



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

THIRD SECTION

**CASE OF GHIȚĂ v. ROMANIA**

*(Application no. 54247/07)*

JUDGMENT

STRASBOURG

23 October 2012

**FINAL**

***23/01/2013***

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



**In the case of Ghiță v. Romania,**

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

Josep Casadevall, *President*,

Egbert Myjer,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 2 October 2012,

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

**PROCEDURE**

1. The case originated in an application (no. 54247/07) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Radu Sorin Ghiță (“the applicant”), on 7 December 2007. The applicant has both Romanian and Canadian nationality.

2. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan Horațiu Radu, of the Ministry of Foreign Affairs.

3. The applicant alleged in particular that he had been subjected to ill-treatment when arrested by two police officers and that the ensuing investigations of his allegations of ill-treatment had not been effective.

4. On 15 June 2010 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).

5. As Mr Corneliu Bîrsan, the Judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mrs Kristina Pardalos to sit as ad hoc judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

**THE FACTS****THE CIRCUMSTANCES OF THE CASE**

6. The applicant was born in 1961 and lives in Bucharest.

### **A. The incident on 3 May 2006 – the applicant’s version**

7. At 1 a.m. on 3 May 2006 the applicant and Ms C.B. were sitting in his car, which was parked in a spot where the street lights were not working. A police patrol of two officers from the Public Order Unit of Bucharest Police Section No. 3 approached the car and asked for their identity papers.

8. The applicant presented his passport and driving licence for inspection. Police officer D.U. asked him, “Do you think you are at border control?” (“*bă, ce te crezi, la vamă?*”) and asked him to present his Romanian identity card (*cartea de identitate*). The police agents checked his identity but then refused to return his papers, claiming that he was drunk. The applicant denied being drunk and offered to go to the Forensic Medicine Institute to have his blood alcohol level tested. The police refused, saying that they were not traffic police.

9. Police officer A.H. took the identity papers and went to the police van. Meanwhile, officer D.U. invited the applicant to step out of his car and prove that he was not drunk. When the applicant got out, the police officer pushed him between his car and the wall of a building. The applicant said: “Poor old chap, you’re behaving like a militiaman” (“*tataie, te porți ca un milițian*”). D.U. immediately handcuffed the applicant with his hands in front. He then pulled the handcuffs down, causing the applicant to fall to the ground.

10. The two officers then kicked him several times, first in the stomach then in the kidneys. His glasses came off and his mobile phone fell to the ground. The applicant started shouting. The two officers pulled him to his feet and hustled him into their van.

11. During this time Ms. C.B. was still inside the applicant’s car and because it was dark she could not see outside. A.H. returned to the applicant’s car and invited Ms. C.B. to accompany them to the police station, which she did. A.H. drove the van and D.U. sat on the back seat with the applicant and continued to punch him in the head, eyes and temples all the way to the police station. The applicant protected his mouth and nose with his handcuffed hands.

12. At the police station the applicant was taken to a room in the basement. His glasses and mobile phone were returned to him. He immediately called M.N., a lawyer friend, and told him that he had been beaten up by police officers. The lawyer asked him to pass the phone to one of the police officers. After a phone conversation between the lawyer and agent A.H., the police took the handcuffs off the applicant and allowed him to leave the station, after asking him not to press charges.

## B. Official reports on the incident

13. The police agents drafted a report on the incident which they dated 3 May 2006. It was registered with Police Section No. 3 on 29 May 2006.

14. They stated that they had approached the applicant's car as they had noticed that the occupants were having sexual intercourse; they had to insist that the applicant present his passport for identification; after obtaining the identity papers, they had asked Ms. C.B. to get into their van while they drafted the offence report (*procesul verbal de contravenție*). At that moment, the applicant became aggressive, threw his glasses, mobile phone and then himself to the ground, shouting that he was being abused by police. Their description of the incident continued as follows:

“To defuse the situation we decided to handcuff [the applicant] and take him and [Ms C.B.] to the [police station]...

We had to use physical force to handcuff [the applicant] because he himself was using physical force against us, trying to push us away while threatening us. He deliberately hit his head on the ground and on the van doors. It was only with difficulty that we managed to protect him from his own violence and agitation.

After the discussions we had at the police station... he calmed down and apologised for his previous behaviour, claiming that he was drunk and got scared that his wife would find out about what had happened that night.

We took note of the change in his behaviour and decided to give him a verbal warning.”

15. Officer D.U. drafted a standard report on the use of force during the incident. He described the incident in a few lines and recorded that he had used physical force and handcuffs. He described the applicant as being under the influence of alcohol and aggressive, refusing to calm down and thus disturbing public order. He left blank the box on the report form concerning any visible injuries on the applicant. He reported that the applicant had been sanctioned with a verbal warning.

Lastly, the police agents wrote an offence report on Ms C.B., whom they fined 500 new Romanian lei (RON) for prostitution. She admitted the offence and signed the report.

## C. The Government's version of facts

16. The Government shared the point of view of the official reports on the incidents. They stated that the police officers had approached the applicant and Ms C.B. that night, informing them that they were about to be fined for engaging in sexual intercourse. Ms C.B. had previously been on trial for prostitution by this time.

The applicant was under the influence of alcohol, refused to present his identification papers and threatened the police officers with allegations that he had relatives in the police hierarchy. He got out of the car and handed his passport to officer D.U., but started shouting that he was being abused by police, then lost his balance, fell to the ground and injured himself. He became aggressive and police agent H.A. had to use handcuffs to restrain him.

#### **D. The medical reports on the applicant's injuries**

17. At 11.35 a.m. on 3 May 2006 the applicant consulted a forensic doctor, who drafted a medical report, noting as follows:

- tumefaction of the right temporal bone with inhomogeneous ecchymosis of approximately 4.4/4.5 cm;
- right upper eyelid showing inhomogeneous purple ecchymosis of approximately 1.5/1.5 cm;
- left lower eyelid showing inhomogeneous purple ecchymosis of approximately 3/1.5 cm; subconjunctival haematoma in the external quadrant of the left eye;
- inhomogeneous purple ecchymosis on the left temporal bone with a subjacent tumefaction of approximately 4.5/4.5 cm;
- red ecchymosis of approximately 3.5/1.5 cm (3.5 cm on the horizontal axis) on the cervical inferior median artery;
- bilateral, radial, red horizontal marks of approximately 3.5/0.5-0.8 cm each around the radio-carpal articulations;
- complaints of headaches, bilateral lumbar pains.”

18. At 12.33 p.m. the forensic doctor noted the existence of bruising and that the temporal bone had not been damaged. The X-ray and ultrasound scan revealed no damage to the lungs, internal organs or spine.

19. The applicant was hospitalised from 29 to 31 May 2006 for further investigation of his severe and persistent headaches. No cranial trauma was discovered.

20. On 6 June 2006 the Mina Minovici National Forensic Institute (“the Forensic Institute”) issued a report reiterating the findings above and concluding as follows:

“[The applicant] had, on the date of the examination by [the Forensic Institute] (3 May 2006) traumatic injuries that could have been produced on the same day by being repeatedly hit with a hard object and possibly through being handcuffed (lesions noted around the radio-carpal articulations bilaterally).

He needed eight to nine days of medical care.”

21. The applicant submitted pictures taken on 4 May 2006 which show bruises on his right temple, bruising around both his eyes and redness around his left eye. He also submitted several pictures of the place where the incident had occurred.

#### **E. Criminal investigation of the incident**

22. On 10 May 2006 the applicant lodged a criminal complaint against the two police officers. The Criminal Investigation Unit of Bucharest Police interviewed the applicant, the two police officers, Ms. C.B. and the applicant's lawyer friend.

23. On 13 July 2006 the applicant was interviewed by the investigators. He presented his version of the events, claiming police brutality. He admitted to having drunk two spritzers and an espresso earlier in the evening of the incident. He said that he had shouted at the police that night, but that he had only been trying to protect himself from their aggressive behaviour.

24. The two officers denied inflicting any violence on the applicant. Their version of the events reiterated the statements made in the official police report of 3 May 2006. They claimed that they had informed the applicant that he and Ms. C.B. were committing an offence, for which they were going to be sanctioned. They stated that the applicant had started shouting and had become violent, thus disturbing public order. They had therefore been forced to take action, by handcuffing him and taking him to the police station.

25. In her statement of 7 July 2006, Ms. C.B. admitted that she and the applicant had been negotiating a price for sexual services when the police had arrived. She said that the applicant had been drunk, loud and abusive towards the police officers. She had seen the applicant fall to the ground and be helped up by the police officers, who had then handcuffed him with his hands behind his back and escorted him to the police station. She did not see the police officers being violent towards him during the incident or at the police station. According to her statement, the applicant hit his eye when he fell to the ground and banged himself on a step.

26. M.N. was interviewed on 18 July 2006. He stated that the applicant had called him that night, had sounded scared and had claimed to have been beaten up by police officers. M.N. stated that the officer had explained over the phone why the applicant had been taken to the police station and informed him that the applicant was not under arrest. Five minutes later he called the applicant again on his mobile phone, by which time the latter had already been released.

27. On 18 July 2006 the police sent the file to the Prosecutor's Office of the Bucharest District Court for further investigation of the accusation of

abusive behaviour, and to the District Court regarding the applicant's allegations that he had been hit and had suffered other forms of violence.

28. On 25 August 2006, based on the evidence gathered by the police and without hearing fresh testimony from those involved in the incidents, the Prosecutor's Office decided not to prosecute. On 10 October 2006 the head of the Prosecutor's Office upheld that decision, despite the applicant's complaint.

29. On 6 November 2006 the applicant complained to the Bucharest District Court about the prosecutor's decisions, citing police brutality and the lack of an effective investigation.

30. On 12 December 2006 the District Court dismissed the complaint. On the basis of the documents in the file and after hearing pleas from the parties' representatives and the prosecutor but not from the applicant or the police officers involved in the events, it established that the applicant had behaved aggressively that night, had been under the influence of alcohol, had disturbed public order and had deliberately tried to hurt himself. It found no evidence in the file that the reports made by the police officers were untrue, and noted that the applicant had not contested their veracity. It also noted that the applicant had been engaged in illegal activities, which gave the police permission to intervene, to check his identity and to prevent him from continuing. Lastly, it reiterated that according to the applicable law, the police were not to be held responsible for minor injuries caused to a person during the lawful exercise of their powers.

31. The applicant appealed, dissatisfied in particular with the interpretation given by the court of the evidence in the file, and pointing out that he had not complained about the reports made by the police on the incidents, but about the police officers' brutality that night.

32. In a final decision of 26 April 2007 the Bucharest County Court re-examined the evidence in the file and upheld the District Court's judgment. The decision became available to the parties on 8 June 2007.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicant complained of police brutality and ineffectiveness of the investigation of the alleged ill-treatment.

He relied on Article 3 of the Convention, which reads as follows:

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

## **A. Admissibility**

### *1. The six-month rule*

34. The Government argued that the applicant had not respected the six-month rule, in that his first communication had arrived at the Court on 11 December 2007, whereas the final decision had been available to him since 8 June 2007. They relied on Rules nos. 38 § 2 and 47 § 5 of the Rules of Court.

35. The applicant contested the Government's assertions, putting forward extensive argumentation to support his view.

36. The Court notes that the final decision adopted on 26 April 2007 was made available to the parties on 8 June 2007. The applicant dated his first letter to the Court 7 December 2007 and sent it the same day, as the post office stamp (postmark) certifies. It therefore considers that this date is the date of introduction of the application, in accordance with the requirements of the Convention and Rules of Court.

Accordingly, the Court dismisses the Government's preliminary objection.

### *2. Well-foundedness of the complaint*

37. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' positions*

38. The applicant reiterated that he had been subjected to police abuse and that the evidence in the file supported his assertions. He also argued that the use of force had not been made necessary by his behaviour. He pointed to contradictions in the records and statements made by the police officers which had not been explained by the investigation.

39. The Government did not contest the existence of injuries, but considered that the evidence in the file supported the authorities' version of facts and thus denied that any abuse by police had occurred. They further contended that the investigation had been thorough, and the fact that it had not ended with a conviction was not in itself enough to deprive it of effectiveness.

40. They further claimed that the police officers could not have requested that the applicant's alcohol level be tested, as they did not belong to the traffic police.

## 2. *The Court's assessment*

### (a) **General principles**

41. The Court reiterates its case-law on Article 3, in particular concerning the Court's assessment of the minimum level of severity that ill-treatment has to attain in order for it to fall within the scope of this Article (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII; *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25; *Kudła v. Poland* [GC], no. 30210/96, § 91-92, ECHR 2000-XI; *Peers v. Greece*, no. 28524/95, § 67-74, ECHR 2001-III; and *Raninen v. Finland*, 16 December 1997, § 55, *Reports* 1997-VIII).

42. 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. 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. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as with an individual who is under their control, strong presumptions of fact will arise in respect of injuries occurring under such circumstances. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Boicenco v. Moldova*, no. 41088/05, §§ 103-104, 11 July 2006).

43. Furthermore, it reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by police or other such agents of the State unlawfully and in breach of Article 3, that provision requires that there should be an effective official investigation capable of leading to the identification and punishment of those responsible (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Assenov and Others*, cited above, § 102; and, *mutatis mutandis*, *Velikova v. Bulgaria*, no. 41488/98, § 70, ECHR 2000-VI).

44. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under

Article 3 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Avşar v. Turkey*, no. 25657/94, § 283, ECHR 2001-VII (extracts)) even if certain domestic proceedings and investigations have already taken place (see *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007; as well as *Ireland*, cited above, § 161; *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII; and *Boicenco*, cited above, § 104, on the standard of proof applied in such cases).

**(b) Application of those principles to the present case**

45. The Court notes at the outset that the applicant was in good health when he encountered the police (see paragraph 15 above) and was reported to have had several bruises around his eyes a few hours after the incident. It is also uncontested that the applicant was handcuffed with his hands in front of him. In these circumstances, the Court finds that the authorities (including the Government in their observations) failed to explain how, in falling to the ground, or “deliberately hitting his head on the ground and on the van doors” the applicant could have bruised both his eyelids and temporal bone but completely spared his nose and mouth. Such injuries seem rather to be consistent with the applicant’s explanation that he had protected his mouth and nose with his handcuffed hands from the police officers’ blows.

The Court also notes that at various stages of the proceedings, the authorities seemed to have acknowledged that the police officers had injured the applicant (see the report on the use of force, the conclusions in the District Court’s decision) but accepted the notion of a lack of a causal link between the injury and the police officers’ action, without weighing the proportionality of the police response. However while the Court is prepared to admit that the applicant’s conduct might have necessitated the use of physical force to restrain him, it can but note that there are no sufficiently convincing elements in the file to justify such a strong use of force as to necessitate eight to nine days of medical care. Nothing in the official description of the events indicates that he would have offered such resistance to being apprehended as to justify such a severe response.

46. Therefore the Court concludes that the applicant’s injuries were caused by police actions and amounted to treatment contrary to Article 3 of the Convention.

47. It remains to be examined whether the official investigation following the complaints of abuse by police was effective (see paragraph 43 above).

48. The Court notes with concern that although the applicant’s alcohol intake was the explanation given for his allegedly aggressive behaviour, the police failed to test the applicant’s blood alcohol level at the time he was

apprehended. The courts nevertheless took for granted the finding that the applicant was under the influence at that time. The Court cannot accept the argument put forward by the Government, which claimed that the police officers were not in a position to request an alcohol level test. It is for the authorities to put forward evidence to support their position, both in the domestic proceedings and before the Court, in particular when the aggrieved party is under their control and completely deprived of the opportunity to obtain that evidence by his own means, as was the situation in the present case.

49. Furthermore, the investigators and courts took the police officers' description of events as proven fact and failed to assess its consistency with the medical report. However, the Court has found discrepancies between the official version of the events and the injuries sustained by the applicant as they were attested to by the medical certificates (see paragraph 45 above). The domestic investigation did not resolve those discrepancies. The authorities also failed to question the impartiality of the only eyewitness, C.B., who, being at that time already under investigation for matters similar to those imputed to her that night, might not have been fully outside police influence.

In asserting the veracity of the police reports, the courts placed the burden on the applicant to prove otherwise. His chances of doing so were nevertheless practically non-existent as, on the one hand, in failing to test his alcohol level the police precluded him from obtaining relevant evidence, and as, on the other hand, neither the prosecutor nor the courts heard evidence in person from those involved in the incident (see paragraphs 28 and 30 above).

50. The investigation thus lacked the effectiveness required by Article 3 of the Convention.

51. In the light of the conclusions reached at paragraphs 46 and 50 above, the Court considers that there has been a violation of the substantive and procedural branches of Article 3 of the Convention.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. Lastly, the applicant complained under Article 5 of the Convention that he had been unlawfully held in police custody and, under Article 6 §§ 1 and 2 of the Convention that the proceedings before the domestic courts had not been fair.

53. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed 15,000 euros (EUR) in respect of pecuniary damage, representing loss of income while he was hospitalised and EUR 100,000 in respect of non-pecuniary damage as a result of the authorities’ behaviour violating his Articles 3, 5 and 6 rights. He also requested that the two police officers be dismissed from their posts.

56. The Government argued that the applicant had failed to prove he had actually sustained pecuniary damage. They also averred that the non-pecuniary damage should be limited to the object of the case, that is, Article 3 of the Convention, and considered that the amount requested by the applicant was excessive. In their view the finding of a violation could constitute sufficient compensation in the case.

57. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 10,000 in respect of non-pecuniary damage.

#### B. Costs and expenses

58. The applicant also claimed EUR 4,239.04 for costs and expenses incurred before the domestic courts and before the Court, namely medical fees, lawyers’ fees and cost of postal services.

59. The Government contested the causal link to the current case of some of the expenses allegedly incurred. They further argued that the amounts requested were disproportional with regard to the complexity of the case.

60. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its

possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads.

### C. Default interest

61. 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 UNANIMOUSLY

1. *Declares* the complaint concerning Article 3 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of the substantive and procedural branches of Article 3 of the Convention;
3. *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, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada  
Registrar

Josep Casadevall  
President