



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

FOURTH SECTION

CASE OF PRUNEANU v. MOLDOVA

(Application no. 6888/03)

JUDGMENT

STRASBOURG

16 January 2007

FINAL

23/05/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Pruneanu v. Moldova,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 12 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 6888/03) 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 Ion Pruneanu (“the applicant”) on 24 December 2002.

2. The applicant was represented by Mr Vitalie Iordachi, a lawyer practising in Chişinău and member of the non-governmental organisation “Lawyers for Human Rights”. The Moldovan Government (“the Government”) were represented by their Agent, Mr Vitalie Pârlog.

3. The applicant alleged that he had been subjected to severe police brutality and that the authorities had failed to carry out an adequate investigation into the incident, in breach of Article 3. He also complained under Article 13 of the Convention.

4. The application was allocated to the Fourth Section. On 21 October 2005 the President of that Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

5. The applicant and the Government each filed observations on the admissibility and merits of the application (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1972 and lives in the village of Șipoteni. According to him, he was ill-treated by police on two occasions, in May 2001 and in July 2002.

1. Facts related to the first alleged incident of ill-treatment

7. The applicant was suspected of theft of farm animals in his village. On 10 May 2001 he was arrested by six police officers (G.A., C.I., C.V., G.O., A.U. and V.B.) at his home. It does not appear from the submissions of the parties that the applicant had any injury on his body before his arrest or that he was injured in any way during the arrest.

8. According to the applicant, he was taken to the office of the village police inspector, in the Șipoteni Local Council building, and severely beaten by police officers A.U. and V.B. He was punched, kicked and beaten with a wooden baton on his body and on his head until he lost consciousness. Later he was taken by car to Călărași police station where he was handcuffed to a radiator. After regaining consciousness he managed to open the handcuffs and escape.

9. The Government contested the applicant's account of events and submitted that after his arrest, he had been taken by car to the Călărași police station. However, he jumped out of the car as it was moving and sustained injuries from the impact with the road. He later escaped from the Călărași police station.

10. Several days later the applicant went to a hospital where he was admitted for treatment. A medical report of 14 May 2001 stated *inter alia* that:

“[The applicant] has a yellowish bruise of 6x5 cm around his left eye; swelling of the base of his nose; a scratch of 2x1 cm on the left side of his nose; a scratch of 3x5 cm on his left cheek; a wound of 3x0.4 cm on his skull; a bruise of 20x13 cm on his back; painful chest and ribs; a scratch of 4x3 cm on his shoulder; paralysis of the left side of his face; head trauma and head concussion; perforation of the left tympanic membrane as a result of a barotrauma [an injury caused by rapid and extreme changes in pressure]. The injuries were inflicted by blows with blunt objects, possibly on 10 May 2001. They correspond to light corporal injuries and hospitalisation is recommended.”

11. The applicant was in hiding from the police until 10 July 2002, when he was arrested (see paragraph 23 below).

12. On 30 September 2002 the applicant complained to the Ombudsman's Office about the alleged ill-treatment and annexed to his complaint a copy of the medical certificate of 14 May 2001. His complaint

was forwarded to the Ungheni County Prosecutor's Office (*Procuratura Județului Ungheni*).

13. On 6 November 2002 the Ungheni County Prosecutor's Office dismissed the complaint without having conducted any investigation. The applicant challenged the dismissal before the Prosecutor General's Office.

14. On 22 November 2002 the Prosecutor General's Office ordered a re-examination of the applicant's complaints.

15. On 28 November 2002 the Ungheni County Prosecutor's Office heard police officers V.B. and C.I., who had been involved in the arrest of the applicant on 10 May 2001.

16. According to V.B., who was one of the officers accused by the applicant of having ill-treated him, the applicant resisted arrest and jumped out of the car on the way to the Călărași police station. Since nobody had beaten him up, his injuries must have been caused during his arrest or when he jumped out of the car.

17. According to C.I., the applicant resisted arrest and later ran away from the Călărași police station. He had not seen anybody beat him up.

18. On 8 December 2002 the Ungheni County Prosecutor's Office dismissed the applicant's complaint about ill-treatment, finding that he had resisted arrest and had attempted to run away by jumping from the car. Nobody had ill-treated him and there was no evidence to the contrary. The applicant challenged this decision before the Prosecutor General's Office.

19. On 24 January 2003 the Prosecutor General's Office quashed the decision of 8 December 2002, finding it to be unfounded and the investigation superficial and incomplete. It ordered a second investigation during which all the police officers who had participated in the applicant's arrest were to be heard. The applicant's lawyer, relatives and co-detainees were also to be heard in relation to the complaints about ill-treatment, and also, if necessary, the applicant himself.

20. Between 11 and 24 February 2003 a prosecutor interrogated *inter alia* five of the police officers who had participated in the applicant's arrest on 10 May 2001 and the applicant's wife. The sixth police officer, G.O., and the applicant were not interrogated.

21. The police officers stated that after the arrest the applicant was taken first to the office of the village police inspector, in the Șipotenii Local Council building. They all declared that he had not been subjected to any form of violence, except at the time of the arrest when his hands had been tied behind his back because he had allegedly resisted arrest. Police officer C.I. stated that during his detention in the Local Council building, the applicant confessed to having committed a theft.

While in the Local Council building, the police officers had called the Călărași police station and asked for a police car to take the applicant there; however, since no car was available they used one of their own cars.

Police officers G.A., A.U. and V.B. stated that the applicant was accompanied by three police officers in the car: A.U., V.B. and G.O., who was driving. V.B. was in the front seat and the applicant and A.U. were in the back.

Police officer C.V., however, stated that the applicant was accompanied by four police officers in the car, namely G.O., C.I., A.U. and V.B.

One of the five police officers interrogated, C.I., declared that he did not know anything about the applicant's transportation to the Călărași police station. The other four police officers stated that the applicant had attempted to jump from the car. Two of them, G.A. and C.V., had been told that by their colleagues.

The police officers accused of ill-treating the applicant, A.U. and V.B., made almost identical declarations, according to which the applicant was in the back seat of the car with A.U. At one moment, he managed to untie his hands, which were secured with V.B.'s belt, and to jump out of the car which was travelling at approximately 70-80 km/hour. They had stopped the car and picked him up and noted that he was bleeding from his head. They took him to the Călărași police station and left him there.

The applicant's wife declared that nobody had beaten her husband during the arrest at their home. She had protested against the manner in which the policemen entered their house and had been kicked and punched by V.B., notwithstanding that she was pregnant at the time. Later in the night, at about 2 or 3 a.m., her husband had called her outside. He was in a very bad state with injuries to his face. He had told her that he had been beaten up by A.U. and V.B. during his detention at the Local Council building and had run away.

22. On 25 February 2003 a prosecutor dismissed the applicant's complaint about ill-treatment on the ground that he had sustained his injuries when jumping out of the car and that there was no evidence that he had been ill-treated.

2. Facts related to the second alleged incident of ill-treatment

23. On 10 July 2002 between 10 and 11 p.m. the applicant together with an accomplice entered an apartment situated on the third floor (that is second from ground level) of an apartment building and, using force, stole money from its occupant. After the victim started shouting for help, the applicant and his accomplice attempted to run away by jumping off the balcony. The accomplice was able to escape, but the applicant was caught by the police and taken to the Buiucani Police Station.

24. According to the applicant, after falling from the third floor he felt pain in his left leg and he could not therefore run away. At the police station, he had been subjected to torture. While he had confessed about the theft that led to his arrest, the police officers insisted that he also confessed

to another 20-30 thefts which he had not committed. He had been suspended on a metal bar and beaten with a baton on his legs, body and neck.

25. The Government contested the applicant's account of the events and submitted that all his injuries had been sustained by his jumping from the third floor.

26. On 11 July 2002 at 12.21 p.m. an ambulance was called to the Buiucani Police Station and at 2.20 p.m. the applicant was hospitalised at the Emergency Hospital. He could not walk and he was transported on a stretcher. A medical report dated 12 July 2002 stated *inter alia* that:

“[The applicant] has a head trauma with head concussion, an injured lip, bruises and injuries on his face, chest trauma with a fracture of ribs nos. 8, 9 and 10 on the right side, fracture of the tibia of his left foot, contusion of the soft tissues on the back of his neck, contusion of the soft tissues on his knees, fracture of the second finger of his left hand...”

27. On 6 August 2002 the applicant complained to the Prosecutor General's Office about his alleged ill-treatment on 10-11 July 2002.

28. The applicant's complaint was re-directed to the Buiucani Prosecutor's Office. The latter heard police officers R.G. and V.C., who had been involved in the arrest of the applicant on 10 July 2002 and a neighbour of the victim of the theft committed by the applicant.

According to the police officer R.G., the applicant had jumped from the third floor and had broken his legs, hand and neck as a result.

According to the police officer V.C., the applicant had jumped from the third floor and injured his legs. No force was applied to him because he had lost consciousness at the moment of arrest.

According to the neighbour U.I., the applicant was hanging from the victim's balcony and did not want to jump because there were people on the ground waiting for him. Then he, U.I., started hitting his hands to make him jump. Finally, the applicant jumped and was caught by the police.

29. On 6 September 2002 the Buiucani Prosecutor's Office dismissed the applicant's complaint about ill-treatment while finding that his injuries had been caused by his jumping from the third floor. The applicant challenged this decision before the Prosecutor General's Office.

30. On 12 November 2002 the Prosecutor General's Office quashed the decision of 6 September 2002 and ordered a second investigation during which witnesses present at the time of the applicant's arrest were to be heard. In particular, it ordered that the witnesses be asked about the circumstances of the arrest and about the applicant's state at that very moment. The Prosecutor General's Office also pointed to an inconsistency in the decision of 6 September 2002. It noted that while it was found that the applicant had sustained his injuries on the night of 10 July 2002, when he had jumped from the third floor, an ambulance was called for him only on 11 July 2002 at 12.21 p.m.

31. Between 20 and 27 November 2002 a prosecutor from the Buiucani Prosecutor's Office interrogated the applicant, two police officers present at his arrest, the victim of the theft committed by the applicant, three of the victim's neighbours and a paramedic from the ambulance which took the applicant to the hospital on 11 July 2002.

The applicant reiterated his complaints about ill-treatment at the hands of police.

Police officer R.G. stated that the applicant had jumped from the third floor and that he was brought to the Buiucani Police Station. Later an ambulance was called and the applicant was taken to the hospital. He denied having assaulted the applicant in any way.

Officer C.C. declared that he had not been present at the applicant's arrest; however, he had been told by his colleagues that the applicant had jumped from the third floor and had started running away. He was caught by police officer V.C. After arrest, the applicant spent the night at the Buiucani Police Station, where he was interrogated. Nobody had ill-treated him. In the morning he had told the police officers that he had pain in his legs and an ambulance was called.

The victim of the theft, I.T., declared *inter alia* that the applicant had attempted to pass from his balcony to a neighbouring balcony but that he had fallen down when the window which he was holding had broken. He had seen him lying on the ground encircled by his neighbours who would not let him run away.

The victim's neighbour, C.J., declared that he had seen the applicant falling from the third floor as the window broke. He had tried to run away but was stopped by the neighbours.

A similar declaration was made by another neighbour, C.E.

The paramedic declared that he had seen the applicant at about 12.30 p.m. The applicant had told him that he had fallen from the third floor and that he had headaches and pain in his leg. He did not complain of having been beaten up and he had no visible injuries on his face or body.

32. The prosecutor also requested information from the Buiucani Police Station about the exact time when the applicant was brought there. According to the custody records, the applicant was brought there only on 11 July 2002 at 8.10 a.m. and was taken away by ambulance at 12.40 p.m. on the same day.

33. The prosecutor finally ordered a forensic investigation of the applicant's state and particularly of the manner in which his injuries had been caused. On 2 December 2002 a forensic report was completed by a specialised institution of the Ministry of Health. It stated *inter alia* that:

“The [applicant's] injuries were inflicted by blows with blunt objects (*au fost produse prin acțiunea corpurilor contondente*)...

All the injuries ...could have been caused as a result of a fall from the third floor, if the [applicant's] body had hit hard objects.”

34. On 1 December 2002 a prosecutor dismissed the applicant's complaint about ill-treatment on the ground that he had sustained his injuries when jumping from the third floor of an apartment building. The prosecutor relied mainly on the declarations of the police officers that no violence had been inflicted on the applicant during his detention and on the forensic report dated 2 December 2002, which, in his view, confirmed that the applicant's injuries were caused by the fall.

II. RELEVANT DOMESTIC LAW

35. The relevant domestic law has been set out in the Court's judgment *Corsacov v. Moldova*, no. 18944/02, §§ 45-48, 4 April 2006.

THE LAW

36. The applicant complained under Article 3 of the Convention about being ill-treated by the police on 10 May 2001 and 10 July 2002. He also complained about the failure of the domestic authorities to investigate properly his complaints about ill-treatment. Article 3 of the Convention reads as follows:

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

37. The applicant argued that he did not have an effective remedy before a national authority in respect of the breaches of Article 3 of the Convention and alleged a violation of Article 13, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority”

I. ADMISSIBILITY OF THE COMPLAINTS

38. The Court considers that the applicant's complaints under Articles 3 and 13 of the Convention raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring them inadmissible have been established. The Court therefore declares these complaints admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. The submissions of the parties

1. Concerning the first alleged incident of ill-treatment

39. The Government did not contest the authenticity of the medical report of 14 May 2001. However, they argued that the applicant's injuries had been caused as a result of his jumping from the car when being taken to the Călărași police station. The applicant had previous criminal convictions and was young. Despite being cited to appear before the police, he did not comply. Accordingly it was very likely that he had wanted to escape at any price. In the Government's view, it was very easy for him to open the door of the moving car and jump out, since there was only one police officer beside him.

The Government also argued that the fact that the applicant did not complain about the alleged ill-treatment immediately, but only after having been arrested on 10 July 2002, demonstrated that the complaint was ill-founded. The Government also submitted that the domestic authorities had conducted a serious investigation into the applicant's allegations.

40. The applicant contested the Government's submissions and argued that it followed clearly from the medical report of 14 May 2001 that his injuries had been inflicted by blows with blunt objects, and not through hitting the ground. He also submitted that the explanation given by the police and repeated by the Government was not credible given that it would have been virtually impossible for a person sitting next to a police officer to untie his arms and jump out of a car travelling at 70-80 km/hour. The applicant also argued that the investigation conducted by the domestic authorities was superficial and inefficient.

2. Concerning the second alleged incident of ill-treatment

41. The Government argued that all the applicant's injuries were caused by his jumping from the third floor. They relied on the forensic report of 2 December 2002, which, according to them, stated that all the injuries could have been caused as a result of a fall from the third floor and as a result of his body hitting hard objects. The fact that his body had hit hard objects was admitted by the applicant, who stated that after having jumped from the third floor he felt pain in his left leg.

42. The applicant maintained that only his left leg had been hurt when he had jumped from the third floor. The rest of the injuries had been inflicted by policemen. He argued that it was not possible for a person to land on his feet and at the same time hurt his lips, ribs, head and neck. He also

maintained that the forensic report of 2 December 2002 was unclear and that the investigation conducted by the domestic authorities had been superficial and inadequate.

B. The Court's assessment

1. General principles

43. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and the *Assenov and Others v. Bulgaria* judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93).

44. 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 (*Selmouni v. France*, § 87).

45. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

46. The Court recalls that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the]

Convention”, requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such 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).

47. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see the *Assenov and Others v. Bulgaria* judgment cited above, § 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see, *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq. and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

2. The first alleged incident of ill-treatment

48. It is not disputed that the applicant sustained his injuries while in police custody. The core of the Government's submissions is that they had been sustained when he allegedly jumped from a car travelling at 70-80 km/hour.

49. The Court is not convinced by the reasons given by the Government and considers that they have failed to provide a plausible explanation as to how the applicant's injuries were caused.

50. It notes in the first place that there were no independent witnesses who could confirm that the applicant jumped from the car in which he was being taken to the police station. The findings of fact made by the prosecutors were entirely based on the accounts of the police officers accused of ill-treatment.

51. Not only have the Moldovan prosecutors accepted without reserve the submissions of the police officers, they also appear to have disregarded the contradictions in their statements. The Court notes that according to three police officers the applicant had been accompanied in the car by three policemen. The fourth police officer, however, declared that he had been accompanied by four policemen.

52. The investigation carried out by the domestic authorities appears to have had other shortcomings. In particular, not all the occupants of the car were interrogated. The Court notes that G.O., the driver of the car, was

never interrogated during the investigation and no reasons were given for this omission. In addition, it is noteworthy that the applicant himself was never interrogated.

53. The domestic authorities do not, moreover, appear to have taken into account the nature of the applicant's injuries, which appear *prima facie* to be inconsistent with a jump from a speeding car. It appears from the medical certificate submitted by the parties that the applicant did not suffer a single bruise to his limbs as a result of his jump. However, he suffered eight different injuries to his head, such as bruises, swellings, wounds, a head concussion and a barotrauma.

54. In the light of the above and on the basis of all the materials before it, the Court considers that the Government have not provided a plausible explanation for the applicant's injuries and concludes that they were the result of inhuman and degrading treatment while in police custody. Accordingly, there has been a violation of Article 3 of the Convention.

55. Having regard to the deficiencies identified in the investigation (see above), the Court also concludes that the State authorities failed to conduct a proper investigation into the applicant's allegations of ill-treatment. Thus, there has been a violation of Article 3 of the Convention also under its procedural head.

3. The second alleged incident of ill-treatment

56. It is not disputed that the applicant sustained part of his injuries when jumping or falling from the third floor. What is disputed is whether his jump was the cause of all his injuries.

57. It is an established fact that the applicant jumped or fell from a considerable height just before the police arrived and that he complained of pain in his left leg. He was not, however, examined by a doctor until he was taken to hospital some thirteen or fourteen hours later.

58. A medical report dated 12 July 2002, two days after the applicant's arrest, recorded that he had multiple serious injuries more or less all over his body (see paragraph 26 above) but it did not indicate the origin of the injuries. The applicant himself alleged that the injuries had resulted from his ill-treatment by the police.

59. In response to these allegations the Prosecutor's Office ordered a medical forensic investigation to determine the origin of the injuries.

60. Such an investigation was carried out on the basis of previous medical reports on the applicant and a final report of 2 December 2002 stated that the applicant's injuries had been inflicted by blows with blunt objects. However, the forensic doctors also acknowledged that the injuries might have been caused by a fall from the third floor, if the applicant's body had hit hard objects (see paragraph 33 above).

61. It is true that the victim of the theft and a neighbour declared to the police that the applicant was hanging from a window which broke, causing

the applicant's fall (see paragraph 31 above). However, that statement was contradicted by another neighbour, who declared that the applicant jumped only after being hit on his hands (see paragraph 28 above). In any event the Moldovan prosecutors did not finally conclude, and the Government have not argued, that the applicant had collided with hard objects during his fall or jump (such as open windows for example) or that he had landed on anything other than the ground (such as a tree or a car for example).

62. The Court further notes that the police failed to have the applicant medically examined in the immediate aftermath of the fall or jump. This failure of the police was amplified by the prosecutor's failure to follow the instructions received from the Prosecutor General's Office (see paragraph 30 above), and to interrogate the occupants of the apartment building about the extent to which the applicant appeared to have hurt himself as a result of the fall or jump. Moreover, the Court finds it a cause for concern that while the applicant's serious injuries were allegedly caused on the night of 10 July 2002, the authorities appear to have formed the view that he needed urgent medical care only in the afternoon of the next day.

63. Given the failure of the police to have the applicant medically examined immediately after his fall or jump, the Court is not able to determine with certainty the manner in which he sustained his injuries. At the same time, the Court cannot ignore the undisputed fact that the applicant had jumped from a considerable height. Given that fact, and despite the matters of concern described in paragraphs 61 and 62, the Court can only conclude that it has not been established beyond reasonable doubt that the injuries sustained by the applicant were the result of ill-treatment.

64. The above conclusion, however, does not preclude the Court from finding a violation of Article 3 on the ground that the State authorities failed to conduct a proper investigation into the applicant's allegations of ill-treatment (see paragraph 62 above). Accordingly, there has been a violation of Article 3 on that ground.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

65. The applicant argued that he did not have an effective remedy before a national authority in respect of the breaches of Article 3 of the Convention and alleged a violation of Article 13, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority”

A. The submissions of the parties

66. The applicant submitted *inter alia* that due to the outcome of the criminal investigation in respect of his ill-treatment, he was prevented from bringing a civil action for damages against the police officers.

67. The Government disagreed and argued that there has been no violation of Article 13. They submitted that since the guilt of the policemen who had allegedly ill-treated the applicant had not established, the latter could not claim any compensation for pecuniary and non-pecuniary damage.

B. The Court's assessment

68. As found above, the applicant's right not to be subjected to ill-treatment and to benefit from an effective investigation of his complaints about ill-treatment was breached by the State. The applicant's complaints in this regard were therefore “arguable” for the purposes of Article 13 (see the *Boyle and Rice v. the United Kingdom* judgment of 27 April 1988, Series A no. 131, p. 23, § 52).

69. According to the Moldovan Civil Code in force at the material time (see paragraph 47 above), the applicant could have claimed compensation for pecuniary and non-pecuniary damage, only if the damage was caused by illegal acts. Since the criminal investigation, conducted by the domestic authorities, concluded that the actions of the police officers had been lawful, any civil action against them would have been ineffective. The Government confirmed that (see paragraph 67 above).

70. In such circumstances, the Court concludes that the applicant did not have an effective remedy under domestic law to claim compensation for his ill-treatment as regards events that took place on 10 May 2001 (see *Corsacov v. Moldova*, cited above, §§ 80-82) and accordingly there has been a violation of Article 13 of the Convention as regards the complaints under Article 3.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. Article 41 of the Convention provides:

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

A. Non-pecuniary damage

72. The applicant claimed 12,000 euros (EUR) for non-pecuniary damage suffered as a result of the ill-treatment and of the failure of the authorities to investigate his case properly.

73. The Government argued *inter alia* that in view of the fact that the applicant had not been subjected to any form of treatment contrary to Article 3, he was not entitled to any compensation. In any event, he did not adduce any evidence to show that he had suffered non-pecuniary damage.

74. The Court notes that the applicant has suffered numerous serious injuries, such as head trauma and head concussion, bruises, barotraumas, broken ribs, broken fingers at the hands of State agents. It considers that the violations committed in respect of the applicant must have caused him severe suffering and awards him EUR 8,000.

B. Costs and expenses

75. The applicant claimed EUR 2,034.91 for costs and expenses. He claimed that this amount covered translation fees and the costs of representation. He submitted an itemised list of expenses according to which his lawyer had spent 40 hours on the case at a rate of EUR 50 per hour.

76. The Government did not agree with the amount claimed, arguing *inter alia* that the number of hours assessed by the applicant's lawyer was excessive. Moreover, the applicant's lawyer had not drafted the initial application and had mistakenly indicated the application number of another case in his observations.

77. The Court recalls that in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

78. In the present case, regard being had to the itemised list submitted by the applicant and the above criteria, the Court awards him EUR 1,400 for costs and expenses.

C. Default interest

79. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the application admissible;
2. *Holds* by six votes to one that there has been a violation of Article 3 of the Convention since the applicant was subjected to inhuman and degrading treatment on 10 May 2001;
3. *Holds* by six votes to one that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the applicant's complaints about being ill-treated by the police on 10 May 2001;
4. *Holds* by four votes to three that there has been no violation of Article 3 of the Convention as regards the alleged subjecting of the applicant to inhuman and degrading treatment on 10-11 July 2002;
5. *Holds* unanimously that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the applicant's complaints about being ill-treated by the police on 10-11 July 2002;
6. *Holds* by six votes to one that there has been a violation of Article 13 of the Convention on account of the lack of effective remedies in respect of the ill-treatment complained of;
7. *Holds* by six votes to one
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage and EUR 1,400 (one thousand four hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- a) concurring opinion of Sir Nicolas Bratza;
- b) partly dissenting opinion of Mr Bonello, joined by Mr Traja and Mrs Mijović;
- c) partly dissenting opinion of Mr Pavlovschi.

N.B.
T.L.E.

CONCURRING OPINION OF SIR NICOLAS BRATZA

The Chamber was unanimous in finding a procedural violation of Article 3 of the Convention in relation to both incidents involving the applicant's arrest and detention and divided only on the question whether it had been sufficiently shown that the injuries sustained on both occasions resulted from his ill-treatment by the police, in violation of the substantive aspect of that Article. In common with the majority of the Chamber, I take the view that, whereas it has been shown that the injuries recorded in the medical report of 14 May 2001 were the result of ill-treatment by the police following the applicant's arrest on 10 May, the same cannot be said of the injuries sustained by the applicant on 10 July 2002 and recorded in the medical report of the following day.

The different conclusion reached by the majority in relation to the two incidents flowed from the principles developed in the case-law of the Court concerning the burden and standard of proof in relation to complaints of violations of Article 3. As noted in paragraph 45 of the judgment, the oft-repeated principle that the burden lies on an applicant to prove "beyond reasonable doubt" that he has been subjected to ill-treatment attaining the threshold set by that Article has been tempered by the equally well-established principle that such proof may follow from the co-existence of sufficiently strong, clear and concordant influences and similar un rebutted presumptions of facts. One such strong presumption arises in respect of injuries sustained by a person during detention, first explained by the Court in the case of *Tomasi v. France* (judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-111) in which the Court stated that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see to similar effect *Ribitsch v. Austria*, judgment of 4 December 1995, Series A, No. 336, pp. 25-26, § 34; *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

As regards the first incident, the medical report of 14 May 2001 revealed that the applicant had sustained relatively minor physical injuries inflicted by blows with blunt objects, possibly on 10 May 2001. These injuries were consistent with the applicant's account that on the latter date he had been punched, kicked and beaten with a wooden baton in the office of the village police inspector at the time of his arrest. The medical examination was carried out several days after the applicant had escaped from custody on or shortly after 10 May but the respondent Government have at no stage argued that the injuries were caused after the applicant's escape from custody and have not disputed that they were in fact sustained while he was in police custody. The sole explanation offered by the Government for the

injuries is that they were sustained when the applicant allegedly jumped from a police car, in which he was accompanied by three or four policemen and which was, according to the evidence of two of the policemen, travelling at some 70 to 80 kilometres per hour. However, as noted in the judgment of the majority of the Chamber, the nature and extent of the injuries sustained by the applicant and recorded in the medical report are not consistent with this account and no other plausible explanation has been offered as to how the applicant came by the injuries found. Accordingly the Government have failed to discharge the burden on them to provide a satisfactory and convincing explanation for the injuries found.

Different considerations, however, seem to me to apply in the case of the second incident. It is not disputed by the applicant that, on 10 July 2002, before being arrested by the police, he had fallen or jumped to the ground from the window or balcony of the third floor apartment which he and his accomplice had recently burgled. Moreover, according to his own account, the injury which he sustained to his left leg as a result of the fall prevented him from running away from the scene. The medical report of 11 July 2002 recorded a series of injuries, including concussion, fractures of three ribs, a fracture of the tibia of the left foot and a fracture of the second finger of his left hand. The forensic report prepared on 2 December 2002 confirmed that all the injuries recorded in the medical report could have been caused as a result of a fall from the third floor, "if the applicant's body had hit hard objects". In the light of this evidence, I find that a plausible explanation has been given for the injuries sustained by the applicant. In this regard, unlike the minority of the Chamber, I do not attach decisive importance to the use of the word "objects" in the forensic report as indicating the expert's view that there must have been various sources of impact; nor do I feel sufficiently qualified to assert that had the applicant landed on a flat surface following his fall he could not plausibly have sustained multiple injuries to the different parts of his body identified in the medical report.

It is, I accept, a disturbing feature of the case not only that the police failed to have the applicant medically examined in the immediate aftermath of the fall, despite the fact that he had clearly suffered injuries, but that the authorities appear to have formed the view that the applicant needed urgent medical care only in the early afternoon of the following day. As to the former point, while the omission to carry out a medical examination of an injured suspect is clearly unacceptable, I am unable to draw the inference from this omission that the applicant's injuries had not in fact been sustained at the time of his initial detention. As to the latter point, had this lack of medical attention been part of the complaint made by the applicant, I would have found a substantive violation of Article 3 on the ground that the failure to provide medical assistance to a detainee who was in urgent need of it could of itself amount to inhuman treatment for the purposes of that Article. However, that is not the complaint which the applicant has at any

time made, his sole allegation being that the injuries he sustained were caused by physical ill-treatment by the police while he was in their custody. Having regard to the undisputed events which preceded the applicant's arrest and detention on this occasion, I am unable to find that this case has been sufficiently made out.

**PARTLY DISSENTING OPINION OF JUDGE BONELLO,
JOINED BY JUDGES TRAJA AND MIJOVIĆ**

1. The Court unanimously found a “procedural” violation of Article 3 in relation to the ill-treatment claimed to have been suffered by the applicant on July 10, 2002 ('the second incident'), in that the authorities failed to conduct a proper investigation into the applicant's allegations of police brutality. The majority, however, found no “substantive” violation of Article 3 as they believe it has not been “established beyond reasonable doubt that the injuries sustained by the applicant were the result of ill-treatment”.

2. I respectfully disagree with the majority. Their “non-violation” conclusion, in my view, runs counter to factual findings, legal inferences, and the established case-law of the Court.

3. Preliminarily, I feel a duty to underscore what I deem an inconsistency in the reasoning of the majority. The Court, effortlessly and unanimously, agreed that the facts of the case have not been established in a satisfactory manner. The State, under an obligation to conduct a proper and effective investigation into the allegations of ill-treatment made by the applicant, singularly failed in this duty. This failure by the State resulted in a corresponding failure to accrue solid evidence to the file – exclusively through the fault of the State. I find it particularly unsatisfactory to visit on the applicant the negative consequences of the State's failure to secure evidence in breach of its Convention obligation so to do. I am not, of course, positing an automatic “substantive” violation of Article 3 every time a government fails to conduct a proper investigation, but only that a government should be estopped from relying on its own failure in order to succeed in its defence. In so far as the burden of proof is concerned, the failure of the State to conduct a proper investigation could, in appropriate circumstances, give rise to an inference in favour of the applicant who is the victim of that failure, rather than to one in favour of the State which is the cause of it.

4. To put it differently, the majority have penalised the applicant – on account of his inability to provide evidence – for a failing of which, the unanimous Court agreed, the State was eminently culpable. The fault was attributable to the State, but it is the applicant who paid the consequences. I would have found it far more equitable had the court concluded that, once the State was responsible for the dearth of evidence, a legal inference could arise in favour of the applicant's allegations, which throws on the State the onus of rebuttal by contrary evidence.

5. The applicant, as I see it, had no reason at all to fabricate a charge of treatment contrary to Article 3 of the Convention. Persons detained by police authorities derive comfort from reporting, or even 'inventing',

charges of ill-treatment *when they aim at retracting a confession, claiming it was extracted by torture*. In this particular case the applicant never wished to retract a confession at all – in fact he stood by his admission of guilt - so that fabricating a scenario of ill-treatment would have been as pointless as it was inconsequential.

6. Notwithstanding the scarcity of evidence (attributable to the State) there are important indications in the records to substantiate the allegations of the applicant that the majority of the injuries resulted from the interrogation, rather than from the fall. When medically examined *after the interrogation* the applicant was found to have suffered the grievous injuries described as:

“a head trauma with head concussion, an injured lip, bruises and injuries on his face, chest trauma with a fracture of ribs nos. 8, 9, and 10 on the right side, fracture of the tibia of his left foot, contusions of the soft tissue on the back of his neck, contusion of the soft tissues on his knees, fracture of the second finger of his left hand...”

It is, to say the least, unconvincing, that a person who had suffered those crippling injuries in a drop, would have stood up and ran away, and that only the forcible detention by the neighbours prevented his escape (paragraph 31). This was his condition after the fall/jump. After the interrogation, the applicant could not even move one step and had to be carried by stretcher (paragraph 26).

7. The medical certificate established a hierarchy of certainties over possibilities: “the injuries were inflicted by blows with blunt objects” (certainty) but “could have been caused as a result of a fall from the third floor – if the applicant's body had hit hard objects” (possibility).

8. The forensic doctor did not rule out the theoretical possibility that the applicant sustained injuries as a result of a fall/jump, provided only it could be shown that the applicant's body had hit hard objects. The multiple injuries found on the applicant's body are only compatible with traumas originating from various sources of impact. It appears implausible that a person who lands on a flat surface should sustain injuries on opposite parts of his body, like bruises on his face and, simultaneously, at the back of his neck.

9. Had the Government intended to rely on the subordinate possibility mentioned by the forensic doctor, they ought to have proved that during the drop from the balcony the applicant had hit hard objects. As the majority accepts, no evidence of this appears in the records, and so the 'certain' inference that the injuries were caused by blows should have prevailed.

10. The majority, in my view, ought also to have asked themselves, and answered, the question why the police only sent for an ambulance after the interrogation - rather than after the fall. Is this indicative that the (majority

of the) injuries happened after the fall or that they happened after the interrogation?

11. If, as claimed by the Government, all the injuries the applicant complains of were suffered in consequence of the fall/jump (and not inflicted by the interrogators) there would equally be a “substantive” violation of Article 3, in so far as the authorities failed to provide any medical treatment to a person who so urgently required it. The fall happened at 10 or 11 p.m. and the police only sent the applicant for treatment at 12.21 p.m. the following day, after the interrogation had been concluded. One asks why, if the applicant really was already in that severe condition after the fall, the police proceeded leisurely with the interrogation instead of calling for an ambulance forthwith. This failure to provide medical assistance to someone so badly in need of it would in itself constitute a “substantive” violation of Article 3 (see, for instance, *Sarban v. Moldova*, no. 3456/05, §77, 4 October, 2005 and, *Biocenco v. Moldova*, no. 41088/05, §§ 112-119, 11 July 2006).

12. When a person is injured before or in the process of being taken into custody, there is a duty on the part of the authorities to have that person medically examined as soon as practicable. Such an examination is important to ensure that the suspect is not in need of immediate medical treatment and is fit to withstand questioning. Furthermore, when the Government fail to conduct such a medical examination before placing that person in detention, they should be estopped from relying on their own failure in their defence, in accordance with the principle *nemo auditur propriam turpitudine allegans* (see, *mutatis mutandis*, *Abdulsamet Yaman v. Turkey*, no. 32446/96, § 45, 2 November 2004).

13. Given the heavy burden placed on the State to provide plausible explanations for injuries sustained by a person in custody – rather than on the applicant to prove the responsibility of the Government for those injuries - I feel compelled to reach the unequivocal conclusion that the Government has far from established that the majority of the applicant's injuries were not caused otherwise than by ill-treatment while in police custody (*Ribitsch v. Austria*, 4 December 1995, Series A no. 336).

14. The majority only found a violation of Article 13 with regard to the 'first incident'. In view of my conclusions regarding the 'second incident', I would also have found a violation of Article 13 with regard to this latter.

PARTLY DISSENTING OPINION OF JUDGE PAVLOVSKI

First of all I should say that I find no difficulty in accepting in the present case a procedural violation of Article 3 and I share the majority's view on this point.

Indeed, international standards concerning the effectiveness of investigations into cases of alleged torture are extremely high and, as a matter of principle, I am afraid that it is very difficult if not impossible for States to respect them in their entirety.

In the most complete form these principles find their reflection in the document entitled “Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” recommended in UN General Assembly resolution 55/89 of 4 December 2000.

The standards set forth these read as follows:

“1. The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter “torture or other ill-treatment”) include the following:

(a) Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families;

(b) Identification of measures needed to prevent recurrence;

(c) Facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

2. States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.

3. (a) The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue

summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence.

(b) Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

4. Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence.

5. (a) In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

(b) A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. Upon completion, the report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation and, as appropriate, indicate steps to be taken in response.

6. (a) Medical experts involved in the investigation of torture or ill-treatment shall behave at all times in conformity with the highest ethical standards and, in particular, shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

(b) The medical expert shall promptly prepare an accurate written report, which shall include at least the following:

(i) Circumstances of the interview: name of the subject and name and affiliation of those present at the examination; exact time and date; location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g., detention centre, clinic or house); circumstances of the subject at the time of the examination (e.g., nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner or threatening statements to the examiner); and any other relevant factors;

(ii) History: detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;

(iii) Physical and psychological examination: record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;

(iv) Opinion: interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination shall be given;

(v) Authorship: the report shall clearly identify those carrying out the examination and shall be signed.

(c) The report shall be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process shall be solicited and recorded in the report. It shall also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report shall not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such a transfer.” (See, for instance, [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2001.62.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2001.62.En?Opendocument))

Of course, I agree that the Moldovan authorities failed to comply with the above requirements, and if so, a violation of the procedural element of Article 3 should be found.

At the same time I am strongly against the finding of a substantive violation of Article 3 because it would run not just counter to the factual circumstances of the case, but also against common sense.

In the present case the applicant complains of being subjected to torture by Moldovan police officers on two occasions:

- on 10 May 2001 and
- on 10 July 2002.

In addition to that he complains under Article 13 of the fact that the prosecution office failed to examine his complaints about alleged torture. (see page 4 of the applicant's complaint).

The Government proposed their own description of the factual circumstances of the case, based on an official verification of the applicant's allegations which considerably differs from the description given by the applicant.

As far as the first episode (10 May 2001) is concerned, the applicant stated that he had been beaten up by the police officers, as a result of which he sustained "...fracture of two ribs and nose as well as damage of his head..." (see page 3 of the applicant's complaint).

The Government claim that the applicant was injured because whilst being transported from a village to the police department he tried to escape from the police, by jumping out of the moving car and sustained injuries from the impact with the road. Despite that he was brought to the police department. On the same day, while in custody in the police department, the applicant had managed to escape from the police.

As to the second episode (10 July 2002), the applicant contended that he again had been beaten up by the police officers and as a result both his legs, a finger and three ribs were broken. (see page 3 and 3 add. of the applicant's complaint).

The Government claim that the applicant was injured not because of torture but because when caught red-handed at the scene of a crime in order to avoid his arrest he jumped down from the third floor.

So, now we are faced with a situation where there are two different versions of events put forward by the applicant and by the Government. And the Court's task is to determine which version is trustworthy. In carrying out this very delicate exercise the judgment's conclusions are based on some fundamentally wrong presumptions, which do not even stand up to the most elementary analysis.

In paragraph 50 it is written that "...there were no independent witnesses who could confirm that the applicant jumped from the car..." I find this "argument" inconsistent with the factual circumstances as no "independent witnesses" were present in the car when the applicant was being transported to the police department". And if so, it would run counter to common sense to accuse the Moldovan authorities of their failure to rely on "independent witnesses" who simply did not exist.

Taking this way of logic I could also have said that no "independent witnesses" were present when the applicant allegedly was subjected to torture as he claims. Why in the case of police officers is this argument valid, but not in the case of the applicant?

Continuing, the judgment specifies that "...the findings of fact made by the prosecutors were entirely based on the account of the police officers accused of ill-treatment..."

I find this argument to be absolutely inadmissible, because it clearly runs counter to the principle of the presumption of innocence and reveals in a way a total ignoring of Convention standards, which in my view can be considered as a kind of bias. Moreover, no police officer was “accused” in the present case of any ill-treatment. To say that the police officers were “accused of ill-treatment” would contradict the factual circumstances of the case. In my view the European Court's judges should be more cautious in the words and formulas they use in their judgments.

Reaching their finding of a substantive violation of Article 3 the majority did not pay any attention to the fact that the applicant had failed to adduce any reason why the police officers should have applied illegal force, putting at risk their professional reputation and even freedom? Did they have any particular reason to hate this particular person so much as to have him beaten up? Did the applicant give us any reason to believe that the police officers had a personal reason to beat him up? The answer is – of course he did not! And, since the applicant failed to submit any reason for his allegations, it is not surprising that the judgment contains no answer to the above questions either.

From the material we have before us, four police officers were present at the applicant's arrest and only two of them allegedly beat the applicant. What reason could the other two policemen have had to lie? I have the impression that the judgment is simply based on a presumption that all Moldovan policemen apply torture against all Moldovan citizens and in all cases. If I am right, I regret this kind of bias against the Moldovan police. Moldovan police officers are doing their very difficult job just like Albanian, Maltese or Andorran police officers do, trying to protect society against those who violate the law and it is absolutely unfair and unjust to accuse them of applying torture only because of the simple fact that they are policemen. Of course, their professional activity does not attract too much love on the part of those from the opposite side of the law. But is this “lack of love” a sufficient reason for groundless presumptions? To my mind, the answer is self-evident.

If I am wrong, and if the reason for the above presumption was different from simple bias, I would like to see what it was and, more particularly, reasons why Moldovan police officers decided to apply illegal force to the applicant. In the absence of any reason, I am afraid that the presumption that the declarations of police officers do not deserve the Court's trust would send the wrong signals to the outside world.

Concerning the first event, in this case there are police officers and our applicant. No other “independent witness” was present. And we need to make our choice between the version of events submitted by the police and the version of the events submitted by the applicant. There is no other option. If one wishes so much to substitute one's own factual findings for

those of the national investigative authorities, one should do it professionally and with serious evidence on the table.

The next so-called argument, used in the judgment is that “the investigations carried out by the domestic authorities appeared to have had ... shortcomings” (see paragraph 52). I agree that the investigations conducted by the authorities in the case before us were far from ideal, that is why I decided to vote for a procedural violation of Article 3. But what does this fact have to do with a “substantive violation”? Investigative shortcomings manifest the fact that the investigation in the present case was not “effective”, which serves as a ground for finding a procedural violation of Article 3. The existence of such shortcomings cannot prove by itself the existence of a “criminal fact”. I am really sorry that I need to have mentioned this self-evident fact, which should have been taken into account by the majority in their considerations.

Moreover, the event - whether torture or jumping from the car - took place on 10 May 2001, but the applicant did not report it before his second arrest, namely on 30 September 2002, that is more than one year – 14 months - later. Of course because of the time factor it was practically impossible to reconstruct what had happened more than one year before.

Had the applicant been tortured, I suggest, he would have announced it not in September 2002, but in May 2001 when the event allegedly took place. He could have lodged an official request for investigation either personally or by post. He could have made use of a lawyer's assistance. But he failed to do so; he failed to lodge any complaint with the Moldovan authorities. In the judgment no attention was paid to this fact. In my view, the lateness of this request for investigation is what made the investigation ineffective. Had the applicant filed his request in May 2001 and not in July 2002, and had the Moldovan authorities then failed to conduct a proper investigation, I would have accepted the argument that “the investigations carried out by the domestic authorities appeared to have had ... shortcomings” as a ground for drawing inferences concerning a lack of willingness to have the accident investigated. But in conditions where the applicant fails to declare to the authorities the alleged torture at the appropriate time, I find it wrong to start different speculations on this issue.

In paragraph 53 of the judgment it is stated that “the domestic authorities do not...appear to have taken into account the nature of the applicant's injuries...” I am very sorry to say that I can not agree. If an objective and impartial reader compares the injuries found on the applicant's body with the applicant's claims, this objective and impartial reader will discover, that the applicant claimed that two of his ribs and his nose had been broken, while in the medical report no mention of any fracture can be found. This fact denotes a lack of sincerity on the applicant's part, to which the majority did not pay any attention.

Characterisation of bodily harm as well as determination of the possible causes of this harm form part of special forensic knowledge. If the majority has doubts concerning the origin of the injuries, there is no other way but to put a direct question to forensic experts asking whether these injuries could or could not have been produced in one or another type of circumstance. Not being forensic experts we are not entitled to make conclusions which exceed our professional knowledge.

As far as the events of 10 July 2002 are concerned, I agree with the finding that there has been no substantive violation of Article 3.

It is worth mentioning that the applicant hid from the Court the fact that he had jumped down from the third floor when the police tried to arrest him red-handed, claiming again that he had been tortured, beaten up and as a result of this action his legs, ribs and a finger were broken. Hopefully, the fact of his jumping down from the window of the third floor was witnessed even by “independent witnesses” – the victim of the robbery committed by the applicant and his neighbours.

Moreover, a doctor from the emergency services, on being questioned, declared that the applicant had told him that he had fallen down from the third floor.

According to the forensic medical report no 3129/D “...all the injuries found on the body of Mr. Pruneanu could have been produced as a result of his falling from the height of a third floor and the impact of the body on some hard objects...”.

I am mentioning the above facts just to show that the reliability of the applicant's statements as far as the second episode is concerned was so low as to justify the finding that “...it has not been established beyond reasonable doubt that the injuries sustained by the applicant were the result of ill-treatment...” (see paragraph 66).

So, one can say that in this episode the Court accepted the version of the events submitted by the Government and not the version of events submitted by the applicant. Acting in this way, in my judgment, the Court indirectly recognised that the applicant had tried to mislead it, because, indeed, otherwise the Court would have accepted the applicant's position.

If this logic is a correct one, in this case it is not clear for me why the majority preferred not to trust the Government's version of events in the first episode?

In my view, the facts that the applicant:

- provided not very accurate information about the character of the injuries sustained in the result of 10 May 2001 events,
- did not lodge a complaint with the Moldovan authorities about the 10 May 2001 events within a reasonable time,
- lodged his complaint about the 10 May 2001 events only in September 2002 that is two months after being arrested, and

- hid the fact of his jumping down from the third floor and attributed all the injuries sustained by him to the police officers clearly denote his bad faith and render his declarations - concerning the 10 May 2001 events - untrustworthy. As a result, his declarations cannot be considered as reliable evidence and if so the conclusion should have been similar to that reached in paragraph 66.

Accordingly, I cannot accept the fact that the application of illegal force to the applicant was established beyond a reasonable doubt and if so, in my view, there was no substantive violation of Article 3 in the first episode either.

One more doubt I have with this double qualification of the same situation.

In point 3 of the operative part it is proposed to find a violation of Article 3 on account of "... the failure to conduct an effective investigation into the applicant's complaints about being ill-treated by the police on 10 May 2001."

In point 5 it is proposed to find one more violation of Article 3 in respect of "failure to conduct an effective investigation into the applicant's complaints about being ill-treated by the police on 10-11 July 2002" and I agree with these two findings. But then it is proposed to find that there had been a violation of Article 13 on account of the lack of effective remedies for the ill-treatment complained of.

Here I would point out that in his complaint under Article 13 of the Convention, the applicant was relying on the prosecutor's failure to have his criminal complaint properly investigated and not on an alleged lack of the possibility of bringing a civil action against the police officers, which is said in the judgment to constitute as a violation.

My understanding is that we should examine the applicant's complaint as submitted. If so, I find it wrong to give this double qualification. Criminal investigation in principle is an effective remedy for cases of alleged torture. This is a generally recognised fact and that is why before accepting a complaint we request applicants to exhaust this remedy. Otherwise, if a criminal investigation is not an effective remedy, only one conclusion is possible – there is no need to exhaust remedies which are not effective. It would be absolutely wrong to take this path and to say, that in cases of alleged torture an applicant should not lodge a criminal complaint because criminal investigation cannot be considered as an effective remedy.

Lastly, since no violation of Article 3 has been found, the non-pecuniary damage awarded should be not more than EUR 4-500.

One more difficulty I have is in accepting of the lawyer's fees, which are clearly exaggerated.

The application in the present case was lodged by the applicant in 2002, when he submitted to the Court practically all the necessary documents.

The lawyer in the present case started representing the applicant's interests only in 2005. So, the lawyer in the present case was working for about one year only.

My understanding is that the proceedings before the European Court of Human Rights are not like the Olympic Games about which they say that "The most important thing in the Olympic Games is not to win but to participate." I do not accept that the mere participation of a lawyer can ever be considered sufficient justification for awarding considerable amounts of money. Moreover, in other Article 3 cases against Moldova the Court awarded lawyer's fees in much more reasonable sums, for instance, in the case of Corsacov –EUR 1000, in the case of Holomoiv – EUR 800. It goes without saying that in both these cases the applicants had been represented by their lawyers throughout the proceedings.

Since, in my opinion, the lawyer did practically nothing in the case before us, because a great part of the work had been done by the applicant himself, lawyer's fees should have been not more than EUR 600-700.

These are the major points for my disagreement with the majority in the present case.