

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

THIRD SECTION

CASE OF STOIAN v. ROMANIA

(Application no. 33038/04)

JUDGMENT

STRASBOURG

8 July 2014

FINAL

08/10/2014

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



In the case of Stoian v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 17 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 33038/04) 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 Vasile Stoian ("the applicant"), on 3 September 2004.

2. The applicant was represented by Ms I.A. Alic, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Mrs C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged that he had been subjected to ill-treatment in violation of Article 3 of the Convention and that the authorities had not carried out a prompt and effective investigation into that incident. Relying on Article 6 § 1 of the Convention, the applicant also complained that he had not had access to court because his criminal complaint against the reporters of the "Antena 1" television channel had been dismissed. The applicant alleged a breach of Article 8 of the Convention because police officers had invited television reporters to take images of him handcuffed, covered in blood and with his clothes torn which were later broadcast to a large audience without his consent.

4. On 6 November 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and lives in Bucharest.

A. The events of 19 September 1999

6. On 19 September 1999, at approximately 1 a.m., a police patrol from the Ilfov Police Inspectorate pulled the applicant over in his car and asked him to produce an identity card. He replied that he did not have his identity card with him but that his name was Vasile Stoian and he was a lawyer and a former police officer. The applicant was invited to get out of the car.

7. After a few minutes, he got back into his car and drove off abruptly. According to the police officers, their colleague, A.A., was hit by the applicant's car while he was trying to stop him.

8. The applicant alleged that he had left because the police officers had physically abused and insulted him.

9. The four police officers involved in the incident contested the applicant's account of events. They stated that because the applicant had smelled strongly of alcohol, they had asked him to accompany them to a forensic laboratory to determine his blood alcohol content. The applicant had refused, got into his car and left the scene.

10. The police officers got into their car immediately and began chasing him. They also asked the police station for reinforcements. After about five kilometres the police car collided with the applicant's car, forcing him to stop. The police officers immobilised and handcuffed the applicant.

11. As the applicant again refused to show an identity card, the police officers carried out a body search and a search of his car.

12. The applicant tried to escape, running towards the field to the left side of the road. Being handcuffed, he moved with difficulty. After about twenty metres, the police officers immobilised him again. The applicant claimed that he had been repeatedly kicked by the police officers.

13. One of the police officers had the idea to invite reporters from the "Antena 1" television channel to come to the scene in order to film the incident. Within thirty minutes a group of television reporters had arrived and started taking images of the applicant handcuffed and covered in blood.

14. The police officers continued their search, checking the contents of a bag found in the applicant's vehicle. Inside the bag they found the applicant's driving licence.

15. The applicant claimed that the police officers had carried out the search of his bag after breaking its lock despite the fact that he had expressed his intent to open the bag and give them his identity documents.

This allegation was confirmed by witness statements and the images filmed by the television reporters.

16. In the end the applicant was taken to the forensic laboratory, where his blood alcohol content was tested.

B. The medical certificate of 19 September 1999

17. The applicant underwent a medical examination at the National Forensic Institute. According to the medical certificate issued on 19 September 1999, he presented injuries that could have been caused by being hit with a hard object and would need twelve to fourteen days of medical treatment.

C. The police reports

1. The incident report

18. A few hours after the incident, the four police officers drafted an incident report, presenting their version of the events. The report was signed by V.L. and C.G., who allegedly eye-witnessed the incident.

19. The police officers also drafted a search report describing the items found in the applicant's bag and car. This report was signed by C.G. and B.F., who were allegedly present when the search was carried out.

2. The on-site investigation report

20. Other police officers arrived at the scene of the incident, carried out an investigation and drafted an on-site investigation report (*raport de constatare la fața locului*). According to their report, the Ilfov Police Inspectorate had asked for their intervention because their colleague, A.A., had been hit by a car driven by a person under the influence of alcohol. Their report was signed by V.L., who also signed the incident report. The report presented the same version of events as the incident report.

D. The witness statements

1. V.L.'s statements

21. V.L. produced a written statement immediately after the incident, confirming the police officers' version of events. In later statements made on 7 July 2000, 19 September 2002 and 15 January 2004, he changed his initial version of events, claiming that he had not been present at the scene of the incident. In this regard he admitted that on the night of 19 September 1999, he had been stopped by a police patrol and asked where he was going. After informing them that he was going to the nearby village,

the police officers asked him to come back later. He alleged that he had not gone back but that on the following morning, at about 11 a.m., two of the police officers he had met the previous night accompanied by three other police officers had visited him at home. They had dictated a statement to him and asked him to sign it. They also asked him to sign an incident report and a search report, both of which were blank.

22. On 16 August 2004 the prosecutor's office attached to the Bucharest Court of Appeal initiated a criminal investigation against him for false testimony. It noted that after he had signed the incident and on-site reports and produced a written statement which confirmed the version of events presented by the police officers, he had changed his position, stating that he had not been present at the scene of the incident.

23. On 25 January 2006 the criminal investigation was discontinued because other witnesses present at the scene of the incident stated that they had not seen V.L. on the night of 19 September 1999.

2. C.G's statements

24. On 21 February 2000, C.G. changed his initial statement, claiming that it had been dictated to him by police officers. According to his latest statement he was stopped by police officers only after most of the events had already occurred. He had seen the applicant's car in a ditch and three police officers approaching with the applicant from a nearby field. He had noticed that the applicant was handcuffed, had blood on his face and appeared to have an injury on his right temple. C.G. had heard the applicant telling the police officers his name and that he was a lawyer.

25. C.G. also stated that he had been present when the police officers invited reporters from the "Antena 1" channel to come and film the incident and that V.L had not been present at the scene of the events.

3. B.F.'s statements

26. B.F. had been in the same car as C.G. on the night of 19 September 1999.

27. On 22 June 2000 she stated that on the night of the events she had seen the applicant with blood on his face and obvious signs of violence. She also mentioned that she had heard the applicant asking the police officers not to force his bag open because he would open the bag and give them his identity card himself. In her statement of 20 October 2003 she mentioned that the whole of her initial statement, made immediately after the events, had been dictated to her by the police officers.

4. E.I.'s statement

28. In a statement made on 30 May 2000, E.I. contended that on the night of 19 September 1999 he had seen a police car following a white car.

He had also seen the police car forcing the other car to stop and enter a ditch. He had left his car and gone closer to see what had happened. He claimed that he had seen the applicant on the ground and the police officers kicking him. He also claimed that he had heard the applicant crying out in pain and asking them not to kill him because he had children at home. All the police officers had been hitting and insulting him. Afraid to be caught watching the scene by the police officers, he had left, taking the opposite direction in order to avoid a possible meeting with the police car.

29. The following day, he had seen the footage taken by the "Antena 1" reporters and decided to make a statement before the prosecutor.

30. According to the chief prosecutor's decision of 24 September 2004, on 30 June 2004 E.I. changed his initial statement, admitting that he had not been present at the scene of the events of 19 September 1999 but had been trying to help the applicant.

E. Television broadcast

31. On 20 September 1999 the television channel "Antena 1" broadcast its weekly programme, "the Mobile Squad" (*Brigada mobilă*). Most of it concerned the applicant's case.

32. The filmed images were broadcast to a large audience and the applicant was recognised by a large number of people, notably because of his profession as a lawyer. The footage was broadcast again on 23 September 1999 by the same television channel.

F. The criminal proceedings against the applicant

33. On 20 September 1999 a criminal investigation was initiated against the applicant for driving a vehicle under the influence of alcohol, causing bodily harm and using insulting behaviour.

34. On 2 August 2000 the prosecutor's office attached to the Bucharest County Court discontinued the criminal investigation.

It held that the offence of driving under the influence of alcohol had not been factually substantiated because according to a forensic report drafted on 19 September 1999, the applicant's blood alcohol content had been 0.6 %. In connection with the body injury of police officer A.A., it noted that no medical certificate had been included in the file and held that the applicant had had no intent to harm him. In respect of the alleged insulting behavior, it held that no offence had been made out. It also noted that the applicant had got into his car and left the scene because he had been insulted and hit by the police officers.

35. The prosecutor's decision stated that the police officers "had beaten the applicant, forced his bag, containing personal valuable items, open and invited the television channel "Antena 1" to report on the incident". It

concluded that the applicant had not committed any offence and that the police officers had breached their duties. It indicated that its findings were supported by the witness statements. It concluded by noting that the four police officers had behaved abusively towards the applicant and in order to cover up their actions they had fabricated false evidence. It appears that this decision remained final, as its findings were not challenged

G. The criminal proceedings against the police officers

1. The applicant's complaint

36. On 20 September 1999 the applicant lodged a criminal complaint against the four police officers involved in the incident for theft and bodily injury. He claimed that they had beaten him and stolen 1,600 United States dollars from his bag. He also claimed that he had been handcuffed and unlawfully kept in the police car for about two hours. He added that the police officers had carried out unlawful searches of his car and bag. On 12 November 1999 the applicant added to his initial criminal complaint a new complaint for insult and slander against two of the police officers. The applicant alleged that they had made insulting comments about him while the television reporters were filming him. He based his complaint on Articles 205 and 206 of the Criminal Code in force at that time.

37. On 19 February 2001 a criminal investigation was initiated against the four police officers from Ilfov Police Inspectorate for abuse of authority, forgery of official documents, use of forged documents and instigation to false testimony. The military prosecutor held that on the night of 19 September 1999, while on duty, the police officers had subjected the applicant to ill-treatment, causing him injuries which needed between twelve and fourteen days of medical treatment. He also held that the police officers had tried to cover up their criminal activity by drafting reports which did not reflect what had actually happened and had forced the witnesses to make false statements.

38. On 29 March 2003 the military prosecutor discontinued his investigation in connection with the alleged theft. For the rest of the offences imputed to the police officers, he relinquished jurisdiction in favour of the prosecutor's office attached to the Bucharest Court of Appeal.

39. On 12 November 2003 the applicant asked for the criminal investigation against the police officers to take other offences into account. He claimed that they had destroyed his bag, mobile phone, and watch bracelet. He again claimed that his honour and reputation had been damaged by the remarks made by the police officers in front of the television camera.

40. The applicant also asked the prosecutor to start an investigation against the police officers who had drafted the on-site report, claiming that

they had forced V.L. to sign their report despite the fact that he had not witnessed the events.

2. The prosecutor's decision of 19 August 2004

41. On 19 August 2004 the prosecutor's office attached to the Bucharest Court of Appeal decided to discontinue the investigation on the ground that there was no evidence that the police officers had subjected the applicant to ill-treatment. Furthermore, he stated that the applicant's injuries had been self-inflicted and that he had destroyed the bracelet of his watch and his mobile phone himself. The applicant's complaint for insult and slander was dismissed on the ground that it had not been lodged within the legal time-limit of two months provided by Article 284 of the Code of Criminal Procedure ("the CCP"). In respect of the insulting remarks addressed to the applicant by the police officers, the prosecutor held that they had been justified by the applicant's attitude.

42. He also pointed out that the body search and the search of the applicant's bag had been necessary in order to establish his identity. As regards the on-site report, the prosecutor admitted that it had been forged but noted that it could not be established who had signed the report as the police officers denied that they had signed it. Therefore, in order to ensure the identification of the persons who had forged the report, he decided to sever those proceedings and concluded that the offences of forgery and use of forged documents had not been made out. He also held that V.L. had changed his initial statement under the influence of the applicant. His presence at the scene of the incident on the night of 19 September 1999 had been confirmed by all the police officers.

43. The prosecutor decided to sever the proceedings initiated by the applicant against the television reporters and to relinquish jurisdiction in favour of the prosecutor's office attached to the Bucharest County Court.

44. On 24 September 2004 the chief prosecutor dismissed an appeal lodged by the applicant and confirmed the prosecutor's decision.

3. The criminal proceedings before the domestic courts

45. The applicant lodged a complaint with the Bucharest Court of Appeal on the basis of Article 278^1 of the CCP. On 31 May 2006 the first-instance court dismissed the complaint, holding that the applicant's injuries had not been caused by the police officers but had been self-inflicted when he was trying to take off the handcuffs. It based its findings on the initial statements given by witnesses C.G. and B.D. It also held that he had been handcuffed and made to sit in the police car because of his own behaviour.

46. The applicant appealed, claiming that the first-instance court had simply reiterated the prosecutor's decision without providing its own reasons.

47. On 22 January 2008 the High Court of Cassation and Justice dismissed the applicant's appeal, upholding the judgment of the first-instance court.

H. The applicant's criminal complaint against "Antena 1"

48. On 7 October 1999 the applicant lodged a criminal complaint against the reporters and the owners of the "Antena 1" television channel. He claimed a violation of Article 2 of Law 48/1992 ("the Audio-visual Act"). He claimed that the police officers had invited the reporters to film him handcuffed, with his face covered in blood and his clothes torn and dirty. The images had been broadcast without his consent on the following day at peak viewing time and again on 23 September 1999. He also claimed that the images had been accompanied by insulting comments presenting him as an offender despite the fact that he had not committed an offence, as proved by the discontinuance of the criminal proceedings against him. He joined a civil claim to the criminal complaint.

49. On 22 January 2001 the prosecutor decided not to open a criminal investigation.

50. On 4 February 2002 the prosecutor's office attached to the Bucharest Court of Appeal upheld the decision not to initiate a criminal investigation.

51. The applicant's appeal against the prosecutor's decision was dismissed by the Bucharest District Court on 13 February 2004 on the ground that the investigating authorities had not obtained the authorisation of the Telecommunications Ministry and the Audio-visual Council. It held that such authorisation was mandatory for the initiation of a criminal investigation against a television channel under the Audio-visual Act.

II. RELEVANT DOMESTIC LAW

52. The conditions regarding the use of handcuffs by police officers are provided for by the Police (Organisation and Functions) Act 2002. The relevant articles read as follows:

Article 34

"(1) In order to deter, prevent and neutralise aggressive behaviour by people who disturb public order which cannot be brought to an end by other means, police officers can use protective shields, helmets, rubber truncheons (...) rubber bullet guns and handcuffs, dogs and other means of restraint which do not endanger life or cause serious bodily harm.

(2) The means referred to in the above paragraph may be used against people who:

a) behave in such a way as to threaten the physical integrity, health or property of others;

b) (...) try to enter, enter or refuse to leave the premises of public authorities, political parties, institutions and public or private organisations, jeopardise in any way their integrity or security or prevent them from carrying out their normal activity;

c) Insult or attack those who are exercising public functions;

d) Offer resistance or fail to comply, in any way, with the orders of a police officer, but only if there is a legitimate fear that by their actions they could jeopardise the physical integrity or the life of that police officer.

(3) The use of the means described under the first paragraph must not exceed the level necessary to prevent or neutralise the aggressive behaviour."

53. The relevant provisions of Articles 998 and 999 of the former Civil Code, applicable at the time of the facts of the present case, as well as the relevant provisions of Decree No. 31/1954 concerning remedies for persons claiming damage to their dignity or reputation ("Decree No. 31/1954") are set out in *Căşuneanu v. Romania* (no. 22018/10, §§ 35-37, 16 April 2013).

54. At the relevant time, the decision of the National Audio-visual Council ("the CNA") no. 80/2002 concerning the protection of human dignity and the right to the protection of public image, published on 21 August 2002 in the Official Gazette (Decision no. 80/2002), provided in its Article 4 that the recording of the image of a person could not be broadcast without the latter's consent except for situations in which the journalist's action had responded to a justified public interest or the recording had been incidental and made in a public place. The provisions of this decision were amended by decision no. 248/2004 of the CNA, published in the Official Gazette of 26 July 2004. Article 5 of that decision prohibited the broadcasting of images of persons under investigation or detention without their consent, except for cases where the recording was incidental and made in a public place.

55. The provisions of Articles 19 and 20 of the Criminal Code of Procedure regarding the joining of a civil action to criminal proceedings are set out in *Forum Maritime S.A. v. Romania*, nos. 63610/00 and 38692/05, §§ 64 and 65, 4 October 2007.

56. The relevant provisions of the Audio-visual Act in force at that time reads as follows:

Article 2

"(1) The freedom of audio-visual expression shall not infringe [a person's right to the protection of his] dignity, honour, private life or public image."

Article 38

"(1) The following acts are considered offences and punished by imprisonment from six months to two years or by fines between 200,000 lei to 800,000 lei:

a) the broadcasting of programmes without authorisation or while the license is suspended;

b) the emission on another frequency than that mentioned in the authorization decision (...)"

Article 39

"(1) The scheduling and broadcasting of programmes which infringe Article 2 § 1 is considered an offence punishable by imprisonment from six months to five years."

Article 40

"(1) If the National Audio-visual Council or the Ministry of Communications notes that any of the acts prohibited under Articles 38 and 39 have been committed it shall inform the criminal investigation bodies and suspend broadcasting authorisation until a final decision is taken."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

57. The applicant complained of police brutality and of the ineffectiveness of the investigation into his allegations of ill-treatment. He contended that the injuries inflicted on him had been caused by police officers without any justification. He further claimed that the criminal proceedings instituted by him against the police officers had lasted more than nine years. He relied on 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

58. 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. Alleged ill-treatment of the applicant by the police

(a) The parties' submissions

59. The applicant maintained his previous submissions.

60. The Government submitted that the applicant had failed to prove that he had been subjected to ill-treatment by the police officers. They further contended that the handcuffing of the applicant to immobilise him had been justified by a public interest, namely to reveal his identity and to determine the alcohol content in his blood. Furthermore, this measure had been necessary in order to prevent the applicant from fleeing and to calm his recalcitrant behaviour towards the police officers, and the force applied had not gone beyond what was absolutely necessary. They also pointed out that the domestic courts had concluded that the applicant's injuries were of a nature inherent to those which are sustained when a person forcibly resists immobilisation, and that the use of force against the applicant had been in accordance with the applicable legal provisions.

(b) The Court's assessment

61. 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 organised crime, the Convention prohibits, in absolute terms, torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII).

62. Allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt", but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

63. In the present case, the Court is faced with two conflicting versions of the facts. Although the applicant maintained that he had been ill-treated while under police control, without any justification, in their observations the Government stated that the police officers had used force to calm down the applicant, who had been behaving inappropriately towards the police officers, and that the force used by them had not gone beyond what was absolutely necessary.

64. The applicant submitted a medical certificate issued on 19 September 1999, according to which he needed between twelve and fourteen days of medical treatment (see paragraph 17 above).

65. The Court considers that given the nature and severity of the injuries suffered by the applicant and the circumstances in which they were sustained, an arguable claim has been raised under the substantive limb of Article 3.

66. In this respect, the Court reiterates that where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment (see *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004). It is incumbent on the State to provide a plausible explanation of how the injuries were caused, failing which a clear issue arises under Article 3 of the Convention (*Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

67. The Government contended that the applicant's injuries were of a nature inherent to those which are sustained when a person forcibly resists immobilisation, and referred mainly to the handcuffing of the applicant. However, the Court notes that the applicant did not only complain of ill-treatment in connection with his handcuffing but contended that the police officers had repeatedly kicked him.

68. Therefore, even if the Court accepts that in the concrete circumstances the officers may have needed to take measures to calm the applicant down, the question is whether the use of force was in compliance with the requirements of Article 3 of the Convention.

69. The Court considers that the injuries suffered by the applicant are inconsistent with the explanation furnished by the authorities, according to which the injuries were caused by the applicant himself in his efforts to resist immobilisation. However, while the Court is prepared to admit that the applicant's conduct might have necessitated the use of physical force to restrain him, it cannot overlook the fact that there are no sufficiently convincing elements in the file to justify such a strong use of force as to necessitate twelve to fourteen days of medical care. Nothing in the official description of the events indicates that he had offered such resistance to being apprehended as to justify such a severe response.

70. Moreover, the Court observes that the applicant's ill-treatment by the police was explicitly acknowledged by the prosecutor's office attached to the Bucharest County Court in its decision of 2 August 2000 (see paragraphs 34 and 35 above). The Court does not see any reason to depart from those findings.

71. The Court therefore concludes that there has been a violation of Article 3 under its substantive limb.

2. Alleged failure to carry out an effective investigation

(a) The parties'submissions

72. The applicant maintained his previous submissions.

73. As regards the procedural limb of Article 3 of the Convention, the Government submitted that the domestic judicial authorities had conducted an effective investigation. In this respect they pointed out that the prosecutor had questioned all those involved in the incident and had examined all the evidence adduced in the case. Moreover, no periods of inactivity on the part of the authorities could be discerned from the file.

(b) The Court's assessment

74. The Court reiterates that where an individual raises an arguable claim that he has been ill-treated by agents of the State 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 investigation (see, among others, *Assenov*, cited above, § 102).

75. An obligation to investigate is an obligation of means; not every investigation should necessarily come to a conclusion which coincides with the claimant's account of events. However, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

76. Any investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov*, cited above, § 103 et seq.).

77. The Court notes that despite the fact that the applicant lodged a criminal complaint against the police officers immediately after the incidents, it was only in February 2001, one year and a half later, that the prosecutor's office initiated criminal proceedings (see paragraph 37 above).

78. The prosecuting authorities carried out a preliminary investigation which did not result in criminal proceedings being brought against the perpetrators. The applicant's complaints against the refusal of the prosecutors to institute criminal proceedings were also examined by the domestic courts at two levels of jurisdiction. They confirmed the prosecutor's decisions, which found that the measures taken against the applicant had been lawful.

79. In the Court's opinion, the issue is consequently not so much whether there was an investigation, since the parties did not dispute that there had been one, but whether it was conducted diligently and whether the authorities were determined to identify and take adequate action against –

and if necessary prosecute – those responsible and, accordingly, whether the investigation was "effective".

80. The investigation into the applicant's complaint gives rise to serious concerns. In a case which, in the Court's opinion, is not of particular complexity, the investigation lasted for almost eight and a half years. The prosecutor's office was very slow in initiating the proceedings and dismissed the applicant's complaint on grounds which appear to have been based on a superficial investigation.

81. From an analysis of the prosecutors' decisions and judgments the Court observes a selective and somewhat inconsistent approach to the assessment of evidence by the investigating authorities. It is apparent from the decisions submitted to the Court that the judicial authorities based their conclusions mainly on the two reports drafted by the police officers after the incident and the statements made by the police officers. They accepted the version of events presented by the police officers without trying to explain why all eye-witnesses had changed their initial statements on the ground that they had been dictated by the police officers.

82. Thus, the Court notes that V.L. stated that despite the fact that he had not been present at the scene of the incident of 19 September 1999, he had been forced to sign the reports drafted by the police officers on the next day (see paragraph 21 above). The criminal proceedings initiated against him for false testimony because of the contradiction between the statements given by him before the investigative authorities were discontinued on the ground that other eye-witnesses had stated that he had not been present at the scene (see paragraph 23 above). C.G., another eye-witness, changed his initial statements and contended that he had not witnessed all the events that took place on the night between 18 and 19 September but that he had arrived later and seen the applicant with his face covered in blood (see paragraph 24 above). B.F. also stated that her initial statement had been dictated to her by the police officers (see paragraph 27 above).

83. The Court also notes that although criminal proceedings were initiated against the applicant for driving a vehicle under the influence of alcohol, causing bodily harm and using insulting behavior towards the police officers, they were discontinued by a decision issued by the prosecutor's office attached to the Bucharest County Court on 2 August 2000 (see paragraph 34) which remained final, as it was not challenged. The prosecutor found, among other things, that the police officers had behaved in an abusive manner towards the applicant and in order to cover up their actions they had attempted to produce false evidence and had invited reporters from the television channel "Antena 1" to report on the incident. The military prosecutor in the criminal proceedings initiated by the applicant against the police officers arrived at similar conclusions (see paragraph 37).

84. Moreover, the prosecutor's office attached to the Bucharest Court of Appeal admitted that the on-site report had been forged but was not able to identify the police officers responsible for forgery (see paragraph 42 above).

85. Having regard to the above-mentioned failings on the part of the Romanian authorities, the Court finds that the investigation into the applicant's allegations of ill-treatment was not thorough, adequate or effective. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

86. The applicant complained that his access to court was denied, as his criminal complaint against the television channel which broadcast the images filmed on 19 September 1999 was dismissed on the ground that the investigating authorities had not obtained authorisation to bring proceedings from the relevant bodies in accordance with the Audio-visual Act (see paragraph 56 above).

He relied on Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Admissibility

87. The Government raised an objection of non-exhaustion of domestic remedies. They contended that after the dismissal of his criminal complaint against the owners and the reporters of the "Antena 1" channel the applicant could have brought a civil action for damages on the basis of Articles 998-999 of the Romanian Civil Code applicable at the material time or have lodged a claim on the basis of Article 54 of Decree No. 31/1954.

88. The applicant did not agree with the Government.

89. The Court reiterates that the object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address allegations that a Convention right has been violated and, where appropriate, to afford redress before those allegations are submitted to the Court (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, 28 April 2004, and *Kudla v. Poland* [GC] no. 30210/96, § 152, ECHR 2000-XI).

90. In the present case, the applicant's criminal complaint about the alleged infringement of his reputation and dignity by the owners and the reporters of the "Antena 1" channel was not considered on the merits because authorisation from the Telecommunications Ministry or the Audio-visual Council had not been obtained (see paragraph 51 above).

91. The main argument raised by the Government in their observations in respect of non-exhaustion of domestic remedies was that although the

domestic courts had dismissed the criminal complaint, the applicant had had the opportunity to file a separate civil action with the civil courts.

92. The Court reiterates that in other cases in which the domestic courts did not examine a civil complaint on grounds of the inadmissibility of the criminal complaint to which it was joined (see *Moldovan v. Romania (no. 2)*, nos. 41138/98 and 64320/01, §§ 119-22, ECHR 2005-VII (extracts), and *Forum Maritime S.A.,* cited above, § 91), it stressed the importance of the existence of other effective remedies for the civil claims. If such remedies existed, it did not find a violation of the right of access to court (see also *Assenov and Others v. Bulgaria*, 28 October 1998, § 112, *Reports of Judgments and Decisions* 1998-VIII, and *Ernst and Others v. Belgium*, no. 33400/96, §§ 53-55, 15 July 2003).

93. Under Article 20 of the CCP in force at the material time, an injured party who joined a civil action to criminal proceedings was entitled to lodge a separate new action with the civil courts if the criminal courts did not give any decision in respect of the civil claims (see *Borobar and Others v. Romania*, no. 5663/04, § 57, 29 January 2013).

94. With respect to the present case the Court notes that the applicant had the possibility of bringing a separate civil action for damages on the basis of Articles 998-999 of the Romanian Civil Code applicable at the material time or a claim on the basis of Article 54 of Decree No. 31/1954.

95. In the light of these circumstances and having regard to the subsidiary character of the Convention machinery, the Court considers that the applicant should have brought a separate new action before a civil court and that it is not for the Court to speculate on the outcome of such an action.

96. It follows that the complaint concerning the infringement of the applicant's right of access to court must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

97. The applicant further complained about the fact that on the night of 19 September 1999 the police officers had invited reporters from the "Antena 1" television channel to film him handcuffed, covered in blood and with his clothes torn. He also claimed that the footage taken on this occasion had been repeatedly broadcast without his consent. He relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Admissibility

98. The Government contended that the applicant had not exhausted domestic remedies. They contended that the applicant could have lodged a criminal complaint on the basis of Article 206 of the Criminal Code or a civil claim based on Articles 998-999 of the former Civil Code. They also argued that an action based on the provisions of Decree No. 31/1954 would have constituted an effective remedy.

99. The applicant did not agree with the Government and submitted that he had submitted criminal complaints in this connection against the reporters from the "Antena 1" channel.

100. The Court reiterates that the applicants are only obliged to exhaust domestic remedies which are available in theory and in practice at the relevant time and which they can directly institute themselves – that is to say, remedies that are accessible, capable of providing redress in respect of their complaints and offering reasonable prospects of success (see *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II and *Paksas v. Lithuania* [GC], no. 34932/04, § 75, ECHR 2011 (extracts)).

101. However, mere doubts on the part of the applicant regarding the effectiveness of a particular remedy will not absolve him or her from the obligation to try it (see *Epözdemir v. Turkey* (dec.), no. 57039/00, 31 January 2002; *Miloševič v. the the Netherlands* (dec.), no. 77631/01, 19 March 2002; *Pellegriti v. Italy* (dec.), no. 77363/01, 26 May 2005). On the contrary, it is in the applicant's interests to apply to the appropriate court to give it the opportunity to develop existing rights through its power of interpretation (*Ciupercescu v. Romania*, no. 35555/03, § 169, 15 June 2010).

102. In the instant case, the Court notes that the applicant's complaint under Article 8 concerns the police officers' invitation to the "Antena 1" channel reporters to film the applicant in a degrading situation, handcuffed and covered in blood and the fact that the resulting footage had been repeatedly broadcast without the applicant's consent.

103. The Court further observes that the applicant did not complain to any national authority (such as the courts, prosecutor's office) about the the police officers' invitation to the "Antena 1" channel reporters. Moreover, the applicant could not claim to be certain of the lack of any prospect of success of a criminal or civil complaint in this respect.

104. In the light of the above, the Court considers that the applicant has failed to exhaust the domestic remedies available to him. The Government's objection must therefore be allowed.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

105. Lastly, the applicant complained under Article 5 § 1 of the Convention that he was deprived of his liberty for about two hours in the police car.

106. The Court has examined this complaint as submitted by the applicant. However, having regard to all the material in its possession, and in so far as they fall within its jurisdiction, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this complaint must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. 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

108. The applicant claimed 1,600 euros (EUR) in respect of pecuniary damage and EUR 200,000 in respect of non-pecuniary damage. The amount of EUR 1,600 represents the money that was allegedly stolen from him by the police officers on the night of 19 October 1999.

109. The Government submitted that no clear causal link could be established between the pecuniary damage claimed and the alleged violation. As to the non-pecuniary damage, they contended that the mere acknowledgment of a violation of the Convention would represent in itself just satisfaction.

110. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

111. The applicant also claimed EUR 210 for the costs and expenses incurred before the domestic courts and before the Court. The amount represented translation costs and lawyer's fees.

112. The Government considered this sum to be reasonable.

113. 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. 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 sum of EUR 210 covering costs under all.

C. Default interest

114. 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. *Declares* the complaints under Article 3 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantial limb;

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

4. Holds
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 210 (two hundred and ten euros), plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 8 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President