



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

FOURTH SECTION

**CASE OF VICTOR SAVITCHI v. MOLDOVA**

*(Application no. 81/04)*

JUDGMENT

STRASBOURG

17 June 2008

**FINAL**

*17/09/2008*

*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 Victor Savitchi v. Moldova,**

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

Nicolas Bratza, *President*,

Giovanni Bonello,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 27 May 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 81/04) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan national, Mr Victor Savițchi (“the applicant”), on 26 November 2003.

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

3. The applicant alleged, in particular, that he had been ill treated during his arrest, that his telephone conversations had been illegally intercepted and that the criminal proceedings against him had been unfair.

4. On 16 February 2006 the President of the Fourth Section of the Court, to which the case was allocated, decided to give notice of 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.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant, Mr Victor Savițchi, is a Moldovan national who was born in 1954. He worked as an inspector in the Fălești County Economic

Police Force. On 3 August 2000 he was arrested on a charge of taking a bribe of 4,000 United States dollars (USD) in exchange for a favour concerning a case he was dealing with.

*1. The arrest in flagrante delicto*

6. The arrest in *flagrante delicto* was filmed by two cameras from different angles. Both videos were included in the domestic criminal file and were sent to the Court by the Government.

7. One of the videos shows a group of police officers wearing plain clothes enter a room, which looks like a small bar, where the applicant is drinking beer with the briber. At the sight of the police officers, the applicant dips his fingers into a mug of beer, after which he is immediately grabbed and restrained by four police officers. Since the applicant attempts to bend down, three police officers hold his hands behind his back while another one holds his head up. Subsequently, another police officer joins the other four. Another police officer approaches the applicant and checks the pockets of his trousers. The applicant is splashed with beer and water, apparently in an attempt to calm him down, and one of the police officers restraining him comments that he is attempting to bend down. Finally, he is forcibly cuffed and seated on a chair. After approximately four minutes of struggle, the applicant calms down. After approximately five minutes, one of the police officers announces to the others that he has stopped filming because the cassette has run out.

8. The second video starts immediately after the police officers grab and restrain the applicant. A man holding a camera can be seen kicking the applicant in the region of his chest. It appears that the man kicking the applicant is the police officer who was filming the other video (see the preceding paragraph). Immediately after this scene the image changes to a wall; however, sounds resembling two blows are heard in the background. After approximately twenty seconds the same person kicks the applicant twice in the posterior. Another police officer approaches the applicant and does something to him; however, only his back can be seen. Later the applicant, who continues to struggle, is splashed with beer and water, apparently in an attempt to calm him down. One of the police officers restraining him comments that he is attempting to bend down. After being forcibly seated on a chair, the applicant calms down and a police officer examines his hands with a special lamp to detect the presence of a special dust with which the bribe money has apparently been treated. Subsequently, his pockets are examined and USD 4,000 is extracted from the pocket of his shirt. The money appears to have been marked with a special dust and every banknote bears the inscription "Bribe Savitchi 2000". The applicant claims that the money is not his and that he has no idea how it got into his pocket. He argues that in that pocket he had documents and a pen which mysteriously appeared on the table.

2. *The proceedings against the policemen who allegedly ill-treated him during arrest*

9. On an unspecified date the applicant lodged a complaint with the General Prosecutor's Office about his alleged ill-treatment by the policemen who arrested him on 3 August 2000.

10. On 24 November 2000 the General Prosecutor's Office refused to institute criminal proceedings against the policemen, on the ground that the applicant's complaint was ill-founded. The decision dismissing the applicant's complaint stated, *inter alia*, that several police officers who had participated in the applicant's arrest had been questioned and they had denied the applicant's submissions that he had been beaten up.

11. On 17 May 2004 the applicant complained to the Râșcani District Court about the Prosecutor's Office's refusal to institute criminal proceedings against the police officers who had ill-treated him. In support of his complaint the applicant relied on the video of his arrest (see paragraph 8 above) and the findings in the judgment of the Bălți Regional Court of 5 June 2001 (see paragraph 14 below).

12. On 18 June 2004 the Râșcani District Court without having viewed the video, examined the case on its merits and, in a very brief decision, dismissed the complaint as ill-founded.

3. *Criminal proceedings against the applicant*

13. The applicant was detained during the judicial proceedings between 4 August 2000 and 5 June 2001.

14. On 5 June 2001 the Bălți Regional Court acquitted the applicant. In its judgment it stated, *inter alia*, the following:

"Article 109 of the Code of Criminal Procedure provides that investigative measures can be taken only after criminal proceedings are formally instituted... The criminal proceedings were formally instituted in this case on 3 August 2000....

The accusation is based on a number of pieces of evidence which were obtained prior to that date, such as: the warrant for the installation of a recording device of 2 August 2000, the minutes of the marking of the money of 2 August 2000, a video of 2 August 2000, and some audio recordings...

...

According to Article 156 of the Code of Criminal Procedure, the interception of telephone communications and other communications... of suspects... may be carried out in connection with criminal proceedings instituted in accordance with a decision of the authority conducting the investigation with the authorisation of the prosecutor.

In the present criminal proceedings the prosecution presented four audio cassettes and three micro audio cassettes; however, it appears from the materials of the case that the interception of the communications was not authorised by a prosecutor.

...

Having listened to the contents of the audio cassette HF-S 90, micro audio cassette Sony MC-60, TDK-60 and "Olimpus", the court found that the interception and the recordings were carried out in breach of the provisions of the [Code of Criminal Procedure] and it is not clear who made the recordings, who was involved in the discussion and on which date the recordings were made.

The contents of the micro audio cassette Sony MC-60... are incomprehensible....

The above audio cassettes were sent to the Prosecutor General's Office on 2 August 2000, one day before the formal institution of the criminal proceedings.

Since the above evidence was obtained in breach of the provisions of the Code of Criminal Procedure, it is not admissible.

...

Having watched the video of the arrest, the examination of the scene of the crime and the body search, the court found the following: the film starts at 6.52 p.m.; Savitchi is surrounded by men who arrest him, his hands are twisted and he is kicked in the area of his liver. The image changes, but one can still hear the sound of blows. After that ... Savitchi is splashed with beer and water and seated on a chair with his hands cuffed behind his back... At 7.21 p.m. a wad of money is taken out of the left pocket of his shirt.

One can clearly see in the film that during the disorder created at the moment of arrest (at 6.53 p.m.), while Savitchi had his hands cuffed at his back and was surrounded by men, someone approached him, bent low and stretched his arms towards Savitchi's chest.

These images cast doubt on the fact that Savitchi took the money, and his version of the facts, that the money was placed in his pocket, cannot be ruled out...

...

The fact that he was splashed with water and beer seem to support the allegation that he lost consciousness... and that the special dust appeared on his hands which had been behind his back.

Witnesses S. and B., who were questioned during the hearing, declared that when they entered the premises [the bar], they saw Savitchi, who had already been arrested, and that they did not see the moment of his arrest. Their testimonies are consistent with the video.

The fact that he [Savitchi] dipped his fingers in beer is not sufficient proof that he took the money...

The above evidence being equivocal, must be interpreted in favour of Savitchi.

The policemen..., who participated in the arrest as witnesses, stated that during the arrest Savitchi had resisted and therefore he had been cuffed, he had not lost

consciousness, nobody had placed money in his pocket and nobody had beaten him up.

...

The declarations of the above witnesses [the police officers] are not consistent with the film and therefore the court doubts their truthfulness...

...

Witness L.M. [the briber] did not confirm the fact that Savitchi requested money from her... It was A.M. [the intermediary] who told her about the money. Moreover, there were no reasons for her to fear a control...

Having analysed all the circumstances of the case, the court comes to the conclusion that in the present case an entrapment was organised by the State organs, which is contrary to Article 95 (5) of the Code of Criminal Procedure.”

15. The Prosecutor’s Office lodged an appeal against this judgment. It did not deny the fact that some of the evidence had been obtained in breach of the Code of Criminal Procedure.

16. In respect of the description of the video of the applicant’s arrest given by the first-instance court, the Prosecutor’s Office stated that there had indeed been disorder at the moment of the arrest because the applicant had resisted. He would not calm down and had tried to throw himself to the ground. It was, however, clearly visible that the money had been extracted from his pocket. The Prosecutor’s Office stressed that the first-instance court should have paid more attention to the testimonies of victims L.M. and A.M. (the bribers) and argued that the first-instance court had refused to question a witness who had been present at the moment of extraction of money from the applicant’s pocket. The first-instance court had failed to listen to all the audio recordings presented by the prosecution. It had also failed to question the technicians who had made the audio and video recordings and wrongly interpreted the testimonies of the policemen who had arrested the applicant.

17. The Prosecutor’s Office asked for the judgment of 5 June 2001 to be quashed and the case re-examined by the first-instance court.

18. On 30 August 2001 the Court of Appeal allowed the prosecutor’s appeal in its entirety, quashed the judgment of 5 June 2001 and ordered a re-trial of the case by the first-instance court. The court found numerous mistakes in the procedure before the first-instance court, such as, *inter alia*, the wrongful assessment of the evidence, the breach of the accused’s right to defence, the evidence (video and audio cassettes) was not given a proper examination, the prosecutor’s motions to hear a witness and several experts were dismissed, there was insufficient evidence to prove that the applicant had not taken the bribe and the conclusion about the entrapment was wrong.

19. On 12 November 2002 the Bălți Regional Court conducted a complete rehearing of the case, found the applicant guilty of bribe-taking and sentenced him to ten years' imprisonment. The court based the conviction, *inter alia*, on the statements of A.M. and L.M., who declared that the applicant had asked them for a bribe, and of five policemen who arrested the applicant, who made more or less similar declarations about the alleged bribe-giving and arrest. Only one of the five policemen declared in an affidavit that force had been used on the applicant. The other policemen stated that no force had been used. All of the policemen declared that the applicant had dipped his fingers in a glass of beer in order to wash away traces of phosphorescent dust.

20. The court also relied on the fact that the money had been found in the applicant's pocket and that traces of phosphorescent dust had been detected on the palm of his right hand. The court also relied on two audio cassettes containing the recording of telephone conversations between the applicant and A.M. and L.M. of unknown date, and the video of the applicant's arrest. The court stated the following:

"It appears from the audio cassette TDK MC-60 that Savitchi was dealing with the case of L.M. It also appears from their discussion that he requested from her the stated amount of money, in exchange for a positive report on the case. He insisted that she resign and move to another town, and promised that after the payment of the money the problem would be solved positively; if not, the money would be returned.

It appears from the discussions between Savitchi and A.M. that Savitchi was requesting USD 4,000. He was dealing with L.M.'s case and he had discovered irregularities concerning large amounts of money, and promised to help in exchange for a bribe, on condition that she resign and move to another town.

From the video it appears that the money in the amount of USD 4,000 had been marked in the presence of witnesses and had been given to A.M., who, on 3 August 2000 at approximately 6.30 p.m. ... had given it to Savitchi. When the police entered the bar, the bribe was already in the pocket of Savitchi's shirt. Savitchi put his fingers in a glass of beer in order to wash away the traces of phosphorescent dust."

21. The court did not describe the other details of the video of the applicant's arrest described in the judgment of 5 June 2001. It stated that the applicant's submissions that he had not taken the money and that it had been put into his pocket were baseless. The court found that physical force had been used on him in order to overcome his resistance against the police and block his attempts to destroy the evidence.

22. The applicant appealed against this judgment, arguing, *inter alia*, that:

"The court was influenced by the President's [the President of the country] letter addressed to the President of the Superior Council of Magistrates, V.S....

...



...the court failed to give any consideration to the video of the applicant's arrest in which one can clearly see that at 6.52 p.m. someone kicked him in the stomach after which the [camera] was immediately [directed elsewhere] by the person who was filming; however, the sound of beating could still be heard in the background. A minute later, at 6.53 p.m., an unknown person obscured the view with his body and stuck the money into the applicant's pocket... Savitchi was splashed with water and beer in order to make him regain consciousness....

The court did not find out who beat the applicant up and why force had been necessary. Moreover, the court did not take into consideration that all the police witnesses except one denied the fact that Savitchi had been beaten up.... There was a plan to make Savitchi lose consciousness in order to be able to manipulate the evidence.

The court did not take into consideration the fact that some evidence, such as the report of the installing of telephone interception devices of 2 August 2000, the minutes of the marking of the money and the audio and video recordings of 2 August 2000, were obtained in breach of ... the Code of Criminal Procedure....

The recording of the telephone communication was carried out without the authorisation of a prosecutor... Moreover, even these items of evidence prove Savitchi's innocence. ... No audio or video evidence proves that Savitchi demanded or received a bribe from L.M or A.M."

23. On 30 January 2003 the Court of Appeal dismissed the applicant's appeal. In respect of his arguments it stated the following:

"It follows from the materials of the case that Savitchi extorted a bribe of USD 4,000 from A.M. who informed the police. After that, investigative measures were undertaken, recording devices were used and conversations between Savitchi and A.M. about the hand-over of the bribe and its amount were recorded. A video of the marking of the bribe money was made. In this manner, Savitchi was caught red-handed and there are no doubts about his guilt. The arguments in Savitchi's appeal are devoid of any legal basis and the court considers them to be a method of defending the accused with the aim of avoiding penal responsibility for the offence committed. Accordingly it cannot be said that the bribery was [committed as a result of] entrapment."

24. The applicant lodged an appeal on points of law with the Supreme Court of Justice, raising points about the inadmissibility of all the evidence obtained before 3 August 2000 and other arguments similar to those raised in his appeal.

25. On 10 July 2003 the Supreme Court of Justice, without holding a hearing and without giving any reasons, declared the applicant's appeal on points of law inadmissible.

*4. The applicant's attempts to obtain copies of materials from his criminal file*

26. On 26 March 2004 the applicant wrote a letter to the Bălți Court of Appeal, where his criminal file was held, in which he requested to be issued

copies of some materials from the file. In reply he did not receive all the requested copies.

27. He repeated his request and stressed that he needed a copy of the minutes of the hearings in the criminal proceedings against him and a copy of the video of his arrest of 3 August 2000, when he was caught red-handed, for the purpose of applying to an international court.

28. By a letter of 3 May 2004 the President of the Bălți Court of Appeal informed the applicant that under the Code of Criminal Procedure he did not have a right to receive copies of the minutes of the hearings; as to a copy of the video cassette, the applicant was informed that the court did not have the technical or economic means to make one.

29. The applicant wrote in reply that he was prepared to bear all the expenses linked to the copying of the video cassette.

30. On 30 June 2004 a Vice-President of the Bălți Court of Appeal replied to the applicant that the court did not have the technical or economic means to make a copy of a video cassette.

31. On unspecified dates the applicant complained to the Superior Council of Magistrates about the refusal of the Bălți Court of Appeal to issue him with copies of the required materials from his criminal file. He relied, *inter alia*, on the provisions of the Law on Access to Information and on Article 10 of the Convention.

32. On 2 July 2004 C.G., a Vice-President of the Supreme Court of Justice, informed the applicant that he had the right to have his lawyer see the minutes of the hearings and the video of his arrest, but not to request copies of them.

33. On 15 July 2004 the applicant introduced an action with the Chișinău Court of Appeal against C.G.'s decision of 2 July 2004, asking for the decision to be quashed and that the Bălți Court of Appeal be obliged to issue him copies of the transcripts of the hearings of his criminal case and of the video of his arrest. He based his action, *inter alia*, on the Law on Access to Information and on Article 10 of the Convention.

34. On 27 July 2004 the Chișinău Court of Appeal informed the applicant that his action could not be examined, since C.G.'s letter was merely the opinion of a public official which did not infringe the applicant's rights and therefore could not be challenged in the courts.

35. The applicant lodged an appeal with the Supreme Court of Justice. However, on 20 September 2004 he was informed by the Supreme Court of Justice that the letter of the Chișinău Court of Appeal of 27 July 2004 was not a judicial decision and therefore could not be challenged by way of an appeal.

## II. RELEVANT DOMESTIC LAW

36. The relevant provisions of the Code of Criminal Procedure (in force at the time of the events) read as follows:

“Section 55. The evidence

...

Evidence obtained in violation of the present Code or not properly examined during the court hearing cannot be relied upon in a judgment or in any other procedural documents.

...

Section 109. The commencement of the preliminary investigation

The preliminary investigation can be carried out only after the institution of criminal proceedings and in accordance with the rules set out in the present Code. ...

...

37. The relevant provisions of the new Code of Criminal Procedure read as follows:

Section 66. The rights and the obligations of the suspect or accused

(2) The suspect or the accused has the right, in accordance with the provisions of the present Code:

...

22) after the termination of the preliminary investigation, to examine all the materials of the case, to take notes from them, to make copies of them...

Section 336. Minutes of the hearings

...

(5) The president of the hearing shall inform the parties to the proceedings about the minutes of the hearing and about their being signed, and make sure that they have the possibility to see their contents...

## THE LAW

38. The applicant complained under Article 3 of the Convention that he had been beaten up by the police during his arrest on 3 August 2000. Article 3 of the Convention reads as follows:

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

39. The applicant complained under Article 6 § 1 of the Convention that the criminal proceedings against him had been unfair. The relevant part of Article 6 § 1 of the Convention reads:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

40. The applicant originally complained under Article 10 about the refusal of the domestic courts to issue him with copies of the minutes of the hearings in the criminal proceedings against him and of the video of his arrest. The Court considered that it was more appropriate to examine this complaint under Article 8 of the Convention. The applicant further complained under Article 8 of the Convention that his telephone conversations had been illegally recorded by the person who had set him up. Article 8 reads as follows:

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

41. The applicant finally complained under Article 13 of the Convention that he had not had an effective remedy in respect of the alleged breach of Article 8 of the Convention. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

## I. ADMISSIBILITY OF THE COMPLAINTS

### A. The complaint under Article 5 of the Convention

42. In his initial application, the applicant complained under Article 5 § 1 of the Convention that his detention between 4 August 2000 and 5 June 2001 had been unlawful. However, in his observations on the admissibility and merits, he asked the Court not to proceed with the examination of this complaint. The Court finds no reason to examine it.

### B. The complaint under Article 6 of the Convention

43. The applicant submitted that the criminal proceedings against him had been unfair, because some important items of evidence relied upon by the courts, such as the recordings of his telephone conversations, had been unlawfully admitted, and the courts had not given sufficient reasons in their judgments for admitting them and had failed to address some of the

important submissions he raised. Moreover, the courts convicting him had failed to give arguments in support of their disagreement with the findings and conclusions of the Bălți Regional Court's judgment of 5 June 2001. He argued that the proceedings as a whole had been unfair.

44. The Government disagreed with the applicant and submitted that the applicant had had an effective possibility to contest the admissibility of the impugned evidence. He had participated in person at the hearings and had been represented by an attorney, and the courts had given ample reasons in their judgments for finding him guilty.

45. The Court recalls that Article 6 of the Convention does not lay down any rules on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law. The Court cannot exclude as a matter of principle that unlawfully obtained evidence of the present kind may be admissible (*Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, § 46).

46. The Court further reiterates that the effect of Article 6 § 1 is, *inter alia*, to place a "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence put forward by the parties (see *Perez v. France* [GC], no. 47287/99, § 80, ECHR 2004-I). A corollary of this obligation of the courts is their duty to give reasons in their judgments (see, among other authorities, *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001). However, a detailed answer to every single argument cannot be expected (see *Van de Hurk v. the Netherlands*, judgment of 19 April 1994, Series A no. 288, p. 20, §§ 59 and 61, and *Burg and Others v. France* (dec.), no. 34763/02, ECHR 2003-II). The extent to which the duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, judgment of 9 December 1994, Series A no. 303-A, § 29, and *Helle v. Finland*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 55). In any event, reasons must be given in answer to every argument, which, if accepted, could be decisive for the outcome of the case.

47. The Court notes that in examining the criminal case against the applicant the domestic courts did not address some of the issues raised by the applicant, such as the admissibility of the audio recordings, the admissibility of the minutes of the marking of the bribe money, the submission concerning the probative value of one of the recordings and of one of the videos of the *flagrante delicto*.

48. However, against this it must be observed that in reaching their conclusion concerning the applicant's guilt, the domestic courts ascertained that the applicant was involved in his capacity as inspector in the investigation of a case concerning L.M. The bribers testified that the applicant had requested a bribe and a video of the applicant's arrest clearly showed him dipping his fingers in a mug of beer, apparently attempting to

wash away traces of the powder used to mark the banknotes handed over to him; the video also showed the applicant trying to bend down, apparently in an attempt to expel something from the pocket of his shirt. This turned out to be the USD 4,000 which had been powder-marked. It appears clearly from the first video (see paragraph 7 above) that the man who obscured the image of the applicant during his arrest (see paragraph 8 above), only checked the pockets of the applicant's trousers and did not do anything to the pocket of his shirt. In the presence of such evidence, it is difficult to imagine that even if all the issues raised by the applicant had been addressed and accepted by the courts, their conclusion would have been different. For the Court, what is important is the overall fairness of the proceedings (see *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V).

49. On that latter point, the Court notes that the applicant was legally represented throughout the proceedings and it does not appear that there was any breach of the principle of equality of arms or that the applicant was unable personally or through his counsel to present his arguments and submissions.

50. The applicant also complained that the courts convicting him had failed to give arguments in support of their disagreement with the findings and conclusions of the Bălți Regional Court's judgment of 5 June 2001. The Court finds this argument unmeritorious. After the quashing of that judgment, a full rehearing took place. All the evidence was examined anew and all the witnesses were heard again. In such circumstances, it cannot be said that the domestic courts were under an obligation to give reasons for departing from the earlier judgment of 5 June 2001 (compare and contrast with *Salov v. Ukraine*, no. 65518/01, §§ 90-92, ECHR 2005-... (extracts)).

51. In the light of the above, the Court considers that the applicant's complaint about the unfairness of the proceedings must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

### **C. The complaint under Article 8 of the Convention concerning the recording of the applicant's telephone conversations**

52. The applicant complained that his telephone conversations had been illegally recorded and stressed that the recording had been carried out by a private person, A.M., but not by State agents.

53. The Court notes that the applicant failed to lodge a complaint with the competent authorities against the person responsible for the recording. He has therefore not exhausted the remedies available to him under Moldovan law. Furthermore, examination of the case has disclosed no special circumstances which could have exempted the applicant from the requirement to exhaust domestic remedies. Accordingly, this complaint must be declared inadmissible under Article 35 §§ 1 and 4 for failure to exhaust domestic remedies.

**D. The complaint under Article 8 of the Convention concerning the refusal to provide the applicant with copies of some materials of his criminal file**

54. The applicant complained that the authorities had refused to give him copies of the minutes of the hearings in his criminal proceedings and a copy of the video of his arrest.

55. The Court notes that it has already recognised the entitlement of an individual to have access to restricted documents held by public authorities, when these documents are of importance for the exercise of his private life. In *Gaskin v. the United Kingdom* (judgment of 7 July 1989, Series A no. 160, § 36), the documents in question contained information concerning highly personal aspects of the applicant's childhood, development and history and were considered to constitute his principal source of information about his past and formative years. In *Rotaru v. Romania* ([GC], no. 28341/95, § 44, ECHR 2000-V) the restricted documents contained information about the applicant's life, his studies, his political activities and his criminal record. In *Roche v. the United Kingdom* ([GC], no. 32555/96, § 155, ECHR 2005-...) the restricted documents contained information, which could either have allayed the applicant's fears concerning his health or enabled him to assess the danger to which he had been exposed.

56. In the present case, the copies in question related to public proceedings, at which the applicant was present in person, and most importantly, were not restricted documents. Even if it could be argued that they formed part of his past and of his memory, as every element of a person's daily life does to a certain degree, it is undisputed that the applicant could have had access to them through his representative while in prison and in person after release. In such circumstances, the Court considers that the present case is distinguishable from the above mentioned *Gaskin*, *Rotaru* and *Roche* cases and that the documents in question did not have such importance for the applicant's enjoyment of his private life as to fall within the scope of application of Article 8 of the Convention. It follows that, in accordance with Article 35 §§ 3 and 4 of the Convention, this part of the application must be dismissed as being incompatible *ratione materiae* with the Convention provision relied on.

**E. The complaint under Article 13 of the Convention taken together with Article 8 of the Convention**

57. The applicant argued that he did not have an effective remedy before a national authority in respect of the breach of Article 8 of the Convention concerning the refusal to issue him with copies of certain documents from his criminal file.

58. The Court reiterates that Article 13 applies only where an individual has an “arguable claim” to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). The Court has found the applicant’s complaint under Article 8 incompatible *ratione materiae* with the provisions of the Convention (see paragraph 56 above). Accordingly, the applicant does not have an “arguable claim” in this respect and his complaint under Article 13 must be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.

#### **F. The rest of the complaints**

59. The Court considers that the rest of the applicant’s complaints 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 the complaints.

### **II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION**

60. The applicant submitted that he had been beaten up by the police during his arrest and that that could clearly be seen in the video of his arrest. He also argued that the Prosecutor’s Office and the court which examined his complaint about ill-treatment had not conducted an effective investigation.

61. The Government disputed the applicant’s allegations and argued that his complaint about ill-treatment had been carefully examined by the domestic authorities and had been found to be ill-founded. They stressed that it could clearly be seen from the video of the applicant’s arrest that he had resisted the police officers.

62. The Court notes at the outset that this complaint was not communicated to the parties, however, the parties addressed it from both the substantive and procedural angles.

63. 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 *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3288, § 93).

64. The Court reiterates that in the process of arrest of a person, any recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 38).

65. The Court further reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. As with an investigation under Article 2, 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).

66. 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 *Assenov and Others*, 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.

67. In the instant case the Court notes that one of the videos of the applicant's arrest clearly shows that he received at least three blows from a police officer (see paragraph 8 above) while being restrained by several others. Indeed, the Bălți Regional Court made the same finding in its judgment of 5 June 2001. Although the applicant struggled for approximately five minutes with the police officers restraining him, it clearly appears he did not attempt to hit them but was merely struggling to bend down. In any event the balance of force was unequal as he was being restrained by five police officers of approximately the same size and build as he. In such circumstances the blows received by him do not appear to

have been strictly necessary and the police officers could have certainly achieved their goal of calming the applicant by other less brutal methods.

68. The Court must also have regard to the manner in which the domestic authorities examined the applicant's complaint about ill-treatment. It notes that the Prosecutor's Office and the Râșcani District Court limited their examination to the questioning of several police officers who had participated in the applicant's arrest and who denied his allegations of ill-treatment. They appear to have ignored the applicant's statements that the video of the arrest contained evidence in support of his allegations, which, in the Court's view, is surprising, since that would normally be the first and most reliable piece of evidence for the examination of such a complaint. It is to be noted that the Bălți Regional Court in its judgment of 5 June 2001 concluded from the video evidence that the applicant has been surrounded by police officers, his hands had been twisted and he was kicked in the area of the liver. The sound of blows could still be heard even when the applicant was not being filmed (see paragraph 14 above).

69. In the light of the above, the Court concludes that there has been both a substantive and procedural violation of Article 3 of the Convention. In so far as the substantive aspect is concerned, the Court considers that the ill-treatment to which the applicant was subjected amounted to inhuman and degrading treatment.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 153,604 euros (EUR) in respect of pecuniary and non-pecuniary damage made up as follows: EUR 3,604 for loss of earnings for the period of his detention lasting fifty-three and a half months and EUR 150,000 for non-pecuniary damage.

72. The Government contested the claim and argued that the applicant's claims were ill-founded and excessive.

73. The Court's finding of a breach is limited to the applicant's Article 3 complaint. As to the non-pecuniary damage claimed, the Court accepts that the ill-treatment to which the applicant has been subjected caused him non-pecuniary damage, which cannot be made good by the mere finding of a violation. The Court, making its assessment on an equitable basis, awards

the applicant EUR 6,000 in respect of non-pecuniary damage. The claim for pecuniary damage is unsubstantiated and is rejected.

### **B. Costs and expenses**

74. The applicant also claimed EUR 4,590 for costs and expenses incurred before the Court. He submitted a detailed time-sheet indicating the time spent by his lawyer on the case and an itemised list of other expenses linked to the examination of the case. He also submitted a copy of a contract between him and his lawyer and two receipts proving the payment of the entire amount claimed.

75. The Government disagreed with the amount claimed for representation and disputed, *inter alia*, the number of hours spent by the applicant's lawyer on the case and the hourly rate charged by him. They also argued that the claims were excessive in view of the economic situation in Moldova.

76. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession, the above criteria, the complexity of the case and the fact that several complaints have been declared inadmissible, the Court considers it reasonable to award the applicant the sum of EUR 2,000 for costs and expenses.

### **C. Default interest**

77. 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 UNANIMOUSLY**

1. *Declares* admissible the complaint under Article 3 of the Convention and the remainder of the complaints inadmissible;
2. *Holds* that there has been a substantive violation of Article 3 of the Convention;
3. *Holds* that there has been a procedural violation of Article 3 of the Convention;

4. *Holds*

(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 6,000 (six thousand euros) in respect of non-pecuniary damage and EUR 2,000 (two thousand 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President