



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

THIRD SECTION

CASE OF BUZILO v. MOLDOVA

(Application no. 52643/07)

JUDGMENT

STRASBOURG

21 February 2012

FINAL

21/05/2012

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

In the case of Buzilo v. Moldova,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Mihai Poalelungi, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 31 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 52643/07) 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 Serghei Buzilo (“the applicant”), on 15 November 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 subjected to severe police brutality and that the authorities had failed to carry out an adequate investigation into the incident, in breach of Article 3 of the Convention.

4. On 27 August 2008 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Chişinău.

6. On 20 November 2006 the applicant, suspected of theft, was allegedly subjected to a beating by police officers in police station no. 7 in Chişinău. Later he was taken to the Botanica District Police Station, where several

police officers allegedly handcuffed him, put a gas mask over his face and beat him with batons and a metal chair for hours.

7. In the morning of 21 November 2006 he was locked in a cell, where he spent the entire day. During the day he lost consciousness several times and asked for medical assistance. At 4 p.m. the applicant was taken to a hospital where he was diagnosed with multiple bruises on his face, a fracture of the left shin and a head trauma with concussion.

8. On 23 November 2006 the applicant was taken to a forensic medical institution for examination. He was diagnosed with multiple bruises on his face, chest, legs and buttocks, a fracture of the left shin and a head trauma with concussion. The medical report stated that:

“The [applicant’s] injuries were inflicted by blows with blunt objects with a limited surface area (*au fost cauzate în rezultatul acțiunii traumatice de un corp contondent cu suprafața limitată de interacțiune*)...

It cannot be excluded that the fracture [of the left shin] ... was caused as a result of [the applicant’s] fall from a height.”

9. On the same day the applicant complained to the Prosecutor’s Office about the ill-treatment to which he had been subjected and requested that the police officers who had ill-treated him be prosecuted.

10. On 6 December 2006 the Botanica Prosecutor’s Office dismissed the applicant’s complaint as manifestly ill-founded. The prosecutor had questioned the applicant, who had reiterated his complaints. He had also questioned two police officers accused of ill-treatment, who had declared that on 20 November 2006 the applicant had attempted to escape from the police station by jumping from the window of a toilet on the second floor. The prosecutor concluded that all of the injuries on the applicant’s body resulted from his fall.

11. The applicant challenged the prosecutor’s decision before the Botanica District Court and argued, *inter alia*, that he had never jumped from the window of the toilet of the police station and that there was no window in that toilet. Moreover, the forensic medical report concluded that only the fracture of his shin could have been caused by a fall.

12. On 31 October 2007 the Botanica District Court upheld his appeal. The court relied on the forensic medical report, which found that most of the applicant’s injuries could only have been caused by blows, and on the applicant’s submission that there was no window in the toilet of the police station.

13. On 21 November 2007 Prosecutor R.D. from the Botanica Prosecutor’s Office again dismissed the applicant’s complaint about ill-treatment. The prosecutor again questioned the police officers accused of ill-treatment, who repeated their account of the applicant’s jump from the window. This time the police officers added that after jumping from the window and breaking his shin, the applicant had attempted to escape and

resisted arrest and that they had been forced to apply force and special techniques, thus causing the other injuries on his body. The prosecutor also questioned a third party, who worked in an office in the police station and who confirmed the accounts of the police officers. The third party also added that he had heard the applicant shout that he would mutilate himself in order to accuse the police later of ill-treatment. Finally, the prosecutor stated that he had checked the toilet of the police station on the second floor and had found that it had a large window.

14. The applicant challenged the prosecutor's decision before the Prosecutor General's Office and the investigation was reopened. A further forensic report dated 12 March 2008 was obtained, which excluded the possibility that all the injuries on the applicant's body could have been sustained as a result of a jump from the height of the second floor or a fall from the applicant's own height.

15. On 11 July 2008 the Prosecutor's Office indicted the two police officers accused of ill-treating the applicant and one week later referred the case to a court.

16. On 10 March 2009 the Botanica District Court found the accused police officers guilty of acts of torture in respect of the applicant. The court relied on the forensic reports which contradicted the police officers' version of events concerning the origin of the applicant's injuries and relied on the testimony of a witness who had heard sounds of ill-treatment and shouts from the office where the applicant was questioned and who had seen the applicant lying on the floor when the door opened. The police officers were given a suspended sentence of five years' imprisonment and banned from working at the Ministry of Internal Affairs for three years.

17. On 9 November 2009 the Chişinău Court of Appeal dismissed the appeals lodged by the Prosecutor's Office, the applicant and the accused police officers and upheld the judgment of the Botanica District Court.

18. On 25 May 2010 the Supreme Court of Justice upheld the appeal on points of law lodged by the Prosecutor's Office and ordered the reopening of the proceedings before the Chişinău Court of Appeal. It found, *inter alia*, that the sanction imposed on the accused police officers was too lenient.

19. On 21 December 2010 the Chişinău Court of Appeal re-examined the appeal against the judgment of 10 March 2009 and acquitted the accused police officers. The Court has not been provided with a copy of the judgment of the Court of Appeal. The Prosecutor's Office appealed against that judgment and on an unspecified date the Supreme Court of Justice quashed the judgment of 21 December 2010 and ordered a fresh examination by the Chişinău Court of Appeal of the appeal against the judgment of 10 March 2009. The proceedings are still pending before the Court of Appeal.

II. RELEVANT DOMESTIC LAW

20. The relevant provisions of the Criminal Code read as follows:

Article 309 Extorting of confessions

“(1) The act of forcing someone to confess to a criminal offence or to make statements during questioning, by means of threats or by other illegal means on the part of the person carrying out a criminal investigation ... shall be punishable by imprisonment of up to three years ...

(2) The same act accompanied by:

(a) violence;

(b) cruel, inhuman or degrading treatment;

...

Shall be punishable by imprisonment of three to eight years ...”

Article 309 § 1 Torture

“(1) Intentionally causing intense physical or mental pain or suffering, especially with a view to obtaining information or testimonies ... shall be punishable by imprisonment of two to five years. ...

(3) The actions referred to in paragraph 1 ..., carried out:

(c) by two or more persons;

(e) with the use of special instruments of torture or other objects adapted for that purpose;

(f) by an official,

shall be punishable by imprisonment of five to ten years ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

21. The applicant complained of ill-treatment while in police custody and of a lack of an effective investigation in that connection. Article 3 of the Convention reads as follows:

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

A. Admissibility

22. The Government submitted that the investigation into the events of the present case is still being conducted and no final decision has yet been taken at the domestic level. For that reason, they maintained that the application was premature and that the applicant had failed to exhaust the domestic remedies available to him.

23. The Court reiterates that the purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Consequently, States are dispensed from answering for their acts before an international body before they have had the opportunity to put matters right through their own legal systems (see, for example, *Remli v. France*, 23 April 1996, § 33, *Reports of Judgments and Decisions* 1996-II; and *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

24. In the instant case it is true that the proceedings are still pending before the domestic courts. Nevertheless, the Court finds that the question of the exhaustion of domestic remedies is inextricably linked to the merits of the complaint under Article 3 of the Convention, namely, with the problem of the effectiveness of the investigation into the applicant's allegations of ill-treatment. Therefore, it considers that both questions should be joined and examined together (see *Mikheyev v. Russia*, no. 77617/01, § 88, 26 January 2006).

25. The Court further notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring the application inadmissible has been established. It must therefore be declared admissible.

B. Merits

26. The applicant submitted that he had been tortured during his detention and that the authorities had failed to properly investigate his complaint.

27. The Government chose not to make any submissions in respect of the merits of the case and submitted that they would be ready express an opinion only after the termination of the proceedings at the domestic level.

28. 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* 1998-VIII).

29. Where an individual has an arguable claim that he has been tortured while in the hands of agents of the State, the notion of an “effective remedy” entails, in addition to the payment of compensation where appropriate and without prejudice to any other remedy available in domestic law, a thorough and effective investigation. The kind of investigation that will achieve those purposes may vary according to the circumstances. However, whatever the method of investigation, the authorities must act as soon as an official complaint has been lodged. Even when strictly speaking no complaint has been made, an investigation must be started if there are sufficiently clear indications that torture or ill-treatment has been used (see, among other authorities, *Özbey v. Turkey* (dec.), no. 31883/96, 8 March 2001). The authorities must take into account the particularly vulnerable situation of victims of torture and the fact that people who have been subjected to serious ill-treatment will often be less ready or willing to make a complaint (see *Aksoy v. Turkey*, 18 December 1996, §§ 97-98, *Reports* 1996-VI).

30. It is beyond doubt that a requirement of promptness and reasonable expedition is implicit in this context. A prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, among other authorities, *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001; and *Özgür Kılıç v. Turkey* (dec.), no. 42591/98, 24 September 2002). While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, it may generally be regarded as essential for the authorities to launch an investigation promptly in order to maintain public confidence in their adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts (see, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 72, ECHR 2002-II).

31. Turning to the facts of the present case, the Court notes that the domestic proceedings are still pending. In the circumstances of the present case it considers it necessary to refrain from reaching a conclusion in respect of the alleged substantive violation of Article 3 of the Convention. That being said, the Court cannot but notice that the proceedings in respect of the applicant’s complaint have been pending before the domestic authorities for almost five years. The Prosecutor’s Office was very slow in

initiating the proceedings and it dismissed the applicant's complaint twice on grounds which appear to have been based on a superficial investigation. In particular, in dismissing the complaint for the first time, the Prosecutor's Office appears to have relied exclusively on the statements of the accused police officers and disregarded the medical evidence, which was inconsistent with the accused police officers' version of the facts. In dismissing the complaint for the second time, the Prosecutor's Office again appears to have overlooked the inconsistency of the statements of the accused police officers with the medical documentation on some of the applicant's injuries. Moreover, no question appears to have been raised in respect of the sudden change in the statements of the accused officers in order to better accommodate the findings in the medical reports. Only in August 2008 did the Prosecutor's Office remit the case to the courts. The situation does not appear to have improved in the proceedings before the courts, where the case has been pending for more than three years and where the Supreme Court has already ordered a re-examination on two occasions.

32. Judging by the materials in its possession, the Court is not persuaded that the present case presents such complexity as to require such a long time to be resolved. In the light of the shortcomings identified above, especially during the course of the investigation, and of the overall length of the criminal proceedings against the accused police officers, the Court concludes that the investigation into the applicant's allegations of ill-treatment was not adequate or sufficiently effective. The Court thus dismisses the Government's objection based on non-exhaustion of domestic remedies and holds that there has been a violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 500,000 euros (EUR) as compensation for the breach of his rights guaranteed by Articles 3 of the Convention in respect of pecuniary damage, non-pecuniary damage and costs and expenses. He did not specify which part of that amount referred to each head of just satisfaction. According to the applicant, the amount was to compensate him

for the material losses, mental suffering and expenses incurred during both the domestic and Court proceedings.

35. The Government disagreed with the amount requested by the applicant and argued that he had failed to justify in any way his claim in respect of pecuniary damage and costs and expenses. As to the claim in respect of non-pecuniary damage, the Government submitted that the amount claimed was too high in the light of the Court's previous case-law in Article 3 cases.

36. Having regard to the violation found above and its gravity, the Court considers that an award for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards him EUR 10,000. As for the claims concerning pecuniary damage and costs and expenses, the Court dismisses them in view of the lack of details provided by the applicant.

B. Default interest

37. The Court considers it appropriate that the default interest rate 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. *Joins to the merits* the Government's preliminary objection concerning the exhaustion of domestic remedies by the applicant and rejects it unanimously;
2. *Declares* by a majority the application admissible;
3. *Holds* unanimously that there has been a procedural violation of Article 3 of the Convention;
4. *Holds* unanimously
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Moldovan lei at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 21 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President