

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

THIRD SECTION

CASE OF CHINEZ v. ROMANIA

(Application no. 2040/12)

JUDGMENT

STRASBOURG

17 March 2015

FINAL

17/06/2015

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



In the case of Chinez v. Romania,

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

Josep Casadevall, *President,*
Luis López Guerra,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Stephen Pillips, *Section Registrar,*

Having deliberated in private on 17 February 2015,

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

PROCEDURE

1. The case originated in an application (no. 2040/12) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Romanian nationals, Mr Mihai Chinez, Mr Marius-Romeo Chinez and Mr Ionuţ Ludovic Chinez ("the applicants"), on 29 December 2011.

2. The applicants were represented by Ms R. Neagu, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicants claimed that the ill-treatment they were subjected to by police officers and private individuals, and the lack of an effective investigation with regard to their complaint in this connection, had breached their rights guaranteed by Article 3 of the Convention.

4. On 8 October 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, who are brothers, were born in 1986, 1987 and 1985 respectively and live in Bucharest.

1. The incident of 17 March 2008

(a) The applicants' account of events

6. In the early hours of 17 March 2008, around five minutes after midnight, the applicants, together with their parents, decided to go to a police station to report that the applicant Marius-Romeo Chinez had been a victim of crime. They stopped a taxi on the street and because the taxi driver, B.G., refused to take them, they got involved in a verbal dispute with him and one of the applicants punched the bonnet of the car. Shortly afterwards, several taxi drivers from the same taxi company arrived at the scene. A team of two police officers (D.M. and F.I.) who were patrolling the area also arrived at the scene of the incident. They were followed by three additional police units.

7. In the presence of the police the dispute between the applicants and the taxi drivers escalated, with the applicant Mihai Chinez being hit in the face. When he tried to retaliate, the police handcuffed him and took him to their car. At the same time the applicant Ionuţ Ludovic Chinez was hit on the head by an unknown person and lost consciousness. When he saw his brother lying on the ground, the applicant Mihai Chinez refused to get into the police car. At this point the three police officers who had hold of him started hitting him and used their electric stun gun to force him into their car. Afterwards, Ionuţ Ludovic Chinez was lifted off the ground, handcuffed and put into a police car. The applicant Marius-Romeo Chinez, who was watching the scene from a distance, was pushed to the ground by two policemen, handcuffed and taken to another police car nearby.

8. The applicants were then taken to the police station, where Mihai and Marius-Romeo were punched and kicked in the stomach and chest by the police officers who had brought them in. After several hours of waiting without being questioned and without making a statement, Marius-Romeo was taken by ambulance, under police escort, to the Floreasca Emergency Hospital, where he had treatment for two days.

9. The other two applicants were questioned separately by different police officers. On 17 March 2008, at around 4 p.m., when a lawyer hired by their father arrived, they were allowed to leave the police station.

(b) The Government's account of the events

10. According to the incident report drafted by the chief of the police units involved, on 17 March 2008 at around 00.20 a.m. the team of two police officers who were on patrol had seen a group of five persons attacking a taxi driver. When they intervened to stop the fight and to identify the persons involved, the applicants became aggressive towards them too and punched them. The officers asked for support and additional patrol units arrived at the scene. Subsequently, the decision was taken to accompany the attackers, namely the applicants, to the police station to

identify them, but because they refused to go the police officers had to use force and handcuff them. The report further mentioned that the applicants had damaged a taxi belonging to Mr. B.G., who was identified by name, age, personal identity number and address.

The report also stated:

> "Before the arrival of the police units, several colleagues came to protect the taxi driver and assaulted the five [people]; because of the injuries he sustained Marius-Romeo Chinez was taken to the Floreasca Emergency Hospital, where he was admitted to the surgical ward ...
>
> On the occasion of the investigation at the crime scene four eyewitnesses were identified and gave statements ..."

11. The report concluded that, in accordance with an order given by the prosecutor by telephone, an investigation was immediately launched in connection with assault on police officers by the applicants and their father.

12. On the same day the chief asked for forensic expert reports from the National Forensic Medicine Institute in connection with the injuries suffered by police officers F.S.I. and N.C. The reports issued on 14 May 2008 confirm that officer F.S.I. had a 4 x 1 cm ecchymosis and excoriation on the left lumbar region, which could have been caused on 17 March 2008 by being hit with a hard object, and which required one to two days' medical treatment. With respect to officer N.C., the report mentioned that he had a 2 x 2 cm ecchymosis in the left occipital region, which could have been caused by being hit with a hard object on 17 March 2008 and which required one to two days' medical treatment.

2. Medical evidence of the applicants' injuries

13. According to a forensic medical report issued on 2 April 2008, Mihai Chinez had a haematoma of 1 x 0.5 x 0.5 cm in the occipital area, numerous ecchymoses on the face, arms and left leg, and five electrical burns on the left thigh. It was considered that the injuries, which could have occurred on 17 March 2008, were caused by being hit with a hard object, and required two to three days' medical treatment.

14. According to a forensic medical report issued in June 2008, Marius-Romeo Chinez had an excoriation of 3 x 2 cm on the right of the forehead, a 1.5 x 1 cm ecchymosis outside the right eye, several ecchymoses and haematomas on the head, a 1 cm wound on the upper lip which had been sutured, several ecchymoses of 7 x 3 cm and 6 x 4 cm on the back and the lower right thorax, as well as on the right elbow. The report mentioned that he was drunk when he was brought to the Emergency Hospital. It was considered that the injuries, which could have been inflicted on 17 March 2008, had been caused by being hit with and against a hard object or surface, and required eight to nine days' medical treatment.

15. A forensic medical report issued in August 2008 mentioned that Ionuţ Ludovic Chinez had a haematoma of 1 x 0.5 x 0.3 cm on the right side of the head and two ecchymoses on the right thigh. He also had limited capacity to open his mouth because of an injury to the right side of the jaw. The report concluded that the injuries could have been inflicted on 17 March 2008 by being hit with and against hard surfaces and objects, and that they required one to two days' medical treatment.

3. Criminal investigation in connection with the incident

16. On 7 July 2008 the applicants brought criminal proceedings against the police officers who were involved in the events of 17 March 2008, for abusive behaviour, unlawful arrest and misconduct. They claimed that on 17 March 2008 they had been beaten by police officers both before and after they were taken to the police station, following an incident they had been involved in with a taxi driver.

17. The investigation of the applicants' complaint conducted by N.I., a police officer from the Control Unit of the Ministry of Internal Affairs, commenced by taking statements from the applicants on 11, 12 and 14 August 2008. They described the course of the events as mentioned in paragraphs 6 to 9 above. The applicant Ionuţ Ludovic Chinez stated that, while he was approaching the two police officers who were handcuffing his brother Mihai, he was hit on the head and lost consciousness. He further mentioned that after his arrival at the police station he had not been ill-treated. The applicant Mihai Chinez stated that "he was told later that [Ionuţ Ludovic] had been hit by taxi drivers and policemen". The applicants mentioned that they did not know the names of the taxi drivers involved in the incident or of the police officers present at the scene. Lastly, they requested criminal sanctions against the police officers who had assaulted them both in the street and inside the police station.

18. On 11 August 2008, J.V., the applicants' mother, who was present during the incident, declared that she had seen around twenty or thirty taxi drivers hitting the applicants Mihai and Ionuţ Ludovic Chinez. Then she had seen the two police officers pushing Marius-Romeo to the ground, hitting him and handcuffing him. She then stated that when the two police officers saw Ionuţ Ludovic lying on the ground they ran towards him, dragged him to their car, slapped him, turned him over with his face to the ground and handcuffed him. By this time all the taxi drivers had left the scene. Once they arrived at the police station she was not allowed to enter or to contact her sons. After approximately one hour she saw the applicant Marius-Romeo being taken away by ambulance, with his handcuffs still on and under police escort.

19. The investigation continued with the identification of the police officers involved in the incident. In this respect, on 20 August 2008, the operational order of 17 March 2008 as well as the incident report drafted by

the police chief (see paragraph 10 above) were attached to the investigation file.

20. On 24 August 2008 N.I. took statements from police officers D.M. and F.S.I. They declared that they had been on patrol together in a police car when they saw several taxis and several individuals hitting another person. They immediately approached the scene of the incident and asked the aggressors to stop. When they refused the two officers called for back-up, and then intervened in order to remove from the crowd one person who was violent and had blood on his face. When they tried to immobilise this person he went up to a taxi and hit its windscreen with his fist, breaking it. They decided to handcuff him, and at that moment he kicked F.S.I. in the chest and refused to get into the police car, pointing to his brother, who had been beaten and was lying on the ground, and asking them to call an ambulance. Then they put him into the police car with the help of two other colleagues and drove him to their police station. They mentioned in their statement that they did not use any physical or psychological pressure on the person in question, and that they were not equipped with electric stun guns. When they arrived at the police station the person was identified as Mihai Chinez and "was taken over by officer F.L. from the criminal investigations unit and other colleagues who continued the investigation".

21. The same day officer D.A.M. gave a statement in which she mentioned that she was part of one of the units called as back-up by officers D.M. and F.S.I. When she arrived at the scene she found one person pointing out a taxi driver who had allegedly just beaten his brother. She got back into her car and drove in the direction indicated but could not find the taxi driver. Then she returned to the scene and, according to her statement, she "identified two eyewitnesses who could describe the incident and they accompanied her to the police station". She further declared that, once inside the police station, she did not participate in the questioning and did not physically or verbally assault any of the persons involved in the incident.

22. On 26 August 2008, in a note drafted by officer N.I., police officers D.M., Z.C., N.C., F.I., D.D.M., D.A., P.M.C. and S.L.E. were identified as having been present during the incident under investigation "together with other public order forces".

23. On 5 September 2008 officer N.G., who was on duty at the police station on the night of the incident, gave a statement mentioning that he had helped his colleagues D.M. and F.I. to identify the applicants and their parents, and took a statement from J.V., the applicant's mother.

24. On 24 and 25 September 2008 statements were taken from officers F.L.C. and D.D.M. They stated that they had not been on duty on the night of the incident, but were called in and asked to come to the police station. When they arrived they were informed about the incident and asked to help their colleagues. F.L.C. declared that he had heard statements from

two eyewitnesses. D.D.M. declared that he had questioned Mihai Chinez. Both officers declared that they had not assaulted any of the participants in the incident.

25. On 25 September 2008 investigating officer N.I. took a statement from officer A.S, who had also been called in from home to the police station in the early hours of 17 March 2008. He stated that "at the station there were a number of people, including taxi drivers, witnesses and members of the Chinez family". He then proceeded to question Ionuţ Ludovic Chinez. He continued by stating that he was aware that the applicants were being investigated for charges of assault against police officers. Lastly, he concluded that between 2005 and 2007 he was the community police officer in charge of the area in which the applicants lived. He stated in this respect that the applicants were disruptive individuals who had been sanctioned on numerous occasions for disturbing public order, and that in his opinion their complaint was "biased and based on untruths".

26. The statements allegedly taken from the applicants and eyewitnesses immediately after the incident inside the police station were not included in the investigation file.

27. On 2 October 2009 the Prosecutor's Office of the Bucharest Court of Appeal decided to relinquish jurisdiction to the Prosecutor's Office of the Bucharest County Court. On 14 January 2010 it was decided that the Prosecutor's Office of the Bucharest Court of Appeal was competent to examine the case after all, and the file was sent back to them.

28. On 15 and 17 March 2011 officers F.L.C., A.S. and D.D.M. were heard again, this time before the prosecutor. In addition to his initial statement given in 2008, officer F.L.C. pointed out that, once inside the police station and while he was handcuffed, the applicant Mihai Chinez had banged his own head against the wall and the floor several times.

29. On 1 June 2011 the Prosecutor's Office of the Bucharest Court of Appeal dismissed the criminal complaint lodged by the applicants against some of the police officers who had taken part in the incident of 17 March 2008, in particular those officers who had questioned the applicants after they were taken to the police station, on the ground that no unlawful act had been committed by them. It held that following the incident the applicants had been restrained by police officers and taken to the police station for identification and questioning, because a car had been destroyed during the incident and police officers had been assaulted. It was further held that when they reached the police station it was already apparent from physical evidence that the applicants had been involved in a violent incident. There was therefore no evidence in the criminal investigation file to prove beyond reasonable doubt that the police officers who questioned the applicants at the police station, in particular A.S, F.L.C. and D.D.M., had acted violently against the applicants. Moreover, it was held that one of the applicants, namely Mihai Chinez, had inflicted injuries on himself. The prosecutor

finally decided that the criminal investigation in respect of the remaining police officers, not identified by name, should be continued by the Prosecutor's Office of the Bucharest County Court.

30. The applicants complained against this decision, arguing, *inter alia,* that no statements had ever been taken from any of the taxi drivers involved in the incident. They also argued that they had been hit by the taxi drivers in the presence of the police officers, who had done nothing to protect them. On the contrary, the police officers had also brutally attacked them, immobilising them in the street and then beating them up once they were inside the police station. They further alleged that two witnesses, namely I.S. and the applicants' legal representative, had seen the injuries suffered by them but were never called to testify.

31. On 30 June 2011 the applicants' complaint was rejected as ill-founded by the General Prosecutor of the Prosecutor's Office of the Bucharest Court of Appeal.

32. The applicants appealed against the prosecutors' decisions before the Bucharest Court of Appeal, reiterating their previous arguments (see paragraph 30 above). Their appeal was rejected with final effect on 20 October 2011. In reaching this decision the Bucharest Court of Appeal firstly considered that sufficient investigative action had been taken, such as taking statements from the applicants and the police officers present in the police station, and, because the alleged ill-treatment took place in a police station, no other evidence was available that could verify the applicants' complaint with respect to police officers A.S, F.L.C. and D.D. The court further held that it could not decide with respect to the incident which took place in the street and which involved the taxi drivers, because it was the object of an ongoing investigation conducted by the Prosecutor's Office of the Bucharest County Court.

33. The criminal investigation with respect to the rest of the police officers and concerning the incident which took place in the street is still pending before the Prosecutor's Office of the Bucharest County Court.

34. The criminal investigation against the applicants for assaulting police officers (see paragraph 11 above) has also not been completed to date.

II. RELEVANT DOMESTIC LAW

35. Excerpts from the relevant provisions of the Criminal Code concerning the crime of abusive behaviour, and from the Criminal Procedure Code with respect to the complaint against the prosecutor's decisions, can be found in the case of *Şercău v. Romania* (no. 41775/06, §§ 53, 55 and 57, 5 June 2012).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. Relying on Article 6 § 1 of the Convention the applicants complained that they had been subjected to ill-treatment by police officers as well as by private individuals on 17 March 2008, and that there had been no effective investigation or fair trial with regard to their complaint lodged in connection with the said incident. The Court considers that the applicants' complaints fall to be examined 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."

A. Admissibility

37. The Government raised an objection of non-exhaustion of domestic remedies. They argued that the investigation in respect of the police officers who had intervened at the scene of the incident on 17 March 2008 was not yet complete. Moreover, the investigation concerning the applicants' own liability for assaulting the police officers was also not complete. The Government therefore submitted that the applicants should have waited for the completion of these two sets of proceedings, which could clarify the circumstances of the case.

38. The Court considers that the Government's objection is very closely linked to the substance of the applicants' complaint under Article 3 of the Convention, since it requires determination of the effectiveness of the investigation at issue. It therefore considers it appropriate to join this objection to the merits (see *Amine Güzel v. Turkey*, no. 41844/09, §§ 33 and 36, 17 September 2013).

39. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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

40. The applicants Mihai Chinez and Marius-Romeo Chinez submitted that they had been subjected to ill-treatment by the police officers who intervened during the street incident of 17 March 2008 as well as inside the police station. The applicant Ionuţ Ludovic Chinez submitted that he had

been ill-treated by private individuals in the presence of police officers, who had done nothing to protect him.

41. Lastly, the applicants asserted that the investigation conducted into their complaint concerning the above-mentioned acts lacked promptness and effectiveness. More specifically, they complained that with the exception of the statements taken from them, their mother and some of the police officers involved in the incident, no other action was taken. No witnesses were heard to clarify what happened during the incident on the street or inside the police station. Also, no complaint was ever made by the taxi driver with respect to the alleged destruction of his car or to his alleged physical assault by the applicants, and he was never heard by the police in this connection. In addition, the applicants pointed out that the investigation lacked promptness, as six years after the incident the circumstances surrounding their ill-treatment had not yet been clarified.

42. The Government contended that the applicants' injuries, documented by forensic medical reports, had been caused by private individuals during the dispute which took place between the applicants and taxi drivers on 17 March 2008. The police officers present had merely intervened in order to take the applicants to the police station for identification and questioning about the incident, and had had to immobilise them because of their aggressive behaviour.

43. With respect to the investigation, the Government submitted that it had been adequate and effective, and that no convincing evidence could be found that the applicants had been ill-treated by police officers. In addition, the Government argued that it was for the applicants to identify the private individuals who had allegedly assaulted them if the police and the prosecutor were to be able to carry out a full investigation.

2. The Court's assessment

(a) Effectiveness of the investigation carried out by the national authorities

44. 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 unlawfully and in breach of Article 3, 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 (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII; and *B.S. v. Spain*, no. 47159/08, § 39, 24 July 2012).

45. Similarly, when such treatment has been meted out by private individuals a positive obligation on the State to provide protection has been found to arise in a number of cases (see *A. v. the United Kingdom*,

23 September 1998, § 22, *Reports* 1998-VI; and *M.C. v. Bulgaria*, no. 39272/98, § 149, ECHR 2003-XII).

46. Once the ill-treatment has occurred, even though the scope of the State's procedural obligations might differ between cases where treatment contrary to Article 3 has been inflicted through the involvement of State agents and cases where violence has been inflicted by private individuals, the requirements as to an official investigation are similar (see *Denis Vasilyev v. Russia*, no. 32704/04, § 100, 17 December 2009).

47. For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The investigation must be independent, impartial and subject to public scrutiny and that the competent authorities must act with diligence. Among other things, they must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical reports. 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 (see *Koky and Others v. Slovakia*, no. 13624/03, § 215, 12 June 2012). Thus, the authorities have an obligation to take action as soon as an official complaint has been lodged. A requirement of promptness and reasonable expedition is implicit in this context. A prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. Tolerance by the authorities towards such acts cannot but undermine public confidence in the principle of lawfulness and the State's maintenance of the rule of law (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 136, ECHR 2004-IV (extracts); *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 60, 2 November 2004; and *Assenov and Others*, cited above, § 102).

48. The Court observes that in the present case a criminal investigation was opened promptly by the domestic authorities. It remains to be assessed whether it was carried out diligently and whether it was effective, as required by Article 3.

49. In this respect the Court notes that the investigation resumed over an initial period of three months with the identification and questioning of the police officers present during the incident in the street and of those who had questioned the applicants at the police station following the street incident. Statements from the applicants and their mother were also taken during this period. Three years later, and with no further action having been taken in the meantime, the investigation was closed with respect to the three police

officers who had questioned the applicants inside the police station. The prosecutor concluded that the applicants showed traces of violence which had been inflicted before their arrival at the police station, and that there was no evidence in the investigation file to prove beyond reasonable doubt that the police officers who questioned the applicants inside the police station had in any way harmed them. However, the Court observes from the documents submitted by the parties that this conclusion was drawn only from the statements of the police officers under investigation, and that no statements from the taxi drivers allegedly involved in the incident were ever submitted to the investigation file. In addition, the Court would point to the incident report, which mentions the taking of statements from four eyewitnesses (see paragraph 10 above), the statement of officer D.A.M., who declared that two eyewitnesses had been accompanied to the police station for statements to be taken from them (see paragraph 21 above), and the statement of officer F.L.C., who declared that he had taken statements from two eyewitnesses (see paragraph 24 above). Nevertheless, no such statements were ever submitted to the investigation file. In addition, the Court observes that in his decision of 1 June 2011 the prosecutor held as proven that the applicant Mihai Chinez had caused injuries to himself inside the police station, which was mentioned by officer F.L.C. only in his second statement, and was not corroborated by any other evidence.

50. Furthermore, the applicants' complaint against the prosecutor's decision had been rejected by the domestic court in a brief judgment, without a thorough analysis of all the arguments raised by the applicants. Hence, although the applicants requested that, in order to determine the circumstances of their ill-treatment, it was necessary to hear several witnesses and not only the two parties involved, the court considered this issue to constitute the object of a separate ongoing investigation and did not touch upon it (see paragraph 32 above).

51. The Court therefore concludes that the proceedings which ended with the judgment of 20 October 2011 of the Bucharest Court of Appeal did not in any way clarify the circumstances of the applicants' ill-treatment.

52. The Court further notes that, according to the Government, an investigation aimed at clarifying the circumstances of the incident which took place in the street is still pending. This investigation allegedly concerns the police officers present during the street incident, as well as any private individual involved. In respect of these proceedings the Government submitted that it was for the applicants to identify the individuals who had allegedly assaulted them, in order to enable the authorities to make progress with the investigation. The Court however observes on this point that this investigation also concerns police officers who had previously been identified. Moreover, at least one of the taxi drivers had been properly identified at the moment of the incident, namely B.G. (see paragraph 10 above), but there was no indication that he had ever been questioned by the

police within the above-mentioned investigation. Moreover, no information was submitted concerning the steps taken so far by the authorities or whether there was any formal obstacle to the completion of this investigation, more than three years after its initiation (see paragraph 29 above) and more than six years after the incident itself (see *Koky and Others*, cited above, § 238).

53. In the light of the foregoing considerations, the Court is not satisfied that the investigations carried out in the present case were sufficiently thorough and effective to satisfy the aforementioned requirements of Article 3. The Court therefore dismisses the Government's preliminary objection that the applicants failed to exhaust domestic remedies in view of the pending investigation against the police officers and the private individuals concerned.

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

(b) Alleged ill-treatment by the police

55. The Court reiterates that Article 3 enshrines one of the fundamental values of a democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or 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 of the Convention even in the event of a public emergency threatening the life of the nation (see *Assenov and Others*, cited above, § 93; *Cobzaru v. Romania*, no. 482549/99, § 60, 26 July 2007; and *Stoica v. Romania*, no. 42722/02, § 59, 4 March 2008).

56. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt" (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Stoica*, cited above, § 63).

57. The Court is sensitive to the subsidiary nature of its role and recognises that it 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; and *Stoica*, cited above § 64).

58. In the present case, the Court notes from at outset that the parties offered conflicting descriptions of the incident which occurred on 17 March 2008. On the one hand, the applicants claim that Mihai and Marius-Romeo Chinez were hit by police officers, both in the street and inside the police station, while the applicant Ionuţ Ludovic Chinez was not protected by the police against an assault by private individuals. On the other hand, the

Government, denying that any violence was inflicted on the applicants by police officers, considered that their injuries were caused solely by private individuals.

59. The Court observes that, in the absence of any account from any witness besides the applicants' mother, the evidence in the file does not even begin to clarify the contradictory descriptions of the events given by the parties, and that this stems from the ineffectiveness of the investigation conducted by the authorities in the current case (see paragraphs 49-54 above).

60. Under these circumstances, it is therefore impossible for the Court to establish, on the basis of the evidence before it, whether or not the applicants suffered treatment at the hands of the authorities contrary to Article 3 of the Convention as they alleged (see *Assenov and Others,* cited above, § 100; and *Dumitru Popescu v. Romania (no. 1)*, no. 49234/99, § 69, 26 April 2007).

61. Therefore, the Court concludes that there has been no violation of Article 3 under its substantive head.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. Lastly, the applicants complained under Article 5 § 1 of the Convention that they had been unlawfully deprived of their liberty during their questioning inside the police station on 17 March 2008.

63. Having considered the applicants' submissions 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 must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicants claimed 30,000 euros (EUR) in respect of non-pecuniary damage which they had sustained as a result of the ill-treatment complained of.

66. The Government pointed out that the alleged ill-treatment had not been proven, and asked the Court to reject the applicants' claim for non-pecuniary damage.

67. The Court has found the authorities of the respondent State to be in breach of their procedural obligations under Article 3 of the Convention and accepts that the applicants suffered some non-pecuniary damage as a result of this infringement of their rights. The Court, therefore, making its assessment on an equitable basis, awards each applicant EUR 7,500 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicants also claimed EUR 200 (900 Romanian lei) for the costs and expenses incurred before the Court, joining supporting documents in this respect.

69. The Government did not contest this claim.

70. 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 are reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly the sum of EUR 200 for the costs and expenses incurred in the proceedings before the Court.

C. Default interest

71. The Court considers it appropriate that the default interest rate 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 on the issue of exhaustion of domestic remedies in respect of the procedural aspect of Article 3 of the Convention and *dismisses* it;

2. *Declares* the complaint concerning Article 3 of the Convention admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of the procedural limb of Article 3 of the Convention;

4. *Holds* that there has been no violation of the substantive limb of Article 3 of the Convention;

5. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 7,500 (seven thousand five hundred euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 200 (two hundred euros), plus any tax that may be chargeable jointly to the applicants, in respect of costs and expenses;

(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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 March 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Josep Casadevall
President