



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

FOURTH SECTION

CASE OF BREABIN v. MOLDOVA

(Application no. 12544/08)

JUDGMENT

STRASBOURG

7 April 2009

FINAL

07/07/2009

This judgment may be subject to editorial revision.

In the case of Breabin v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 17 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 12544/08) 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 Dumitru Breabin (“the applicant”), on 5 February 2008.

2. The applicant was represented by Mr G. Ulianoschi, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

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 of the Convention. He also complained under Article 13 of the Convention.

4. On 21 April 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in Chişinău. He is a driver but at the time of the events was unemployed.

6. He was suspected of having forged documents concerning the sale of an apartment in Chişinău and was summoned to appear at the Ministry of Internal Affairs for questioning on 21 December 2004.

7. He complied with the summons and appeared before police officers N. T. and S.D. in their office, in the building of the Ministry of Internal Affairs. The time of his arrival in the building of the Ministry is disputed between the parties. According to the applicant he arrived at about 9 a.m. while the Government maintains that he arrived at 1 p.m. According to the applicant, the two police officers tried to force him to confess and when he refused to comply beat him with rubber truncheons and punched him in the head. Following a punch to his right ear he lost consciousness for several minutes. The allegations of beatings are disputed by the Government. It is undisputed that the questioning took place. The length of the questioning is also disputed between the parties: according to the applicant it lasted for eight hours while the Government contend that the questioning lasted for only one hour. At the same time it is undisputed that the police officers did not make any record of the questioning on that day.

8. The time of the applicant's release is also disputed between the parties: the Government contend that he was released at about 2 p.m. while the applicant submits that he was released at approximately 5 p.m. It is, however, undisputed that he took a taxi from the front of the Ministry of Internal Affairs and went directly to his friend, V.P., with whom he had planned to go to Germany the next morning to inform him that he would not be able to go. Both the taxi driver and his friend noted the bruises on his face and were told by the applicant that he had been beaten up by the police in the building of the Ministry of Internal Affairs. The applicant obtained the taxi driver's card.

9. The applicant felt ill during the night and the next morning, 22 December 2004, he went to the Emergency Hospital (*Spitalul de Urgenţă*). The hospital's register contains the following information:

"The patient was beaten up by police officers in the building of the Ministry of Internal Affairs on 21 December 2004 at 11.50 a.m. with loss of consciousness for several minutes. He complains of headache, nausea, vomiting and vertigo. Diagnosis: concussion and bruises to the face, upper lip, head and body.... The applicant refused to be hospitalised. Information has been transmitted to the General Police Station and received by D. under number 6196 at 8.35 p.m."

10. It appears that no action followed as a result of the Emergency Hospital's informing the General Police Station about the applicant's allegations of ill-treatment at the hands of police officers.

11. On the same day, 22 December 2004, at 4.45 p.m. the applicant was hospitalised in a military hospital. According to the applicant, he chose that hospital over the Emergency Hospital because it had cheaper services. It appears from the hospital's register that the applicant gave the same account of events as at the Emergency Hospital about the beating received on

21 December 2004 in the building of the Ministry of Internal Affairs at the hands of two police officers. He was diagnosed with head trauma, multiple bruises to the body and head and post-traumatic deafness in the right ear. The applicant left hospital on 31 December 2004.

12. On 5 January 2005 the applicant obtained a forensic report concerning his injuries. The report confirmed the previous diagnosis and stated that the injuries had been inflicted with blunt objects and that the findings of the medical examinations were compatible with the applicant's account of the use of physical violence against him on 21 December 2004. The injuries were designated under the Criminal Code as light injuries, necessitating no more than twenty-one days of medical care.

13. On 3 September 2005, during the investigation proceedings in the criminal case against the applicant, he complained to an investigator that he had been ill-treated on 21 December 2004. It appears that no action followed in respect of the applicant's complaint.

14. On 15 December 2005 the applicant wrote to the Prosecutor's Office and complained that, having examined his criminal file on 14 December 2005, he had noted that it did not contain any information about his questioning of 21 December 2004 and that no action had been taken in respect of his ill-treatment on that date in spite of two complaints, one lodged by the hospital on 22 December 2004 and his own complaint of 3 September 2005. He asked that criminal proceedings be initiated against the two police officers who had ill-treated him and joined to his request a copy of the forensic medical report of 5 January 2005.

15. On 15 January 2006 the Prosecutor's Office decided to take no action in respect of the applicant's ill-treatment complaint after finding it ill-founded. In a decision of the same date it was stated that the accused police officers had admitted having questioned the applicant; however, they denied having ill-treated him and since the applicant had only complained about the alleged ill-treatment one year later, it was obvious that he had the intention to protract and hinder the criminal proceedings against himself. It appears that the applicant was not heard and no mention of his previous complaints or the forensic report was made. The applicant appealed against this decision and argued that no assessment had been made of the medical report. He also submitted that he had a witness who could confirm the fact of his ill-treatment.

16. On 24 March 2006 the Centru District Court upheld the applicant's appeal and quashed the prosecutor's decision. It found, *inter alia*, that the Prosecutor's Office had not sufficiently investigated the medical evidence presented by the applicant.

17. On 11 May 2006 the applicant was heard by a prosecutor. He reiterated the facts presented earlier in his complaint and informed the prosecutor about the taxi driver who could testify as to his state in the evening of 21 December 2004.

18. On an unspecified date a prosecutor questioned the taxi driver who had taken the applicant from the Ministry of Internal Affairs (see paragraph 8 above). The taxi driver stated that he took the applicant in the evening of 21 December 2004 from the corner of the street on which the Ministry of Internal Affairs was located. The applicant's clothes were dirty and dusty and at the beginning he thought that the applicant was not sober. However, later he was told by the applicant that he had been beaten up by two police officers in the building of the Ministry of Internal Affairs. The applicant showed him signs of beatings on his face, namely a swollen ear and bruises around it. Before leaving the car, the applicant asked for his card and he gave it to him.

19. On an unspecified date a prosecutor questioned the applicant's friend whom the latter visited in the evening of 21 December 2004 (see paragraph 8 above). The applicant's friend confirmed that in the evening of 21 December 2004 between 8 and 10 p.m. the applicant had come to his home to announce to him that he was not able to travel to Germany the next day. The applicant had bruises on his face and told him that he had been beaten up the same day by police officers in the building of the Ministry of Internal Affairs.

20. On 7 July 2006 the Centru Prosecutor's Office again dismissed the applicant's complaint of ill-treatment. Without giving any assessment of the medical reports and the statements of the taxi driver and the applicant's friend it found the applicant's complaint ill-founded because there was sufficient evidence to prove his guilt of the offence imputed to him and therefore his complaint about ill-treatment was a mere attempt to hinder and protract the criminal investigation against him. This was supported by the fact that the applicant had complained only one year after the alleged events. The applicant challenged this decision before the prosecutor's hierarchical superior.

21. On 29 January 2007 the applicant's appeal was dismissed as ill-founded by a hierarchically superior prosecutor on identical grounds. The applicant challenged the decision in court.

22. On 24 April 2007 the Centru District Court upheld the applicant's appeal. It found, *inter alia*, that the prosecutors' decisions lacked reasoning.

23. On 29 June 2007 a prosecutor from the Centru Prosecutor's Office again dismissed the applicant's complaint. He stated, *inter alia*, that the accused police officers had admitted to questioning the applicant on 21 December 2004 only for one hour; however, they had denied having applied force to him. The statements of the taxi driver and of the applicant's friend could not be accepted because they were not eyewitnesses to the beating but rather knew about the applicant's alleged ill-treatment at the hands of police from what the applicant had told them. The police officers argued that it was impossible for them to ill-treat the applicant in their office because the Minister's office was one floor above and if there had been

shouts the Minister or other persons from the Ministry's top echelons would have heard. Moreover, they did not have rubber truncheons in their office and the offence with which the applicant had been charged was not so serious as to justify ill-treating him. A colleague of the police officers also declared that the applicant was not ill-treated and that, during questioning, the door of the office was always open. The applicant appealed against this decision and argued that it was unlawful because the prosecutor had failed to examine objectively and completely all the circumstances of the case. The applicant submitted that the prosecutor had failed to notice that the police officers had failed to draw up a record of his detention and questioning of 21 December 2004.

24. On 15 August 2007 his appeal was dismissed by the Centru District Court. The court found that the forensic report of 5 January 2005 did not prove the applicant's ill-treatment because it had been drawn up twelve days after the alleged ill-treatment.

25. The damage to the applicant's right ear was so serious that it never recovered. The applicant submitted a medical report of 2007 stating that the loss of hearing in his right ear was irremediable and permanent.

26. On an unspecified date the applicant requested a medical report from the Forensic Medicine Centre of the Ministry of Health Protection which concluded on 11 November 2008 that following the head trauma of 21 December 2004 the applicant had entirely lost the hearing in his right ear. According to Moldovan legislation the injury caused the applicant a loss of working capacity of twenty-five per cent. The applicant's injury was redesignated under the Criminal Code as an injury of medium seriousness causing long-term health problems necessitating more than twenty-one days of medical care.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Domestic Law

27. The relevant provisions of the Criminal Code read as follows:

Article 309. Extortion of confession

(1) The act of forcing someone to confess a criminal offence or to make declarations during questioning, by means of threats or by other illegal means by the person carrying out a criminal investigation... shall be punishable by imprisonment of up to three years...

(2) The same act accompanied by:

a) violence;

b) cruel, inhuman or degrading treatment;

...

Shall be punishable by imprisonment of three to eight years...

Article 309 § 1. Torture

(1) Intentionally creating intense physical or mental pain or suffering, especially with a view to obtaining information or testimonies ... shall be punishable by imprisonment of two to five years....

(3) The actions provided at paragraph 1 ..., carried out:

c) by two or more persons;

e) with the use of special instruments for torture or other objects adapted for that purpose;

f) by an official,

shall be punishable by imprisonment of five to ten years...

28. The relevant provision of the Code of Administrative Offences reads as follows:

Article 471. Causing injuries

The intentional causing of light injuries, ill-treatment, blows or other violent actions which caused physical pain shall be punishable by a fine of 200-300 Moldovan lei (MDL) or by imprisonment of up to fifteen days...

B. Domestic remedies relied on by the Government

29. In *Ciorap v. the Ministry of Internal Affairs and the Ministry of Finance* (final judgment of the Supreme Court of Justice of 19 December 2007) a person remanded in custody was ill-treated by police to such an extent that he had a fractured skull and an open post-operative wound. Despite clear evidence in support of his allegations of ill-treatment, his criminal complaints were dismissed by the Prosecutor's Office and the video of his ill-treatment disappeared from the criminal file. The applicant introduced a civil action against the State claiming that there had been a violation of his rights guaranteed by Article 3 of the Convention and seeking compensation of MDL 300,000 (approximately 18,000 euros (EUR)). By its final judgment the Supreme Court of Justice found that there was sufficient evidence to support the applicant's allegations of torture, that the Prosecutor Office's investigation had been inefficient and that therefore there had been a violation of the applicant's rights guaranteed by Article 3

of the Convention. The applicant was initially awarded MDL 30,000; however, that amount was reduced by the Supreme Court to MDL 3,000 (approximately EUR 180).

THE LAW

30. The applicant complained under Article 3 of the Convention that he had been ill-treated by the police on 21 December 2004. He also complained that the domestic authorities had failed to investigate his complaints of ill-treatment properly. Article 3 of the Convention reads as follows:

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

31. The applicant argued that he did not have effective remedies to claim compensation for the ill-treatment to which he had been subjected 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 CASE

32. The Government submitted that the application was inadmissible on grounds of non-exhaustion of domestic remedies. In particular, they argued that the applicant should have initiated civil proceedings and claimed compensation for the alleged ill-treatment. They relied on the domestic courts’ jurisprudence, in particular on the case of *Ciorap* (see paragraph 29 above). Alternatively, the applicant could have complained under Article 471 of the Code of Administrative Offences. The applicant disagreed with the Government.

33. In so far as the Government’s contention that the applicant should have complained under the provisions of the Code of Administrative Offences is concerned, the Court reiterates that an individual is not required to try more than one avenue of redress when there are several available (see, for example, *Airey v. Ireland*, 9 October 1979, § 23, Series A no. 32). It clearly appears from the facts of the case that the applicant made a criminal complaint against the police officers under the provisions of the Criminal Code (see paragraphs 13 and 14 above). The Government have not argued that such a procedure is ineffective in respect of the alleged breach of the applicant’s right guaranteed by Article 3. Accordingly, their objection that he should have tried to complain also under the provisions of the Code of Administrative Offences must be dismissed.

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

35. Having examined the domestic courts' judgments in the case of *Ciorap*, the Court notes that beside the manifestly inadequate amount of non-pecuniary damage awarded to Mr Ciorap for a violation as serious as torture, the civil proceedings in question did not lead to the identification and punishment of the responsible police officers. The Court recalls other decisions by the domestic courts to compensate victims of Article 3 breaches, such as the 2004 judgment in *Drugalev v. the Ministry of Internal Affairs and the Ministry of Finance* (see *Holomiov v. Moldova*, no. 30649/05, §§ 88, 106 and 107, 7 November 2006). However, such decisions, encouraging as they may seem, do not appear to be part of a consistent policy of the domestic courts offering real remedies against breaches of Article 3 of the Convention. The Court considers, therefore that the complaint under Article 3 of the Convention cannot be declared inadmissible for non-exhaustion of domestic remedies and accordingly the Government's objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. The submissions of the parties

1. Concerning the alleged ill-treatment

36. The applicant submitted that on 21 December 2004 between 9 a.m. and 5 p.m. he was under the control of the police and that before that he had been in perfect health. After his release, he had injuries on his body, which was confirmed by the medical report of 22 December 2004 and not contested by the Government. The medical evidence, which was

corroborated by the statements of two witnesses (the taxi driver and the applicant's friend), proved beyond any reasonable doubt that the injuries had been inflicted on the applicant during his detention in the building of the Ministry of Internal Affairs. The conclusions reached by the prosecuting authorities in dismissing the applicant's complaint were based exclusively on the declarations of the police officers accused of ill-treatment. The applicant also argued that one of the police officers accused by him implicitly admitted that there was a current practice of ill-treating suspects by saying that the charges against him had not been so serious as to warrant ill-treatment.

37. The Government contested the applicant's submissions and argued that he had not been subjected to ill-treatment on 21 December 2004. In support of their position the Government restated the findings of the Prosecutor's Office in the decisions dismissing the applicant's complaint.

2. Concerning the alleged inadequacy of the investigation

38. The applicant submitted that only in respect of cases of violence between individuals is a complaint from the victim necessary to trigger a police investigation. Under Articles 276 and 298 of the Code of Criminal Procedure the triggering of an investigation into allegations of ill-treatment by police is not conditioned by the existence of a prior complaint from the alleged victim of ill-treatment. In support of his contention the applicant sent a copy of an order of the Prosecutor General addressed to his subordinates, according to which prosecutors are obliged to investigate *ex officio* any case concerning torture or ill-treatment by the police.

39. The applicant was informed on 22 December 2004 by the hospital that the police would be informed about his allegations of ill-treatment. Therefore, he did not submit any complaints and was awaiting to be summoned by the police to make statements.

40. On 3 September 2005, when summoned by a prosecutor for questioning in respect of the criminal proceedings against him, the applicant complained about the ill-treatment of 21 December 2004. Despite this fact, and despite the provisions of the Code of Criminal Procedure, no action followed.

41. On 14 December 2005, when examining his criminal file, the applicant noted that it did not contain any traces of the information submitted by the hospital on 22 December 2004 or of his complaint made on 3 September 2005 and, on 15 December 2005, he made a complaint.

42. Even after 15 December 2005 the Prosecutor's Office did not undertake any investigative measures and dismissed the complaint on 15 January 2006 solely on the basis of the declarations of the accused police officers. The prosecutor in charge of the case concluded that the applicant had made the complaint of ill-treatment in order to distort the criminal proceedings against him; however the applicant did not make any

confession during the questioning of 21 December 2004 and therefore any fake complaint would not have helped him in the criminal proceedings against him. Moreover, after 21 December 2004 the police officers who had ill-treated him were not involved in the investigation of the charges against him.

43. During the investigation into his allegations of ill-treatment, the prosecutors only questioned two witnesses and the two police officers accused of ill-treatment. They did not question the doctors who had examined the applicant. Moreover, the case file concerning the investigation into his complaints of ill-treatment did not contain anything which would indicate that the prosecutors had noted the doctors' conclusions that the injuries on the applicant's body were consistent with his description of the events leading to them. The prosecutors also failed to give any alternative explanation as to the origin of the applicant's injuries.

44. The Government submitted that at the time of receiving the information about the applicant's ill-treatment from the hospital, on 22 December 2004, the offence fell within the category of offences (causing light injuries) in which a criminal investigation was to be commenced only as a result of a complaint lodged by the victim. Therefore, even if the police were informed about the applicant's injuries, they could not start investigating the case unless they received a complaint from the applicant.

45. After thorough investigation, the investigating authorities came to the conclusion that the applicant's complaint one year after the events was aimed at tampering with the criminal investigation in respect of the charges against the applicant. Moreover, the fact that the applicant complained only one year after the events made it difficult for the authorities to investigate his complaints properly. Had the applicant informed the authorities immediately, they could have looked for traces of the applicant's blood on the clothes of the accused police officers or for other evidence. However, this was rendered impossible by the applicant's late complaint.

46. The witnesses called by the applicant were not eyewitnesses to the alleged ill-treatment but had rather heard about it from the applicant.

B. The Court's assessment

1. Concerning the alleged ill-treatment

47. 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*, 28 October 1998, § 93 *Reports of Judgments and Decisions* 1998-VIII).

48. 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*, cited above, § 87).

49. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted 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).

50. It is undisputed that on 21 December 2004 the applicant was in the building of the Ministry of Internal Affairs under the control of the police. The Court notes with concern that no record was kept of the time of his arrival and release nor of the times of his interrogation. A medical report dated 22 December 2004, in the morning, concluded that the applicant had injuries to his head and body. It is true that after his release from the Ministry of Internal Affairs the applicant did not go directly to a hospital. However, he was able to provide two witnesses who confirmed that he had injuries on his face in the evening of 21 December 2004, after his release from the Ministry of Internal Affairs. One of the witnesses was a taxi driver who picked him up from the front of the Ministry of Internal Affairs. The Centru Prosecutor’s Office dismissed the testimony of the taxi driver on the ground that it was hearsay evidence, namely that it was the applicant who had told him about the beating at the hands of the police. However, it appears clearly from the taxi driver’s statements that he had personally seen injuries on the applicant’s face and the latter’s dirty clothes. Moreover, it is undisputed between the parties that the applicant was seen by the taxi driver immediately after his release from the building of the Ministry of Internal Affairs.

51. In the light of the above considerations, and since it was not found that the applicant had been injured before entering the building of the Ministry of Internal Affairs, the Court concludes that the applicant’s injuries

were caused during his stay at the Ministry of Internal Affairs on 21 December 2004.

52. Since the Government did not give any explanations concerning the origin of the above injury, and having regard to the strong presumption which arises in such matters (see paragraph 48 above), the Court concludes that the Government have not satisfied it that the applicant's injuries were caused by anything other than ill-treatment while in police custody. Accordingly, there has been a violation of Article 3 of the Convention in that he was subjected to ill-treatment.

2. Concerning the alleged inadequacy of the investigation

53. Beside the general principle enunciated in paragraph 34 above, the Court reiterates that 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* 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 *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 104, ECHR 1999-IV, 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.

54. The Court notes a series of serious shortcomings in the investigation conducted by the national authorities. In so far as the Government's reliance on the fact that the applicant waited for almost a year before personally filing a complaint about his ill-treatment is concerned, the Court notes that the applicant sought medical attention upon his release from custody. The doctor who examined him notified the police of the applicant's injuries and his allegations that they had been caused by police ill-treatment. In such circumstances, the onus was on the authorities to follow-up the concerns raised in the hospital's letter. However, no response at all was given to the letter. The Prosecutor's Office also failed to react even when it was approached personally by the applicant on 3 September 2005. After 15 December 2005, when an investigation was finally launched, the prosecutors failed to inquire as to the reason why the two accused police officers had omitted to make any entries in the registration log concerning the applicant's questioning on 21 December 2004. On 15 January 2006 the Prosecutor's Office dismissed the applicant's complaint without even questioning the applicant, nor for that matter any other witnesses. The conclusion was that his aim was to tamper with the criminal investigation against him, a conclusion which remained predominant until the end of the investigation. It is not without interest to note that in spite of reaching such

a conclusion, the Prosecutor's Office did not make any analysis of whether the applicant had any incentive to make false accusations against the two police officers or whether the applicant could have benefited from such accusations in circumstances in which no confession was obtained on 21 December 2004 and the two accused police officers did not work on his case after that date.

55. It is true that after the quashing of the Prosecutor's decision of 15 January 2006 to dismiss the applicant's complaint, witnesses were heard. However, the Prosecutor's Office dismissed the witnesses' testimonies on the ground that they were hearsay evidence, namely that the taxi driver's and the applicant's friend's knowledge of the ill-treatment were based on the applicant's account of events to them. However, having examined the witnesses' statements, the Court noted that they declared that they had seen signs of beatings on his face. These very important declarations were ignored by the prosecutors and treated as irrelevant information.

56. In the light of the serious deficiencies referred to above, the Court considers that the domestic authorities did not make a serious attempt to investigate the applicant's complaints of ill-treatment. Accordingly, there has been a violation of Article 3 of the Convention in this respect also.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

57. The applicant contended that as a result of the ineffectiveness of the criminal investigation of his allegations of ill-treatment he did not have effective remedies to claim compensation for the ill-treatment to which he was subjected.

58. The Government disagreed and invoked the case of *Ciorap* as an example of available domestic remedies.

59. The Court notes that the Government failed to submit evidence as to the existence of any effective domestic remedies (see paragraphs 32-35 above). In any event, given the inadequacy of the investigation into the applicant's criminal complaint against the police officers who had ill-treated him, a civil claim based on the same facts and allegations would not have had any prospects of success. Accordingly, the Court considers that it has not been shown that effective remedies existed for the applicant to claim compensation for the ill-treatment suffered at the hands of the police. There has therefore been a violation of Article 13 taken in conjunction with Article 3 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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. Pecuniary damage

61. The applicant claimed EUR 200 in respect of pecuniary damage, the amount representing his expenditure on the treatment of his injuries caused on 21 December 2004.

62. The Government submitted that the applicant was not entitled to any compensation because he had not been ill-treated.

63. The Court considers that there is a causal link between the violation found and the pecuniary damage alleged; it therefore awards the entire amount claimed in respect of pecuniary damage.

B. Non-pecuniary damage

64. The applicant claimed EUR 150,000 in respect of non-pecuniary damage arguing that he had suffered serious physical pain as a result of ill-treatment necessitating more than twenty-one days of treatment. He also endured severe mental and emotional suffering as a result of the treatment he had been subjected to and as a result of the total loss of hearing in his right ear. According to the Moldovan legislation such a disability amounts to a loss of working capacity of 25%. The applicant's disability constituted a serious obstacle to the practice of his profession and made it very difficult for him to find a permanent place of employment. The applicant and the other three members of his family who are his dependants were therefore in a very difficult economic situation. He was obliged to accept minor unqualified temporary jobs in order to provide for his family.

65. The Government disagreed and argued that since the domestic authorities had not found that the applicant had been ill-treated by the police officers he was not entitled to any compensation. As an alternative they submitted that the amount claimed was excessive in the light of the Court's case-law in similar cases.

66. Having regard to the violations found above and their gravity, the Court considers that an award for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, and bearing in mind the permanent disability caused to the applicant as a result of ill-treatment, the Court awards him EUR 25,000.

C. Costs and expenses

67. The applicant also claimed EUR 5,287 for the costs and expenses incurred before the Court.

68. The Government contested this amount and argued that it was excessive and unfounded.

69. The Court awards EUR 3,500 for costs and expenses.

D. Default interest

70. 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* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's ill-treatment by police officers on 21 December 2004;
3. *Holds* 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 of ill-treatment while in detention;
4. *Holds* 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;
5. *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 the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 200 (two hundred euros) in respect of pecuniary damage;
 - (ii) EUR 25,000 (twenty-five thousand euros) in respect of non-pecuniary damage;
 - (iii) EUR 3,500 (three thousand five hundred euros) in respect of costs and expenses;
 - (iv) any tax that may be chargeable on the above amounts;

(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;

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

Done in English, and notified in writing on 7 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President