



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

SECOND SECTION

CASE OF BOBOC AND OTHERS v. THE REPUBLIC OF MOLDOVA

(Application no. 44592/16 – see list of applicants in the appendix)

JUDGMENT

Art 2 (substantive and procedural) • Beating to death of applicants' husband and son by police during mass protests • Use of force not absolutely necessary
• Ineffective investigation

STRASBOURG

7 June 2022

FINAL

07/09/2022

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

In the case of Boboc and Others v. the Republic of Moldova,

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

Jon Fridrik Kjølbro, *President*,

Carlo Ranzoni,

Egidijus Kūris,

Pauliine Koskelo,

Jovan Ilievski,

Saadet Yüksel,

Diana Sârcu, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 44592/16) 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 three Moldovan nationals, Mrs Ala Boboc, Mr Victor Boboc and Mrs Natalia Romanciuc (“the applicants”), on the various dates indicated in the appended table;

the decision to give notice of the application to the Moldovan Government (“the Government”);

the decision to give priority to the applications (Rule 41 of the Rules of Court);

the parties’ observations;

Having deliberated in private on 17 May 2022,

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

INTRODUCTION

1. The application concerns the beating to death of Mr Valeriu Boboc, the applicants’ son and husband respectively, during mass protests in April 2009 in the Republic of Moldova, as well as the manner in which his death and ill-treatment were investigated.

THE FACTS

2. The applicants were born in 1963, 1959 and 1987 and live in Bubuieci and Chişinău, respectively. The applicants were represented by Mr V. Pleşca, a lawyer practising in Chişinău.

3. The Government were represented by their Agent, Mr O. Rotari.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. Mr Valeriu Boboc was the son of the first two applicants and the husband of the third. At the time of the events he was 24 years old.

A. General background of the case

6. On 5 April 2009 general elections took place in Moldova. The preliminary results of the elections were announced on 6 April 2009. According to these results, the ruling Communist Party of Moldova had narrowly won the elections.

7. On 6 April 2009 growing discontent with the results of the elections and with alleged electoral fraud was expressed, notably on various online forums. At 6 p.m. several hundred people, mostly young, gathered in front of the Stephen the Great (*Ștefan cel Mare*) monument in the centre of Chișinău. Half an hour later there were already 3,000-4,000 people assembled, who began a protest against the alleged electoral fraud in front of the Presidential Palace and Parliament buildings, then returned to Great National Assembly Square. A bigger demonstration was then announced for 10 a.m. the next day.

8. On 7 April 2009 the protest resumed with the participation of some 5,000-6,000 people. While the demonstration was initially peaceful, several hundred of the participants gradually became violent. As established by the subsequently-created parliamentary inquiry commission tasked with the elucidation of the causes and consequences of the events following the general elections held on 5 April 2009 in Moldova (“the Commission”), two incidents of poorly-planned interventions by a fire truck and riot police brought the crowd to a point beyond which massive violent acts could no longer be prevented. Following violent attacks and stone throwing, which met with very weak police resistance, approximately 250 violent protesters were eventually able to take over the lower floors of the Presidential Palace and Parliament buildings. They looted those floors and set the canteen in the Presidential Palace alight. During the night, several fires broke out in the Parliament building, some of them breaking out after full control over the building was recovered by the authorities at around 11 p.m.

9. At approximately 1 a.m. on 8 April 2009 various police and special forces units started a massive operation aimed at re-establishing public order. However, as established by the Commission, excessive force was used and all those still present in the main square were arrested, regardless of whether they had acted violently or not. The arrests continued for several days. The media reported cases and showed video footage of young people being arrested and/or beaten by both uniformed police and plain-clothed officers in the city centre on 8 April and thereafter, long after the protests ended on the evening of 7 April 2009.

B. The death of Mr Valeriu Boboc and its investigation

10. According to the applicants, in the evening of 7 April 2009 Mr Valeriu Boboc was in the central square in Chișinău, peacefully protesting together with others. At approximately 00.50 a.m. on 8 April 2009 several squads of

police and special forces, both uniformed and plain-clothed, surrounded the approximately 50 protesters and ordered them to lie down on the ground. They then started hitting those protesters. For several days Mr Boboc's relatives had no knowledge of his fate.

11. On 8 April 2009 a criminal investigation (no. 2009038035 – hereinafter referred to as “the main investigation”) was opened into intentional serious bodily harm resulting in Mr Boboc's death. According to that file, on 8 April 2009 at 1.30 a.m. the body of a man in his thirties was discovered near the Municipal Clinical Emergency Hospital in Chişinău. According to the testimony of B.V., an ambulance doctor working at the hospital near which the body was officially found, he and his colleagues were driving their ambulance when they were stopped by a uniformed police officer and asked to help a patient. They then approached a car parked nearby, in the boot of which was the dead body of an unknown man in his thirties. They took the body to the hospital and informed the police. The body had suffered visible head injuries. His colleague, L.M., made a similar statement, adding that when the doctor told the officer that the man was dead, the officer dropped the body on the ground and said “do what you will with it” and left. The ambulance driver largely confirmed the above-mentioned statements, to the extent that he saw what happened from the ambulance, including the body being dropped by the officer, who then left. These witnesses noted down and communicated to the investigators the car's number plates, which belonged to the Ministry of Interior.

12. An initial medical conclusion was reached, according to which Mr Boboc had died from poisoning with an unknown toxic agent. On 8 April 2009 a statement was placed on the official website of the Prosecutor General's Office, informing the public that Mr Boboc had died from poisoning with an unknown toxic agent and not from a broken rib. Relying on the same initial report, the Health Minister confirmed poisoning as the cause of death.

13. Between 8 April and 14 May 2009, a forensic examination of the body was carried out and an expert drew up a detailed report. The expert found that the exact cause of death could not be determined, given the absence of information about the circumstances, the presence of insignificant injuries on the body and a less serious heart problem, coupled with the presence of alcohol in the blood. However, there were clear signs that death had occurred suddenly; a number of injuries, both insignificant and life-threatening (notably closed trauma to the neck, the thoracic region, with haemorrhages at the level of the vagus nerve and of the carotid sinus and a broken rib with pulmonary contusion), had been caused to various parts of the body some 1-2 hours before death. The cause of death had thus been acute cardio-vascular insufficiency caused by the application of force on the reflexogenic areas of the throat.

14. The applicants and their lawyers asked for an alternative forensic examination, to be submitted by an international team. After numerous complaints and requests, following pressure by the public, non-governmental organisations and the European Union, the prosecution agreed to a new examination of Mr Boboc's body, requiring its exhumation. The team carrying out the new examination was composed of Moldovan experts and a British one, Professor Derrick John Pounder. The resulting report, certified on 9 July 2009, established that Mr Boboc's body had injuries to the head, neck, thoracic cage, abdomen, the lower body and limbs. Those injuries had been caused by blunt objects and were consistent with typical signs of physical violence; they could not have been caused as a result of a fall or several falls or from simply bumping or dragging the person. The injuries had been caused shortly before the victim's death and were the cause of his death. They were typical of injuries sustained by a person lying on the ground and being kicked and struck with flexible objects such as a police baton. The report also established the absence of any toxic substance in Mr Boboc's body, as well as the absence of any underlying health problems, with the exception of a dilation of the heart, which could not have contributed to the victim's death.

15. Starting from 1 July 2009 the applicants' lawyers asked on several occasions to be granted access to the results of the new report. This was refused; the applicants were given access to the report on 10 February 2010.

16. During the investigation the applicants' lawyers identified several witnesses and asked for them to be heard. On 1 June 2009 one such witness (D., see *D. v. the Republic of Moldova*, no. 25397/09, 8 December 2020) declared that she had seen Mr Boboc being beaten in the central square by several officers, both uniformed and plain-clothed. He was lying on the ground and was kicked and struck with police batons and the backs of rifles. At first, he had tried to cover his head, but later on he no longer reacted to kicks and blows, yet the beating still continued. Another witness (R.T.) declared on 6 April 2010 that she had seen Mr Boboc being hit first by one officer in a balaclava and black uniform of the special forces, but then she was told not to look, and she obeyed. Subsequently an officer came to the group of persons where R.T. was being held and gave an order to stop the beatings, because there was already one person dead. Witness I.D. testified that he had seen the victim being hit first by several persons, then by two persons in black uniforms and balaclavas. He added that he could probably identify two other uniformed officers who were not wearing balaclavas and who had hit the victim.

17. Witness S.R., who at the time of the events was head of the Chişinău criminal police, testified, *inter alia*, that he had not been kept informed of plans to arrest the protesters and so he was a simple participant in the events. He had attempted to coordinate the actions of his subordinates, notably by

telephone, but in the chaos and noise of the events it was very difficult to do so.

18. On 23 and 31 July 2009 the applicants' lawyers asked the Prosecutor General's Office for information about whether any of the persons who had killed Mr Boboc had been identified. They pointed out that the authorities had a duty to carry out a thorough and speedy investigation and that any delay in taking measures aimed at identifying the criminals diminished the efficiency of the investigation.

19. On 19 October 2009 the applicants' lawyers asked for the prosecution not only of those who had committed the murder, but also those high-ranking officials who had ordered and directed the large-scale operation in the centre of Chişinău which had resulted in Mr Boboc's death. They asked for all available video recordings of the events on the night of 7 to 8 April 2009 to be viewed. Such video recordings were officially examined for the first time on 2 March 2010.

20. One police officer (I.P.) – the first who had hit Mr Boboc – was identified from the footage of a security camera installed on the nearby Government building and from witness statements. He was charged with causing serious bodily harm resulting in the victim's death. On 18 May 2010 the case against I.P. was separated from the main investigation under no. 2010038044. As a result, from that date the applicants did not have access to any materials of the main investigation. On 28 May 2010 the applicants' lawyers challenged that decision, but their complaint was rejected.

21. On 18 November 2010 the applicants' lawyers asked for updates on the course of the main investigation, but received no reply. On 24 December 2013 I.P. was acquitted. He testified in court, *inter alia*, that he had been ordered by his superior to arrest protesters at all costs, using force if necessary, even ill-treatment. On 30 March 2015 the Chişinău Court of Appeal quashed that judgment and convicted I.P., sentencing him to 10 years' imprisonment. That decision was upheld by the Supreme Court of Justice on 15 December 2015, the full judgment being available since 22 January 2016. I.P. absconded and was placed on an international wanted list.

C. Two other related criminal investigations

22. In addition to the main investigation (see paragraph 11 above) and the one against I.P. (see paragraph 20 above), two other criminal investigations were initiated by the authorities into various aspects of the events of 7-8 April 2009. One of them (no. 2009038163) concerned high-ranking officials suspected of having ordered and directed the intervention in the centre of Chişinău on the night of 7 to 8 April 2009 resulting, *inter alia*, in Mr Boboc's death.

23. Another investigation (no. 2009018224) resulted in the indictment of the former Minister of the Interior, G.P., and former head of the Chişinău

Police Commissariat, V.B., for negligence in carrying out their duties. They were both acquitted by a final judgment of the Supreme Court of Justice on 30 June 2015. On 10 April 2010 the applicants asked the prosecution to acknowledge them as the victim's successors in this investigation. This request was forwarded to the trial court, which was alone competent to deal with such requests at the trial stage. On 11 February 2011 the applicants repeated their request, which was again forwarded to the trial court. They did not receive a reply. Relying on their application before the Court, on 9 November 2018 the applicants asked the trial court for access to the materials of the case against G.P. and V.B. On an unknown date they were given copies of certain documents from the file, including a decision of the Centru District Court dated 23 March 2011, refusing to allow the applicants to participate in the proceedings as successors of the injured party. The court found that since Mr Boboc did not have the procedural standing of an injured party in the proceedings against G.P. and V.B., the applicants could not become successors to the injured party. According to the minutes of the hearing of that date, the court examined the applicants' request in camera, in their absence and in the absence of their lawyers.

24. In all these criminal investigations, except the one against I.P., the applicants were not officially acknowledged as having any status as the victim's successors and did not have access to the materials of the cases. The main investigation, from which that against I.P. was subsequently separated (see paragraph 11 above), remained at the investigation stage and was suspended in 2013.

D. Subsequent events

25. On 7 April 2010 Mr Boboc was awarded the "Order of the Republic" medal, posthumously.

26. On 4 April 2012 the Government awarded indemnities to all those who suffered as a result of the events of April 2009. Mr Boboc's parents received 5,000 Moldovan lei (MDL) each, while his wife received MDL 7,000.

RELEVANT LEGAL FRAMEWORK

27. The relevant reports made by various State authorities and non-governmental organisations have been summarised in *Taraburca v. Moldova* (no. 18919/10, §§ 33-37, 6 December 2011).

28. In addition, under Section 297 (4) of the Code of Criminal Procedure all requests and complaints concerning a case which has been sent to the trial court shall be examined by that court.

THE LAW

I. PRELIMINARY ISSUES

29. The Court must determine whether the applicants have standing to lodge the present application, in view of the fact that the victim died before the application was lodged. In this respect, the Court reiterates that close family members, including siblings, of a person whose death is alleged to engage the responsibility of the State can themselves claim to be indirect victims of the alleged violation of Article 2 of the Convention (see *Tsalikidis and Others v. Greece*, no. 73974/14, § 64, 16 November 2017, *Velikova v. Bulgaria* (dec.), no. 41488/98, ECHR 1999-V (extracts), and *Van Colle v. the United Kingdom*, no. 7678/09, § 86, 13 November 2012).

30. The Court considers that, as the parents and wife of Mr Boboc, the applicants could also legitimately claim to be victims of a violation of the substantive limb of Article 3 of the Convention, as well as of any deficiencies in the investigation into his death, since the ill-treatment was closely linked to the victim's death (see, for instance, *Karpylenko v. Ukraine*, no. 15509/12, § 105, 11 February 2016 with further citations).

31. It follows that the applicants have standing to lodge the complaints under Articles 2 and 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

32. The applicants complained of the death of their son/husband, respectively, at the hands of State agents, as well as of the inefficient investigation into his death. They relied on Article 2 of the Convention, which reads as follows:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Admissibility

33. The Government argued that the applicants had not exhausted available domestic remedies in respect of their complaint about not being allowed access to the materials of the criminal investigation against G.P. and V.B. (see paragraph 28 above).

34. The applicants submitted that they had asked to be given status as the victim's successors in the relevant investigation. They had made this request both before the prosecutor's office and the trial court.

35. The Court notes that access to the materials of the cases could be obtained only on condition of having an official status in the investigation (such as the victim's successors). The applicants could thus not exhaust this remedy without obtaining such a procedural status, which they clearly tried to do, but with no response from the trial court (see paragraph 23 above). Therefore, it cannot be said that the applicants have failed to exhaust available domestic remedies in the present case. The Government's objection must thus be rejected.

36. The Court also must determine whether the applicants can still complain of a violation of Article 2 of the Convention following I.P.'s conviction (see paragraph 21 above). It considers that in view of the various procedural shortcomings (see paragraph 57 below) the conviction of one of several officers who had hit Mr Boboc cannot deprive the applicants of their victim status.

37. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

38. The applicants submitted that it was clear from the materials in the criminal file against I.P. that Mr Boboc died at the hands of State agents. There had thus been a violation of the negative obligation of the State not to cause the death of a person.

39. Moreover, the investigation into Mr Boboc's death was deficient. Initially there was an unsuccessful attempt to derail the investigation by falsely finding that Mr Boboc had died from intoxication with an unknown agent. Even though at least three other State agents had hit him besides I.P., and some of them did not have their faces covered, the prosecution was unable or unwilling to find the other persons directly responsible for causing the victim injuries leading to his death. Even though I.P. was convicted, he was not arrested immediately, which allowed him to abscond. In addition, no high-ranking official was eventually held responsible for organising and directing the actions of the police and special forces on the night of 7 to 8 April 2009, even though I.P. and some other officers testified that they had been ordered to arrest protesters at all costs, including by use of force and ill-treatment. The applicants were not allowed to be involved in any of the three investigations which concerned the events of that night and implicitly the death of Mr Boboc.

40. The Government argued that the domestic authorities had taken all reasonable steps to investigate Mr Boboc's death. This included examining the scene of the crime and all available video recordings, hearing witnesses and carrying out forensic examinations. As soon as the victim had been identified on 9 April 2009, his relatives were informed. An initial forensic examination was carried out between 8 and 14 April 2009 and resulted in a provisional conclusion, before any laboratory results, that death had occurred as a result of poisoning with an unknown toxic agent. A final forensic report completed on 14 May 2009 concluded that death had occurred as a result of acute cardio-vascular insufficiency caused by the application of force on the reflexogenic areas of the throat (see paragraph 13 above). A further forensic report was carried out by an international team and confirmed the presence of injuries on various parts of the body, finding that death had occurred as a result of ill-treatment. While the obligation to investigate was one of means and not of result, it had still been possible to identify and sanction I.P., one of those responsible for that death.

41. The separation of the investigation against I.P. from the main investigation was done in order not to delay the criminal investigation. The other investigations focused on determining the responsibility of other officers in the events of April 2009, including the death of Mr Boboc. However, it was impossible to identify any specific individual officer who had committed criminal offences and the prosecutions had to be suspended. The applicants' lawyers were given answers to all their requests made in connection with all these investigations, the courts finding no reasons to admit the applicants into the proceedings as successors of the injured party. There was thus no violation of Article 2 of the Convention.

2. *The Court's assessment*

(a) **General principles**

42. The Court reiterates that Article 2 ranks as one of the most fundamental provisions in the Convention, one which, in peace time, admits of no derogation under Article 15. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe (see, among many other authorities, *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 171, *Reports of Judgments and Decisions* 1997-VI, *Solomou and Others v. Turkey*, no. 36832/97, § 63, 24 June 2008, and *Giuliani and Gaggio v. Ital* [GC], no. 23458/02, § 174, ECHR 2011 (extracts)). Having regard to the fundamental importance of the right to life, the Court must subject any possible interferences with Article 2 of the Convention to the most careful and thorough scrutiny, taking into account not only the actions of State agents but also all the surrounding circumstances (see *McCann and Others v. the United Kingdom*,

27 September 1995, § 150, Series A no. 324, and *Tekin and Arslan v. Belgium*, no. 37795/13, § 83, 5 September 2017).

43. Moreover, where an individual is deprived of his or her liberty or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention. The Court has also emphasised that the words "in principle" cannot be taken to mean that there might be situations in which such a finding of a violation is not called for, because the relevant severity threshold (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 86-87, ECHR 2015) has not been attained. Any interference with human dignity strikes at the very essence of the Convention. For that reason any conduct by law-enforcement officers *vis-à-vis* an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question (*Bouyid*, cited above, §§ 100-101).

44. According to its case-law, the Court must examine the planning and control of a policing operation resulting in the death of one or more individuals in order to assess whether, in the particular circumstances of the case, the authorities took appropriate care to ensure that any risk to life was minimised and were not negligent in their choice of action (see *Giuliani and Gaggio v. Italy* [GC], cited above, § 249 (extracts), *McCann and Others v. the United Kingdom*, cited above, § 194, and *Andronicou and Constantinou v. Cyprus*, cited above, § 181). The use of lethal force by police officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant *carte blanche*. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that policing operations must be sufficiently regulated by national law, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force. Accordingly, the Court must take into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination. Police officers should not be left in a vacuum when performing their duties: a legal and administrative framework should define the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the international standards which have been developed in this respect (see *Giuliani and Gaggio*, cited above, § 249 and *Makaratzis v. Greece* [GC], no. 50385/99, §§ 57-59, ECHR 2004-XI, §§ 58-59).

45. The Court further reiterates that Article 2 of the Convention contains a procedural obligation to carry out an effective investigation into alleged breaches of its substantive limb (for a summary of the relevant general

principles, see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, §§ 229 et seq., ECHR 2016).

46. A requirement of promptness and reasonable expedition is implicit in the context of Article 2 investigations. It must, however, be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. That said, a prompt response by the authorities in investigating a use of lethal force 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 *Hanan v. Germany* [GC], no. 4871/16, § 207, 16 February 2021, *Armani Da Silva*, cited above, § 237, and *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 167, ECHR 2011).

47. There must also be a sufficient element of public scrutiny of the investigation, the degree of which may vary from case to case. The investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests (see *Armani da Silva*, cited above, § 235, and *Al-Skeini and Others*, cited above, § 167). However, the investigative materials may involve sensitive issues and disclosure cannot be regarded as an automatic requirement under Article 2 (see *Giuliani and Gaggio*, cited above, § 304, *McKerr v. the United Kingdom*, no. 28883/95, § 129, ECHR 2001-III, and *Armani da Silva*, cited above, § 236). Moreover, Article 2 does not impose a duty on the investigating authorities to satisfy every request for a particular investigative measure made by a relative in the course of the investigation (see *Velcea and Mazăre v. Romania*, no. 64301/01, § 113, 1 December 2009, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 348, ECHR 2007-II, and *Armani da Silva*, cited above, § 236). The outcome of the investigation must be duly brought to the attention of the next-of-kin (see *Hanan*, cited above, § 208).

48. Finally, the Court reiterates that compliance with the procedural requirement of Article 2 is assessed on the basis of several essential parameters, which are inter-related. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed. It is in relation to this purpose of an effective investigation that any issues, including that of promptness and reasonable expediency, must be assessed (*Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 171, 25 June 2019).

(b) Application of these principles

(i) Substantive limb of Article 2

49. In the present case, the Court notes that while Mr Boboc was not formally in police custody, he was part of a group of approximately fifty persons surrounded by many more officers from various police and special forces units (see paragraph 10 above). All the persons so surrounded were ordered to lie down, which they did, including Mr Boboc. In such

circumstances, the Court considers that he was confronted with and under the control of those officers (cf. *Bouyid v. Belgium* [GC], no. 23380/09, § 88, ECHR 2015) and in a vulnerable position.

50. It is also clear from the materials of the domestic criminal investigation that Mr Boboc was struck repeatedly by several officers, including I.P., while lying on the ground. It is also apparent that he did not resist any of the officers or conduct himself in an aggressive or otherwise dangerous manner. The Court concludes that the use of force against him was entirely unprovoked and not required by the circumstances. Therefore, the officers' actions could not be regarded as having been taken pursuant to any of the exceptional grounds mentioned in paragraph 2 of Article 2. Furthermore, it was not demonstrated that the use of force against Mr Boboc was absolutely necessary.

51. In the light of the clear conclusions made by experts showing a direct link between the force applied to Mr Boboc and his death (see paragraph 14 above) and the absence of any disagreement between the parties as to the cause of Mr Boboc's death (see, *a contrario*, *Kurnaz and Others v. Turkey*, no. 36672/97, §§ 43-45, 24 July 2007), the Court concludes that there has been a violation of the substantive limb of Article 2 in the present case.

(ii) *Procedural limb of Article 2*

52. The applicants complained that the investigation into the circumstances surrounding the death of Mr Boboc was deficient. In this respect, the Court notes that the investigation started promptly, on the day when the body was discovered. However, an important element, namely the examination of video recordings of the events, was carried out with significant delay – almost a year later (see paragraph 19 above) – and no explanation for the delay was given. It is also noted that the main investigation lasted for approximately four years until it was suspended in 2013 and that it was still suspended at the time of submission of the parties' most recent observations in December 2018 (see paragraph 24 above).

53. It is further noted that the applicants asked for all those responsible for Mr Boboc's death to be prosecuted: not only those who were directly involved in his beating, but also those who had ordered and organised the intervention by various police and special forces units against the demonstrators (see paragraph 19 above). In fact, the prosecution itself considered it important to investigate this aspect and started several investigations against high-ranking officials (see paragraphs 22-24 above). In view of the fact that Mr Boboc was one of several persons who had died during the events of April 2009, all the investigations concerning the authorities' actions during those events must have also necessarily concerned that death. In such circumstances, it is unclear why the courts rejected his successors' participation in all the relevant investigations, except for the one concerning I.P. It is noted that, without being admitted into the investigation

in any official capacity, the applicants did not have access to any materials of those cases and the prosecution was not under any obligation to inform them about the course of the investigations. Moreover, it appears from the documents in the file that, in respect of the only other investigation (in addition to that concerning I.P.) which reached the trial stage, the applicants were not only denied any standing, but they were not allowed to plead before the court, nor were they informed of the decision taken (see paragraph 23 above). This is in contradiction with the obligation of making the investigation accessible to the victim's family (see paragraph 47 above and, for a more recent example, *Ribcheva and Others v. Bulgaria*, nos. 37801/16 and 2 others, 30 March 2021).

54. The Court further notes that although they had examined video recordings of the events and interviewed several witnesses who confirmed having clearly seen the beating of Mr Boboc, the investigators were unable to identify the other officers involved in Mr Boboc's beating, because they were wearing balaclavas (see paragraph 16 above). It is also apparent that no means of identification via wearable signs or otherwise had been used, preventing any meaningful attempt to hold each officer responsible for his actions. In this respect the Court has, in the past, expressed concern about incidents involving armed and masked police officers taking part in interventions against individuals, as well as the failure to identify and question such officers (see, for instance, *Kučera v. Slovakia*, no. 48666/99, §§ 122-124, 17 July 2007, *Rachwalski and Ferenc v. Poland*, no. 47709/99, 28 July 2009, *Hristovi v. Bulgaria*, no. 42697/05, §§ 80-93, 11 October 2011, *Ataykaya v. Turkey*, no. 50275/08, § 53, 22 July 2014, and *Ciorap v. the Republic of Moldova (no. 5)*, no. 7232/07, § 64, 15 March 2016). It must also be noted that, even though the doctors who first saw the victim's body in a car had noted down its number plates belonging to the Ministry of the Interior (see paragraph 11 above), no attempt was apparently made to find and interview the officer driving that car on the relevant evening about the circumstances in which he ended up with the victim's body in his car's boot.

55. More generally, the Court agrees with the applicants that the present case cannot only concern the actions of specific officers such as I.P., but must necessarily be examined from the point of view of the planning and control of the policing operation during the relevant events in April 2009 (see paragraph 44 above). As established by the parliamentary inquiry commission (see paragraph 8 above), there have been widespread allegations of mass arrests and ill-treatment during the April 2009 events. The materials in the file concerning Mr Boboc's death reveal that officers, both uniformed and plain-clothed, with or without face coverings, engaged in unprovoked beatings in the very centre of the capital, in plain view of approximately 50 persons whom they were beating and of possible onlookers, and while also being aware of security cameras installed on the Government building situated nearby. Such conduct denotes the absence of any fear of

repercussions. This, together with the testimony by I.P. that he had been ordered to arrest protesters at any cost, including by using force and ill-treatment (see paragraphs 21 above), and that of the head of the Chişinău criminal police, R.S., that he was not kept informed and was simply a participant in the events (see paragraph 17 above), raises the question of the role of the various State authorities' leadership in the events of April 2009 and of the manner in which the operation was planned and executed.

56. However, the manner in which the prosecution and the courts dealt with this particular case reflects the authorities' apparent position that such issues were unimportant to the full investigation of the death of Mr Boboc. The Court considers that excluding the applicants from all criminal investigations except that concerning I.P. prevented their participation in dealing with one of the fundamental issues concerning the death of their relative, namely the alleged official tolerance, or even instigation by the leadership of the various State institutions, of the type of conduct which resulted in Mr Boboc's death. Moreover, having been acquitted by the first-instance court, I.P. was not subjected to any preventive measure pending the appeal lodged by the prosecution, such as seizing his passport. This allowed him to abscond and to effectively avoid any punishment.

57. The Court considers that, in view of the unexplained delays in dealing with important issues such as examining video recordings of the events and dealing with the case in general, the failure to set up a system for post-factum identification of masked officers, as well as the complete denial of access to the investigations other than the one concerning I.P., the authorities did not ensure an effective investigation into all aspects of Mr Boboc's death.

58. There has accordingly been a further violation of Article 2 of the Convention in its procedural limb.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

59. The applicants complained that their son/husband Valeriu Boboc had been subjected to severe ill-treatment by State agents, as a result of which he had died, and that the domestic authorities had failed to investigate effectively the circumstances of his death. Under the same head, the applicants complained of mental suffering caused by their son's/husband's death and the authorities' inadequate response to their complaints. Article 3 of the Convention reads as follows:

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

60. The Government submitted that the authorities had carried out a prompt, effective and thorough examination of the allegation of ill-treatment, even creating a special Parliamentary Commission. After the events, rules were changed so that, for instance, whenever officers had to wear protective masks, their post-factum identification would be ensured via badges or

identification numbers. Officers and judges were given additional training and more serious criminal sanctions were introduced into the Criminal Code for acts of ill-treatment.

61. In respect of the applicants' complaint about the mental suffering caused by the death of their son and husband, the Court notes that it has consistently refused to extend the application of Article 3 to the relatives of persons who have allegedly been killed in violation of Article 2 of the Convention, as opposed to the relatives of the victims of enforced disappearances (see *Yasin Ateş v. Turkey*, no. 30949/96, § 135, 31 May 2005, and *Dangayeva and Taramova v. Russia*, no. 1896/04, § 107, 8 January 2009). In these circumstances, and taking into account its findings in paragraphs 52-58 above, the Court concludes that the applicants' complaint under Article 3 of the Convention in respect of the death of Mr Valeriu Boboc must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention (see *Tsakoyevy v. Russia*, no. 16397/07, § 136, 2 October 2018).

62. The Court notes that the remaining complaints under Article 3 are linked to those examined above under Article 2 of the Convention and must therefore be declared admissible.

63. As concerns the allegation of ill-treatment, having found a violation of Article 2 of the Convention in its substantive aspect (see paragraph 51 above), the Court takes the view, in the circumstances of the present case, that it is not necessary to examine separately whether there has been a further violation of Article 3 of the Convention (*Semache v. France*, no. 36083/16, § 121, 21 June 2018; and *Hasan Köse v. Turkey*, no. 15014/11, § 43, 18 December 2018).

64. As to the applicants' complaint about the failure to investigate properly the alleged ill-treatment of Valeriu Boboc, the Court notes that the substance of the applicants' complaint has been examined by the Court above under the procedural aspect of Article 2 of the Convention (see paragraph 58 above). Therefore, the Court does not deem it necessary to make a separate finding under Article 3 of the Convention in respect of the alleged deficiencies of the investigation into the ill-treatment (see *Tsakoyevy*, cited above, § 135).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. Article 41 of the Convention provides:

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

A. Damage

66. The applicants claimed 80,000 euros (EUR) in respect of pecuniary damage. They submitted that Mr Valeriu Boboc was the breadwinner for the family, which lost that essential revenue due to the actions of State agents. They also claimed 90,000 euros (EUR) in respect of non-pecuniary damage. They referred to the psychological trauma and anxiety suffered as a result of the torture and killing of their son/husband, as well as of the negligence and irresponsibility of the prosecuting authorities and courts in examining the case, notably by not bringing to justice any of the organisers of the police operation which led to Mr Boboc's death. All three applicants submitted medical conclusions of the "Memoria" Rehabilitation Centre for Torture Victims, a non-governmental organisation financed by the European Union and a member of the General Assembly of the International Rehabilitation Council for Torture Victims (IRCT). According to these conclusions, each applicant presented various forms of post-traumatic stress disorder.

67. The Government considered that the method used by the applicants was speculative and unreasonable. They noted the absence from the file of any document confirming that Mr Valeriu Boboc was in fact employed. The sum claimed for non-pecuniary damage was excessive and not consistent with the Court's case-law in similar cases.

68. The Court finds that the applicants have not sufficiently substantiated their claim for pecuniary damage. It therefore makes no award in this respect. At the same time, it considers that the applicants must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Ruling on an equitable basis, and taking into consideration its findings of both substantive and procedural breaches of Article 2 of the Convention, the Court awards the applicants jointly EUR 50,000 in respect of non-pecuniary damage caused, plus any tax that may be chargeable.

B. Costs and expenses

69. The applicants also claimed EUR 28,400 for costs and expenses. Their lawyers represented them at the investigation stage and before the domestic courts, including 79 hearings in the criminal case against I.P., as well as in the proceedings before the Court. They relied on contracts with their lawyers and the itemised list of hours worked on the case at the domestic level and 49 hours in the proceedings before the Court.

70. The Government considered that the sum claimed was both unsubstantiated and excessive, notably on account of the number of hours allegedly worked on the case.

71. 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 were 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 7,000 covering costs under all heads, plus any tax that may be chargeable to the applicants.

C. Default interest

72. 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 under Article 3 about the applicants' mental suffering inadmissible, and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention in its both substantive and procedural limbs;
3. *Holds* that there is no need to examine separately the complaints under the substantive and procedural aspects of Article 3 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months from 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 currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage caused;
 - (ii) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable to the applicants, 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;
5. *Dismisses*, the remainder of the applicants' claim for just satisfaction.

BOBOC AND OTHERS v. THE REPUBLIC OF MOLDOVA JUDGMENT

Done in English, and notified in writing on 7 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Jon Fridrik Kjølbro
President

APPENDIX

List of applicants:

Application no. 44592/16

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Ala BOBOC	1963	Moldovan	Chişinău
2.	Victor BOBOC	1959	Moldovan	Bubuieci
3.	Natalia ROMANCIUC	1987	Moldovan	Bubuieci