



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

FOURTH SECTION

CASE OF CIORAP v. MOLDOVA (No. 2)¹

(Application no. 7481/06)

JUDGMENT

*This version was rectified on 31 August 2010
under Rule 81 of the Rules of the Court*

STRASBOURG

20 July 2010

FINAL

20/10/2010

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

1. Rectified on 31 August 2010: the former text read “(No. 3)”.

In the case of Ciorap v. Moldova (no. 2)¹,

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 29 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 7481/06) 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 Tudor Ciorap (“the applicant”), on 26 January 2006.

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

3. The applicant alleged that he had been ill-treated by the police and detained in inhuman conditions.

4. On 15 December 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Chişinău. He works for “Social Amnesty”, an organisation which provides legal help to persons in detention.

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6. On 11 October 2000 the applicant underwent an operation to drain fluid from his liver. He was released from hospital on 21 October 2000.

7. On 23 October 2000 he was arrested by the Department for Fighting Organised Crime and Corruption on suspicion of fraud and was placed in detention at the Hînceşti police station. He alleged that he was suspended from an iron bar and beaten with machine guns and rubber truncheons and that the beating re-opened his surgical wound. He was placed in a small cell in the police station, without a bed, mattress or blankets and without access to a toilet or washing facilities, where he had to sleep on the concrete floor. He was seen by a doctor on 29 October 2000, who observed that the applicant's surgical wound had reopened and recommended that he be admitted to hospital immediately. However, police officer Ș. refused a transfer to the hospital.

8. On 6 November 2000 the applicant was transferred to prison no. 13, where he was placed into the medical treatment unit with the diagnosis "post-surgery state" (see further *Ciorap v. Moldova*, no. 12066/02, 19 June 2007). According to medical reports, on 7 November 2000 the applicant swallowed a nail and was hospitalised in order to extract it. According to medical evidence, during 2000-2001 the applicant underwent 10 operations made necessary by acts of self-harm, such as swallowing sharp objects and cutting himself (see *Ciorap v. Moldova* (dec.), no. 12066/02, 11 October 2005).

9. The applicant made a number of complaints in respect of his alleged ill-treatment by the police, the failure to give him medical treatment and the inhuman conditions of detention. The prosecutor opened a criminal investigation and interviewed the applicant, the police officers involved and their colleagues, as well as the medical personnel who had examined the applicant during his arrest. The doctors confirmed that they had been called twice to attend the applicant on the night of his arrest but that this had been in connection with a post-surgery problem. The prosecutor found that the applicant had made no complaint of ill-treatment when examined by the doctors or by the superior police officers (see *Ciorap v. Moldova* (dec.), no. 12066/02, 11 October 2005). All the applicant's complaints were dismissed as unfounded. This decision was confirmed by the investigating judge on 21 June 2006 and 30 October 2006.

10. In a final judgment of 7 November 2006 the Supreme Court of Justice found that on 7 October 2002 and 29 April 2003 the applicant had been informed of the prosecutor's decision to reject his request for the initiation of a criminal investigation into his alleged torture in October 2000. He was also informed of his right to challenge that decision in court within ten days of the date on which he was informed of it. However, the applicant did not challenge that decision until three years later, without having asked for an extension of the time-limit. The court therefore rejected

his complaint for failure to challenge the prosecutor's decision within the time-limit provided for by law.

11. On an unspecified date, the applicant initiated new court proceedings against the Hîncești police station, the Prosecutor's Office and the Ministry of Finance, claiming compensation for the damage caused to him through his ill-treatment upon his arrest on 23 October 2000, the failure to give him medical treatment while in detention and the inhuman conditions of detention.

12. On 15 March 2007 the Hîncești District Court rejected his claims as unfounded. On 7 June 2007 the Chișinău Court of Appeal quashed that judgment and partly accepted the applicant's claims. The court found that the documents in the file established that police officer Ș. had refused to allow the applicant to be treated in hospital even though an urgent examination by a surgeon had been recommended by the doctor who saw the applicant on 29 October 2000. The court also found that the applicant had been detained at Hîncești police station in conditions that breached the requirements of domestic law. In particular, the Law on preventive arrest (no. 1226-XIII, 27 June 1997) required that individuals detained pre-trial had a minimum of two square metres of cell space, access to daylight and fresh air, access to a toilet in sanitary conditions not degrading human dignity, access to a shower once every ten days and access to a bed with bed linen. The court referred to a letter from the Ministry of Interior which acknowledged that at the time of the applicant's detention Hîncești police station had been insufficiently equipped to offer appropriate conditions of detention, including proper ventilation. The court awarded the applicant 100 Moldovan lei (MDL) (6 euros (EUR) at the time) for non-pecuniary damage caused. The applicant appealed.

13. On 21 November 2007 the Supreme Court of Justice accepted the applicant's appeal in cassation and partly quashed the lower court's judgment. The court confirmed the findings of the Chișinău Court of Appeal concerning the failure to give the applicant required medical treatment and to provide the applicant with adequate conditions of detention. In reaching this conclusion, the court referred to Article 3 of the Convention and the Court's judgments such as *Kudła v. Poland* [GC] (no. 30210/96, ECHR 2000-XI), *Sarban v. Moldova* (no. 3456/05, 4 October 2005) and *Ostrovar v. Moldova* (no. 35207/03, 13 September 2005). The court added that while there was no domestic legislation giving the applicant a right to compensation, the Convention should be applied directly as it was part of the domestic legal system and had precedence over domestic legislation by virtue of the express provisions of Article 4 of the Constitution. The same conclusion had been reached by the Constitutional Court in a judgment of 14 October 1999. The court also relied on the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment made during its visits in 1998, 2001 and 2004

concerning the substandard conditions of detention in the Hîncești police station. The court held that the denial of medical treatment combined with the conditions of detention, which had aggravated the applicant's medical condition, had amounted to inhuman treatment in breach of Article 3 of the Convention. The court increased the award made to the applicant in compensation for non-pecuniary damage to MDL 10,000 (EUR 600 at the time) and awarded him MDL 210 (EUR 12.6) in compensation for pecuniary damage.

14. The applicant again requested the Hîncești Prosecutor's Office to open a criminal investigation into his alleged ill-treatment by the police, but the prosecutor rejected the request. The applicant challenged this decision before the Hîncești investigating judge and subsequently the Supreme Court, which dismissed his appeal on 1 October 2008.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

15. In the present application, the applicant complained about his detention and treatment by the police between 23 October and 6 November 2000. He contended under Article 8 of the Convention that he had been ill-treated by the police, detained in inhuman conditions and denied medical treatment. He submitted that the compensation awarded in the judgment of 21 November 2007 was inadequate. The Court considers that it is more appropriate to consider these complaints under Article 3 of the Convention, which reads as follows:

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

16. The applicant contended that he had been beaten with machine guns and rubber truncheons at the police station and that this caused his surgical wound to reopen and to extend from 2 to 4 centimetres in length. He alleged that the medical authorities had refused to confirm his injuries in order to protect the police from responsibility. He was denied medical treatment and forced to sleep on a cold concrete floor. He was in extreme pain and repeatedly lost consciousness. The award of damages by the Supreme Court was completely inadequate, particularly in view of the fact that the applicant had been deliberately mistreated by the police. It followed that the applicant was still a victim of the violation of Article 3.

17. The Government submitted that the medical evidence indicated that the applicant might have deliberately reopened his surgical wound as a basis for his false accusations against the police. The domestic courts had found

that there had been a breach of Article 3 because the applicant was denied the medical treatment he needed for eight days following the doctor's recommendation on 29 October 2000 and also because he had been detained in inhuman conditions between 23 October and 6 November 2000. They did not find that the applicant had been tortured or that the breaches of Article 3 had had any lasting effect on his health. The applicant had been awarded compensation in respect of these breaches of Article 3 and no longer had victim status. The award made by the Supreme Court was reasonable in the light of the relatively minor breaches of Article 3.

18. The Court must first consider whether the applicant can still claim to be a victim of a violation of Article 3 within the meaning of Article 34 of the Convention. In this connection it emphasises that it falls first to the national authorities to redress any alleged violation of the Convention. The question whether a person may still claim to be the victim of an alleged violation of the Convention essentially entails on the part of the Court an *ex post facto* examination of his or her situation. A decision or measure of the domestic authorities favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention. The question whether he has received reparation for the damage caused – comparable to just satisfaction as provided for under Article 41 of the Convention – is an important issue. It is the Court's settled case-law that where the national authorities have found a violation and their decision constitutes appropriate and sufficient redress, the party concerned can no longer claim to be a victim within the meaning of Article 34 of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 179-181, ECHR 2006-V).

19. In the present case the Court considers that the question whether the remedy provided by the national courts was sufficient, so that the applicant can no longer claim to be a victim of a violation of Article 3, is inextricably linked to the merits of this complaint. It therefore joins the Government's preliminary objection to the merits and will determine, first, whether, and to what extent, the applicant's rights under Article 3 have been violated.

20. The Court takes as its starting point the fact that the applicant was examined by a doctor on 29 October 2000 and found to be in need of surgical treatment because his surgical wound had reopened. It recalls its constant case-law to the effect that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see, for example, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V). However, in the present case the applicant was not in entirely good health when he was taken into custody. He was arrested only two days after being released from hospital following abdominal surgery.

The applicant alleges that he was beaten by police officers and that this caused the incision to reopen. The medical evidence submitted to the Court does indicate that the applicant experienced problems linked to the surgical wound while in custody, but there is no medical evidence of any other injury which could have been caused by a beating. The prosecutor who investigated the applicant's allegations was told by the doctors who saw him during his detention at the police station that they had been called twice to attend the applicant on the night of his arrest but that this had been in connection with a post-surgery problem and that the applicant had made no complaint to them of ill-treatment. The applicant was examined by a doctor on 6 November 2000 and found to be in a "post-surgery" condition. Moreover, to the extent that the condition of the applicant's abdominal wound deteriorated during his time in detention, the Government have provided a plausible explanation. The applicant has a history of self-harm in prison; on 7 November 2000 he needed an operation to remove a nail that he had swallowed and this was the first of ten operations made necessary by incidents of self-harm. The medical evidence indicates that the applicant could have reopened the wound by picking and scratching at it. On the basis of the material before it the Court does not find the applicant's allegations of torture to be substantiated.

21. There is, however, evidence that the conditions at Hîncești Police Station where the applicant was detained for two weeks were very poor. In particular, the applicant who was suffering from problems with his surgical wound, had to sleep on a concrete floor with no bedding. In addition, the applicant was denied hospital treatment for eight days contrary to medical advice. These facts were established by the domestic courts which, moreover, determined that they amounted to inhuman treatment in breach of Article 3.

22. The object and purpose underlying the Convention, as set out in Article 1, is that the rights and freedoms should be secured by the Contracting State within its jurisdiction. It is fundamental to the machinery of protection established by the Convention that the national systems themselves provide redress for breaches of its provisions, with the Court exercising a supervisory role subject to the principle of subsidiarity (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 174, ECHR 2009-...). In the circumstances of the present case, where the Supreme Court has examined the issues and found a violation of Article 3 of the Convention, the Court considers that it would be justified in reaching a contrary conclusion only if satisfied that the national court had misinterpreted or misapplied the relevant legal principles or reached a conclusion which was manifestly unreasonable (see, *mutatis mutandis*, *A. and Others*, cited above, § 174).

23. That is not the case here. Indeed, in the light of the principle of subsidiarity referred to above, the Supreme Court's decision to apply the

Convention directly, in the absence of a provision of domestic legislation giving the applicant a right to compensation, is to be commended. Moreover, the parties do not contest this part of the Supreme Court's judgment. The Court therefore accepts the conclusion of the Supreme Court that the applicant was subjected to inhuman treatment in breach of Article 3 as a result of being held for two weeks in substandard conditions and being denied hospital treatment for eight days, which aggravated his pre-existing medical condition.

24. The only issue which remains to be determined is the amount of compensation. The Supreme Court awarded the applicant the equivalent of EUR 600 in respect of non-pecuniary damage. Even taking into account the relatively short period of the detention in inhuman conditions, this is considerably below the minimum generally awarded by the Court in cases in which it has found a violation of Article 3 (see, for a recent example, *Gavrilovici v. Moldova*, no. 25464/05, 15 December 2009, where the Court awarded the applicant EUR 6,000 in respect of five days' detention in inhuman conditions following an unwarranted criminal conviction in violation of Article 10 of the Convention, and see also, for example, *Istratii and Others v. Moldova*, nos. 8721/05, 8705/05 and 8742/05, 27 March 2007, where the Court awarded EUR 6,000 to Mr Istratii, who had been held for approximately two months in inhuman conditions of detention and who had suffered a delay of three hours in the provision of emergency medical treatment).

25. In the light of the foregoing, the Court considers that the applicant can still claim to be a victim of a violation of Article 3. It therefore dismisses the Government's preliminary objection and declares part of the application admissible.

26. It also finds that there has been a violation of Article 3, arising out of the inhuman conditions of detention and the failure to provide timely medical assistance.

II. OTHER CONVENTION COMPLAINTS

27. The applicant complained under Articles 3 and 6 that a confession extracted from him by torture was admitted in evidence against him during the criminal proceedings. He complained in addition about various alleged breaches of his rights under Articles 5 and 6 of the Convention which took place at the time of his arrest in October 2000 and immediately thereafter. He also complained under Article 10 that he was denied access to his medical file. Finally, he invoked Article 17 because of the untrue and contradictory statements made by various State officials.

28. The Court repeats that the applicant's allegation that he was tortured is not substantiated. The complaint that the confession was induced by

torture is, therefore, manifestly ill-founded. It does not appear from the information before the Court that the applicant exhausted domestic remedies in respect of the other complaints, by bringing them before the domestic authorities within the applicable time-limits. Moreover, these complaints were not introduced before the Court within the six months' time limit laid down by Article 35 § 1 of the Convention.

29. In conclusion, therefore, the Court considers that the remainder of the application must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed EUR 20,000 euros in respect of non-pecuniary damage.

32. The Government maintained that the compensation awarded by the Supreme Court had been sufficient. In the event that the Court decided to award additional compensation, the sum claimed by the applicant was excessive in view of the relatively minor nature of the breach.

33. In the light of all the circumstances, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

34. The applicant also claimed EUR 1,540, representing 22 hours' work done by his legal representative, charged at EUR 70 per hour, together with EUR 14.50 translation fee, for the costs and expenses incurred before the Court.

35. The Government submitted that the claim was unrealistic in the light of national economic conditions.

36. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the limited nature of the issue before it, the Court considers it reasonable to award EUR 1,000 for costs and expenses.

C. Default interest

37. 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. *Joins* to the merits the Government's preliminary objection about lack of victim status;
2. *Declares* the complaint concerning conditions of detention and failure to provide timely medical assistance admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention and dismisses in consequence the Government's preliminary objection;
4. *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), in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President