



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

1959 · 50 · 2009

THIRD SECTION

CASE OF BOLOVAN v. ROMANIA

(Application no. 64541/01)

JUDGMENT

*This judgment was revised in accordance with Rule 80 of the Rules of Court
in a judgment of 20 September 2011*

STRASBOURG

24 November 2009

FINAL

24/02/2010

*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 Bolovan v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 3 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 64541/01) against Romania lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Constantin Bolovan (“the applicant”), on 26 August 1998.

2. The applicant was represented by Law Office Oancea-Rădulețu, based in Craiova. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he had been hit by a police officer, that the criminal proceedings against him had been unfair and that his property rights had been violated.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. On 13 March 2006 the President of the Third Section decided to communicate the complaints described above 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

6. The applicant was born in 1944 and lives in Cioroiași. At the material time he was working as a professional driver.

A. The events on 21 June 1997

1. The applicant's version of the incident involving him and the police

7. On 21 June 1997, at around 7 p.m., the applicant parked his car at the side of the road, with the intention of spending the night in his outhouse. He was accompanied by his girlfriend, S.U. When they started walking away from the car, two lower ranking police officers (*plutonieri*) got out of a car and approached them, one in uniform (S.D.) and the other in plain clothes (P.D.). Other police officers were also present at the scene, as traffic controls were being carried out.

S.D. asked for the applicant's identification papers, but the latter could not produce them as he had left them in his other car. S.D. grabbed the car keys from his hand with the intention of searching the car. The applicant told him that he would not find the papers in the car and that, in fact, he had just been fined for the same offence. He put his hand in his pocket to pull out the police report.

At that moment, the police officer punched the applicant in the mouth and tried to hit him again. The applicant stepped back and lifted his leg in defence. P.D. intervened and the two police officers threw the applicant face down on his car and searched him and the vehicle. As his lip was bleeding, the applicant shouted at the police, calling them "militia agents" (*milițieni*). He told them he would go straight to a forensic doctor and would then press charges against them.

2. The authorities' version of the incident involving the applicant and the police

8. On 21 June 1997, at around 7 p.m., the applicant was driving his car while under the influence of alcohol. When he saw the police performing traffic controls, he decided to stop the car and continue on foot, in order to avoid being caught drunk driving. The police officers S.D. and P.D. noticed the applicant and assumed that he was trying to avoid being checked. They approached him in their car. S.D. introduced himself and asked to see the applicant's identification papers.

The applicant turned his back on the police, shouted abuse and told them he did not have the papers on him. He was incoherent and smelled of alcohol. The police asked him to go with them to the hospital for a blood test. The applicant refused to follow them. When S.D. tried to take him by the arm, the applicant became violent and abusive. He kicked S.D. in the leg. He was then immobilised by S.D. and P.D. but managed to tear S.D.'s uniform.

B. The criminal proceedings against the applicant

9. After the incident, the applicant was taken straight to hospital to have his blood alcohol content tested. The physician concluded, after carrying out the standard tests, that the applicant was not under the influence of alcohol. She also noted in the clinical evaluation form that the applicant had a small bruise on the left upper lip. Two urine samples were taken and sent to the laboratory for further testing. The results (available on 23 June 1997) showed a blood alcohol content of 1.45g/100.

10. Later that evening, the applicant was taken from the hospital to the police headquarters. His car was also brought to the police courtyard. His girlfriend was interviewed until 11 p.m., when she was released.

11. On 22 June 1997 the prosecutor ordered the applicant's arrest. On 23 June 1997 he was remanded in custody for thirty days. He remained in custody until the end of the criminal proceedings against him.

12. A few days after the incident, the police allowed S.U. to take the applicant's car from the police yard.

13. On 8 July 1997 the Prosecutor's Office attached to the Dolj County Court indicted the applicant for driving under the influence of alcohol and for insult and violence. It described the incident as follows:

"As [the applicant] did not have his identity papers, [S.D.] insisted that they go to the hospital and when he tried to take his arm to lead him to the police car, [the applicant] became violent, tearing himself away and kicking him in the left femur, near the hip. ...

During the interview [the applicant] partially admitted the facts; he declared that he had only drunk one bottle of beer at around 11 a.m. and that he had only kicked the police officer after having been slapped by him."

14. On 8 September 1997 the court heard statements from S.U. and a witness, D.P. They maintained the statements they had made to the prosecutor but the former added that she had seen the police officer hit the applicant and that he had started bleeding, and the latter added that he had seen the applicant bleeding.

15. On 20 October 1997 the Dolj County Court convicted the applicant as charged and sentenced him to three years' imprisonment. The court upheld the prosecutor's version of the events. The applicant reiterated that

he had been hit by S.D. The court discarded the statements given by S.U. and D.P as follows:

“It is true that before the court the witness [S.U.] declared that the applicant had been hit by [S.D.], and witness D.P. had noticed that the applicant had been bleeding, without having seen whether he had been hit. However, these statements will be set aside as insincere in so far as during the criminal prosecution the witnesses did not make such statements and could not justify why they did not do so.”

16. The applicant appealed against the decision. He reiterated that he had been hit first by the police officer and made reference to the clinical evaluation form to prove the violence suffered. The Craiova Court of Appeal based its examination on the statement the applicant made to the prosecutor and considered that his allegations were not supported by evidence. It therefore upheld the county court’s decision, on 12 February 1998.

17. On 19 June 1998 the Supreme Court of Justice dismissed an appeal on points of law lodged by the applicant and upheld his sentence. It held that:

“None of the witnesses heard in the case confirmed the applicant’s defence that he had been hit straight after the request to produce his identity papers.”

18. On 7 August 1998 the applicant requested the Procurator General to appeal against the final decision of 19 June 1998. On 30 October 1998, the Procurator General informed him that there were no reasons to request the reopening of the proceedings (*recurs în anulare*). He received the same answer even after he complained that his intention had been to lodge a request for the annulment of the final decision (*contestație în anulare*).

C. Complaints against police

19. On 26 July 1997 the applicant lodged a criminal complaint against S.D. with the Craiova Military Prosecutor’s Office. He accused the police officer of having punched him in the mouth and in the back of his head.

20. He was interviewed on 14 August 1997 and 8 January 1998.

21. On 12 September 1997 S.D. made a statement.

22. On 23 September 1997 the applicant filed a complaint of theft from his car, apartment and outhouse, all keys being in the set that had been confiscated by the police and then returned to S.U.

23. The police officers who had been witnesses to the incident were interviewed by the prosecutor. They all declared that the applicant had been recalcitrant and had hit S.D.

24. On 30 January 1998 the Craiova Military Prosecutor’s Office decided not to start criminal proceedings against S.D. and the other police officers. It considered that the applicant had behaved aggressively on the evening of 21 June 1997. The decision made no reference to any act of

violence having been perpetrated by the police officer. As for the accusations of theft, it noted that:

“The car was transported to the Traffic Police headquarters and, as the driver was arrested the same day by the Prosecutor’s Office attached to the Dolj County Court for insult and violence, it was released to [S.U.], the driver’s mistress, and a report was drafted. ...

There is no evidence indicating that anything was stolen from the car; the report confirms that it was given [to S.U.] in good condition.”

25. Subsequent complaints lodged by the applicant did not result in the reopening of the case by the military prosecutor, the latest decision not to prosecute being dated 26 August 1999.

II. RELEVANT DOMESTIC LAW

26. The relevant provisions of the Code of Criminal Procedure and of the provisions governing the police and military prosecutor are set out in *Dumitru Popescu v. Romania* ((no. 1), no. 49234/99, §§ 43-46, 26 April 2007) and *Barbu Anghelescu v. Romania* (no. 46430/99, § 40, 5 October 2004).

27. In paragraphs 43-45 of the judgment in *Dumitru Popescu* (no. 1), cited above, there is a description of the development of the law concerning complaints about decisions by the prosecutor (Article 278 of the Code of Criminal Procedure and Article 278¹ introduced by Law no. 281/24 June 2003 applicable from 1 January 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

28. The applicant complained that he had been ill-treated during the incident of 21 June 1997 at the hands of police. He invoked Article 3 of the Convention, which reads as follows:

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

29. Under the same Article, the Court raised with the parties the issue of the effectiveness of the investigation into the applicant’s allegations of ill-treatment.

A. Admissibility

30. The Government considered that the applicant had not exhausted domestic remedies, in that he had not used the appeal provided for by Article 278¹ of the Code of Criminal Procedure introduced by Law no. 281/2003. They relied on *Brusco v. Italy* ((dec.), no. 69789/01, ECHR 2001-IX) and *Nogolica v. Croatia* ((dec.), no. 77784/01, ECHR 2002-VIII).

31. The applicant pointed out that the Government had not proven that the appeal, which had not existed at the material time, would have been effective for him.

32. The Court has already established that the appeal proposed by the Government was not available in practice in cases similar to the present one. In *Dumitru Popescu*, cited above, § 56, the Court concluded that a five-year lapse of time between the facts under investigation and the entry into force of Law no. 281/2003 was too long and rendered the appeal ineffective. The Court reached a similar conclusion in *Mantog v. Romania* (no. 2893/02, § 54, 11 October 2007) where it considered a three-year lapse of time to have been too long.

In the present case six years passed between the incident complained of and the date of entry into force of the new remedy. The Court sees no reason to reach a different conclusion concerning the lack of effectiveness of the appeal in this case to the one it reached in the cases cited above.

It therefore rejects the Government's plea of inadmissibility.

33. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

34. The Government averred that the applicant had not presented a medical certificate attesting the alleged ill-treatment. Even if he had suffered injuries at the hands of police, that would have been the result of his own violence and aggressiveness. The Government also contended that the investigation into the allegations had been effective as the prosecutor had interviewed all those involved in the altercation.

35. The applicant argued that the medical report from the night of the incident proved he had been hit by the police officer. He questioned the military prosecutors' independence, as they are part of the same military structure as the police.

2. *The Court's assessment*

36. The Court will examine separately the two branches of this complaint: the alleged ill-treatment by the authorities and the lack of effective investigation into the incidents.

(a) **Alleged ill-treatment by the police**

37. The Court notes from the outset that the parties offered conflicting descriptions of the incidents. On the one hand, the applicant claimed that he had been hit by the police unnecessarily, which triggered his response. On the other hand, the authorities, while contesting that any violence was inflicted on the applicant, considered that any injuries that could have been caused by the police would only have been the consequence of the applicant's own aggressive behaviour.

38. The Court refers to its case-law on Article 3, in particular concerning its assessment of the minimum level of severity that ill-treatment has to attain in order for it to fall within the scope of this Article (see *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 93-94, *Reports of Judgments and Decisions* 1998-VIII; *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25; *Kudla v. Poland* [GC], no. 30210/96, § 91-92, ECHR 2000-XI; *Peers v. Greece*, no. 28524/95, § 67-74, ECHR 2001-III; and *Raninen v. Finland*, 16 December 1997, § 55, *Reports* 1997-VIII).

39. In particular, it reiterates that, in assessing evidence, it adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Orhan v. Turkey*, no. 25656/94, § 264, ECHR 2002).

40. Lastly, the Court is sensitive to the subsidiary nature of its role and must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000).

41. In the present case the Court notes that the applicant is in the possession of a medical certificate attesting that he had incurred injuries (see, *a contrario*, *Barbu Anghelescu v. Romania* no. 2 (dec.), no. 2871/02, 26 February 2008). He filed a criminal complaint against the police officer whom he accused of having hit him first, but the proceedings had been discontinued without any concrete determination of the origin of the applicant's bruise. The witness testimonies are contradictory, the applicant's girlfriend being the only one to support fully his version of facts.

42. There had been no official admission of any act of violence against the applicant but the Government failed to give an explanation for the cause of the applicant's injuries, which had been recorded in the medical certificate on the evening of the incidents.

43. Furthermore, from the domestic courts' description of the facts, it appears that the police visibly outnumbered the applicant: two officers approached him directly while others were in the vicinity. The police officers' statements consistently maintained that the applicant had tried to kick S.D. in the leg, while no reference was made to any gesture by the applicant that could have justified punching him in the head or in the mouth in self-defence. Moreover, the applicant was fifty-three years old and was unarmed.

Therefore, while a small bruise might not in itself be sufficiently serious to pass the threshold imposed by Article 3, the Court considers that in the circumstances of the case the injury alleged by the applicant attained the minimum level of severity required by this Article.

44. The Court admits, nevertheless, that the evidence in the file indicates that the encounter between the applicant and the police on the evening of 21 June 1997 was turbulent, with abuse and violence on the part of the applicant which might have justified the use of force in order to control him. In addition, it appears that the applicant was under the influence of alcohol at that time (see paragraph 9 above).

45. Under these circumstances, it is impossible to establish, on the basis of the evidence before it, whether or not the applicant had suffered, at the hands of authorities, treatment contrary to Article 3 of the Convention as he alleged (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 100, *Reports of Judgments and Decisions* 1998-VIII; and *Dumitru Popescu (no. 1)*, cited above, § 69).

46. The question whether the impossibility to determine the facts from the point of view of Article 3 is caused by the alleged ineffectiveness of the investigation does not come within the scope of the substantive aspect of Article 3 but instead raises problems as regards the procedural branch of this Article; the Court will examine them below (see also *Dumitru Popescu (no. 1)*, cited above, § 67).

47. Therefore, the Court cannot conclude that there has been a violation of Article 3 under its substantive head.

(b) Adequacy of the investigation

48. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State or under their control, unlawfully and in breach of Article 3, that provision requires that there should be an effective official investigation capable of leading to the identification and punishment of those responsible (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Assenov and Others*, cited above, § 102; and, *mutatis mutandis*, *Velikova v. Bulgaria*, no. 41488/98, § 70, ECHR 2000-VI).

49. Lastly, notwithstanding its subsidiary role in assessing evidence, the Court reiterates that where allegations are made under Article 3 of the Convention, the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000, and *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007).

50. The Court considers that given the nature of the injury suffered by the applicant and the circumstances in which it occurred, the applicant can be considered to have raised an arguable claim under Article 3.

51. The Court is particularly concerned about the way the criminal investigation was conducted in the case. It reiterates that the military prosecutor was called upon to investigate acts of ill-treatment allegedly committed by police officers. The Court has already established that the applicable law at the date of the facts made the hierarchical and institutional independence of the military prosecutor doubtful (see *Barbu Anghelescu*, §§ 40-30 and 70, and *Dumitru Popescu (no. 1)*, §§ 74-78, cited above; *Melinte v. Romania*, no. 43247/02, §§ 23-30, 9 November 2006; and *Georgescu v. Romania*, no. 25230/03, § 75, 13 May 2008).

52. These doubts are reflected in the present case by the way the investigation was conducted. In particular the Court notes that the military prosecutor questioned the police officers present at the scene of the incident but no other witnesses, not even those examined by the county court in the criminal proceedings against the applicant. Moreover, although two of the latter witnesses, namely S.U. and D.P., declared on 8 September 1997, when the investigation into allegations of ill-treatment was ongoing, that the applicant had been injured in the events, the military prosecutor did not question them or refer to their statements in his decision.

The Court is also concerned that the military prosecutor did not examine the medical evidence of the applicant's injury.

53. Having regard to the above-mentioned deficiencies identified in the investigation, the Court concludes that the State authorities failed to conduct a proper investigation into the applicant's allegations of ill-treatment.

54. There has accordingly been a violation of Article 3 of the Convention under its procedural head.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. The applicant complained under Article 6 §§ 1 and 3 (b) and (c) of the Convention that the criminal proceedings against him had not been fair. He also contended that he had had no remedy at his disposal to complain effectively about the ill-treatment, in violation of Article 13 of the Convention. The applicant complained, under Article 1 of Protocol No. 1 to the Convention, about the fact that the police had handed his car and house

keys to his girlfriend and that his property had fallen into disrepair while he had been in detention.

Having regard to the finding of a violation of Article 3 of the Convention in respect of the applicant's main complaint, the Court considers that while the complaints above are admissible, it is not necessary to examine whether, in this case, there has also been a violation of Articles 6 §§ 1 and 3 and 13 of the Convention and Article 1 of Protocol No. 1.

56. Lastly, the applicant considered that he had been arrested illegally (Article 5 of the Convention), that his right to the presumption of innocence had been breached (Article 6 § 2 of the Convention), that the Procurator General had not allowed him to lodge a request for the annulment of the final decision (Article 13 of the Convention) and that he had been arrested and ill-treated because he was a professional driver (Article 14 of the Convention).

However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant claimed 100,000 euros (EUR) in respect of pecuniary and non-pecuniary damage, in compensation for his property loss during his detention, for lost earnings and the reduction of his pension because of that period. As for non-pecuniary damage, he claimed that the events had affected his dignity and self-esteem and that he had suffered humiliation because he had been detained.

59. The Government contended that the applicant's claims in respect of pecuniary damage were unsubstantiated and speculative and that those in respect of non-pecuniary damage were excessive.

60. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it accepts that the applicant suffered distress and frustration because the State failed to properly investigate into his allegations of ill-treatment. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

61. The applicant made no claim for costs and expenses.

C. Default interest

62. 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 complaints concerning Articles 3, 6 §§ 1 and 3 and 13 (remedy for the alleged ill-treatment) of the Convention and 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb;
3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;
4. *Holds* that there is no need to examine the complaints under Articles 6 §§ 1 and 3 and 13 of the Convention and 1 of Protocol No. 1 to the Convention;
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, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the respondent State's national currency 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 amount 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 24 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President