



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

FOURTH SECTION

CASE OF BOICENCO v. MOLDOVA

(Application no. 41088/05)

JUDGMENT
(Just satisfaction)

STRASBOURG

10 June 2008

FINAL

10/09/2008

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 Boicenco v. Moldova,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

Ljiljana Mijović

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 20 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 41088/05) 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 Nicolae Boicenco (“the applicant”) on 16 November 2005.

2. In a judgment delivered on 11 July 2006 (“the principal judgment”), the Court held that the applicant had been subjected to police brutality and that the authorities had failed to carry out an adequate investigation into the incident, in breach of Article 3 of the Convention. The Court also found a violation of Article 3 of the Convention on account of lack of proper medical care while in detention, several violations of Article 5 of the Convention and a violation of Article 34 of the Convention (ECHR *Boicenco v. Moldova*, no. 41088/05, 11 July 2006). It awarded the applicant 40,000 euro (EUR) for non-pecuniary damage and EUR 6,823 for costs and expenses.

3. Since the question of the application of Article 41 of the Convention was not ready for decision as regards pecuniary damage, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach.

4. The applicant and the Government each filed observations.

THE LAW

5. 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.”

6. The applicant claimed EUR 123,800 to cover the pecuniary damage caused as a result of the violation of Article 3 of the Convention. He presented several medical reports.

7. In a medical report dated 13 September 2006 and signed by the applicant’s family doctor, it is stated that the applicant suffered ischemic heart disease, angia pectoris, diffuse sclerosis of the heart, consequences of deregulation of blood circulation in the brain, diabetes and obesity. It was recommended that the applicant undergo a magneto-resonance tomography of the brain in order to determine a precise diagnosis and to undergo the necessary treatment if needed. The applicant was also recommended to undergo a neuro-rehabilitation therapy.

8. In a medical report dated 9 October 2006 the same doctor repeated the same conclusions.

9. Between October 2006 and February 2007 the applicant underwent different kinds of therapy in medical institutions in Romania and Ukraine. The applicant did not provide the Court with details of the therapy and treatment received in those institutions but only submitted that they were recommended by doctors.

10. On an unspecified date the applicant underwent magneto-resonance tomography in a Kiev hospital. In a medical report dated 2 December 2006 it was stated that the applicant’s brain did not present any signs of abnormality or lesions. It was also stated that the applicant had an unclosed circle of Willis (*at the base of the brain, the carotid and vertebrobasilar arteries form a circle of communicating arteries, known as the circle of Willis*) and that he suffered from cervical osteochondrosis.

11. In an undated medical report issued by the same hospital, resuming the applicant’s medical background, it was stated, *inter alia*, that the applicant had a state after stroke in the pool of the right internal carotid artery, against the background of an unclosed circle of Willis. He had impaired function (3rd degree) of the nervous system including the brain due to atherosclerosis, high blood pressure and a metabolic disorder, together with a syndrome of a disorder of the balance system and an impairment of the intellectual and memory functions against the background of the remaining effects of a trauma of the brain, as in the patient’s history. He also had a cyst of the pineal gland, high blood pressure (3rd degree) of unknown origin (*hypertensive crises intractable by administration of peroral preparations*). The applicant also suffered from ischemic heart

disease: exertional (*due to exercise*) angina pectoris of functional class 1 and diffuse sclerosis of the heart. He also had a degeneration of the backbone in the neck (osteochondrosis), diabetes mellitus type 2 of medium severity, double-sided syndrome of subacromial conflict (*a painful condition in the shoulder*) and tendosynovitis of the biceps head of the right and left shoulder joints (*a certain inflammation in both shoulder joints*).

12. The applicant sent the Court a detailed list of expenses incurred by him for therapy, medical checkups and treatment in different medical institutions in Moldova, Romania and Ukraine between October 2006 and February 2007 and an estimate cost for the future treatment.

13. The Government disputed the applicant's submissions and argued that there was no causal link between the ill-treatment to which the applicant had been subjected and his subsequent condition. They stressed that before the incident of 20 May 2005 the applicant had experienced several other head traumas. They also submitted that a large part of the treatment and therapy to which the applicant had been subjected in Romania and Ukraine, was also available in Moldova and was partly covered by the social security.

14. The Court recalls that in the principal judgment it was unable to establish a direct causal link between the ill-treatment and the state of stupor subsequently suffered by the applicant (see paragraph 110 of the principal judgment). The Court has now been presented with new medical evidence from independent sources; however, it is still unable to conclude that the neurological and psychiatric state of the applicant in the aftermath of his ill-treatment was generated by the ill-treatment of 20 May 2005. Indeed, none of the above medical reports allows the Court to draw such a conclusion. Accordingly, the Court considers it necessary to dismiss the applicant's claim for pecuniary damage.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Dismisses the remainder of the applicant's claim for just satisfaction relating to pecuniary damage.

Done in English, and notified in writing on 10 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President