

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

THIRD SECTION

CASE OF ŞERCĂU v. ROMANIA

(Application no. 41775/06)

JUDGMENT

STRASBOURG

5 June 2012

FINAL

05/09/2012

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



In the case of Şercău v. Romania**,**

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Luis López Guerra,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 10 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 41775/06) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Ionuţ Cristian Şercău ("the applicant"), on 4 October 2006.

2. The applicant was represented by Mr I. Turculeanu and Ms A. Troanţă-Rebeleş-Turculeanu, two lawyers practising in Craiova. The Romanian Government ("the Government") were represented by their Agent, Mr Răzvan-Horaţiu Radu, from the Ministry of Foreign Affairs.

3. As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mrs Kristina Pardalos to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

4. The applicant claimed, in particular, that the alleged ill-treatment he was subjected to by police officer G.B., on 7 April 2004, at Balş police station, and the lack of an effective investigation and a fair trial with regard to his complaint in connection with the said incident, had breached his rights guaranteed by Articles 3 and 6 of the Convention.

5. On 12 May 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1980 and lives in Craiova.

1. The incident of 7 April 2004

a) The applicant's account of events

7. On 7 April 2004 around 4 p.m., following a traffic incident, the applicant and two others accompanying him, T.C.S and G.M.S., were stopped and arrested by a group of police officers, including police officer G.B., and escorted to Balş police station.

8. During the questioning, G.B. was very agitated and allegedly hit the applicant several times on the head until he lost consciousness. Afterwards, he gave orders for the applicant to be dragged out into the police station courtyard until he regained consciousness.

9. After he regained consciousness the applicant realised that he could not move his right foot and could not control his right hand. Consequently, he was carried back into the police station because he was unable to move on his own.

b) The Government's account of events

10. On 7 April 2004, the applicant and two others accompanying him, T.C.S. and G.M.S., were asked to go to the Balş police station by police officer G.B. The police officer had seen the applicant trying to hold up a vehicle in traffic armed with a baseball bat.

11. At the police station and in the presence of other police officers, the applicant, together with T.C.S. and G.M.S., were asked to provide written statements about the traffic incident.

12. While they were writing their statements the applicant felt ill and started shaking. Consequently, the police officers took him outside for fresh air for a few minutes. Afterwards, because his condition did not improve, he was laid down on a bed inside the police station and the police officers called an ambulance.

2. The applicant's subsequent medical examinations

13. According to the ambulance records of 7 April 2004, the ambulance call from Balş police station was placed at 4.12 p.m. The ambulance left Balş Emergency Hospital at 4.15 p.m. and arrived at the police station at 4.20 p.m. The applicant received treatment for spasmophilia. The

ambulance left the police station at 4.45 p.m. and arrived back at the depot at 5.03 p.m.

14. At Balş Emergency Hospital the applicant was diagnosed with spasmophilia, dystonia and a pre-existent right-sided cavernoma which had been operated on in 2002.

15. The doctors who examined the applicant at Balş Hospital also made other entries in the medical file. Doctor N., a neurologist, wrote the results of her investigation under entry no. 622 as follows:

> "Recent craniocerebral trauma. Operated frontal right-sided cavernoma. Neuro-surgical examination is recommended."

16. Doctor D.C.G., a general surgeon, wrote the results of her investigation under entry no. 634 as follows:

> "Affirmatively recent craniocerebral trauma. Right-sided surgical scar on the head sensitive to touch."

17. Doctor D.C.G. also entered in the hospital's consultation register under entry no. 634 the following:

> "Affirmatively recent craniocerebral trauma. Shows signs of violence. Right-sided surgical scar on the head, sensitive to touch...."

18. Doctor G.L.J., a specialist in internal medicine at the Emergency Unit, wrote the results of her investigation under entry no. 851 as follows:

> "Affirmatively recent craniocerebral trauma. Referral for neurological examination"

19. Doctor G.L.J. also filled in the hospital's consultation register and stated that the applicant did not show signs of violence.

20. On 8 April 2004 the applicant was still feeling unwell and was hospitalised at the neurosurgery unit of Vlad Voiculescu Hospital in Bucharest, the same hospital where he had undergone an operation for a cavernoma in 2002. According to the applicant's clinical file and the discharge papers drawn up on 9 April 2004 by doctor C.T., a specialist in neurosurgery, the applicant had been diagnosed with a minor cerebral contusion. He had been committed to the hospital for a paralysis of the right side of the body as a result of a craniocerebral trauma caused by an attack, followed by loss of consciousness. The computerised tomography (CT scan) examination did not show any sign of haemorrhagic cerebral lesions, only a right hypo-dense frontal zone as a result of the cavernoma surgery. Consequently, he was recommended to follow the prescribed treatment, which would be re-evaluated after three months.

21. On 20 May 2004 the Craiova Institute of Forensic Medicine, sitting in a composition of one specialist forensic doctor, in particular C.T., issued a forensic report at the applicant's request. The forensic report was dated 7 April 2004 and recorded the following:

> "The subject submitted that he was hit on 7 April 2004.

Findings

- Does not show external signs of traumatic lesions. States that he is experiencing headaches and dizziness. Paralysis on the right side. Repetitive contraction of the third, fourth and fifth fingers of the right hand.

- Submitted discharge papers from Vlad Voiculescu Hospital, which show that he was hospitalised there between 8 and 9 April 2004 with diagnoses of "minor cerebral contusion. Operated on for a frontal right-sided cavernoma". The conclusion of the patient's medical observation sheet states that "the 23-year-old patient was operated on at the clinic in March 2002 for a frontal right-sided cavernoma. He was readmmitted to the clinic for a right-sided walking difficulty resulting from a cranio-cerebral trauma caused by an attack and followed by loss of consciousness. Objectively neurological – show right-sided paralysis. CT scan – negative with no cerebral bleeding, only a hyper-dense right-sided frontal zone following the cavernoma surgery. Under treatment, with almost full recovery of the right-sided paralysis."

- The neurological examinations of 15 and 16 April and 18 May 2004 diagnosed the applicant with right-sided paralysis. Status post minor cerebral contusion. Operated right sided frontal cavernoma.

Conclusion

As stated by the medical papers the subject showed traumatic lesions which could have been caused on 7 April 2004 by being hit on or with an instrument with a rough surface, as well as pathological history (operated cavernoma in 2002).

He needs fifty to fifty-five days of medical care from the date the lesions were caused."

3. The first set of criminal investigation proceedings

22. On 29 April 2004, the applicant's father lodged a complaint against G.B. for ill-treatment inflicted upon the applicant on 7 April 2004, citing crimes of bodily harm and abusive behaviour. The complaint, lodged on behalf of the applicant, was addressed to the Prosecutor's Office attached to the Craiova Court of Appeal.

23. On 20 May and 3 June 2004 the Prosecutor's Office attached to the Craiova Court of Appeal took a statement from G.B. about the incident. He denied hitting the applicant.

24. On 20 May and 17 June 2004 the Prosecutor's Office attached to the Craiova Court of Appeal took two statements from each of the police officers who had knowledge of the incident the applicant was involved in, in particular M.C., M.L.P., S.S., N.V. and I.D. They all stated that G.B. did not hit the applicant and that the applicant started feeling unwell while he was being questioned about the traffic incident he had been involved in that afternoon. In addition, I.D. testified that G.B.'s office door was constantly open during the questioning and that he had heard the applicant and his

companions speaking loudly. N.V. stated that he had briefly entered G.B.s office and had seen the three young people talking to the officer. There were no other people in G.B.'s office, only a number of officers in the corridor. S.S. testified that he had been in the office when G.B. was trying to question the applicant and his friends. M.L.P. stated that he had also been present in the same office when G.B. was trying to question the applicant and his friends. M.C. testified that he had heard loud voices coming from the office where G.B. was questioning the three young men, because the door was open.

25. On 24 and 26 May and 1 and 16 June 2004 the Prosecutor's Office attached to the Craiova Court of Appeal took several statements from the applicant, T.C.S., G.M.S., I.C. and G.C. The applicant, T.C.S., and G.M.S. all stated that he was hit over the head twice by police officer G.B. and that he collapsed immediately. They also testified that G.B. apologised to the applicant for the incident prior to their departure for the hospital and that the apology was witnessed by other people as well. G.M.S. also testified that the applicant had informed D.A.D., the ambulance doctor who treated him, that he had been hit over the head by a police officer. At the same time, I.C. and G.C., friends of the applicant's family, confirmed that they had seen and heard G.B. apologising to the applicant.

26. On 25 May 2004 Balş Hospital, represented by its manager M.P and by doctor G.L.J., informed the Prosecutor's Office attached to the Craiova Court of Appeal that the applicant's diagnosis established by doctors G.L.J. and D.C.G. on 7 April 2004 was:

> "Spasmophilia, dystonia, pre-existing right-sided cavernoma which had been operated on in 2002. Affirmatively craniocerebral trauma (attack). No signs of violence."

27. On 26 May and 17 June 2004 the Prosecutor's Office attached to the Craiova Court of Appeal took statements from both G.L.J. and D.C.G. on each occasion. G.L.J. stated that the applicant was brought to the hospital by ambulance around 4.45 p.m. and he claimed that a police officer at Balş police station had hit his face. The applicant did not show any traces of violence on his face, but he became nervous when he saw a police officer, who, she later found out, was G.B. The applicant had a post-surgical scar on his head that was sensitive to touch, but the applicant informed the doctor that the sensitiveness of the surgical scar pre-dated the incident. She diagnosed the applicant with spasmophilia, dystonia, pre-existent right-sided cavernoma which was operated on in 2002, and affirmed that there had been recent craniocerebral trauma. Her professional opinion was that the applicant showed no traces of violence and the applicant's neurological symptoms could have been caused by the surgery. He was discharged approximately one hour after arrival, with a recommendation that he should go to the Craiova Neurological Hospital for further investigation, because, according to her, she could not determine if the

applicant's symptoms were caused by a recent attack on him or as a result of a pre-existent pathology. D.C.G. stated that doctor G.L.J. had called her at around 5 p.m. to examine the applicant and found him agitated because he had seen a police officer, who, she later found out, was G.B. She was informed by the applicant that he had been hit on the head by a police officer. She examined the applicant, but could not find any signs of violence. She asked G.L.J. about her diagnosis of the applicant and confirmed that the applicant's post-surgical scar was sensitive to touch and that the applicant had stated that the sensitiveness pre-dated the incident. She did not think the applicant needed to be referred for a neurological examination. She stated that she had recorded in the hospital's consultation register that the applicant had reported that he had suffered a craniocerebral trauma as a result of an attack, and that she had not found traces of violence. Her professional opinion was that the applicant's symptoms could have been caused by his surgery or because of intense stress. She also stated that the applicant was discharged around 6 p.m.

28. On 17 June 2004 the Prosecutor's Office attached to the Craiova Court of Appeal heard M.C.C., a medical nurse who assisted doctors G.L.J. and D.C.G. in examining the applicant at Balş Hospital on the day of the incident. He confirmed the statements of the two doctors and stated that he did not notice any signs of violence on the applicant's body.

29. On 22 June 2004 the Prosecutor's Office attached to the Craiova Court of Appeal heard D.A.D. and A.L.O., the ambulance doctor and medical nurse who first treated the applicant at Balş police station and then transported him to the hospital, respectively. They stated that they had reached the police station around 4.12 p.m. and were informed by T.C.S. that the applicant had begun to feel unwell. T.C.S. also informed them that the applicant had not fallen and had not hit any hard or rough objects. The applicant did not claim that he had been hit by a police officer, either during his examination or while he was being transported to the hospital. No traces of violence were visible on the applicant's body. T.C.S. also informed them that the applicant had felt unwell before but not "like that". The applicant was treated for fifteen minutes at the police station and afterwards taken to hospital.

30. On 21 June 2004 the Prosecutor's Office attached to the Craiova Court of Appeal requested the Craiova Institute of Forensic Medicine to carry out a forensic report in respect of the applicant on the basis of the documents available in the file.

31. On 30 June 2004 R.Z., one of the forensic specialists at the Craiova Institute of Forensic Medicine, referred the applicant for a neurological examination in order to determine the applicant's medical condition and whether there was a connection between his condition and the attack which had taken place on 7 April 2004.

32. On 1 July 2004 the applicant was examined by C.N., a neurologist. C.N.'s diagnosis was:

> "Status post-operative cavernoma in 2002. Status post minor cerebral contusion. Right-sided paralysis."

33. On 2 August 2004 the Craiova Institute of Forensic Medicine, sitting in a panel of three specialist doctors, two forensic doctors, including R.Z. and M.S. and a neurologist, C.Z., produced the forensic report requested by the public prosecutor's office on 21 June 2004, taking into account the finding of the forensic report issued on 20 May 2004, the medical papers from the Vad Voiculescu Hospital in Bucharest, the neurological examination of 1 July 2004, and a neurosurgical examination carried out on 7 July 2004, which diagnosed the applicant's status as "post-operative frontal right-sided cavernoma and more than three-month-old craniocerebral trauma". It held that:

> "The subject affirmed that on 7 April 2004 he suffered a craniocerebral trauma as a result of an attack. On 8 April 2004 he was committed to the neurosurgery unit of Vlad Voiculescu Hospital where (according to the clinical file) he was diagnosed with a minor cerebral contusion and post-operative frontal right-sided cavernoma. A cerebral contusion is always post-traumatic. The absence of traumatic injuries (mentioned following the admission to Balş Emergency Hospital, in the copy of the clinical file from Vlad Voiculescu Hospital in Bucharest, and in the forensic report of 7 April 2004 issued on 20 May 2004) and the conflicting statements of the witnesses seriously call into question the existence of a craniocerebral trauma caused by an attack. At the neurology unit of the Vlad Voiculescu Hospital the applicant was discharged with a diagnosis of a minor cerebral contusion. If the patient or the accompanying person claims that the patient has suffered a craniocerebral trauma the doctor is under an obligation to record it in the clinical file. The doctors, relying on the applicant's claims, felt entitled to specify that there was a minor cerebral contusion because the CT scan examination results were normal. In the event of a minor cerebral contusion the individual loses consciousness for a short period of time (under one hour) and the clinical neurological signs are missing or are of a low intensity and the patient makes a full recovery...The persistence of the patient's difficulty in walking three months after a cerebral contusion rebuts the diagnosis of a minor contusion..."

34. The report of 2 August 2004 concluded that the applicant had not suffered any injuries on 7 April 2004, that no causal link could be established between the injuries allegedly sustained by the applicant and his subsequent condition, and that his paralysis had other causes, which it failed to mention.

35. On 5 August 2004 the Prosecutor's Office attached to the Craiova Court of Appeal decided not to prosecute G.B., on the basis of the available evidence. The prosecutor held that the forensic report produced on 2 August 2004 rebutted the findings of the neurological examination concerning the existence of a minor contusion. Moreover, police officers M.C., M.L.P., S.S., N.V. and I.D. had testified that G.B. had not hit the applicant. Furthermore, M.C.C., G.L.J, D.C.G, D.A.D. and A.L.O., all of

them doctors and nurses who had examined the applicant, testified that the applicant did not show any signs of violence and that he was treated only for spasmophilia. In addition, according to D.A.D.'s and A.L.O.'s statements, the young men did not inform them that the applicant had been hit by a police officer when they arrived at the scene and asked the applicant, as well as T.C.S. and G.M.S., what had happened. Furthermore, according to the statement of D.C.G., the applicant's condition could have also been caused by extreme stress and not as a result of violence. Lastly, the prosecutor held that the applicant's statements and those of T.C.S. and G.M.S. were subjective and were rebutted by the rest of the evidence available in the file.

36. The applicant appealed against the decision of 5 August 2004 before the head prosecutor of the Prosecutor's Office attached to the Craiova Court of Appeal.

37. On 30 August 2004 the head prosecutor of the Prosecutor's Office attached to the Craiova Court of Appeal dismissed the applicant's appeal against the decision of 5 August 2004. The head prosecutor held that the applicant's statements and those of the witnesses T.C.S., G.M.S., I.C. and G.C. were rebutted by the forensic evidence available to the file and by the statements of the other witnesses. Moreover, the absence of any craniocerebral trauma was confirmed by the testimony of the doctors and nurses who examined the applicant at Balş Hospital immediately after the incident. The applicant further contested the prosecutor's non-indictment decision before the Craiova Court of Appeal, requesting the reopening of the criminal investigation. He argued that the authorities failed to confront the witnesses brought in by the defence in order to clarify their contradictory statements and contested the prosecutor office's decision to rely on the forensic report of 2 August 2004 while earlier medical evidence suggested that the applicant had been hit by G.B.

4. The first set of court proceedings

38. By interlocutory judgments of 28 October, 18 November and 9 December 2004 the Craiova Court of Appeal adjourned the proceedings repeatedly at the parties' request in order to allow the parties to submit additional documents and on account of the applicant's lawyer's inability to attend the hearing of 9 December.

39. On 20 January 2005 the Craiova Court of Appeal dismissed the applicant's complaint against the order of 30 August 2004. The court based its decision on statements taken during the criminal investigation from police officers, doctors from the ambulance service, the doctors who had examined the applicant at Balş Hospital, and on the results of the forensic report of 2 August 2004. None of the witnesses was called to testify before the court.

40. On 24 January 2005 the applicant lodged an appeal on points of law (*recurs*) against the judgment of 20 January 2005, making another request for the reopening of the criminal investigation.

41. By an interlocutory judgment of 23 March 2005 the Court of Cassation adjourned the proceedings on account of the applicant's lawyer's inability to attend the hearing.

42. By a final judgment of 11 May 2005, the Court of Cassation allowed the applicant's appeal on points of law, quashed the judgment of the Craiova Court of Appeal, and ordered the reopening of the criminal investigation against G.B. for abusive behaviour. The court ordered that the investigation clarify the contradictions between the medical documents prepared in the case, underlining that all the medical documents produced after the incident mentioned that the applicant had suffered a craniocerebral trauma, while the forensic report of 2 August 2004 held that the applicant's condition had another cause, the details of which were not mentioned. In this respect, the court considered it necessary that the medical documents be reviewed by the Superior Review Panel of the Bucharest Forensic Institute (*Comisia Superioară de Avizare a Institutului de Medicină Legală Bucureşti*). In addition, the court ordered the identification and taking of statements from all those involved in transporting the applicant to the hospital by ambulance, in order to clarify everything relating to his state of health, his injuries and any comments made by the applicant, in order to explain his condition. Moreover, the court considered that the investigation needed to clarify the applicant's statements that he had been admitted to Balş Hospital on 7 April 2004 with two different diagnoses of craniocerebral trauma caused by an attack and spasmophilia under two different entries, nos. 634 and 851 respectively, the truthfulness of the two records and the need to make them. Furthermore, the court referred to the necessity for the investigators to request the medical file drawn up by the ambulance doctors on 7 April 2004 in order to verify the authenticity of the information contained in it, in the light of the applicant's claim that the content of the said documents had been changed.

5. The second set of criminal investigation proceedings

43. On 17 June 2005 the Prosecutor's Office attached to the Craiova Court of Appeal requested the Superior Review Panel of the Bucharest Forensic Institute to review the contradictory medical documents available in the file.

44. On 23 September 2005 the Superior Review Panel informed the Prosecutor's Office that on 7 July 2005 it had reviewed the available forensic medical reports and the documents available in the file and had validated the forensic report of 2 August 2004. No other information was provided by the Review Panel in respect of its reasoning.

45. On 23 September 2005 the Prosecutor's Office attached to the Craiova Court of Appeal issued a second decision not to prosecute G.B. The Prosecutor's Office held that the criminal investigation against G.B. for abusive behaviour had already been opened by the prosecutor's order of 2 June 2004. Moreover, the individuals who had transported the applicant to Balş Hospital by ambulance had already been identified and their statements taken into account when the Prosecutor's Office issued the decision of 5 August 2004. In addition, the file contained copies of all the documents concerning the applicant's transport to the hospital and his admission. Furthermore, police officers M.C., M.L.P., S.S., N.V. and I.D. had testified that G.B. had not hit the applicant. Also, the witnesses M.C.C., G.L.J. D.C.G, D.A.D. and A.L.O., on-call staff members of the Emergency Unit of the Balş Hospital on 7 April 2004, testified that the applicant did not show any traces of violence and was suffering only from spasmophilia. Lastly, the Superior Review Panel of the Bucharest Forensic Institute reviewed the available forensic reports and validated the forensic report of 2 August 2004, which confirmed that the applicant had not suffered any injuries on 7 April 2004 and that his paralysis had other causes.

46. On 17 October 2005 the head prosecutor of the Prosecutor's Office attached to the Craiova Court of Appeal dismissed the applicant's complaint against the decision of 23 September 2005 not to prosecute, and upheld the said decision. The applicant contested this decision before the court, complaining that the investigating prosecutors had failed to follow the instructions of the Court of Cassation and that they had not clarified some of the contradictory statements made by the witnesses for the defence.

6. The second set of court proceedings

47. By interlocutory judgments of 9 December 2005, 12 January and 7 February 2006 the Craiova Court of Appeal adjourned the proceedings at the parties' request on account of their need either to instruct or to contact their legal representative.

48. On 28 February 2006 the Craiova Court of Appeal dismissed the applicant's complaint, on the ground that the forensic report of 2 August 2004, subsequently confirmed by the Superior Review Panel, held unequivocally that the applicant had not been assaulted or subjected to ill-treatment on 7 April 2004. The court also held that the statements given by the witnesses immediately after the incident, in particular the police officers present in G.B.'s office, as well as the doctors and nurses of the ambulance unit and those who had first examined the applicant at Balş Hospital, led to the same conclusion. Moreover, the statements of the witnesses were consistent with the findings of the medical reports, while the references to a recent craniocerebral trauma in the forensic report of 20 May 2004 and under the hospital entry no. 634 arose from the applicant's own statements, which the doctors were obliged to record in his

medical file, as confirmed by the forensic report of 2 August 2004 and also by the Superior Review Panel. In addition, the existence of two entries in respect of the applicant's diagnosis in the medical files was explained by the statements of D.C.G and G.L.J., the two doctors who had examined the applicant. G.L.J. diagnosed the applicant with spasmophilia, dystonia and pre-existent right-sided cavernoma, and also recorded, *inter alia,* the absence of any traces of violence on the applicant's body. Her colleague, D.C.G., joined her in examining the applicant. According to D.C.G.'s statement, she agreed with her colleague's diagnosis. She only recorded, *inter alia,* the applicant's statements about a craniocerebral trauma and the absence of signs of violence on the applicant's body.

49. On 2 March 2006 the applicant submitted an appeal on points of law (*recurs*) against the judgment of 28 February 2006, complaining again that the investigating prosecutors had not followed all the instructions of the Court of Cassation, in particular identification and taking of statements from all those involved in transporting the applicant to the hospital and examining him there in order to clarify all the aspects relating to his state of health and the possible comments made by the applicant, in order to explain his condition. In addition, the applicant complained that the Superior Review Panel, which had examined the two forensic reports prepared in his case, had not included a specialist in neurology.

50. By an interlocutory judgment of 3 May 2006 the Court of Cassation adjourned the proceedings to allow the applicant to retain the services of a legal representative.

51. By a final judgment of 14 June 2006 the Court of Cassation dismissed the applicant's appeal on points of law and upheld the judgment of 28 February 2006. The court held that during the course of the criminal investigation all relevant witnesses had been heard and all pertinent medical documents examined. The findings of the doctors who examined the applicant that day were consistent with the information recorded in the ambulance transport documents and the statements of the witnesses for the defence. Moreover, it cannot be excluded that the applicant could have been under the influence of strong emotions when he was taken to the police station to be questioned about the traffic incident. In addition, the existence of two entries in respect of the applicant's diagnosis in the medical files was explained by his examination by two doctors one after the other. Consequently, the first-instance court had assessed correctly that the issues raised by the Court of Cassation had been clarified as instructed by the said court. With regard to the applicant's complaint that the Superior Review Panel had not included a specialist in neurology, the court noted that the said panel had been established in accordance with the law.

52. There is no indication in the file as to whether any charges were brought against the applicant and his two companions for the acts of violence allegedly witnessed by police officer G.B.

II. RELEVANT DOMESTIC LAW

53. Excerpts from the relevant provisions of the Romanian Criminal Code with regard to ill-treatment can be found in *Iambor v. Romania*, no. 64536/01, § 130, 24 June 2008.

54. Article 181 of the Romanian Criminal Code on bodily harm provides, *inter alia,* that the harm caused to the physical integrity or the health of a person requiring up to sixty days of medical care is punishable by six months to five years' imprisonment. The criminal investigation is opened at the victim's request.

55. Article 250 of the Romanian Criminal Code on abusive behaviour provides that a public servant on duty who uses insulting language while physically harming a person may be punished by six months to five years' imprisonment.

56. Excerpts from the relevant provisions of the Romanian Civil Code with regard to actions for compensation on the basis of general tort law, namely Articles 998-99 of the Civil Code, can be found in *Toma v. Romania*, no. 42716/02, §§ 32, 24 February 2009.

57. Excerpts from the relevant provisions of the Romanian Code of Criminal Procedure with regard to the complaint against the prosecutor's decisions can be found in *Toma*, cited above*,* §§ 25-27.

58. Article 20 of Ordinance no. 1/2000 on the organisation of forensic institutes provides that the Superior Review Panel of the Bucharest Forensic Institute sits in the following permanent composition: the director and deputy director of the Bucharest Forensic Institute, the directors of the forensic institutes operating in medical university centres, the heads of the forensic departments of the accredited universities operating in the medical university centres, the head of the morphopathology department of the Bucharest Medical University, and four experienced forensic doctors. The Superior Review Panel may, depending on the task, also bring in professors and heads of departments specialising in other medical fields to clarify issues requested by the courts in respect of forensic reports.

59. Article 24 of Ordinance no. 1/2000 on the organisation of forensic institutes provides that the Superior Review Panel reviews, approves and provides opinions in respect of the findings of contradictory forensic and medical documents. If the findings of the forensic documents cannot be approved, the Superior Review Panel proposes the remaking of the documents submitted for approval and provides its own recommendations or conclusions.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

60. Relying on Articles 3 and 6 of the Convention, the applicant complained that he had been subjected to ill-treatment by police officer G.B. on 7 April 2004, at Balş police station, and that there had been no effective investigation or fair trial with regard to his complaint lodged in connection with the said incident before the domestic authorities.

61. The Court reiterates that since it is master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by an applicant or a government. By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by those appearing before it. A complaint is characterised by the matters alleged in it and not merely by the legal grounds or arguments relied on (see, *mutatis mutandis, Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, § 29; *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports* 1998-I, § 44; *Berktay v. Turkey*, no. 22493/93, § 167, 1 March 2001; and *Eugenia Lazăr v. Romania*, no. 32146/05, § 60, 16 February 2010).

62. Having regard to the facts of the present application, the Court considers that the case, communicated to the respondent Government under Article 3 of the Convention, must be examined exclusively under the substantive and procedural heads of the said Article.

The relevant provisions of the Article read as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

63. The Court notes that the application 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

(a) Submissions of the parties

(i) The applicant

64. The applicant submitted that, although he was not arrested after the traffic incident he was involved in on 7 April 2004, he was in the custody of the Balş police officers when G.B. hit him.

65. He also argued that the police officers failed to call the ambulance immediately after the applicant started feeling unwell. In addition, they left him outside the police station to suffer. Moreover, the early medical reports produced immediately after the incident, including the forensic report of 20 May 2004, showed that the applicant had suffered a recent craniocerebral trauma as a result of an attack and that he presented signs of violence. These contradicted the witness statements made by some of the medical personnel who had examined the applicant on the day of the events. Also, the forensic report of 2 August 2004 and the Superior Review Panel did not take into account the findings of the forensic report of 20 May 2004. Furthermore, the part of I.C.'s and G.C.'s statements concerning the apology presented by G.B. to the applicant after the incident was not rebutted, and no legal argument was presented as to why it was untrue. In addition, the public prosecutor's office had not followed all the instructions of the Court of Cassation of 11 May 2005, and had failed to clarify the facts. The procedure before the Superior Review Panel lacked transparency in the way the decision was taken, and no neurologist was a member of the said panel.

66. He also argued that the public prosecutor's office had waited for three months before it started taking evidence, hearing the parties and the witnesses. Although the medical evidence suggested that the applicant had been subjected to an attack, the prosecutor's office disregarded the evidence. The medical reports the public prosecutor relied on were short and unclear and did not contain the applicant's allegations. No photographs were taken of the injuries, and the opinion of the neurologist was disregarded by the investigators.

(ii) The Government

67. The Government contested the applicant's allegations, and argued that he was not arrested by the police at the time of the events and that an ambulance was called soon after he started feeling unwell. Moreover, they submitted that there was no evidence in the file to support the applicant's allegations and to show that he was hit by police officer G.B. Relying on the medical and witness evidence available in the file, they argued that the cause of the change in the applicant's state of health was not the alleged physical attack he had been subjected to by police officer G.B. but the

pre-existent pathology, taken in conjunction with a stressful situation. In addition, they underlined that in this case it was established without a doubt that the applicant did not present any signs of violence and that the medical documents contained only his allegations in respect of a craniocerebral trauma. Consequently, it was impossible to determine on the basis of the evidence adduced whether or not the applicant had suffered treatment at the hands of the authorities in breach of Article 3 of the Convention.

68. The Government also submitted that the domestic authorities had carried out an effective investigation. The public prosecutor's office heard the parties and all the relevant witnesses, including the witnesses brought by the applicant in support of his allegations. The prosecutor's office also ordered a forensic medical report and gathered all the relevant medical evidence from all the hospitals which examined the applicant. In addition, it submitted all the available medical evidence to the Superior Review Panel for examination. Moreover, the public prosecutor assessed the evidence in the file, decided that the witness evidence submitted by the applicant was biased because it was contradicted by the remaining evidence available to the file, and dismissed the applicant's complaint. Furthermore, at the second stage of the proceedings the public prosecutor's office clarified all the aspects raised by the Court of Cassation in its judgment of 11 May 2005.

(b) The Court's assessment

(i) Alleged ill-treatment by the police

69. The Court reiterates that Article 3 enshrines one of the fundamental values of 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 v. Bulgaria*, § 93, 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII; *Cobzaru v. Romania*, no. 482549/99, § 60, 26 July 2007; and *Stoica v. Romania*, no. 42722/02, § 59, 4 March 2008).

70. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed

treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła*, cited above, § 92).

71. In considering whether a particular form of treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it has adversely affected his or her personality in a manner incompatible with Article 3 (see *Raninen v. Finland*, judgment of 16 December 1997, *Reports* 1997-VIII, § 55). However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see *Peers*, cited above, § 74). The suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.

72. The Court considers that the diagnosis established by the doctors who examined the applicant after the incident (see paragraphs 13-20 above) indicates that the latter's condition, if caused by the police, was sufficiently serious to amount to ill-treatment within the scope of Article 3 (see, for example, *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VI, § 21; *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, §§ 13 and 39; and *Cobzaru*, cited above, § 63).

73. The Government did not dispute that the applicant had been under the control of State agents at the time of the incident or that the applicant's condition reached a level of severity sufficient to bring it within the scope of Article 3.

74. The Court reiterates its jurisprudence confirming the standard of proof "beyond reasonable doubt" in its assessment of evidence (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).

75. 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).

76. In the present case, the Court notes from the outset that the parties offered conflicting descriptions of the incident which occurred at Balş police station on 7 April 2004. On the one hand, the applicant claimed that he had been hit over the head by police officer G.B., which had triggered a rapid alteration of his state of health. On the other hand, the Government, while contesting that any violence was inflicted on the applicant, considered that his altered state of health was caused by the pre-existent pathology taken in conjunction with a stressful situation.

77. The Court notes that the applicant was transported by ambulance and admitted to hospital immediately after the incident. At Balş Hospital he was examined by three separate doctors and they all reported a recent craniocerebral trauma. The applicant lodged a criminal complaint against the police officer whom he accused of having beaten him. His statements were coherent and supported by some of the available medical and forensic reports as well as some witness statements. However, the evidence available in the file is conflicting; some of the medical and forensic reports and witnesses denied that any violence had occurred, while other medical evidence and witnesses showed that it had. The authorities concluded that the officer was not responsible for the applicant's condition and there had been no official admission of any act of violence against the applicant.

78. The Court observes that the evidence in the file indicates that the encounter between the applicant and the police officer who allegedly hit him was loud (see paragraph 24 above) and might have caused the applicant a certain degree of stress. In addition, it appears that the applicant's pre-existent pathology had caused him to feel unwell before (see paragraph 29 above).

79. Under these circumstances, it is impossible for the Court to establish, on the basis of the evidence before it, whether or not the applicant had suffered, at the hands of authorities, treatment contrary to Article 3 of the Convention as he alleged (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 100, *Reports of Judgments and Decisions* 1998-VIII; and *Dumitru Popescu v. Romania (no. 1)*, no. 49234/99, § 69, 26 April 2007).

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

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

(ii) Alleged ineffectiveness of the investigation

82. 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. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition

of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would 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 *Assenov and Others*, cited above, § 102).

83. Where allegations are made under Article 3 of the Convention the Court must apply a particularly thorough scrutiny, even if certain domestic proceedings and investigations have already taken place (see *Cobzaru*, cited above, § 65).

84. The Court notes that a substantial criminal investigation was carried out in the case by the domestic authorities. It remains to be assessed whether it was effective, as required by Article 3, taking into account that the available medical evidence was contradictory (see paragraph 77 above).

85. In this respect the Court observes that although three doctors examined the applicant after he arrived at Balş Hospital, and they all made records of a recent craniocerebral trauma, only two of them, namely G.L.J. and D.C.G., were called to testify before the domestic authorities. Moreover, neither the neurosurgeon who diagnosed the applicant with a minor cerebral contusion on 8 April 2004, following his admission to Vlad Voiculescu Hospital in Bucharest, nor the forensic specialist who produced the first forensic report in respect of the applicant on 20 May 2004 and who concluded that he showed traumatic lesions which could have been caused by aggression on 7 April 2004, were called to testify. All police officers who had been aware of the incident and had been present in the police station at the time were called to testify.

86. The Court is also concerned about the way the authorities dismissed the statements made by the witnesses brought by the applicant in support of his allegations. During the first set of proceedings the prosecutor dismissed those statements on the grounds that they were biased and rebutted by the rest of the available evidence. However, the Court cannot but notice that the prosecutor did not explain why the statements of the applicant's witnesses would be less credible than those of the police officers and how I.C.'s, and G.C.'s statements in respect of G.B.'s apology addressed to the applicant were rebutted by the available evidence. Moreover, the authorities failed to address the issue of the said statements during the second set of proceedings.

87. The Court also considers that the authorities did not carry out an in depth investigation of the content of the records made by the three doctors who examined the applicant at Balş Hospital on 7 April 2004. While in respect of G.L.J. and D.C.G. the authorities relied on their statements that they had recorded the recent craniocerebral trauma as a result of the applicant's statements, no explanation was sought or offered in respect of Doctor N.'s record, particularly that the said entry did not contain the word "affirmatively" or any other indication that it had arisen from the applicant's

statement. Moreover, the authorities also failed to provide any explanation in respect of the entry made by doctor D.C.G. in the Balş hospital's consultation register concerning the fact that the applicant showed signs of violence, although the said entry contradicted her statement that she had recorded the absence of signs of violence (see paragraph 48 above) as well as the information received by the authorities from Balş Hospital on 25 May 2004 (see paragraph 25, above).

88. Furthermore, the Court observes that although the applicant's father lodged the complaint against G.B. on 29 April 2004 the first forensic report in respect of the applicant's injuries was issued on 20 May 2004 at the applicant's request. In addition, it was only on 21 June 2004 that the authorities decided to ask the Craiova Institute of Forensic Medicine to produce a forensic report in the case. Given the importance of time in determining the existence of alleged signs of violence, the Court considers that the authorities' delayed reaction casts even more doubt as to how thoroughly and effectively they investigated the case.

89. Lastly, the Court notes that the authorities limited themselves to exonerating the police officer who allegedly hit the applicant, but failed to advance any conclusive cause for the change in his state of health following the encounter with the police, or to explain how strong emotions could have resulted in the condition experienced by the applicant. This is particularly serious bearing in mind that the applicant suffered severe physical consequences as a result of the incident.

90. In the light of the above and on the basis of all the material placed before it, the Court concludes that the State authorities failed to conduct a proper investigation into the applicant's allegations of ill-treatment (see also *Cobzaru*, cited above, § 75).

91. Accordingly, there has been a violation of Article 3 of the Convention under its procedural head.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The applicant claimed 5,620 euros (EUR) in respect of pecuniary damage, that is, money he had spent on travel and neurological examinations after the incident of 7 April 2004, as well as loss of the salary

he could have earned if he had been employed. He submitted invoices amounting to EUR 23 for costs incurred for neurological examinations after 7 April 2004. He also claimed EUR 10,000 in respect of non-pecuniary damage.

94. The Government requested the Court to dismiss the applicant's claims for just satisfaction. They considered that the applicant did not adduce any evidence to the file to support his claims for compensation for pecuniary damage, and there was no causal link between the alleged ill-treatment and the expenses allegedly incurred by him. Moreover, they argued that his claims in respect of non-pecuniary damage were not justified, and in any event they were excessive.

95. The Court notes that the applicant did not submit any documents substantiating his claim of loss of salary or for travel expenses; it therefore rejects this part of the applicant's claim in respect of pecuniary damage. He submitted, however, invoices totalling EUR 23 for neurological examinations; it therefore awards the applicant the said amount in respect of pecuniary damage, plus any tax that may be chargeable.

96. It also accepts that the applicant suffered some non-pecuniary damage as a result of the infringement of his rights guaranteed by Article 3 of the Convention. Making an assessment on an equitable basis, the Court awards the applicant EUR 6,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

97. The applicant also claimed EUR 204 for costs and expenses incurred before the domestic courts and for transportation. He sent an invoice of 193 Romanian lei (RON, approximately EUR 47) from 23 September 2009, representing judicial expenses incurred by the applicant which do not appear to be connected to the criminal proceedings that ended on 14 June 2006.

98. The Government contested the claim.

99. The Court notes that the judicial expenses incurred in the domestic courts appear to have no causal link with the violation found. Consequently, the Court rejects the claim made under this head.

C. Default interest

100. 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

1. *Declares* the application admissible unanimously;

2. *Holds* unanimously that there has been no violation of Article 3 of the Convention under its substantive limb;

3. *Holds* by five votes to two that there has been a violation of Article 3 of the Convention under its procedural limb;

4. *Holds* by five votes to two
   (a) that the respondent State is to pay the applicant, within three months of 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 national currency of the respondent State at the rate applicable on the date of settlement:
      (i) EUR 23 (twenty-three euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada	Josep Casadevall
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Myjer and López Guerra is annexed to this judgment.

J.C.M.
S.Q.

JOINT DISSENTING OPINION OF JUDGES MYJER AND LÓPEZ GUERRA

We voted against finding a procedural violation in this case.

We subscribe to the majority's view that the diagnosis established by the doctors who examined the applicant after the incident indicates that the latter's condition, if caused by the police, was sufficiently serious to amount to ill-treatment within the scope of Article 3 (see paragraph 72 of the judgment). We are also in agreement that, as was said, for instance, in the *Cobzaru v. Romania* judgment (no. 482549/99, § 65, 26 July 2007), "where allegations are made under Article 3 of the Convention the Court must apply a particularly thorough scrutiny, even if certain domestic proceedings and investigations have already taken place" (see paragraph 83 of the judgment). And we agree that a substantial criminal investigation was carried out in the case by the domestic authorities (see paragraph 84).

From the facts (see paragraphs 23-37) it is clear that the Romanian authorities took the allegations seriously and carried out an immediate and extensive investigation, hearing all kind of witnesses and ordering expert reports.

The majority still have doubts as to the effectiveness of the investigation and give examples of what should have been investigated as well.

At this point we would like to note that the same paragraph 65 of the *Cobzaru* judgment cited above starts as follows: "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)."

Looking at the way the investigation was carried out in this particular case, we strongly believe that this is one of the cases where the Court should not try to take on the role of a first-instance tribunal and indicate what the national authorities should have investigated as well, or dismiss as inadequate the inferences drawn by the national authorities from the direct examination of witnesses and other evidence.