



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF BUZILOV v. MOLDOVA

(Application no. 28653/05)

JUDGMENT

STRASBOURG

23 June 2009

FINAL

23/09/2009

This judgment may be subject to editorial revision.

In the case of Buzilov 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 2 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 28653/05) 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 a Moldovan national, Mr Petru Buzilov (“the applicant”), on 6 July 2005.

2. The applicant was represented by Mr Mihai Cebotari and Ms Eugenia Buzilov. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, 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 6 § 1 of the Convention of the excessive length of the criminal proceedings against him.

4. On 7 May 2007 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 1961 and lives in Cahul.

6. On 30 May 2002 (31 May 2002, according to the Government) the applicant was arrested in Chişinău by the Department of Criminal Investigation of the Ministry of Internal Affairs on suspicion of racketeering (*banditism*). He alleges that he was hooded, pushed into a car and taken to a police station.

7. At Hânceşti Police Station the applicant was allegedly severely beaten up by police officers. He alleges that a police officer in plain clothes ordered five other officers to put a gas mask over his head; that he was handcuffed and his legs tied together and attached to his arms behind his back; that he was laid face-down on his abdomen; and that two electric wires were attached to his ears. He was allegedly given electric shocks while cold water was poured over him. Because of the severe pain he bit his tongue. In the meantime, another police officer had been blocking the air to the gas mask and moving the wires from his ears to his toes. The applicant alleges that between 30 May and 3 June 2002 he was subjected to the same ill-treatment every night. During the day he was driven to Comrat Police Station.

8. On 3 June 2002 the Comrat District Court issued an order remanding the applicant in custody for a period of thirty days. The applicant was placed in the remand centre of Comrat Police Station. It is unclear from the documents in the case file whether he appealed against the decision of 3 June 2002.

9. Following a request from his lawyer, an investigator from Comrat Police Station ordered the applicant's examination by a forensic doctor A. medical report of 4 June 2002 stated, *inter alia*:

“[According to the applicant] On 30 May 2002 he was taken to Hânceşti Police Station. His arms and legs were tied together, and he was beaten with a baton and with metal bars. Electric wires were attached to his toes and he was given electric shocks. When he was losing consciousness water was poured over him. The wires were then attached to his ears and he was again given electric shocks. When he was losing consciousness water was again poured over him. A gas mask was put over his head and the air permanently cut off. The applicant complained of headache, nausea and pain in the injured places.

Above the right eyebrow – a scratch of 2.4 x 1.4 cm, ..., in the right occipital region of the head – a light-yellowish bruise of 1 x 0.8 cm, on the right upper eyelid - an oval bruise of 3.5 x 0.8 cm, around the left eye – a light-yellowish bruise of 4.5 x 2.1 cm, ... irregular-shaped light-violet bruises of 2.6 x 2 cm and 2.7 x 1.9 cm on both cheeks, in the right temporal region – an irregular-shaped light-yellowish bruise of 4 x 2 cm, auricles (right and left) [ears] – yellow, ... on the front part of the right shoulder – a yellow bruise of 10 x 7 cm, ... multiple bruises of between 7.3 x 2.4 cm, 1.3 x 1.2 cm and 4 x 0.9 cm on both sides of the chest, on the abdomen – multiple irregular-shaped light-yellowish bruises of between 1.8 x 1.2 cm and 6 x 1.7 cm, on the scapulas – irregular-shaped dark-reddish bruises of 9 x 6 cm, 14 x 2 cm and 3.7 x 1 cm, multiple bruises of between 0.2 x 0.4 cm and 7 x 2.2 cm on both legs. ... On the tip of the [applicant's] tongue – oval scar of 1.4 x 0.6 cm, 0.3 cm in depth.

The scratches and bruises ... were inflicted by blows with a hard blunt object, the scar on the tip of the tongue ... could have been caused by human teeth, [the injuries]

could have been caused in the circumstances and at the time indicated and are qualified as light bodily injuries.”

10. On 26 June 2002 a private newspaper published an article according to which the police had arrested a gang organised by the applicant. It gave his name and stated that he could be sentenced to twenty-five years’ imprisonment.

11. On 13 June 2003 a State-owned newspaper also published an article about a group of people suspected of racketeering. However, it did not disclose the applicant’s name, but only mentioned “Petru B.”.

12. On an unspecified date the applicant complained to the General Prosecutor’s Office about the alleged ill-treatment in Hâncesti Police Station. On 18 and 31 March 2005 the Hâncesti and the General Prosecutor’s Office, respectively, informed the applicant that his complaint had been dismissed on grounds of lack of “constitutive elements” of an offence. It appears that, in dismissing the applicant’s complaint, the Prosecutor’s Office relied on the statements of two police officers who had declared not having beaten the applicant and not having seen any signs of ill-treatment on his body on 1 June 2002 when they had escorted him from Hâncesti Police Station to another police station. The prosecutor concluded that the injuries found on the applicant’s body had not been caused by police officers from Hâncesti Police Station.

13. Between January and October 2003 the criminal case against the applicant was examined by the Chişinău Court of Appeal. On 7 October 2004 the Chişinău Court of Appeal declined jurisdiction in favour of the Cahul Court of Appeal, which, in turn, declined jurisdiction on 31 October in favour of the Comrat Court of Appeal. In view of a competence conflict over jurisdiction, the case was sent to the Supreme Court of Justice which decided, on 27 January 2003 that the Cahul Court of Appeal was the competent instance.

14. By a judgment of the Cahul Court of Appeal of 18 June 2007 the applicant was found guilty as charged and sentenced to ten years’ imprisonment. It is not clear from the parties’ submissions whether the proceedings ended on that date.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. The relevant provisions of the Criminal Code in force at the material time read as follows:

“Article 185

An abuse of power accompanied by acts of violence, use of arms or acts of torture and humiliation shall be punishable by imprisonment of three to ten years and by a prohibition on carrying on certain activities for a period of up to five years. ...”

THE LAW

16. The applicant complained under Article 3 of the Convention that he had been ill-treated by the police. 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.”

17. The applicant complained that the length of the criminal proceedings had been incompatible with the “reasonable time” requirement provided for in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

I. ADMISSIBILITY OF THE CASE

18. The applicant complained under Article 6 § 1 of the Convention that the criminal proceedings against him were excessively long. The Government disputed the applicant’s submission and argued that in view of the complexity of the case and the behaviour of the accused persons, the length of the proceedings had not been excessive.

19. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). In the present case, the Court notes that the applicant did not substantiate his complaint and did not provide the Court with a copy of the domestic case file. Without that, the Court is not able to determine the reasonableness of the length of the proceedings. In such circumstances, the complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

20. The applicant also complained that the two newspapers that wrote articles about him (see paragraphs 10 and 11 above) breached his right to be presumed innocent. The Court notes that the State-owned newspaper did not disclose the applicant’s identity and/or make him identifiable in any way. Accordingly, the complaint is manifestly ill-founded. As regards the other newspaper, the Court notes that it was privately owned and, therefore, the complaint is incompatible *ratione materiae*. In any event, it appears that the applicant has not used any available domestic remedies in order to initiate proceedings against the newspapers. The Court therefore considers the

applicant's complaint under Article 6 § 2 to be inadmissible under Article 35 §§ 1, 3 and 4 of the Convention.

21. The applicant finally complained under Article 38 of the Convention that his lawyer did not have adequate facilities to meet with him. In the Court's opinion, this complaint refers in substance to the applicant's right of petition guaranteed by Article 34 of the Convention. However, since the applicant failed to substantiate it by providing any evidence, the complaint must be declared inadmissible as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

22. The Court considers that the applicant's remaining complaint, under Article 3 of the Convention, raises questions of fact and law which are sufficiently serious that its determination should depend on an examination of the merits, and that no other grounds for declaring it inadmissible have been established. The Court therefore declares this complaint 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 complaint.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

23. The applicant submitted that he had been tortured during his detention at Hâncești Police Station and argued that the authorities had failed to explain the origin of over forty injuries on his body recorded in the medical report of 4 June 2002. The applicant also contended that the Prosecutor's Office had failed to properly investigate his complaint.

24. The Government submitted that the applicant had not been ill-treated during his detention at Hâncești Police Station. This had been proved by the statements of police officers from that police station who denied any accusation of ill-treatment. According to the Government, the authorities had conducted an effective investigation into the applicant's complaint of ill-treatment.

25. 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*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII).

26. 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 (see *Selmouni*, cited above, § 87).

27. 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 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).

28. 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).

29. 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 *Asenov 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, § 104 et seq., ECHR 1999-IV, 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.

30. In determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction,

embodied in Article 3, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see *Ireland*, cited above, § 167). The fact that pain or suffering was deliberately inflicted for the purpose of obtaining a confession is a further factor to be taken into account in deciding whether ill-treatment amounted to torture (see *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports*, and *Salman*, cited above, § 114).

31. Turning to the facts of the present case, the Court notes that the applicant sustained numerous injuries during his detention at Hâncesti Police Station. Since the Government have failed to provide an explanation for the applicant's injuries, the Court concludes that they were the result of ill-treatment while in police custody.

32. The Court further notes that the findings in the medical report of 4 June 2002 that the applicant's ears were yellow and that he had a deep scar left by a bite to the tip of his tongue are consistent with the submission made by the applicant that he had been given electric shocks through wires attached to his ears and that, as a result of the severe pain, he had involuntarily bitten the tip of his tongue. The Court considers that this form of ill-treatment is particularly reprehensible as it presupposes an intention to obtain information, inflict punishment or intimidate. In such circumstances, the Court considers that the violence inflicted upon the applicant was of a particularly serious nature, capable of provoking severe pain and cruel suffering and that it falls to be treated as acts of torture. Accordingly, there has been a violation of Article 3 of the Convention.

33. The Court finally notes that after receiving the applicant's complaint about ill-treatment, the Prosecutor's Office did not take statements from the applicant or from the doctors who had examined him. Nor did the Prosecutor Office asked the applicant to identify the police officers responsible. In fact, the Prosecutor's Office did not undertake any decisive steps in order to investigate the applicant's complaint but was content to accept without reservation the statements of the accused police officers. It is therefore impossible for the Court to conclude that an effective official investigation took place. Thus, there has been a violation of Article 3 of the Convention under its procedural head as well.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed 500,000 euros (EUR) as compensation for the breach of his rights guaranteed by Articles 3 and 6 of the Convention. He did not specify whether his claim referred to pecuniary or non-pecuniary damage. According to the applicant, the amount was to compensate him for the extraction of a confession and for the period of five years spent in detention during the proceedings. In respect of the latter, he submitted that during his detention he had been unable to support his family.

36. The Government treated the applicant’s claim as a claim in respect of non-pecuniary damage. They submitted that the proceedings had not been excessively long and that the applicant’s detention during the proceedings had been justified. Referring to the claim in respect of a breach of Article 3 of the Convention, the Government submitted that the amount claimed was too high in the light of the Court’s previous case-law in Article 3 cases concerning Moldova. They also submitted that in some cases the Court considered that a finding of a violation constituted sufficient just satisfaction.

37. Having regard to the violation found above and its gravity, the Court considers that an award for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards him EUR 30,000.

B. Costs and expenses

38. The applicant also claimed EUR 1,680 for the costs and expenses incurred before the Court.

39. The Government objected and argued that the amount was excessive.

40. The Court awards EUR 500 for costs and expenses in respect of costs incurred by Mr M. Cebotari.

C. Default interest

41. 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 complaint under Article 3 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the respondent State's substantive and procedural obligations;
3. *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 30,000 (thirty thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, and EUR 500 (five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President