



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

THIRD SECTION

CASE OF IPATI v. THE REPUBLIC OF MOLDOVA

(Application no. 55408/07)

JUDGMENT

STRASBOURG

5 February 2013

FINAL

05/05/2013

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

In the case of Ipati v. the Republic of Moldova,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Corneliu Bîrsan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Valeriu Grițco, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 15 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 55408/07) 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 Gheorghe Ipati (“the applicant”), on 22 August 2007.

2. The applicant, who had been granted legal aid, was represented by Mr R. Zadoinov, a lawyer practising in Chișinău. 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 by the police and deprived of medical assistance, that there had been no effective investigation of his ill-treatment and that his correspondence had been censored.

4. On 10 January 2011 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 1954 and is detained in prison no. 9 in Pruncul, Republic of Moldova.

A. The applicant's arrest and detention by the police

6. On 22 September 2006 the applicant was arrested on suspicion of theft and taken to the Centru police station in Chişinău. He was healthy and did not have any injuries.

7. According to the applicant, he was beaten up at the police station to make him confess to a crime which he had not committed. He was then placed in a cell and denied medical assistance.

8. At midnight on the same date the applicant was again beaten by a police officer and the investigator in charge of his case. He was thrown to the ground and the officers kicked and punched him all over the body, while demanding a confession. The applicant was left in the cell unconscious and bleeding from the nose, mouth and ears.

9. The cell in which he was initially held had no furniture and there was no toilet. The applicant did not receive any food or water during his detention at the police station.

B. The applicant's detention at the General Police Headquarters

10. According to the applicant, on 23 September 2006 the applicant was to be transferred to the General Police Headquarters ("the GPH"). However, when the GPH officers discovered the extent of the applicant's injuries they refused to accept the transfer. Police officers from the Centru police station then escorted him to a hospital where they spoke to doctors and obtained a certificate from them. The applicant did not see the certificate and was not seen by the doctors before it was issued.

11. According to the Government, the applicant was seen by a doctor at the emergency hospital on 23 September 2006. The doctor found bruises on the applicant's body, as follows: contusion of tissue on his left elbow, contusion of soft tissue on the head and the cervical region and contusion of soft tissue of the thorax. The applicant underwent an X-ray examination. A traumatology doctor, a surgeon and a neurosurgeon examined the applicant, who was prescribed outpatient treatment.

12. After being seen by the emergency doctor on 23 September 2006, the applicant was transported back to the GPH and admitted. He claims that he did not even receive a slice of bread until 24 September 2006. Also on 24 September 2006 the applicant was brought before prosecutor C. and complained to him that he had been ill-treated. According to the applicant, the investigator asked C. to request a court order for the applicant's detention for thirty days. However, C. considered that were the applicant to be brought before an investigating judge, the latter would inquire about the applicant's injuries and insist on the prosecution of those responsible. That is why he decided to release the applicant, in the hope that he would not complain of ill-treatment.

13. After his release the applicant went directly to the Centru district prosecutor's office and waited for C. to return. The applicant asked to be examined by a forensic doctor to confirm the existence and seriousness of the injuries on his body. C. refused to issue such an order until 26 September 2006. On that day the applicant visited a forensic doctor, who found injuries on the applicant's body, as follows: two haematomas on the nose covered with a red crust measuring 0.3 x 0.1 cm and 0.5 x 0.3 cm respectively and a cyan-red haematoma measuring 1.3 x 0.4 cm; haemorrhage in the tissue of both lips with raw skin covered with a white substance; pronounced oedema of the left elbow, limited movement due to pain; cyan-violet-yellow haematomas on various parts of the left arm and elbow measuring 2.7 x 2 to 14 x 6.5 cm; two areas of raw skin covered with brown crust in the lumbar region of the back at rib level measuring 3 x 0.1 cm and 2.8 x 1.5 cm; on the right side of the spine at the level of vertebrae 6-7 a cyan-green haematoma measuring 4 x 2 cm.

14. The doctor also noted that the applicant had had radiography. From the results obtained on 26 September 2006 the forensic doctor concluded that a bone had been broken in the applicant's left elbow. In addition, left ribs nine and ten had been broken. The medical report was submitted to the prosecutor.

15. On 12 June 2007 another specialised doctor (A.V.) examined the medical reports of 23 and 26 September 2006. In his opinion of 9 August 2007 A.V. concluded that the applicant had sustained his injuries on 25-26 September 2006, judging by the absence of any signs of broken bones in the X-ray exam of 23 September 2006 and their presence in the X-ray exam of 26 September 2006 and in view of the colour of the haematomas on the applicant's body as described in the report of 26 September 2006.

C. Complaints lodged by the applicant and the criminal investigation into his alleged ill-treatment

16. According to the applicant, at his request on 13 October 2006 the prosecutor initiated a criminal investigation of his alleged ill-treatment, but then discontinued it. Following his complaints to the investigating judge, the investigation was reopened. Subsequently it was discontinued again, only to be reopened following another court order.

17. During the investigation a number of police officers involved in apprehending and detaining the applicant on 22-24 September 2006 were interviewed. All of them denied having seen any injuries on the applicant's body. One of them (C. V., the officer charged with the applicant's case) declared that the applicant could not have been beaten up by unknown persons prior to his arrest since at the relevant time he had already been arrested. Moreover, he had not seen any injuries on the applicant's body and he did not know who had taken the applicant to the hospital on

23 September 2006. Another officer (I. M.) was interviewed as a suspect, since the applicant remembered that one of his alleged torturers was called “Iurie”. I. M. stated that between the applicant’s arrest on 26 September 2006 at 9.35 p.m. and the next morning at 9 a.m. when he went home he had not seen any injuries on the applicant’s body. He found out later that on 23 September 2006 at 2.30 p.m. the applicant had been taken to a hospital. Other officers denied having seen any injuries on the applicant’s body at the time of his arrest or release. The applicant was officially declared a victim (*partea vătămată*) on 9 November 2006 and was heard on that day by the prosecutor. A number of the police officers were interviewed by C., the prosecutor in charge of the theft case against the applicant.

18. On 28 June 2007 the applicant hired a lawyer to represent him. On the same day the lawyer asked the Chişinău prosecutor to send him copies of all the complaints made by the applicant to law-enforcement authorities in connection with his alleged ill-treatment, as well as copies of all the materials of the investigation initiated at his request. The lawyer informed the prosecutor that the applicant intended to lodge an application with the Court and noted that any refusal by the State authorities to make available documents concerning the applicant’s complaint could lead to a violation of Article 34 of the Convention.

19. On 18 July 2007 the Chişinău prosecutor informed the applicant’s lawyer that his request had been rejected on 16 July 2007 in the part concerning supply of copies of the complaints made by the applicant and documents in the file. The prosecutor added that the Code of Criminal Procedure did not provide for the right of a victim (*partea vătămată*) to examine the materials obtained within the framework of a criminal investigation before the end of that investigation, except for reports concerning investigative acts in which the victim had participated. The investigation into the applicant’s complaint was still ongoing and no decision had been taken. The prosecutor added that his decision could be appealed against to a superior prosecutor. According to the Government, and not contradicted by the applicant, no challenge to that decision had been made before the investigating judge.

20. On 31 July 2007 the applicant’s lawyer lodged a complaint with the Centru District Court in which he asked the court to find that the applicant had been detained in inhuman conditions of detention, contrary to Article 3 of the Convention, that he had been ill-treated by police and that no effective investigation of the ill-treatment had been carried out. He also sought a finding of a violation of Article 8 because of interference with the applicant’s correspondence. He finally asked the court to order the prosecution to fully investigate the alleged ill-treatment and to suspend the police officers accused of ill-treatment pending the investigation. The applicant’s lawyer also asked for damages to be paid to his client.

21. On 14 August 2007 the Centru District Court rejected the applicant's lawyer's complaint, finding that he had not challenged any specific decision of the prosecutor before the court. As for the damages claimed, these could be sought in a civil court action. Moreover, the applicant had not specifically authorised his lawyer to lodge such a court action. That decision was final.

22. The Government submitted, without annexing any documents, that on 5 June 2008 the prosecutor had decided to stay the criminal investigation of the applicant's complaint if ill-treatment. The applicant's lawyer challenged that decision before the investigating judge, who revoked it on 18 November 2008. The prosecutor adopted another decision to discontinue the investigation on 21 July 2009. At the applicant's lawyer's request that decision was revoked by the investigating judge on 23 October 2009.

On 26 January 2010 the prosecutor again decided to stay the investigation. On 20 July 2011 the applicant's lawyer challenged that decision before the hierarchically superior prosecutor. The latter rejected the complaint as unfounded on the same day. The applicant and his lawyer did not challenge that decision before the investigating judge.

D. The applicant's second arrest and detention in prison no. 13

23. On 25 January 2007 the applicant was arrested again and was detained in Pruncul Prison no. 9 until 15 February 2007. He was then transferred to Chisinau Prison no. 13, where he was detained until 10 May 2007, before his transfer back to prison no. 9.

24. According to the Government, in prison no. 13 the applicant was placed in cell no. 97, measuring 41.65 sq. m, and subsequently in cell no. 18, measuring 17.25 q. m.

25. According to the applicant, cell no. 97 accommodated thirty-five to forty detainees at a time. There was a single toilet, not separated from the rest of the cell. There were only twelve bunk beds, and detainees had to take turns to sleep, even then sharing beds. The food was of very poor quality. Detainees were not issued with bed linen or hygiene products, there was no ventilation or heating, and the window was almost completely covered. The applicant was subjected to passive smoking and suffered from the presence of parasitic insects and rats. Detainees who had tuberculosis and other infectious diseases were detained together with healthy detainees. The applicant was allowed to have a shower only every ten days.

E. Alleged interference with correspondence and lack of confidentiality of meetings with the applicant's lawyer

26. In January and February 2007 the applicant sent numerous complaints to the Centru District Court concerning inefficient investigation

of his ill-treatment. On 3 March 2007 the Centru District Court forwarded one of his complaints to the prosecutor and sent a reply to the applicant. He received the letter from the court opened and with a prison stamp on it. The same happened in the case of several other letters sent to the applicant by the investigating judge (letter of 15 June 2007) and the prosecutor's office (letter of 6 April 2007).

27. On 30 July 2007 the applicant met his lawyer in Pruncul Prison no. 9. The meeting took place in a visiting room. According to the applicant, other detainees and their visitors were present in the same room and could hear his conversation with his lawyer. At that meeting they discussed the details of the applicant's complaints, which the lawyer formulated in a complaint to the Centru District Court submitted the next day.

II. RELEVANT DOMESTIC LAW AND PRACTICE AND INTERNATIONAL MATERIAL

A. Relevant domestic case law submitted by the Government

28. In *Drugalev v. the Ministry of Internal Affairs and the Ministry of Finance* (final judgment of the Chişinău Court of Appeal of 26 October 2004), the applicant claimed and obtained compensation of 15,000 Moldovan lei (MDL, approximately 950 euros (EUR)) for having been held in inhuman and degrading conditions for approximately six months. The courts found that domestic law did not supply legal grounds to award compensation, and relied directly on the Convention and the Court's case-law.

29. In *Ciorap v. the Ministry of Finance* (final judgment of the Chişinău Court of Appeal of 21 June 2007) the applicant initiated court proceedings claiming compensation for damage caused to him as a result of his ill-treatment upon his arrest, failure to investigate his complaint of ill-treatment, failure to give him medical treatment while in detention, and inhuman conditions of detention. He was awarded MDL 3,000 in compensation for the damage caused to him. The courts found that domestic law did not provide for a legal ground to award compensation and relied directly on the Convention and the Court's case-law.

30. In *Ipate v. the Ministry of Finance*, the applicant initiated court proceedings claiming compensation for inhuman and degrading conditions of detention in prison no. 13 in 2006 and for the prison administration's failure to register his hunger strike declaration. On 16 December 2008 the Centru District Court dismissed the applicant's complaint of poor conditions of detention but upheld the other complaint. The applicant was awarded

MDL 350 in compensation for non-pecuniary damage. The court relied on Article 1398 of the Civil Code.

31. In *Gristiuc v. the Ministry of Finance*, the applicant initiated civil proceedings claiming compensation for inhuman and degrading conditions of detention in prison no. 13 between 2000 and 2003. On 19 November 2008 the action was finally upheld by the Supreme Court of Justice and the applicant was awarded MDL 10,000 for non-pecuniary damage. The courts relied on the Health Care Act of 28 March 1995 and Article 1422 of the Civil Code.

B. Relevant report by the Centre for Human Rights in the Republic of Moldova

32. In its report for 2010 (page 142 et seq., “Conditions of detention” chapter), the Centre for Human Rights in the Republic of Moldova (“the Centre”, which is the Moldovan Ombudsman institution) found, *inter alia*, that:

“Observance of the statutory living space (4 square metres)... has become a systemic deficiency of prisons throughout the country. ...

The same situation was attested to during a visit to Chisinau Prison no. 13 on 9 September 2010. In some cells the living space was not proportionate to the number of detainees. At the time of the visit there were eight inmates in cell no. 38, which measures twenty-four square metres. This situation has been attested to repeatedly during visits by the Centre’s staff to the preventive detention centre in Chişinău. ...

Overcrowding is a matter of direct relevance to the Ombudsman’s mandate as it is covered by the National Mechanism for the Prevention of Torture, which has established overcrowding in the country’s prisons on many occasions. ...

...The Department of Prisons has informed the ombudsman that meat and fish products are provided [to detainees] whenever that is possible. However, that authority stated that, owing to the difficult financial situation, during 2010 detainees in prison no. 17 in Rezina received only 75% of the necessary meat products and 80% of the necessary fish products. In this regard, the Minister of Justice submitted information on its expenditure on feeding detainees in 2010. This expenditure amounted to MDL 24,050,000, while the amount required for that period of time was, according to Ministry of Finance when presenting the draft Budget law, MDL 29,050,000. The daily cost of feeding a detainee in 2010 was MDL 10.24, while the daily requirement was MDL 12.35. This fact was often cited by prison authorities as the reason for their inability to provide detainees with meat and fish...

In respect of sanitary conditions, lighting and ventilation problems continue to exist in the majority of prison cell blocks in the Republic of Moldova’s prisons, with the exception of Taraclia no. 1 and Rusca no.7 prisons.

The Republic of Moldova inherited old gulag-type prisons with run-down buildings, which corresponded to Soviet standards. These prisons do not satisfy the requirements

of national and international standards, but the reduced financial means of the State do not allow for their reconstruction or renovation.

In the Republic of Moldova's prisons, with the exception of Taraclia no. 1 Prison, detainees are held in large-capacity cells insufficiently equipped to meet the daily needs of detainees: space for sleeping, for daily life and for sanitary installations. Detainees are held in extremely cramped, dark, damp, non-ventilated spaces filled with cigarette smoke. In certain prisons the bunk beds essentially prevent daylight from reaching the living space."

C. Relevant report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

33. The relevant parts of the report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Republic of Moldova between 14 and 24 September 2007 (CPT/Inf (2008) 39) read as follows (unofficial translation):

"46. At the outset of the 2007 visit, the Director of the Department of Prisons of the Ministry of Justice provided the delegation with detailed information on measures already taken or planned with a view to reforming the Moldovan prison system and implementing the CPT's recommendations. One particularly welcome outcome of these measures is the reduction of the country's prison population. At the time of the 2007 visit, the total number of prisoners stood at 8,033 (including 1,290 on remand), compared to 10,591 in 2004. This positive trend can be attributed to legislative changes in recent years, including the entry into force of a new Code of Execution of Sentences in July 2005 and the adoption of amendments to the Criminal Code and the Code of Criminal Procedure. As a result, there has been an increase in the number of conditional early releases, as well as a wider use of alternatives to imprisonment and a more selective application of remand in custody by the courts.

Further, the implementation of the "Concept for reforming the prison system in the period 2004-13" has been supported by an increase in the budgetary allocation (from MDL 75,800,000 in 2004 to 166,100,000 in 2007), as well as by a growing input of foreign aid. This has enabled, *inter alia*, improvement of the food provided to prisoners, an improvement in health care, and refurbishment works at several prisons (for example, Taraclia no. 1, Rusca no. 7 and Rezina no. 17.).

Last but not least, there has been an important shift in attitudes through improved staff recruitment and training procedures. The delegation was informed that the directors of many prisons had been replaced in the past year, following a recruitment competition and a probation period. Further, new training programmes for staff had been developed, placing particular emphasis on human rights issues ...

47. The CPT can only welcome the above-mentioned measures taken by the Moldovan authorities. Nevertheless, the information gathered by the Committee's delegation during the 2007 visit shows that much remains to be done. In particular, overcrowding continues to be a problem; despite the fact that all establishments visited were operating at well under their official capacities, there was on average only two square metres of living space per prisoner, rather than the standard of four square metres provided for in Moldovan legislation.

The CPT is convinced that the only viable way to control overcrowding and achieve the standard of at least four square metres of living space per prisoner is to adopt policies designed to limit or modulate the number of people sent to prison. In this connection, the Committee must stress the need for a strategy covering both admission to and release from prison, to ensure that imprisonment really is the last resort. This implies, in the first place, an emphasis on non-custodial measures in the period before the imposition of a sentence and, in the second place, the adoption of measures which facilitate the reintegration into society of individuals who have been deprived of their liberty.

The CPT trusts that the Moldovan authorities will continue their efforts to combat prison overcrowding and, in so doing, will be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, as well as Recommendation Rec(2003)22 on conditional release (parole)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE ALLEGED ILL-TREATMENT AND INVESTIGATION THEREOF

34. The applicant complained that he had been ill-treated by the police to extract a confession from him and that the investigation of his complaints of ill-treatment had been ineffective, in breach of 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

35. The Government submitted that the applicant had failed to exhaust available domestic remedies. In particular, he had not challenged the prosecutors' decision of 20 July 2011 before the investigating judge (see paragraph 22 above). They referred to *Levința v. Moldova* (no. 17332/03, § 63, 16 December 2008), in which the Court had found inadmissible a complaint under Article 3 of the Convention since the applicants had failed to challenge the decision to discontinue the criminal investigation in court.

36. The applicant considered that he had done as much as he could to exhaust domestic remedies.

37. The Court notes that one of the applicant's complaints is that the investigation of his allegation of ill-treatment was inefficient. It finds that the Government's argument concerning the applicant's failure to exhaust

domestic remedies is closely related to his complaint about the effectiveness of the investigation. It therefore joins this objection to the merits of the case.

38. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The effectiveness of the investigation (the procedural limb of Article 3 complaint)

39. The applicant complained that the investigation of his allegations of ill-treatment had been ineffective. He noted that part of the investigation had been carried out by C., the same prosecutor who had been in charge of the case against the applicant (see paragraph 17 above) and by colleagues of his torturers. Moreover, the investigation had been excessively long.

40. The Government submitted that the investigation had been thorough and that all the persons who could have had any knowledge of the alleged ill-treatment had been identified by examining the detention records and officer duty rosters and had been interviewed. Nobody confirmed the applicant's version of events, not even his cellmates. Moreover, all the minor deficiencies of the investigation had been redressed by the investigating judge at the applicant's request.

41. 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, the 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).

42. Moreover, a requirement of promptness and reasonable expedition is implicit in the context of investigating allegations of ill-treatment by the police (see, among other authorities, *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001, and *Pădureț v. Moldova*, no. 33134/03, § 62, 5 January 2010).

43. In the present case the Court notes that the applicant challenged three times the prosecutor's decisions to discontinue the investigation into his alleged ill-treatment. Twice his requests were accepted and the case was returned to the prosecutor for further examination, while the third time a superior prosecutor rejected his complaint (see paragraph 22 above).

44. It is true, as pointed by the Government, that the applicant could further challenge the decision of 20 July 2011 before an investigating judge. However, the Court notes that the investigating judge could only revoke the decision and send the case back to the same prosecutor who had already stayed the investigation on three occasions. The Court finds that the repeated staying of the investigation by the prosecutor and the fact that the investigating judge could only revoke the decisions adopted by the prosecutor, thereby returning the case to the same stage at which it had been for a long period of time (the decision of 20 July 2011 was adopted almost five years after the applicant's alleged ill-treatment in September 2006), rendered ineffective the remedy referred to by the Government in the applicant's case. In this sense the present case, in which the applicant challenged the prosecutor's decisions to stay the investigation three times, is to be distinguished from *Levința*, referred to above, in which the applicants made no such challenge.

45. The Court also notes that prosecutor C. carried out a number of the investigating actions in respect of the applicant's complaint of ill-treatment (see paragraph 17 above). It observes however that C. was at the same time in charge of the criminal investigation against the applicant and was accused of failing to respond to the applicant's complaint of ill-treatment and of delaying his medical examination by two days (see paragraphs 12 and 13 above). The Court considers that, given C.'s apparent conflict of interests in the present case, his active involvement in investigating the applicant's allegations undermined the effectiveness of the investigation.

46. It is also apparent (see paragraph 18 above) that the applicant's lawyer was not initially allowed to obtain copies of the applicant's complaints about ill-treatment or other documents concerning the investigation of his client's complaint. This undermined the applicant's ability to properly exercise his right to be informed of the course of the investigation and to influence it in a legal manner, such as by providing additional evidence or formulating his own questions to be put to the medical experts when examining his medical files.

47. The Court concludes that the investigation, including its length, C.'s active involvement and the failure to disclose relevant documents to the applicant's lawyer in a timely manner, was thus affected by shortcomings which are incompatible with the procedural obligations under Article 3 of the Convention.

48. There has therefore been a violation of that provision in its procedural limb. In the light of this conclusion, the Government's argument

that the applicant has not exhausted available domestic remedies by challenging the decision of 20 July 2011 is to be dismissed, since by that date the investigation was already inconsistent with Article 3 requirements.

2. The applicant's alleged ill-treatment (the material limb of Article 3 complaint)

49. The applicant complained that he had been ill-treated by police during his detention on 22-23 September 2006. He claimed that the doctors and the police had falsified the results of the X-ray examination of 23 September 2006 to allow the conclusion that his ribs had been broken after his release on 24 September 2006.

50. The Government relied on the conclusions of the medical expert, who had found that the applicant's injuries had been caused during 25-26 September 2006 (see paragraph 15 above), during which time the applicant was not in detention. Nor did the applicant's cellmates confirm that he had been ill-treated. All the police officers involved, as well as the prosecutor in charge of the case against the applicant, denied having seen any signs of ill-treatment on the applicant's body before his release on 24 September 2006. Therefore, the applicant's injuries were sustained after his release and the authorities could not be held accountable.

51. 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 v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

52. The Court notes that when taking the applicant to the police station the arresting officers and the officers who took responsibility for his detention thereafter did not note any injuries on the applicant's body. Moreover, all the officers who had seen the applicant on the day of his arrest denied having seen any injuries on his body. It follows that he entered detention in good health on 22 September 2006.

53. It is also to be noted that the day after his arrest, which was also the day after his alleged ill-treatment by police officers, the applicant was taken to hospital, where he had to undergo examination by a number of doctors, who noted injuries to his hand, head and thorax (see paragraph 11 above).

54. Independently of the weight to be given to the applicant's X-ray examinations, the fact remains that the applicant sustained injuries between the date of his arrest on 22 September 2006 and the next day, when the doctors found those injuries on his body. The Government have not provided an explanation for the origin of those injuries, except to submit that he had been beaten up by unknown individuals prior to his arrest. However, this explanation is inconsistent with the police officers' own

statements and the absence of any record confirming the applicant's injuries at the time of his arrest and placement in detention at the police station.

55. The foregoing considerations are sufficient to enable the Court to conclude that the applicant was subjected to ill-treatment on 22-23 September 2006, while he was in detention.

There has accordingly been a violation of Article 3 of the Convention in its substantive limb.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE APPLICANT'S CONDITIONS OF DETENTION IN PRISON No. 13

56. The applicant complained of a violation of Article 3 of the Convention as a result of inhuman conditions of his detention in prison no. 13.

A. Admissibility

57. The Government submitted that the applicant had failed to exhaust available domestic remedies. In particular, he could have lodged a civil court action claiming compensation for damage caused to him by inhuman conditions of detention. They referred to the direct applicability of the Convention in the domestic legal system, as well as to the opportunity to claim damages by virtue of a number of legal provisions, as reflected in the judgments of the domestic courts (see paragraphs 28-31 above).

58. The Court reiterates that under Article 35 § 1 of the Convention normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, the *Akdivar and Others v. Turkey* judgment of 16 September 1996, § 66, Reports of Judgments and Decisions 1996-IV).

59. The assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court (see *Prodan v. Moldova*, no. 49806/99, § 39, ECHR 2004-III (extracts)).

60. Having examined the case-law of the domestic courts cited by the Government, the Court notes that at the time of the introduction of the present application judgments had been adopted only in two cases (*Drugalev* and *Ciorap*). It does not appear that these two cases formed part of a consistent policy of the domestic courts offering real remedies against breaches of Article 3 of the Convention on account of poor conditions of detention to individuals whose detention had come to an end. This is also

apparent from the fact that in three of the four examples of domestic case-law cited by the Government the courts relied on different legal grounds for awarding compensation. The Court therefore considers that the Government have not shown that an effective remedy was available in theory and in practice at the relevant time. Accordingly, the complaint under Article 3 of the Convention cannot be declared inadmissible for non-exhaustion of domestic remedies, and the Government's objection must be dismissed.

61. 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

62. The applicant referred to his description of the conditions of detention in prison no. 13 (see paragraph 25 above).

63. The Government submitted that the cells in which the applicant had been detained were sufficiently heated and ventilated; tap water was available, and the toilet was separated by a wall from the rest of the cell. Each detainee had a bed and bed linen and could have a shower once a week. Detainees were allowed to bring their own television set. Food was sufficient and corresponded to sanitary and nutritional norms. Detainees also enjoyed an hour's exercise each day. Moreover, the applicant never complained about the conditions of his detention while actually detained, which confirmed the absence of a violation of his rights. His application to the Court did not contain any evidence in support of the complaint, which consisted of declarations, while reference to the findings of the CPT could not, in itself and without reference to particular circumstances applying to the applicant, lead to a violation of Article 3 of the Convention.

64. The Court reiterates that the general principles concerning conditions of detention have been set out in *Ostrovar v. Moldova* (no. 35207/03, §§ 76-79, 13 September 2005).

65. It notes that the applicant gave a detailed description of the conditions of his detention, in particular as regards overcrowding. In their observations the Government provided specific details concerning the size of the cells, but did not specify the number of inmates, nor did they challenge the applicant's claim as regards the number of those detained. Therefore, the applicant's submission that in cell no. 97 he was detained with thirty-five to forty other detainees is to be accepted as true. Given the Government's statement that cell no. 97 measured 41.65 sq. m (see paragraph 24 above), the space available to each detainee was between 1.04 sq. m and 1.19 sq. m. This is substantially below the minimum of four square metres often referred to by the CPT and the Court (see, for instance, *Rotaru v. Moldova*, no. 51216/06, § 38, 15 February 2011).

66. As for the Government's argument that the applicant did not complain about his conditions of detention, thus tacitly accepting them as appropriate, the Court notes that the applicant's lawyer did make such a complaint on 31 July 2007 (see paragraph 20 above).

67. The above considerations, in particular the severe overcrowding to which the applicant was subjected, suffice for the Court to conclude that there has been a violation of Article 3 of the Convention in respect of the applicant's conditions of detention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

68. The applicant further complained that his correspondence with his lawyer, the domestic courts and other authorities had been opened by the prison authorities. He also complained about the lack of confidentiality during his meeting with his lawyer on 30 July 2007, when he had to have a discussion with his lawyer in a visitors' room where other detainees and their visitors were also present and could overhear their conversation. He relied on Article 8 of the Convention, which reads as follows:

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

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

A. The parties' submissions

69. The Government submitted that the applicant had failed to exhaust available domestic remedies by not complaining about the privacy of his meeting with his lawyer and by complaining about the interference with correspondence to the wrong court (the investigating judge, who did not have authority to deal with such matters) instead of the common courts. They added that the applicant's correspondence had not been interfered with. The few letters which he had submitted as evidence, bearing the stamp of the prison authorities, had been sent without an envelope by the sender. They were addressed to the prison authorities and a copy was to be given to the applicant. As to the meeting of 30 July 2007, it had taken place in a special room where privacy had been ensured. Since the applicant had already been convicted by that time, the meeting could not have referred to any issues concerning detention pending trial, and thus Article 5 § 4 did not apply. This distinguishes the present case from the cases of *Castravet v. Moldova* (no. 23393/05, §§ 45-61, 13 March 2007); *Istratii and Others*

v. Moldova (nos. 8721/05, 8705/05 and 8742/05, §§ 85-101, 27 March 2007); and *Modarca v. Moldova* (no. 14437/05, §§ 83-99, 10 May 2007), where the Court has found violations of Article 5 § 4.

70. The applicant submitted that according to the rules of operation of the Moldovan postal service the latter could never deliver a letter unless it was in a closed envelope. Therefore, all the letters which he had received bearing the stamp of the prison authorities had been opened by those authorities. He also submitted that on 30 July 2007 he discussed with his lawyer, *inter alia*, his complaints of ill-treatment and inhuman conditions of detention.

B. The Court's assessment

1. Admissibility

71. As to his complaint of failure to secure privacy of the lawyer-to-client meeting, the Court considers that the failure to complain to any domestic authority amounts to a failure to exhaust available domestic remedies. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

72. As to his complaint that his correspondence had been interfered with, the Court notes that the investigating judge did not decide that that complaint had been lodged with the wrong court. Therefore, the Government's submission is to be rejected in so far as it relates to the complaint of interference with correspondence.

73. 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.

2. Merits

74. In respect of the complaint concerning the alleged interference with the applicant's correspondence, the Court notes that the applicant submitted copies of three letters from the prosecutor's office and a court addressed personally to him and which bore prison authority stamps. They referred to his complaint of ill-treatment. The Court finds not plausible the Government's explanation that the letters were all received at the institution without envelopes. The postal rules referred to by the applicant prevent this, and the Government did not submit any evidence that a courier or any other alternative method had been used to deliver the letters sent by the court and the prosecutor to the applicant.

75. Moreover, the Government's argument that the relevant letters were only copies of letters addressed to the prison authority is to be rejected,

since all three letters under examination were addressed personally to the applicant. Even though one of them was indeed a copy of a similar letter sent to the prosecutor, it is obvious that the prison staff who stamped the letter could not have known that before opening it. In any event, people other than the addressees (the applicant and the relevant prosecutor) had no right to read that letter.

76. In the absence of a reasonable explanation for the origin of the prison stamp on the letters addressed to the applicant by judicial and prosecuting authorities, the Court finds that his right to respect for his correspondence has been breached. There has, therefore, been a violation of Article 8 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

77. The applicant lastly complained that the prosecutor had refused to allow his lawyer to study the materials of the case against his alleged torturers. He relied on Article 34 of the Convention, which reads as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

Admissibility

78. The Government argued that the applicant had failed to exhaust available domestic remedies in respect of this complaint. In particular, the prosecutor’s decision of 18 July 2007 (see paragraph 19 above) could have been challenged before the hierarchically superior prosecutor and the investigating judge, which had not been done.

79. The applicant did not comment on this argument.

80. The Court notes that the prosecutor’s decision was not final and – as was expressly noted in its text – was subject to an ordinary appeal. However, the applicant and his lawyer never challenged that decision. This part of the complaint must therefore be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The applicant claimed EUR 37,000 in compensation for non-pecuniary damage.

83. The Government submitted that the amount claimed was excessive in the light of the Court’s similar case-law in respect of the Republic of Moldova.

84. The Court awards the applicant EUR 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

85. The applicant also claimed EUR 24,531 for costs and expenses incurred before the Court. He submitted an itemised list of hours his lawyer had worked on the case, amounting to 136 hours at a rate of EUR 180 per hour.

86. The Government submitted that the applicant had failed to submit any evidence that the relevant sums had in fact been paid. In any event, both the number of hours worked on the case and the sum claimed were excessive.

87. 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 1,500 covering costs under all heads.

C. Default interest rate

88. 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. *Joins* to the merits the Government's objection concerning the failure to exhaust domestic remedies in respect of the complaint about the inefficient investigation under Article 3 of the Convention and rejects it;
2. *Declares* the complaints under Articles 3 and 8 (in respect of censorship of correspondence) admissible, and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention under both the procedural and substantive limbs as concerns the applicant's ill-treatment;
4. *Holds* that there has been a violation of Article 3 of the Convention as concerns the applicant's conditions of detention;
5. *Holds* that there has been a violation of Article 8 of the Convention in respect of censorship of correspondence;
6. *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 respondent State's national currency at the rate applicable at the date of settlement:
 - (i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and
 - (ii) EUR 1,500 (one thousand five hundred 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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President