. In the evening he was able to approach cell 121 and ask the person inside whether he needed anything. The person replied that he needed to be seen by a doctor. However, when P.I. told the doctor about that, the latter replied that he had been ordered not to go to cell 121. Another staff member then told him that the applicant was in cell 121.

31. Witness Z.Gh. stated that he had seen the applicant being taken somewhere by two prison staff members, with his hands behind his back, his face almost on the ground, and being beaten on the way.

32. Witness G.I. stated that he had been transferred to Criuleni police station on the same day as the applicant, and that they were placed together in the same cell. The applicant then told him about the ill-treatment and showed the signs of ill-treatment on his body. He was in a bad shape and could not sleep.

33. Witness S.N. had not seen the applicant in the relevant period and had only heard from another detainee that the latter had witnessed the applicant's ill-treatment.

34. On 29 March 2007 the applicant was convicted of the murder of one person and the attempted murder of another. He was also convicted of threatening with violence five officers of Prison no. 13 who had been escorting him to another cell. In this latter respect, the court summarised the witness statements made by various prison officers and detainees (see paragraphs 28-33 above). The court considered that the detainees who had confirmed the applicant's statements concerning his ill-treatment by the prison officers who accused him of threatening them, had made the statements to protect the applicant from criminal liability.

35. On 6 December 2007 the Chişinău Court of Appeal upheld the lower court's judgment. In respect of the events of 3 May 2006 the court referred to the applicant's punishment for breaching prison regulations on 3 May 2006 and the results of the medical examination of some of the staff attacked by the applicant on that day. It considered, like the lower court, that the statements by other detainees had been made with the aim of helping the applicant avoid criminal responsibility. The court added that the applicant's complaints of ill-treatment had been the subject of a separate investigation, and that similar complaints were being examined.

36. On 16 April 2008 the Supreme Court of Justice upheld the lower courts' judgments. That judgment was final.

4. Civil court action lodged by the applicant

37. On 20 October 2007 the applicant lodged a civil court action against Prison no. 13, the Prisons Department, the Prosecutor General's Office and the Ministry of Finance, asking them to determine that he had been ill-treated on 3 May 2006 in Prison no. 13, and claiming damages.

38. On 22 May 2008 Botanica District Court rejected the applicant's action as unfounded, finding that he could not claim any compensation

without a criminal conviction of the prison officers he had accused of ill-treatment. During the hearing on that day the applicant noted that the prosecutor had been well aware of the existence of video materials, as well as that they had been destroyed very soon afterwards, but had done nothing to obtain the materials in order to substantiate his complaint of ill-treatment. In reply, a prosecutor representing the Prosecutor General's Office informed the court that the prosecution had been aware of the fact that Prison no. 13 was under video surveillance, but had decided at that time that video recording was not necessary in view of the other materials in the file, which were sufficient to adopt a lawful decision. Moreover, the materials had been destroyed by the time the verification had taken place.

39. On 15 December 2008 the Chişinău Court of Appeal upheld the first-instance court judgment.

THE LAW

40. The applicant complained under Articles 1, 3, 6, 13 and 14 of the Convention that he had been ill-treated by prison staff on 3 May 2006, that his complaint in that respect had not been investigated and that there was no effective mechanism for the prevention of ill-treatment. The Court considers that the complaints under Articles 1, 6, 13 and 14 essentially repeat that made under Article 3 of the Convention. Article 3 reads as follows:

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

I. ADMISSIBILITY

41. The Government considered that the present application was vexatious, and asked the Court to strike it out of its list of cases. In particular, they considered defamatory and offensive the following passages from the applicant's submissions to the Court:

“... My opinion is that the Soviet mentality and methods used are very present in the words and actions of this new temporary so-called ‘democratic’ Government of the Republic of Moldova”; “... And they [the prosecuting authorities] have never investigated my allegations, because they are like a family (the prosecutors, the guards, the judges, etc.) – that satisfies the interests and the needs of the Government. And anyone, especially a detainee, who makes a complaint against them (allegations of ill-treatment or detention in inhuman and degrading conditions) immediately becomes their no. 1 enemy, and they know how to treat an enemy (by KGB methods)...”; “... These courts denied me the right to have my case tried properly in a civil court. With regret, this is the whole Justice System of the Republic of Moldova. The Court knows better than me and anyone, this completely dysfunctional justice system of Moldova...”; “... The problem is much larger. This is the first case of such

complaints that reached the Court, but in the detention facilities of Moldova such methods are widely practiced by the prison authorities together with the Prosecutor's Office, against detainees who make allegations of ill-treatment against the guards in order to force them to withdraw their allegations from the Prosecutor's Office. It is a very effective tool of the State authorities which is used often and widely and the torture, ill-treatment of detainees in detention facilities goes on uninterrupted. [He] who refuses to withdraw his complaint is charged and then convicted under the same charges of Article 349 of the Criminal Code ... or under Article 321 of the Criminal Code... just upon the same reports made by the guards, just as in my case... It's the Government's problem to sort out, in a democratic way, but not using torture, ill-treatment and such methods and should not submit these reports to the Court as justification for ill-treating me.”.

42. The Government added that the applicant's reference to the alleged ill-treatment of another detainee, T. I., without adducing any evidence thereof, was akin to *actio popularis*. It had aimed at creating a false image of the prosecution and other authorities of human rights violations in Moldovan prisons on a massive scale, an argument which could not serve as a basis for examining an individual case and should therefore be treated as having as its sole purpose to disparage the respondent Government.

43. The Court considers that an application would not normally be rejected as vexatious under Article 35 § 3 of the Convention on the basis that it was “offensive” or “defamatory”, unless it was knowingly based on untruths (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; *Rehak v. the Czech Republic*, (dec.), no. 67208/01, 18 May 2004; and *Popov v. Moldova (no. 1)*, no. 74153/01, § 49, 18 January 2005). However, on the basis of the material in its possession, the Court is unable to conclude that the applicant has based part of his allegations on facts concerning his complaint which he knew to be untrue. Accordingly, this submission is to be dismissed.

44. The Court considers that the applicant's complaint under Article 3 of the Convention raises questions of law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring it inadmissible have been established. The Court therefore declares this complaint admissible.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. The applicant's alleged ill-treatment

45. The applicant complained that he had been ill-treated by prison staff on 3 May 2006. He added that the courts which examined the criminal case against him for threatening the prison staff had not dealt with the issue of whether those officers had ill-treated him.

46. The Government submitted that the applicant had not been ill-treated. He had threatened prison staff and had caused injuries to himself. In order to stop him from disobeying and engaging in provocative behaviour, the prison staff had to handcuff him. He had been known for provocative behaviour while in detention and had also been punished for physically attacking a co-detainee. Moreover, the allegation of ill-treatment was examined by the domestic courts as part of the criminal proceedings against the applicant. The courts found that the applicant had resisted legitimate orders by the prison staff and had threatened them with physical violence, which was a punishable offence. There was no reason to doubt the domestic courts' findings, which had not established that the applicant had been ill-treated. Therefore, the applicant's allegation of ill-treatment was merely his argument in his defence in the domestic proceedings, which had been dismissed by the courts.

47. The Government also submitted an "informative note" written on 12 May 2010 by the head of the organisational and preventive medicine department of the Prisons Department within the Ministry of Justice. According to this document, the applicant had refused all medical assistance on 3 May 2006 in Prison no. 13. As to the medical record made by the medical staff at Criuleni police station (see paragraph 13 above), the document stated that the findings on 16 and 21 May 2006 made no reference to objective evidence of ill-treatment (except for self-inflicted wounds on his arms) and only noted subjective information such as pain on the right side of the chest. A neurological consultation was prescribed, but that could have referred to a neurological condition, with no connection to any alleged ill-treatment. As to the findings made on 26 June 2006, they were made fifty-three days after the date of the relevant events and did not have anything in common with the alleged ill-treatment.

48. 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 its Protocols, 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, for instance, *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII; and *Gäfgen v. Germany* [GC], no. 22978/05, § 87., ECHR 2010-...).

49. The Court reiterates that 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). It is not sufficient for the State to refer merely to the acquittal of the accused police officers in the course of a criminal prosecution, and consequently the acquittal of officers on a charge of assaulting an individual will not discharge the burden of proof on the State under Article 3 of the Convention to show that the injuries suffered by that individual whilst under police control were not caused by the police officers (see *Ribitsch v. Austria*, 4 December 1995, §§ 34, 38, Series A no. 336).

50. In the present case, the Court notes that the parties disagree as to the circumstances in which the applicant was injured. At the same time, it observes that it has not been disputed by the parties that on 15 May 2006, two weeks after the alleged ill-treatment, the applicant was transferred to Criuleni police station and was seen by the local doctor the following day. The doctor noted that the applicant had pain in his chest and back and needed to see a traumatology doctor and a neurologist, as well as to have an X-ray of his pectoral area. Five days later, on the basis of a court order (see paragraph 14 above) another doctor noted that the applicant had complained that he had been beaten by the staff of the prison in Chişinău three weeks earlier; he had been kicked in the ribs and liver. The doctor again prescribed an X-ray of the thoracic region in order to exclude broken bones, which apparently was never carried out. Finally, on 26 June 2006 a doctor noted objective evidence of injuries caused to the applicant (see paragraph 13 above).

51. It has not been argued before the Court that other assaults on the applicant had taken place after the alleged ill-treatment on 3 May 2006 and before the doctors had reported their findings on 15 and 21 May and 26 June 2006. At the same time, the Government did not give any plausible explanation as to the origin of the injuries noted by the doctors at Criuleni police station, injuries which had appeared during the applicant's detention.

52. The Court also notes that the Government did not argue that the applicant had been injured as part of a legitimate use of force which had been made strictly necessary by his own actions. Their position was, rather, that no injuries at all had been caused to the applicant, as established by the doctors at Prison no. 13 and the domestic courts. However, as noted above, that finding is at clear odds with the findings of the doctors at Criuleni police station.

53. On the basis of all the material placed before it, the Court concludes that the Government have not satisfied the burden on them to persuade it that the applicant's injuries were caused otherwise than by his ill-treatment while in custody.

54. In the light of the above, the Court concludes that there has been a violation of Article 3 of the Convention in its substantive limb.

B. Alleged failure to investigate the applicant's ill-treatment properly

55. The applicant complained of a failure by the domestic authorities to carry out an effective investigation into his allegations of ill-treatment, contrary to the requirements of Article 3 of the Convention. His complaint was not immediately forwarded to the prosecutor's office and no medical examination was carried out immediately in order to verify the presence of injuries before they disappeared. Moreover, video materials from the prison which could reveal whether he had in fact resisted the prison staff and attacked them was not requested from the prison authorities and was allowed to be destroyed.

56. The Government considered that a thorough investigation had been carried out which established that there was no evidence of ill-treatment. The prosecuting authorities and courts examined his complaints and found them unfounded, both in response to his complaints and during the criminal proceedings concerning his assault on the prison staff. It was important to note that the applicant had refused any medical assistance on 3 May 2006, which prevented the verification of his claims of ill-treatment. The injuries found on his body ten days later at Criuleni police station did not have anything to do with the events of 3 May 2006. Moreover, two of the witnesses who had confirmed the applicant's version of events later withdrew their statements and confessed that they had signed a petition in the applicant's support in order "to do him a favour". They also noted that the others had signed for the same reason.

57. 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 an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition on 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, and *Boicenco v. Moldova*, no. 41088/05, § 120, 11 July 2006).

58. An 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 *Assenov 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, § 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.

59. In the case of *Batu and Others v. Turkey* (nos. 33097/96 and 57834/00, §§ 133 and 136, ECHR 2004-IV (extracts)) the Court held, *inter alia*, that “whatever the method of investigation, the authorities must act as soon as an official complaint has been lodged” and that “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”.

60. Turning to the facts of the present case, the Court notes that the applicant lodged his complaint with the prison authorities on 4 May 2006, while the prosecutor in charge of the case received that complaint only on 28 July 2006 (see paragraph 20 above). The Court considers that a fifty-five-day delay during which the complaint was forwarded by the State authorities to the relevant prosecutor and during which time there was, accordingly, no investigation into the facts of the case, is inconsistent with the obligation to carry out a prompt investigation, as there is a risk that evidence of ill-treatment disappears as time goes by and injuries heal (see *Pădureț v. Moldova*, no. 33134/03, § 63, 5 January 2010).

61. Moreover, as acknowledged by the prosecution itself (see paragraph 38 above), it considered it unnecessary to request access to the video materials and in any event, by the time it had started looking into the facts of the case the video recording made at the prison had already been destroyed under the regulations in force. The Court cannot speculate as to the content of the video materials in question, and in any event it is primarily for the domestic courts to assess the relevance of such materials for the outcome of any domestic proceedings. However, the Court cannot but note that by allowing an unwarranted and unexplained delay before initiating any kind of investigation the authorities effectively deprived the domestic courts of access to evidence which could have objectively confirmed or disproved the applicant’s claims.

62. The Court further notes the repeated overturning, by the investigating judge, of the prosecutor’s decisions not to initiate a criminal investigation on the basis of the applicant’s complaint of ill-treatment (see paragraphs 19 and 22 above). On each of these occasions the judge referred to the prosecutor’s failure to carry out essential investigating measures, such

as interviewing alleged eyewitnesses to the events of 3 May 2006 and examining the medical records at Criuleni police station which revealed the existence of injuries on the applicant's body. Even though some of those failures had not been rectified (for instance, the examination of medical records at Criuleni police station), the domestic court accepted the prosecutor's decision not to initiate a criminal investigation.

63. Finally, the Court notes that the applicant refused to be seen by doctors from Prison no. 13 after the events of 3 May 2006. However, he declared himself to be on hunger strike and asked to be seen by an independent doctor and Amnesty International, which can hardly be reconciled with the Government's submission that the applicant obstructed any medical examination intended to verify his allegations. The Court reiterates that it has already found that "in accordance with Articles 93, 96 and 109 of the Code of Criminal Procedure, no investigative measures at all could be taken in respect of the offence allegedly committed ... unless criminal proceedings were formally instituted" (see *Guțu v. Moldova*, no. 20289/02, § 61, 7 June 2007). Since the prosecutor did not receive the applicant's complaint until 28 July 2006, any findings of doctors in Prison no. 13 on 3 May 2006 could not have been used for any criminal investigation against the applicant's alleged assailants. Moreover, the prosecutor has not ordered the applicant's examination by a doctor specialising in establishing the existence and nature of physical injuries, which was required by domestic law, but relied on his medical record kept by the prison doctors.

64. The Court notes with concern that the applicant's lack of confidence in the independence of the doctors in Prison no. 13 in proceedings against their colleagues in the same prison was apparently not without foundation: while the doctor at Criuleni police station had clearly found injuries on the applicant's body on 26 June 2006 (see paragraph 13), the doctors in Prison no. 13 did not note any injuries (except the self-inflicted ones on the wrist) only four days later (see paragraph 16 above). This selectivity in noting injuries has not been explained.

65. The Court concludes that the investigation into the applicant's complaint of ill-treatment has been inefficient and protracted as a result of repeated refusals to institute criminal proceedings and the failure to carry out in a timely manner essential investigative measures, as established by the investigating judge. These shortcomings are incompatible with the procedural obligations under Article 3 of the Convention.

66. There has, therefore, been a violation of that provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Non-pecuniary damage

68. The applicant claimed 15,000 euros (EUR) in compensation for the damage caused to him, in particular as a result of his ill-treatment on 3 May 2006.

69. The Government submitted that any award made by the Court would implicitly run counter to the final domestic judgments convicting the applicant, who would therefore be paid for the crime which he had committed. There was no causal link between the damage allegedly caused to him and the compensation sought. In any event, the claims were excessive in the light of the Court’s relevant case-law.

70. The Court considers that its findings in respect of the applicant’s ill-treatment while in detention and the failure to carry out an effective investigation of his complaint are not incompatible with the domestic courts’ finding that the applicant himself had threatened and assaulted prison staff. It notes in this connection that the proceedings in which the applicant was accused of assaulting the prison staff were separate from those in which the applicant tried in vain to have a criminal investigation initiated in respect of his own ill-treatment by the same staff members, and the courts did not decide on that issue (see, for instance, paragraph 35 above).

71. The Court considers that the applicant must have been caused a certain amount of pain and suffering by the violation of his rights protected under Article 3 of the Convention. Ruling on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

72. The applicant claimed EUR 500 for costs and expenses, adding that he had not kept copies of documents proving his expenses.

73. The Government considered that no more than EUR 100 was to be paid to the applicant in case of a finding of a violation, taking into account that he had not been represented and had not submitted any evidence of his expenses.

74. Regard being had to the information in its possession, the Court considers it reasonable to award the applicant the sum of EUR 100 for incidental costs and expenses.

C. Default interest

75. 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* the complaint under Articles 3 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention in its substantive limb;
3. *Holds* that there has been a violation of Article 3 of the Convention in its procedural limb;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) for costs and expenses, to be converted into Moldovan lei at the rate applicable on the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts, at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President