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

FOURTH SECTION

DECISION

Application no. 48789/22
Remus TUDOR
against Romania

The European Court of Human Rights (Fourth Section), sitting on 3 September 2024 as a Committee composed of:

Branko Lubarda*, President*,
Anne Louise Bormann,
Sebastian Răduleţu*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 48789/22) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 7 October 2022 by a Romanian national, Mr Remus Tudor, who was born in 1966 and is detained in Giurgiu ("the applicant") and was represented by Mr M.A. Stoicescu, residing in Constanța;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application mainly concerns allegations of police brutality during a search of the applicant's home and lack of an effective investigation into those allegations.

2. On an unspecified date in 2019, C.M., a seventeen-year-old girl, filed a criminal complaint accusing the applicant of having repeatedly forced and blackmailed her into having sex with him earlier that year.

3. A criminal investigation against the applicant was started.

4. At that time, the applicant was on early release from prison where he was serving a life sentence for murder.

5. On 8 December 2019 C.M. told the investigators that the applicant had told her he had a gun. He was not registered as possessing a firearm.

6. On 17 January 2020 the Bucharest County Court authorised a search of the applicant's home, aimed at collecting the gun and electronic devices used for communicating with and about C.M.

7. On 21 January 2020 at 6 a.m. a team composed of four members of the police brigade investigating sexual aggressions and five officers of the police special intervention forces arrived at the applicant's home address. The police entered the property, a family house, talked with the owners, who lived in the house, then identified the applicant's flat situated in the semi-basement of the house. They searched his home and seized, for the purpose of the investigation, electronic equipment and documents. No gun was found in the flat and the applicant consistently denied that he possessed one. The applicant was taken to the police station, interrogated and placed under arrest.

8. On 21 January 2020 at 7.30 p.m. the applicant was admitted to the pre-trial detention centre. The medical report made at that time recorded bruises around his left eye and alleged intercostal pain on the right side of his chest. At 10.34 p.m. on the same day a CT scan performed at the Emergency Hospital did not reveal any cerebral lesions or other fractures. An ultrasound examination which took place on 23 January 2020 at the same hospital did not reveal any abdominal or costal traumatism.

9. On 19 February 2020 the prosecutor attached to the Bucharest District Court started an investigation regarding the conduct of the police officers during the search, prompted by the allegations of police brutality made by the applicant earlier before the pre-trial judge in the criminal proceedings that had started against him.

10. In June 2020 and September-October 2021 the investigators interviewed all the police officers who had participated in the search. Two police officers who had apprehended him on the spot, explained that while searching the yard and basement, they had noticed a person (later turned out to be the applicant) moving around in the flat. They announced their presence and asked him to come out, but he had refused to comply, charged towards them with the intention of fleeing, and resisted their attempts to handcuff him. They had caught the applicant by his arms and prevented him from flailing. Two other officers had joined and caught the applicant by his legs to subdue his resistance. Together they had immobilised the applicant on the ground and eventually had handcuffed him. All nine officers that had participated in the operation denied having hit the applicant or having seen any of their colleagues hit him and explained that bearing in mind the applicant's resistance, it was possible that he had injured his eye when he had been immobilised on the ground.

11. The owner of the building, interviewed at the applicant's request, confirmed that she had seen the applicant, handcuffed and accompanied by police officers. She also said that the applicant had tripped and fallen and had had hit his left temple on the concrete ground, while being taken out from his

flat, and opined that, although she had not seen anyone hitting him, he could have been pushed.

12. In his statements, the applicant said that a police officer had broken the door to his flat, grabbed him by the hand and asked him to identify himself. After he had given his name, the police officer had twisted his arms behind his back and handcuffed him. He had then been hit in the eye with a hard object and had fallen to the ground, where a police officer had kicked him in the stomach and asked him to surrender his gun. Then the brutality had stopped, but the police officers had continued to use insulting language towards him.

13. In the meantime, on 22 March 2021 the pre-trial judge of the Bucharest District Court allowed an objection lodged by the applicant concerning the length of the investigation and ordered the prosecutor to complete it within six months.

14. On 4 June 2021 the prosecutor's office attached to the Bucharest Court of Appeal (to which the investigation had been transferred on 18 December 2020) ordered a forensic examination of the medical documents in the file. On 13 September 2021 the forensic doctor concluded that the left eye injury had most probably been caused by being hit with a hard object, but it could also have been caused by a fall; he found it unlikely that the injury could have been the result of handcuffing. The doctor estimated that the injury had required three to five days' medical care, had not endangered the applicant's life and caused no severe or permanent disfigurement. No other injuries had been confirmed.

15. On 8 November 2021 the investigation was terminated. The prosecutor found that the police officers had used force only in order to prevent the applicant from fleeing and to handcuff him. Bearing in mind the applicant's non-compliance with the officers' instructions, as well as his criminal record (previous conviction for murder) and the allegation that he had a gun, their actions (paragraph 10 above) had been justified. The prosecutor noted that none of the witnesses had seen any violent behaviour towards the applicant. All police officers had denied having hit him and had had to subdue him of the ground because of his resistance (see paragraph 10 above). Moreover, the applicant had been seen falling and injuring his left temple, an action which, according to the forensic doctors, could explain the injury sustained to his left eye (see paragraphs 11 and 14 above). The owner's statement that the applicant could have been pushed (see paragraph 11 above) remained pure speculation which, moreover, was not supported by any evidence. Neither the witness evidence nor medical records supported the applicant's allegations that he had been kicked in the stomach (see paragraph 12 above). The prosecutor thus found no evidence in support of the alleged police brutality.

16. The decision was upheld, for similar reasons, on 27 December 2021 by the chief prosecutor from the same prosecutor's office and on 31 May

2022 by the preliminary chamber judge of the Bucharest District Court. The latter's decision was final.

17. Relying on Articles 3, 5, 6, 17 and 18 of the Convention, the applicant complained that he had been handcuffed and subjected to violence by police officers during the search of his flat and that the investigation into his complaint against them had been ineffective and had lasted too long.

18. He further complained, under Article 8 of the Convention, that the search had been conducted in disregard of the other occupants of the house and their belongings, and that some of his personal documents had been unlawfully seized during the search. Under Article 2 of Protocol No. 7, he complained that the law provided for no appeal against the final decision of 31 May 2022 (see paragraph 16 above).

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

19. Although the applicant relied on various Articles of the Convention (see paragraph 17 above), his complaint concerning the alleged police brutality and ineffectiveness of the ensuing investigation falls to be examined exclusively under Article 3 of the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018, and *Ciorcan and Others v. Romania*, nos. 29414/09 and 44841/09, §§ 128-29, 27 January 2015).

20. The relevant general principles have been summarised in *Bouyid v. Belgium* [GC], no. 23380/09, §§ 81-90 and 114-23, ECHR 2015.

21. The authorities did not deny that during the search the applicant had been restrained by force and had sustained a minor injury to his left eye (see paragraph 14 *in fine* and 15 above). It thus remains to be examined whether the recourse to physical force was made strictly necessary by his own conduct (ibid., §§ 88, 100-01).

22. At the outset, it is noted that the eye injury sustained by the applicant required three to five days' medical care and did not put his life in danger (see paragraphs 14 *in fine* and 15 above). Moreover, it was correctly recorded and promptly examined by doctors (see paragraph 8 above). The medical reports were subsequently assessed by forensic doctors and used as evidence in the investigation (see paragraphs 14-15 above).

23. The use of force was thoroughly examined by the domestic authorities and the Court has no reason to depart from their findings given the following considerations.

24. Firstly, the authorities started the investigation of their own motion, as soon as the applicant alleged, before the pre-trial judge, that he had been ill-treated (see paragraph 9 above, as well as *Bouyid*, cited above, § 119).

25. The investigators interviewed all those present, law enforcement officers and witnesses, as well as the applicant, and took into account his requests for evidence (see paragraph 10 above and *Bouyid*, cited above, § 119).

26. When assessing the manner in which the operation was organised and carried out, and ultimately the justification put forward for the use of force, the investigators took into account the applicant's situation and potential level of dangerousness, notably his previous conviction for murder and the information that he could be in possession of a gun (see paragraph 15 above). The fact that, finally, no weapon was found during the search (see paragraphs 2 and 7 above) does not invalidate the authorities' assessment of the situation.

27. Based on the evidence in the file, the prosecutor concluded that the use of handcuffs was necessary as the applicant had failed to comply with police orders (see paragraph 15 above). The evidence in the file (see paragraphs 8, 10 and 14 above), which was comprehensively examined by the prosecutor (see paragraph 15 above) did not support the applicant's allegations of gratuitous violence (see paragraph 12 above). It was established that the eye injury had been sustained either during the applicant's immobilisation on the ground which was justified by his own recalcitrant behaviour, or during a fall for which no direct responsibility could be attributed to the police officers. Furthermore, there was no evidence confirming chest injuries (see paragraphs 8, 12 and 15 above).

28. The applicant participated in the proceedings, he was able to put forward evidence (see paragraph 11 above) and to complain effectively when he considered that the investigation was protracted (see paragraph 13 above and *Bouyid*, cited above, §§ 121-22).

29. Regrettably, the investigators did not seem to have had at their disposal any internal records of the police on the use of force during the applicant's apprehension. While such omission could potentially affect the effectiveness of an investigation into allegations of police brutality (ibid., § 83), it was remedied in the present case by the extent of the evidence examined and the thoroughness of the investigation.

30. Consequently, it is established that the measure did not entail the use of force or public exposure exceeding what was reasonably considered necessary in the circumstances of the case (see *Raninen v. Finland*, 16 December 1997, § 56, *Reports of Judgments and Decisions* 1997-VIII).

31. Moreover, despite certain delays in the investigation, the overall duration of two years, three months and two weeks for those proceedings, from 19 February 2020 (see paragraph 9 above) to 31 May 2022 (see paragraph 16 above), cannot be regarded excessive.

32. Accordingly, it cannot be established beyond reasonable doubt that the force used to subdue the applicant during his arrest was unjustified and

that he was subject to any police brutality. Moreover, the ensuing investigation was thorough and effective for the purposes of Article 3.

33. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. OTHER COMPLAINTS

34. The applicant also raised other complaints under various Convention provisions (see paragraph 18 above).

35. The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

36. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 September 2024.

Simeon Petrovski Deputy Registrar	Branko Lubarda President