



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

FOURTH SECTION

CASE OF PARNOV v. MOLDOVA

(Application no. 35208/06)

JUDGMENT

STRASBOURG

13 July 2010

FINAL

13/10/2010

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

In the case of Parnov 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,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 22 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 35208/06) 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 Vladimir Parnov (“the applicant”), on 8 August 2006.

2. The applicant was represented by Mr D. Toma, a lawyer practising in Chişinău. 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. He also complained under Article 13 of the Convention.

4. The application was allocated to the Fourth Section. On 13 July 2009 the President of that Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

5. The applicant and the Government each filed written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, Mr Vladimir Parnov, is a Moldovan national who was born in 1986 and lives in Chişinău. At the time of the events he worked as a security guard in a café in Chişinău.

7. According to the applicant, on 22 March 2005, he was approached by four individuals while walking along a street. They offered him a package, the content of which was unknown. At that moment two plain-clothed persons shouted: "Police, don't move". All the persons started to run, including the applicant. According to the applicant, he was not convinced that the person running after him was a police officer. After being chased for approximately seven hundred metres, the applicant stumbled not far from his house and was arrested by the chasing police officer. The applicant was wrestled to the ground and a pistol with tear gas, which he possessed by virtue of his job, was removed from its holster. The police officer beat him up and then called other police officers to the scene. Later, several passers-by and the applicant's brother-in-law approached the scene, stopped the police officer from beating the applicant and forced him to let the applicant go. The applicant and his brother-in-law were handcuffed and taken to the police station. The former was arrested on charges of aiding the latter to resist arrest.

8. The applicant submitted that he was ill-treated in the car on the way to the police station and at the police station by several police officers. In particular, he was punched and kicked all over and hit on his head and other parts of his body with a plastic bottle full of water. His head was banged against walls, the floor and furniture.

9. According to the Government, during the chase the applicant shot at the chasing police officer from his pistol and then resisted arrest. The Government contested the applicant's allegations about any ill-treatment after the arrest and submitted that all of his injuries were a result of his resisting arrest.

10. On 23 March 2005 the applicant was taken to a court and charged with the administrative offence of resisting arrest. He confessed during proceedings to having fired at the police officer from his tear-gas pistol. On the same date he was found guilty of firing from a tear-gas pistol at a police officer during the chase and sentenced to five days' imprisonment. The next day the Chişinău Court of Appeal upheld the applicant's appeal and changed the sentence to a fine of 180 Moldovan lei (MDL).

11. On 23 March 2005 the police officer who had arrested the applicant lodged a criminal complaint against the applicant complaining that he had shot at him with a tear-gas pistol. On the same date he underwent a forensic

examination which showed that he had scratches and bruises on his knees, the palms of his hands and elbows. The injuries were qualified as “light injuries” needing between six and twenty-one days of medical care. The criminal complaint was finally dismissed on 20 May 2005 on the grounds that the applicant had already been convicted for the same offence in the administrative proceedings which ended with the judgment of the Chişinău Court of Appeal of 23 March 2005.

12. On 23 March 2005 the applicant was visited in custody by a prosecutor. He complained that he had suffered ill-treatment by the police officers and the prosecutor ordered a forensic examination of the applicant's injuries. That examination was carried out on 31 March 2005. In the meantime the applicant was released from custody on 24 March 2005 and was seen by doctors who diagnosed him with a fractured cranial bone, first-degree concussion, post-traumatic acute otitis media of the right ear with perforation, and contusion of the soft tissue of the head and face. On 30 March 2005 the applicant underwent surgery in order to repair the torn tympanic membrane (eardrum).

13. On 31 March 2005 the applicant was examined by a forensic doctor who found that he had suffered a perforation of the right eardrum and a first-degree head injury. The doctor concluded that the injuries had been caused by contact with a blunt object of a limited surface area, possibly in the circumstances described by the applicant, and that they qualified as “light injuries” which needed between six and twenty-one days of medical care.

14. On 19 May 2005 the Rascani Prosecutor's Office dismissed the applicant's complaint of ill-treatment. The grounds for dismissing the complaint were the statements of the accused police officers, according to which the applicant had resisted arrest and shot at one of them from a tear-gas pistol. According to the police officers they were obliged to apply force in order to arrest and restrain the applicant and all of his injuries were a result of that. The applicant submitted that he had been ill-treated at the moment of the arrest, in the car and at the police station. He also denied that he had fought the police officers and fired at them from his gun. He submitted that his confession that he had fired at a police officer in the administrative proceedings had been made under duress. The Prosecutor's Office heard testimonies from several witnesses who had seen the applicant being restrained on the ground by a police officer and later being released after several persons had intervened. Some witnesses said that they had heard a gun shot. Only one of them stated that they had seen the applicant shooting at the police officer. Nobody had seen the applicant fighting the arresting police officer.

15. The applicant challenged the above decision before an investigating judge. He contested the findings of the Prosecutor's Office and reiterated his complaints about the ill-treatment at the hands of the police. However, on

18 April 2006, following a public hearing, an investigating judge from the Râșcani District Court dismissed the applicant's appeal as ill-founded.

16. On 8 February 2007 the Râșcani District Court acquitted the applicant in the main criminal proceedings against him concerning the possession and sale of marijuana. The court dismissed, *inter alia*, the accusations concerning the applicant's shooting at the arresting police officer with a pistol on the grounds of inconsistency in the statements of the witnesses concerning that event. It also considered that there was no evidence that the package of marijuana had belonged to the applicant and that he had intended to sell it.

II. RELEVANT DOMESTIC LAW

17. The Police Act of 18 December 1990 states:

“Section 14. Conditions and limits of the use of force, special techniques and firearms

Police officers have the right to use force, special techniques and firearms in the cases and in the manner provided for in the present law. The use of force, special techniques and firearms shall be preceded by a warning of the intention to use them and sufficient time shall be allowed for reaction, except in cases in which a delayed use of force... may directly threaten the life and health of citizens or police officers or have serious consequences.

...

In any case, when the use of force cannot be avoided, police officers are obliged to do their utmost to cause the least harm possible to the health, honour, dignity and possessions of citizens, as well as to ensure that medical assistance is provided to victims.

In case of injury or death caused as a result of use of force... the police officer shall inform his direct superior accordingly, in order that the latter may inform a prosecutor.

An abuse of the power to use force... shall be punished in accordance with the law.

Section 15. The use of physical force

Police officers are entitled to use force and special fighting techniques for the purpose of ending criminal activities and for neutralising resistance to legal demands, only in cases in which non-violent methods are not sufficient to discharge their obligations.”

THE LAW

18. The applicant complained under Article 3 of the Convention that he had been ill-treated by the police during his arrest and detention at the police station. He also complained of the failure of the domestic authorities to investigate properly his allegations of ill-treatment. Article 3 of the Convention reads as follows:

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

19. The applicant argued that he had not had 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 COMPLAINTS

20. The Court considers that the applicant's complaints under Articles 3 and 13 of the Convention raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring them inadmissible have been established. The Court therefore declares these complaints admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. The submissions of the parties

1. Concerning the alleged ill-treatment

21. The applicant argued that he had not been taken for a medical check upon his arrival at the police station and had been ill-treated by two police officers. He disputed the Government's allegation that all the injuries on his body had been sustained during his arrest. However, he submitted that even assuming that that had been the case, the force applied by the police had been excessive. Moreover, the police officers had been wearing plain clothes, making it difficult to be sure of their identities. The applicant also disputed the Government's allegations that he had fired a shot from his pistol in the direction of the police officer chasing him. He submitted that

the police officer had fired the gun after he had taken it away from him. The applicant finally disputed the Government's submission concerning his martial arts skills and submitted, *inter alia*, that he had only practised judo for a short time as a child and had not been awarded any grades.

22. The Government did not contest the fact that the injuries on the applicant's body had been caused by the police. However, they stressed that the arresting police officers' actions had been justified in the circumstances because the applicant had used a firearm and resisted arrest. In the Government's opinion, the gravity of the situation had been proved by the injuries later found on the body of one of the arresting police officers. The Government also pointed out that the applicant was dangerous because he had practised judo and that the use of force against him by one of the arresting police officers had been a last resort in order to neutralise and arrest the applicant. Moreover, the injuries received by the applicant were light injuries, exactly like those received by one of the arresting police officers, which proved that the ill-treatment had not reached such a level of severity as to trigger a violation of Article 3 of the Convention. Finally, the Government submitted that the applicant had been passive in pursuing his case before the domestic authorities because he had challenged the prosecutor's decision not to initiate criminal proceedings only after eight months, despite having been immediately informed of it.

2. Concerning the alleged inadequacy of the investigation

23. The applicant submitted that while a prosecutor had ordered a forensic medical report on 23 March 2005, the State-run institute of forensic medicine had not conducted one until 31 March 2005, thus leaving time for the marks of violence to disappear. The applicant disputed the Government's allegation that he had been passive in pursuing the case and argued that he had learned about the decision of 19 May 2005 only in December 2005. According to the applicant, the investigation conducted by the State authorities into his allegations of ill-treatment had been ineffective.

24. The Government submitted that the applicant had failed to give details in his appeal against the decision of 19 May 2005 about the shortcomings of the investigation. Accordingly, in the absence of such detailed reasons, the court had been entitled to dismiss the applicant's appeal and to uphold the decision of the Prosecutor's Office.

B. The Court's assessment

1. Concerning the alleged 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, in respect of a person deprived of liberty, recourse to physical force which has not been made strictly necessary by the individual's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336). Furthermore, the use of force in the context of an arrest, even if it entails injury, may fall outside Article 3, particularly in circumstances resulting from the applicant's own conduct (see *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 64, 20 June 2002). In this connection, the Court notes that the timing of the injuries and the intensity of the applicant's resistance to arrest is a matter of dispute between the parties. According to the applicant, he only ran away and was ill-treated during arrest, in the car and at the police station. According to the Government, the applicant ran away, shot a police officer with his tear-gas pistol and then fought the police officer during arrest; all of the applicant's injuries were obtained in fighting the police officer.

29. The Court notes in the first place that at no point in the domestic proceedings was it clearly established that the applicant had fought the

arresting police officer while resisting arrest at the end of the chase. In convicting the applicant for resisting arrest on 23 March 2005, the Râșcani District Court only found him guilty of firing at the police officer from a tear-gas pistol (see paragraph 10 above). The applicant was not found guilty of fighting and/or injuring the arresting police officer, despite the presence of bruises and scratches on the palms, elbows and knees of that officer. Moreover, in the domestic proceedings concerning the alleged ill-treatment of the applicant, none of the witnesses was able to confirm the police's version that the applicant had fought the chasing police officer after being arrested. Later, in the criminal proceedings against the applicant, in acquitting the applicant, the Râșcani District Court expressed doubt even in respect of the fact that it had been the applicant who had fired his pistol (see paragraph 16 above). Accordingly, the Court considers that it was not provided with sufficient evidence to conclude that the intensity of the applicant's resistance was such as to warrant the use of such force by the arresting police officer and to cause the applicant injuries going beyond those unavoidable in the process of his arrest and wrestling to the ground. The Court is particularly concerned by the nature of one of the injuries on the applicant's body, namely the perforated eardrum. The Court cannot fail to observe that a similar injury was found to be characteristic of ill-treatment in the majority of cases against Moldova in which a breach of Article 3 was found and that in all those cases the injury appeared to be consistent with allegations that the applicants had been slapped on the ears (see *Corsacov v. Moldova*, no. 18944/02, § 61, 4 April 2006; *Pruneanu v. Moldova*, no. 6888/03, § 53, 16 January 2007; *Colibaba v. Moldova*, no. 29089/06, § 18, 23 October 2007; *Breabin v. Moldova*, no. 12544/08, § 11, 7 April 2009; and *Gurgurov v. Moldova*, no. 7045/08, §§ 23 and 41, 16 June 2009). It is regrettable that the domestic authorities did not attempt to give an explanation as to the cause of that injury on the applicant's body and as to whether such an injury was compatible with any techniques used by the Moldovan police in arresting and restraining recalcitrant individuals.

30. In the light of the above, the Court is not convinced that all of the injuries on the applicant's body were sustained during his arrest and were due to the intensity of his resistance. Nonetheless, even assuming that that was the case, the Court notes that upon his arrival at the police station the applicant was not taken for a medical examination before being taken into custody. Such an examination would have been appropriate, particularly bearing in mind that the applicant had allegedly been in a fight with a police officer. This would not only ensure that the person is fit to be questioned in police custody but would also enable the respondent Government to discharge their burden of providing a plausible explanation for those injuries. In this connection, the Court notes that a medical examination, together with the right of access to a lawyer and the right to inform a third

party of the detention, constitute fundamental safeguards against the ill-treatment of detained persons which should apply from the very outset of deprivation of liberty (see the 2nd General Report of the European Committee for Prevention of Torture, CPT/Inf/E (2002) 1 - Rev. 2006, § 36) (see *Türkan v. Turkey*, no. 33086/04, § 42, 18 September 2008).

31. In those circumstances, and given the burden on the State to provide a plausible explanation for injuries sustained by a person in custody, the Court concludes that the Government have not satisfactorily established that the applicant's injuries were wholly caused otherwise than by ill-treatment while in police custody. Accordingly, there has been a violation of Article 3 of the Convention in that the applicant was subjected to inhuman and degrading treatment.

2. Concerning the alleged inadequacy of the investigation

32. 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 an 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).

33. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others v. Bulgaria*, 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 *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.

34. The Court notes a series of serious shortcomings in the investigation conducted by the national authorities. In the first place, in spite of the allegations made by the authorities that the applicant had been injured before he was placed in detention, no medical assistance was provided to

him upon arrival at the police station. On 23 March 2005 a prosecutor ordered a forensic medical examination which was not carried out until 31 March 2005, that is, more than one week after the alleged acts of ill-treatment. The authorities did not provide any explanation for this lapse of time, during which some of the marks of violence on the applicant's body could have disappeared. In contrast, the Court notes that one of the police officers was able to undergo a forensic examination immediately after requesting one (see paragraph 11 above). Moreover, the authorities appear to have accepted without reservation the version of the facts presented by the arresting police officers. They did not check whether it was theoretically possible for the arresting police officer to continue the chase and arrest the applicant after being shot at by a tear-gas pistol. They also too readily accepted the police's allegations that the applicant had fought the chasing police officer after being arrested, despite the lack of testimonies to such effect from any of the witnesses questioned. No questions were raised in respect of the nature of the applicant's injury to his ear and no answers were given as to whether it was possible for the applicant to obtain such an injury by other means other than deliberate infliction.

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

36. The applicant contended that as a result of the ineffectiveness of the criminal investigation into his allegations of ill-treatment he had not had any effective remedies by which to claim compensation for the ill-treatment to which he had been subjected.

37. The Government disagreed and submitted that it had been open to the applicant to institute civil proceedings and claim compensation.

38. The Court considers that 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 (see, among other authorities, *Corsacov*, cited above, §§ 81 and 82; *Pruneanu*, cited above, § 70; *Breabin*, cited above, § 59; and *Gurgurov*, cited above, § 73). Accordingly, the Court considers that it has not been shown that effective remedies existed which would have enabled 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

39. 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

40. The applicant claimed 87 euros (EUR) in respect of pecuniary damage, the amount representing his expenses for the treatment of his injuries suffered on 22 March 2005. He submitted copies of receipts concerning the above amount. He also argued that the real amount had been much higher, but that he did not have receipts to prove it.

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

42. 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

43. The applicant claimed EUR 20,000 in respect of non-pecuniary damage, arguing that as a result of ill-treatment he still experienced hearing problems in his right ear. He had had headaches and insomnia for a long period of time and was still afraid of police officers. He had lost confidence in the State authorities and had problems in his personal life. It had taken a long time for his health and his social life to recover.

44. The Government disagreed and argued that the amount claimed was excessive in the light of the Court's case-law in similar cases.

45. 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 the Court awards him EUR 9,000.

C. Costs and expenses

46. The applicant also claimed EUR 2,550 for the costs and expenses incurred before the Court and submitted detailed information concerning the expenditure.

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

48. The Court awards EUR 800 for costs and expenses.

D. Default interest

49. 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 the grounds of the treatment inflicted on the applicant;
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 by the police;
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, EUR 87 (eighty-seven euros) in respect of pecuniary damage; EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage and EUR 800 (eight hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President