



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

FOURTH SECTION

CASE OF BREGA v. MOLDOVA

(Application no. 52100/08)

JUDGMENT

STRASBOURG

20 April 2010

FINAL

20/07/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Brega v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 23 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 52100/08) 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 Ghenadie Brega (“the applicant”), on 24 October 2008.

2. The applicant was represented by Mr V. Jereghi and Ms N. Bayram, lawyers practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that the police subjected him to inhuman and degrading treatment and breached his right to liberty and security and his right to freedom of expression and of assembly.

4. On 18 February 2009 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 1975 and lives in Pepeni. He is a journalist.

6. The applicant is a member of Hyde Park, an unincorporated non-governmental organisation from Chişinău lobbying, *inter alia*, for freedom of expression and the right to peaceful assembly. Following a demonstration

organised by the organisation on 8 May 2008, the applicant's brother, also a member of the organisation, was arrested and placed in detention. As the applicant was unable to trace his brother for two days, he decided to go on hunger strike.

7. On 10 May 2008 at 10 a.m. the applicant stood outside the Government building in Chişinău's main square, positioned a placard with the inscription "Hunger strike for rights" and started his silent protest. Shortly afterwards, police officers approached him and some asked him questions while others filmed him.

8. At approximately 10.45 a.m. the applicant was approached by two persons wearing plain clothes. In a video filmed by the applicant, one of the persons can be seen ordering him to stop filming. The applicant refuses and says that he is a journalist on hunger strike. He asks them for identification. One of the two persons hits the applicant, apparently in the hand holding the camera, and threatens him in rude terms with violence if he does not stop filming. The applicant backs away, insisting that he has the right to film, and asks for the identity of the aggressor. The aggressor says that he is C.A., Commander of the Special Forces police regiment "Scut". He says that he only wants to talk and insists that the applicant stop filming. The applicant asks why he does not want to talk with the camera on. C.A. retorts that he is not an actor to be filmed. The applicant asks for identification documents and, at that moment, he receives another blow from Mr C.A. He continues to back away while being followed by the second police officer who appears to forcefully put an end to the filming. The video resumes for several seconds in what appears to be a police van taking the applicant away from the scene of the event.

9. In another video, filmed by the police from another angle, the scene with the two police officers and the applicant can be seen from a distance. The camera approaches when the second police officer forcefully puts an end to the applicant's filming, seizing the applicant by his clothes and hands. The applicant asks the police officer not to use force and insists that he has the right to protest. The police officer retorts that by protesting the applicant is breaching the rights of other persons. At that moment two uniformed police officers approach and apprehend the applicant. They take him to a police van without any resistance from the applicant.

10. The applicant arrived at the police station at approximately 11 a.m. His personal effects were taken away and he was questioned for approximately two hours. According to him, he insisted on being informed of the reasons for his arrest, but to no avail.

11. He was detained for forty-eight hours in solitary confinement in a cell without windows. The temperature in the cell was approximately fourteen degrees centigrade and he was wearing light clothes. There was a concrete bed in the cell, covered with wooden boards but without any bedding. There were no sanitary facilities and the applicant had to ask the

guards to be taken to a toilet. The guards reacted to his request only one or two hours later, when he screamed out loud in order to be heard by their superiors. The only water the applicant had to drink was water from the sink in the toilet. Throughout his detention he was given no food and nobody was allowed to visit him. The cell was lit with a low-energy bulb which was on continuously, with no possibility to switch it off.

12. After twelve hours of detention the applicant felt unwell. His request for a doctor was ignored and only the next morning was a doctor called and the applicant taken by ambulance to a hospital. The doctors at the hospital diagnosed him with nephrolithiasis (*kidney stones*) and renal colic (*extremely sharp and severe pain caused by a renal stone blocking the ureter*), and decided to hospitalise him. However, the police officer accompanying him refused.

13. On 12 May 2008 at 11 a.m. the applicant was taken to the Buiucani District Court, where he learned that he had been charged with the offences of insulting police officers and resisting arrest. In particular, the police accused him of calling them “rats”, “cowards” and “Voronin's dogs” when they peacefully approached him.

14. At the end of the hearing, at 3 p.m., the applicant was released. Since he had no money or mobile telephone, he had to walk to the police station to pick up his belongings without laces on his shoes and without a belt.

15. At the police station he discovered that the memory of his video camera (approximately forty-five minutes of film) had been erased. He sealed the camera in the presence of two witnesses who signed a document attesting to the sealing. The police officer responsible for the storage of the applicant's belongings refused to sign the document. The same day the applicant took his camera to an expert who succeeded in recovering 7-10% of the contents of the erased memory, including the images described in paragraph 8 above.

16. On 15 May 2008, the applicant lodged a criminal complaint with the Prosecutor's Office, complaining about the actions of the police officers. He complained that the police officers had breached several provisions of the Criminal Code. In particular, they had physically and verbally aggressed him, dispersed a peaceful protest held in accordance with the law, unlawfully deprived him of his liberty for forty-eight hours, and unlawfully searched him, seized his possessions and erased the memory of his video camera. However, on 26 May 2008 the complaint was dismissed. The applicant appealed. In his appeal he added that he had been held in inhuman and degrading conditions and that he had not been provided with appropriate medical assistance.

17. In the meantime, the video of the applicant's verbal and physical abuse in front of the Government building (see paragraph 8 above) became the subject matter of a media scandal. Several television stations reported on the event and broadcast the video footage. As a result, on 28 May 2008 the

Minister of Internal Affairs formally admonished the two police officers, C.A. and V.O. The applicant was accused of having provoked the police officers by insulting them and resisting arrest. He was also described as someone with a systematic tendency to disturb public order. Without any explanations, the police officers received an admonishment for breaching several rules of police conduct, in particular unprofessional conduct, dishonesty and failure to identify themselves.

18. On 5 June 2008 the Buiucani District Court delivered its judgment, acquitting the applicant of all charges. After examining the videos of the applicant's encounter with the police and his arrest of 10 May 2008 (see paragraphs 8 and 9 above) and after hearing witnesses, the court found that the accusations against the applicant were false and that he had not insulted the police officers or resisted arrest.

19. On 15 June 2008 the Chişinău Prosecutor's Office dismissed the applicant's appeal on the ground that the police officers' behaviour did not disclose an offence. It was noted that the applicant had insulted the police officers by calling them "rats", "cowards" and "Voronin's dogs" and that the two police officers who had physically and verbally assaulted the applicant had been admonished for their behaviour. The applicant lodged an appeal on points of law against that decision.

20. On 2 July 2008 the Buiucani District Court dismissed the applicant's appeal against the Chişinău Prosecutor's Office's decision of 15 June 2008.

II. RELEVANT DOMESTIC LAW

21. According to Law No. 26 of 22 February 2008, in force at the time of the events, no authorisation is needed to hold a peaceful demonstration with fewer than fifty participants.

22. According to Article 308 of the Criminal Code, unlawful arrest or detention is punishable with up to two years' imprisonment.

23. According to Article 184 of the Criminal Code, breach of the right to peaceful assembly by a public official is punishable with a fine, community service or up to two years' imprisonment.

24. According to Article 328 of the Criminal Code, abuse of authority accompanied by acts of violence is punishable with up to ten years' imprisonment.

25. According to Article 249 of the Code of Administrative Offences, persons who disobey in bad faith the lawful orders of police officers, or resist or insult police officers, may be detained until their case is examined by a court.

THE LAW

26. The applicant complained under Article 3 of the Convention that he had been subjected to inhuman and degrading treatment. In particular he complained about the verbal and physical abuse to which he had been subjected before being arrested, and the poor conditions of detention. Article 3 reads as follows:

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

27. The applicant alleged that his right to liberty provided for under Article 5 § 1 of the Convention had been breached since he had been detained for approximately forty-eight hours without any legal grounds. The relevant parts of Article 5 read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;”

28. The applicant also complained that his arrest and detention had violated his right to freedom of peaceful assembly as guaranteed by Article 11 of the Convention, which provides:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

I. ADMISSIBILITY OF THE CASE

29. The Government submitted that the application was inadmissible on the grounds of non-exhaustion of domestic remedies. In particular, they argued that the applicant's complaint under Article 3 had been raised for the first time before the Court. In so far as the complaints under Articles 5, 10 and 11 were concerned, the applicant should have initiated civil proceedings

and claimed compensation for the alleged breaches. The applicant disagreed with the Government and argued that he had exhausted domestic remedies.

30. As to the applicant's complaint under Article 3 of the Convention, the Court notes that the applicant explicitly complained to the Prosecutor's Office about the treatment to which he had been subjected, namely about the verbal and physical abuse and about the conditions of his detention. Accordingly, the Government's objection cannot be upheld.

31. In so far as the complaints under Articles 5, 10 and 11 are concerned and the Government's contention that the applicant should have initiated civil proceedings in respect thereof, 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. The Government have not argued that such a procedure is ineffective in respect of the alleged breaches of the applicant's rights guaranteed by Articles 5, 10 and 11. Accordingly, their objection that he should have tried to complain also under the provisions of the Civil Code must be dismissed.

32. The Court considers that 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 that no other grounds for declaring them inadmissible have been established. The Court therefore declares the 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 5 § 1 OF THE CONVENTION

33. The applicant argued that his arrest and subsequent detention had been unlawful and arbitrary.

34. The Government argued that the actions of the police officers had been lawful under domestic law and pointed to Article 249 of the CAO, which provided for the possibility of detaining a person for failure to comply with the lawful orders of a police officer. The Government did not specify exactly what those lawful orders were.

35. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the “lawfulness” of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty

in an arbitrary fashion (see *Anguelova v. Bulgaria*, no. 38361/97, § 154, ECHR 2002-IV, and *Fedotov v. Russia*, no. 5140/02, § 74, 25 October 2005).

36. The Court considers that the applicant's detention fell within the ambit of Article 5 § 1 (c) of the Convention, as it was imposed for the purpose of bringing him before the competent legal authority on suspicion of having committed an offence.

37. There is no dispute as to the fact that the police, when arresting the applicant and taking him to the police station, followed the procedure provided for in Article 249 of the CAO.

38. The Court notes that the applicant was arrested and charged with the offences of insulting police officers and resisting arrest. It appears clearly from the video and it was confirmed by the domestic court which acquitted the applicant (see paragraph 18 above) that the accusations against him were false and that he had not done any of the things imputed to him. In such circumstances, and given the absence of any "reasonable suspicion" within the meaning of Article 5 § 1(c), the Court considers that the applicant's detention on false charges that he had resisted arrest and insulted police officers cannot be considered "lawful" under Article 5 § 1 of the Convention. There has therefore been a breach of that provision.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. The applicant submitted that the police officers should have been punished in accordance with the Criminal Code and not merely reprimanded, and that there has been a breach of Article 3 of the Convention in particular after he had been left suffering without medical assistance for twelve hours. According to him, his arrest and detention in harsh conditions were intended to punish him for having protested in front of the Government building and to discourage him from doing so in the future.

40. The Government argued that the police officers had not hit the applicant but merely ordered him to stop filming and pushed away the camera. In any event the State authorities had examined the complaint lodged by the applicant and the police officers in question had been admonished by the Minister of Internal Affairs for their behaviour. In so far as the conditions of the applicant's detention were concerned, the Government contended that the detention had been too short for the suffering to attain the minimum threshold of severity necessary to trigger a violation of Article 3 of the Convention. The Government pointed to the case of *Hyde Park and Others v. Moldova* (no. 4) (no. 18491/07, §§ 37-39, 7 April 2009), in which a complaint concerning poor conditions of detention had been declared inadmissible on account of the short duration of the detention.

41. The Court recalls that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Kudla v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI, and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers*, cited above, § 74).

42. The Government argued that the police officers had merely pushed the applicant's camera away but had not hit him. The Court agrees that the physical aggression was not such as to cause physical pain but was rather an act of intimidation. After that the applicant was abusively arrested and placed in detention for forty-eight hours (see paragraph 38 above). While in detention the applicant suffered a renal colic attack, a condition which, although not life-threatening, usually causes extreme pain. Despite the applicant's request to be seen by a doctor in the evening of 10 May 2008, a doctor was called only the next morning, some twelve hours later. Moreover, throughout his detention the applicant was cold, as the temperature in his cell was about fourteen degrees centigrade and he was wearing light clothes and was given no bedding.

43. The Government submitted that in view of the short duration of the detention, the threshold of severity required by Article 3 was not attained. The Court is not convinced by this, especially when looking at all the above elements cumulatively and taking into consideration the applicant's state of health at the time. It considers that the treatment applied to the applicant could be qualified at least as degrading. Accordingly, there has been a violation of Article 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

44. The applicant maintained that there had been a violation of Article 11 of the Convention.

45. The Government contended that there had been no interference with the applicant's freedom of assembly because he was not arrested for protesting but merely for his failure to cooperate with the police officers. In particular, according to the Government, the police had arrested him because he had refused to talk to them with his camera turned off.

46. Unlike the Government, the Court considers that the applicant's arrest constituted "interference by [a] public authority" with his right to freedom of assembly under the first paragraph of Article 11. Such

interference will entail a violation of Article 11 unless it is “prescribed by law”, has an aim or aims that are legitimate under paragraph 2 of the Article and is “necessary in a democratic society” to achieve such aim or aims.

47. The Court notes that the applicant's protest was staged in accordance with the law concerning assemblies (see paragraph 21 above), that he remained peaceful and did not disturb public order in any way. Nor was his filming the encounter with the police officers contrary to the law. He continued to be peaceful and polite even after being manhandled by the police and did not resist the abusive arrest in any way. In such circumstances, the interference with his right of assembly cannot be considered lawful under domestic law. Accordingly, there has been a violation of Article 11 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

48. The applicant also alleged a violation of Article 10 of the Convention. As this complaint relates to the same matters as those considered under Article 11, the Court does not consider it necessary to examine it separately.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

51. The Government disagreed and argued that the amount was excessive and unsubstantiated.

52. Having regard to the violations found above, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 8,000.

B. Costs and expenses

53. The applicants also claimed EUR 1,000 for the costs and expenses incurred before the Court.

54. The Government contested the amount and argued that it was excessive.

55. In accordance with its case-law, the Court must consider whether the costs and expenses claimed were actually and necessarily incurred by the applicant and are reasonable as to quantum (see *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII). It may have regard in that connection to such matters as the number of hours worked and the hourly rate sought (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI).

In the instant case, however, the applicant has not produced any evidence in support of his claims. The Court therefore decides not to award any sum under this head.

C. Default interest

56. 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;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 11 of the Convention;
5. *Holds* that there is no need to examine the complaint under Article 10 of the Convention;
6. *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 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Moldovan lei 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;

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

Done in English, and notified in writing on 20 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President