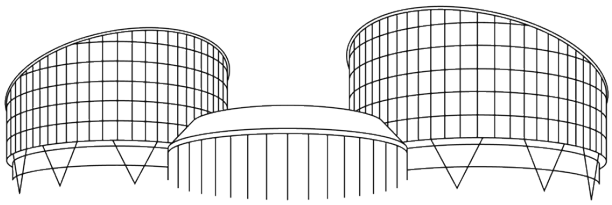

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MĂTĂSARU AND SAVIŢCHI v. MOLDOVA

(Application no. 38281/08)

JUDGMENT

STRASBOURG

2 November 2010

FINAL

02/02/2011

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

In the case of Mătăsaru and Saviţchi v. Moldova,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Mihai Poalelungi, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 12 October 2010,

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

PROCEDURE

1. The case originated in an application (no. 38281/08) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Moldovan nationals, Mr Anatol Mătăsaru and Mrs Djulieta Saviţchi ("the applicants"), on 28 July 2008.

2. The applicants were represented by Mr V. Gribincea from "Lawyers for Human Rights", a non-governmental organisation based in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicants alleged, in particular, that they had been illegally detained and that their right to freedom of assembly had been breached as a result. The first applicant alleged, in addition, that he had been ill-treated and that the authorities had failed to conduct an effective investigation into the matter.

4. The application was allocated to the Fourth Section of the Court. On 25 March 2009 the President of the Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were both born in 1970 and live in Chişinău. They are married to each other.

1. The first applicant's alleged ill-treatment and the investigation into his complaint of ill-treatment

6. The first applicant is the owner of an Internet café. On 22 October 2006 at around 6.10 p.m. he ejected a boy from the café because he had prevented another boy from using the Internet. The first applicant then went to another address and brought a plumber (C.) back in order to do some repair work at the café.

7. While he was away, two persons (C.A. and D.A.; C.A. was the Commander of the Special Forces police regiment "Scut") came to the café and asked L.C., the café manager who was on duty on that day, about the first applicant's whereabouts.

8. L.C. told them that the first applicant would return shortly and they went outside. L.C. then called the second applicant, the first applicant's wife, and told her that two men had been looking for the first applicant. She asked L.C. to ask one of the men to come to the telephone. When L.C. went outside to do so, he saw the first applicant on the ground, unconscious. One of the men who had been looking for him earlier was giving him emergency assistance. He informed the second applicant of what he had just seen and then called an ambulance and the police.

a. The first refusal to open a criminal investigation

9. On 25 October 2006 the first applicant lodged a complaint with the police, stating that when he had approached the Internet café he had seen two men and a boy near the entrance. The boy was the one whom he had ejected earlier from the café. One of the men asked the boy: "Is that him?". Having received an affirmative response, the man punched the first applicant in the face. When the first applicant tried to resist, the second man hit him on the back of his head with a hard object, following which he lost consciousness. When he regained consciousness, he was on the ground and one of the attackers was giving him emergency medical assistance. That man told the persons who had gathered around that the first applicant had had an epileptic fit.

10. The first applicant was taken to hospital and was prescribed in-patient treatment. On 25 October 2006 he was examined by a doctor, who noted that he had a hematoma around his right eye and on his nose (5x3 and

2.5x3 cm), and one on the back of his head measuring 0.3x0.2 cm. The specialist also noted a neurologist's diagnosis dated 23 October 2006, according to which the first applicant had suffered a head trauma. The specialist finally established that, given the location of the various injuries suffered by the first applicant, it was "unlikely that they could have been caused by a fall".

11. On 23 November 2006 the prosecutor's office decided not to initiate criminal proceedings against C.A. and D.A., "because the act was not prohibited by criminal law". The prosecutor found that C.A. had offered the first applicant medical help and had not attacked him.

b. The second refusal to open a criminal investigation

12. On 10 January 2007 the hierarchically superior prosecutor annulled that decision, finding it premature and taken in the absence of a thorough examination of the circumstances of the case. In particular, there had been no verification of whether the first applicant had had an epileptic fit and whether he had previously suffered from epilepsy. In addition, the statements of C.A. and D.A. were contradicted by the statement by L.C., according to which they had been looking for the first applicant before the alleged attack. Moreover, other witnesses identified by the first applicant, including C.I., had not been heard.

13. On 25 January 2007 the prosecutor inquired with the local medical authorities about the first applicant's alleged medical condition. On 29 January 2007 the local territorial medical association replied that it did not have the first applicant's medical file and that it could not confirm whether the first applicant suffered from epilepsy.

14. On 30 January 2007 L.C. was questioned again and repeated his earlier statement, reiterating that C.A. and D.A. had been looking for the first applicant before the attack.

15. On 15 February 2007 the prosecutor decided not to initiate criminal proceedings against C.A. and D.A. The decision was almost identical to that of 23 November 2006, although it contained a summary of the statement made by L.C.

c. The third refusal to open a criminal investigation

16. On 6 June 2007 the hierarchically superior prosecutor annulled that decision, finding it premature. The prosecutor in charge of the case was ordered to hear the second applicant and the ambulance doctor who had given the first applicant medical treatment.

17. On an unknown date the second applicant made a statement to the prosecutor and confirmed having received a call from L.C., informing her that two men had been looking for the first applicant.

18. On 10 September 2007 the prosecutor decided not to initiate criminal proceedings against C.A. and D.A. The decision was almost identical to the

two previous decisions, although it mentioned that the ambulance doctor had been interviewed and had confirmed that he had diagnosed the first applicant's condition on 22 October 2006. However, he had not filled in the first applicant's medical file and did not know who had done so.

d. The fourth refusal to open a criminal investigation

19. The first applicant complained about that decision to the hierarchically superior prosecutor. The latter rejected the complaint on 18 February 2008, finding it ill-founded.

20. The first applicant challenged that decision before the Centru District Court. On 15 April 2008 the investigating judge of the Centru District Court accepted the request and annulled the decisions of 10 September 2007 and 18 February 2008. The court found that the facts of the case had not been properly verified, as was obvious from the decisions themselves, which had failed to analyse the first applicant's statements and the medical report of 25 October 2006. Moreover, the prosecutor had not inquired as to whether the first applicant had had a history of epileptic attacks or had been seeing a psychiatrist, and whether the injuries suffered by the first applicant could have been the result of a fall.

21. On 30 May 2008 the prosecutor obtained a copy of the first applicant's medical file, which contained only data registered on or after 22 October 2006.

22. On 11 June 2008 the prosecutor decided not to initiate criminal proceedings against C.A. and D.A. The decision was almost identical to the three previous decisions, adding that the specialist who had filed the report of 25 October 2006 had stated that the injuries suffered by the first applicant could have been caused by a fall. In addition, the first applicant had refused to submit a medical certificate which attested that he had lost consciousness after a blow to the occipital area of his cranium.

e. Opening of the criminal investigation

23. On 9 July 2008 the first applicant challenged that decision in court. He referred to the fact that he had never suffered from epilepsy and that there was no statement by the medical expert in the file indicating that the injuries could have been caused by a fall. He also noted that C.A. was known for his violent behaviour, mentioning that on 10 May 2008 he had attacked the journalist Ghenadie Brega (see *Brega v. Moldova*, no. 52100/08, 20 April 2010).

24. The complaint was forwarded to the hierarchically superior prosecutor, who rejected it on 17 July 2008. The prosecutor found that the first applicant's allegations had not been confirmed by facts and that the statements of witnesses showed that he had not been hit by C.A. and D.A. but had been helped by them.

25. The first applicant challenged that decision in court. On 20 October 2008 the Centru District Court accepted the request and annulled the decisions of 11 June 2008 and 17 July 2008. The court found that not all the circumstances of the case had been fully examined. Moreover, the medical evidence and witness statements on which the prosecutor had relied could not be used as evidence since they had not been obtained as part of a proper criminal investigation. The case was sent back for examination by the prosecutor.

26. On 25 November 2008 the Centru district prosecutor's office initiated criminal proceedings on the basis of the first applicant's complaint of 25 October 2006. However, he did not receive a copy of that decision, and saw it for the first time among the documents attached to the Government's observations.

27. On 2 February 2009 the first applicant asked the Prosecutor General to assign the case to another prosecutor in view of the perceived bias of the prosecutor dealing with the case. On 3 February 2009 the Deputy Prosecutor General assigned the case to the Chişinău Prosecutor's Office. The reason for this re-assignment was that "several tendentious circumstances appeared within the framework of the relevant criminal proceedings which could cause the investigation to be excessively lengthy".

28. In late February 2009 both applicants were questioned, but were not shown the minutes of the interviews on the ground of protecting the confidentiality of the investigation.

29. On 29 June 2009, after communication of the present case to the respondent Government, the prosecutor formally named C.A. and D.A. as suspects in the case. The applicants found out about that decision from the Government's observations.

30. On 21 September 2009 the first applicant asked the prosecutor to inform him about the progress of the investigation. He was shown a recent medical report concerning the injuries caused to him in 2006, but he was refused permission to make a copy of that report for confidentiality reasons. The first applicant had not been informed before the second report had been ordered and he had therefore not been able to exercise any of his rights under Article 145 of the Code of Criminal Procedure ("the CCP", see paragraph 61 below).

31. On 28 September 2009 the charges against C.A. and D.A. were dropped. According to the applicants, they received a copy of the decision when they received the Government's observations of 30 December 2009.

32. On 23 October 2009 the Chişinău Prosecutor's Office transferred the case back to the Centru district prosecutor's office, which had territorial competence to investigate it.

33. On 6 November 2009 the Centru district prosecutor's office suspended the investigation because the identity of the perpetrator(s) had not been established. On 15 December 2009 the first applicant complained

to the Prosecutor General's Office about the suspension of the investigation. He also noted that he had not been informed about the suspension and had only found out about it on 8 December 2009 when he had called the prosecutor and then visited his office on 15 December 2009. The first applicant added that the charges against C.A. and D.A. had apparently been dropped but that he had not seen any decision in that respect. Moreover, on an unknown date and for unknown reasons the case had been re-assigned back to the Centru district prosecutor's office, again without his having been informed. In addition, no cross examination with the applicants' participation and that of C.A. and D.A. had ever been organised. No attempt had been made to find the boy who had been ejected from the internet café, despite L.C.'s witness statement confirming that the two persons whom he had seen with the first applicant had been accompanied by a boy. L.C. was never asked to identify C.A. and D.A. at an identity parade, even though he had given a complete description of the two persons who had been looking for the first applicant immediately before he was attacked.

34. On 15 January 2010 the first applicant was informed that the decision of 6 November 2009 had been quashed and the investigation had been reopened.

35. On 22 January 2010 the first applicant repeated his request, noting that he had received no response to his complaint concerning the dropping of charges against C.A. and D.A. or to that concerning the transfer of the case back to the Centru district prosecutor's office. On 2 March 2010 the Prosecutor General's Office informed him that no unlawful act had been apparent in the dropping of the charges or in transferring the case to the Centru district prosecutor's office.

36. The investigation is pending before the Centru district prosecutor's office.

2. The protest of 29 January 2008

37. On 29 January 2008 the applicants organised a protest march in the centre of Chişinău, which had been authorised by the Chişinău municipality. The aim of the protest was to draw public attention to the first applicant's ill-treatment and the prosecution's inertia in investigating the case. Only the applicants participated in the protest, holding banners with inscriptions such as: “Prosecutors, you should respect the law and human rights!”, “The Moldovan prosecutor's office protects police criminals!”, “NO to corruption in the Moldovan prosecutor's office!”, “NO to bandits in the law-enforcement agencies!” and “The prosecutor's office covers up the crimes of police officer [C.A.]!”.

38. The applicants protested in front of the Centru police station, then in front of the Prosecutor General's Office. The applicants were approached by plain-clothed officers, who were shown the authorisation for the march and who accompanied the applicants until they reached the Ministry of Internal

Affairs. The applicants stood across the road from the Ministry and protested by displaying banners and blowing a whistle. At 10.15 a.m. the plain-clothed officers asked the applicants to follow them to the police station because the applicants had insulted them.

39. The protest and the arrest were filmed by reporters. The video footage shows the applicants next to a building with no officer in the vicinity until the time of the arrest. The plain-clothed officers who arrested the applicants were asked by the applicants and the reporters about the reasons for the arrest. They answered that the applicants' identities needed to be verified and that they had "insulted the law-enforcement authority" through the messages on the banners. They did not specify which banner was considered insulting, other than to ask: "Bandits, is that not insulting?" It appears from the video materials that the applicants were not asked to provide identification documents.

40. According to the applicants, they were released immediately after a short period in detention in front of the police station on the morning of 29 January 2008. It appears from the video materials submitted by the parties that one plain-clothed officer explained that "[the applicants] were not arrested but only brought in for identification. The protest has been authorised, so they are free to continue it". They were subsequently rearrested in front of the Prosecutor General's Office at 10.15 a.m. and detained until 5 p.m.

41. On the same day the applicants were charged with having committed several administrative offences, provided for under Article 174 § 1 of the Code of Administrative Offences ("the CCA") (refusal to abide by the lawful orders of a police officer), Article 174/1 §§ 2-4 of the CCA (violation of the order on holding assemblies), Article 174/5 § 1 of the CCA (resisting a police officer), and Article 174/6 § 1 of the CCA (insulting a police officer). On the same day, a judge of the Centru District Court decided to postpone the hearing, ordering the applicants' release at 5 p.m.

42. On 21 April 2008 the Centru District Court dismissed all the charges against the applicants, except for the charge of insulting a police officer on account of the inscription "The prosecutor's office covers up the crimes of police officer [C.A.]!". The applicants were found guilty of having committed the administrative offence provided for under Article 174/6 § 1 of the CCA (see below).

43. The applicants appealed, arguing that the statement on the banner concerning the prosecution's failure to properly investigate their alleged ill-treatment by C.A. had been based on facts. The aim of the message had not been to disseminate insults but rather to provoke an effective investigation by the prosecutor's office. Moreover, the applicants had not seen C.A. on 29 January 2008. Therefore, even if the banner could be seen as insulting to C.A., it could not be said that they had intentionally insulted him while he was carrying out his duty to maintain public order.

44. On 7 August 2008 the Chişinău Court of Appeal quashed the decision of 21 April 2008, finding that the lower court had not analysed the applicants' arguments and had not fully determined the circumstances of the case. The case was sent for a retrial.

45. On 13 November 2008 the Centru District Court found the applicants guilty of the administrative offences provided for under Articles 174 § 1, 174/1 §§ 2-4, 174/5 § 1, and 174/6 § 1 of the CCA.

46. On 10 February 2009 the Chişinău Court of Appeal quashed the decision of 13 November 2008 and discontinued the proceedings against the applicants. The court found that the lower court had not indicated the evidence on which it had based its decision and that the arresting police officers who had witnessed the events were unsure whether the applicants had resisted or insulted them.

3. The protest of 18 December 2008

47. On 18 December 2008, national police day, the first applicant intended to protest in the centre of Chişinău against the prosecution's failure to properly investigate his ill-treatment by C.A. He had previously obtained the Chişinău mayor's permission to bring domestic animals to the protest.

48. On 18 December 2008 at 9.15 a.m. the first applicant parked his minibus in front of his garage. Inside were a mule, dressed in uniform and bearing the inscription "*miliţioner*" (officer of Soviet-time militia), and a pig, dressed in black and bearing the inscription "*porcuror*" (a play on the words "pig" and "prosecutor", roughly translated as "*pigsecutor*").

49. At 9.30 a.m. a car belonging to the Special Forces police regiment "Scut" with four men inside arrived at the garage. Ten minutes later a traffic police car arrived. Minutes later an operative group of the Ministry of Internal Affairs arrived, followed by the Centru sector deputy head of the police station, some plain-clothed police officers, a criminal investigator and a specialist. The media arrived at the garage shortly afterwards.

50. The Special Forces officers who had arrived first prevented the applicant from leaving the garage area with his minibus by blocking the exit with their own car and later took his car keys and papers, while the criminal investigator sealed off the area with yellow tape. The first applicant took his animals out of the minibus in order to go on foot to the protest area. At 10.30 a.m. his minibus was driven away by the traffic police, without answering the protests of the second applicant and questions put by the media.

51. At 11.30 a.m. the deputy head of the Centru police station ordered the applicant's arrest because he had urinated in a public place. The first applicant declared that he had not done so.

52. It is apparent from the video footage aired on several TV channels in Chişinău that the first applicant asked repeatedly for witnesses of the alleged act to be identified, and the second applicant asked to be shown the

place where the alleged wrongdoing had taken place. They received no reply. One journalist commented "After several hours during which more than 20 police officers present had been looking for a reason to make the protester show respect, they finally found a pretext for his arrest: that he had urinated in a public place".

53. On 18 December 2008 the first applicant was charged with having committed the administrative offences provided for under Article 164 § 1 of the CCA (hooliganism), Article 174 § 1 of the CCA (refusal to abide by the lawful orders of a police officer), Article 174/5 § 1 of the CCA (resisting a police officer), and Article 174/6 § 1 of the CCA (insulting a police officer). The report concerning the events of the day noted that on 18 December 2008 at approximately 11.10 a.m. the operative group of the Centru police station was on route in response to a call for assistance when it discovered the first applicant's minibus and two animals next to it, dressed in uniform and bearing the names "*miliţian*" and "*porcuror*". The operative group stopped to find out what was going on, but the first applicant "reacted negatively" to their presence and made direct comparisons between the animals and the police officers, thus insulting them. He then went behind the police car and openly urinated. Having been asked to stop, he refused and resisted the officers when they forced him into the police car and brought him to the police station.

54. On 22 December 2008 the Centru District Court found the first applicant guilty of having committed the administrative offences provided for under Articles 164 § 1, 174 § 1 and 174/5 § 1 of the CCA.

55. The first applicant appealed, noting the absence of any evidence that he had committed any wrongdoing. Moreover, the reports filed by the police officers mentioned that the first applicant had already been asked to follow them to the police station, before the alleged offence had taken place. It was therefore unclear what the reason for the limitation of his liberty before the alleged wrongdoing had been. Since he had not committed any act that warranted his being brought to the police station, the police officers' request to follow them had been unlawful. Therefore, his refusal to abide by that request, and his resistance to unlawful orders, could not be considered a violation of the law. The first applicant added that the hearing had never been officially opened and had taken place in the absence of witnesses and his lawyer. He had not been allowed to describe the circumstances of the case, since after about one minute of presenting the arguments he had been interrupted and the judge had declared that he was guilty of having committed three administrative offences and was fined 200 Moldovan lei (approximately 14 euros (EUR) at the time).

56. On 2 February 2009 the Chişinău Court of Appeal quashed the decision of 22 December 2008 and ordered a re-trial by the first-instance court. The court found that the lower court had not fully examined the circumstances of the case, had not heard witnesses and had examined the

case in the absence of the applicant's lawyer, failing to note that absence in the minutes of the hearing.

57. On 11 May 2009 the Centru District Court discontinued the administrative proceedings against the first applicant, finding that there was not sufficient evidence in the file to prove that he had committed any offence and that the police officers who had reported on the offence allegedly committed by the first applicant had refused to appear in court. The court added that the reports, which were the only evidence in the file, were insufficient to establish that an offence had been committed. The court found that "the actions of the police officers were not well-founded and lawful, [as] they did not have a ground on which to bring [the first applicant] by force to the police station."

58. On 24 July 2009 the Chişinău Court of Appeal dismissed the appeal lodged by the Centru Police Commissariat as out of time. That judgment was final.

II. RELEVANT DOMESTIC LAW AND PRACTICE

59. Law no. 26 of 22 February 2008, in force since 22 April 2008, provides that no authorisation is needed for holding a peaceful demonstration with less than fifty participants.

60. The relevant provisions of Law no. 1545 on compensation for damage caused by the illegal acts of the criminal investigation organs, prosecution and courts have been set out in *Sarban v. Moldova*, no. 3456/05, § 54, 4 October 2005.

61. The relevant part of Article 145 of the Code of Criminal Procedure reads as follows:

> "Article 145. Actions preceding an expert report
>
> (1) The investigating authority or the court, when ordering an expert report, shall summon the parties and the expert, if the latter has been assigned by the investigating authority or the court.
>
> (2) On the date set in the summons, the parties and the expert shall be informed of the object of examination and of the questions which the expert will have to answer, and it shall be explained [to the parties] that they have the right to make remarks concerning those questions or to ask for them to be amended or added to. At the same time, the parties shall be informed of their right to select an expert of their choice to participate in the expert report."

62. The applicants referred to reports by the Moldovan Centre for Human Rights (the Ombudsman's office) for 2007 and 2008, which had found that various provisions of administrative law had been frequently abused by the police by unlawfully detaining individuals. They also noted that members of the Hyde Park non-governmental organisation had been

arrested at least 11 times during 2006-2009, while the first applicant had been arrested six times during the same period.

63. The applicants submitted copies of five judgments adopted by the Supreme Court of Justice concerning unlawful administrative detention or prosecution. These judgments allegedly constituted that court's entire case-law on that issue during 2009. The awards made in those cases varied between the equivalent of EUR 62 and EUR 206.

64. The applicants referred to a number of court actions lodged under Law no. 1545, cited above, the examination of which had lasted for approximately two years or was still pending before the domestic courts. In many of these cases the courts postponed numerous hearings due to the failure of the defending State authorities' representatives to appear before the courts. Moreover, enforcement of final judgments against the State was a long-standing problem in Moldova, as established in numerous cases decided by the Court.

THE LAW

65. The first applicant complained of a violation of Article 3 of the Convention as a result of the insufficient investigation into his ill-treatment.

Article 3 reads as follows:

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

66. The applicants complained of a violation of Article 5 § 1 of the Convention as a result of their detention on 29 January 2008. The first applicant also complained, under the same Article, that his arrest on 18 December 2008 had been unlawful. The relevant part of Article 5 reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ..."

67. The applicants also complained of a violation of their right to peaceful assembly, contrary to Article 11 of the Convention, as a result of

the disruption of the protest of 29 January 2008. The first applicant also complained about the disruption of his protest of 18 December 2008.

Article 11 reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

68. The first applicant finally complained that, contrary to Article 13 of the Convention, he did not have an effective remedy in respect of his complaint under Article 3 of the Convention. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

I. ADMISSIBILITY

69. The Government conceded that there had been a violation of the applicants' rights guaranteed under Article 5 of the Convention as a result of their unlawful detention. Moreover, that violation was established by the domestic courts, which in itself offered partial satisfaction to the applicants. In order to obtain full compensation they needed to claim it under Law no. 1545 (see paragraph 60 above). However, they had failed to do so and thus they had not exhausted the available domestic remedies. Moreover, the applicants could have relied directly on Article 5 § 5 of the Convention in their submissions to the domestic courts, which could have awarded them compensation.

70. The applicants acknowledged that they could have claimed compensation for their unlawful detention under Law no. 1545. However, in practice that remedy was not effective. They noted that in *Scordino v. Italy (no. 1)* ([GC] no. 36813/97, § 195, ECHR 2006-V) the Court already established that excessive delays in an action for compensation would render the remedy inadequate. In the same judgment, the Court found that "in respect of a compensatory remedy designed to redress the consequences of excessively lengthy proceedings, that period should not generally exceed six months from the date on which the decision awarding compensation becomes enforceable" (§ 198 *in fine*). In the applicants' opinion, recent case-law of the Supreme Court of Justice proved that court actions lodged under

Law no. 1545 were examined for long periods of time and years could pass before the decisions adopted were enforced (see paragraph 64 above).

In addition, the awards made by the courts in 2009 were very small and did not offer sufficient just satisfaction for the violations established (see paragraph 63 above).

71. The Court notes that the existence and applicability of the remedy referred to by the Government was not in dispute between the parties, the applicants having challenged only the effectiveness of the remedy. In doing so, they relied on specific examples of recent case-law showing that the remedy was both slow in its effect and generally resulted in awards not capable of offering sufficient just satisfaction. The Government did not rely on any other case-law to counter these arguments, but only stated in a general manner that the applicants could not prove the alleged inefficiency of the remedy under examination without first attempting to use it. The Court considers that the awards made by the domestic courts in similar cases (see paragraph 63 above) were small in comparison to what the Court has awarded in its own judgments in respect of Moldova (see, for instance, *David v. Moldova*, no. 41578/05, § 47, 27 November 2007, and *Hyde Park and Others v. Moldova (no. 4)*, no. 18491/07, § 70, 7 April 2009).

72. At the same time, the Court notes that the applicants did not argue that their case was special in any manner, but rather argued generally that the domestic courts never made awards of a nature capable of offering sufficient just satisfaction in cases concerning illegal administrative detention. They therefore sought a finding that an entire class of cases should not be dealt with by the domestic courts but rather by the Court directly. The Court considers that it would need to be presented with clear evidence of systematic denial of sufficient just satisfaction to victims of Article 5 violations before accepting such an argument. It finds that the applicants did not submit sufficient evidence in this respect. It notes that in at least one case the Moldovan courts awarded an applicant a substantial amount of compensation, exceeding EUR 10,000 (see *Duca v. Moldova* (striking out), no. 1579/02, § 13, 10 June 2008). The Court is aware of the differences between that case and the present one: the *Duca* case concerned a criminal prosecution, rather than administrative arrest as in the present case; the unlawful deprivation of liberty in that case lasted for a much longer period of time and the award made included compensation for violations of Article 3 of the Convention. Nevertheless, the Court considers that this case reinforces the presumption that domestic courts in Moldova, in principle, may award sufficient just satisfaction.

73. As for the alleged excessive length of the proceedings under Law no. 1545, the Court notes that the examples relied on by the applicants do not suffice to establish a de facto denial of compensation, given that the proceedings in most of those cases lasted for approximately two years. Moreover, no evidence was submitted of any delays in enforcing judgments

awarding such compensation. As for the two examples of cases where proceedings lasted for more than six years, the Court considers that they are not representative enough to show that proceedings brought under Law no. 1545 have systematically lasted for excessive periods of time.

74. The Court would observe, however, that it will for future purposes examine carefully the evolution of judicial practice in the respondent State and that it cannot be excluded that it will change its stance if it becomes clear that the awards made by domestic courts are systematically manifestly inconsistent with those which the Court would make in its own judgments or if compensation proceedings, including enforcement of awards made, routinely exceed reasonable periods of time.

75. In view of the findings above, the Court considers that the applicants did not exhaust available domestic remedies by failing to initiate a civil court action under Law no. 1545. Accordingly, their complaints under Article 5 of the Convention must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

76. In the Government's opinion, the applicants could have raised their complaint under Article 11 before the domestic courts, but had failed to do so. The Court accepts this objection for the same reasons for which it accepted the objection concerning Article 5 of the Convention, even though Law no. 1545 was not applicable. In this respect, the Court notes that all the proceedings in the present case were initiated by the police due to the applicants' alleged violation of various provisions of the law. The courts eventually dismissed all the charges against the applicants, but they could not exceed the parties' claims by awarding compensation to the applicants in the absence of a request on their part. It was the combination of a full acquittal by the courts and the absence of any claim for compensation on the part of the applicants which leads the Court to the conclusion that this complaint must be rejected for failure to exhaust domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

77. The Government also submitted that the first applicant had failed to exhaust available domestic remedies in respect of his complaints under Articles 3 and 13 of the Convention by lodging his application with the Court while the criminal investigation was still pending.

The Court considers that this objection is closely related to the merits of the first applicant's complaints under Articles 3 and 13 of the Convention. It will therefore examine this preliminary objection together with the merits of the case.

78. The Court therefore concludes that all of the complaints made by the second applicant are inadmissible, as are those made by the first applicant under Articles 5 and 11 of the Convention. It also considers that the first applicant's complaints under Article 3 and 13 of the Convention raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no other

grounds for declaring them inadmissible have been established. In accordance with its decision to apply former Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of the complaints.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. The submissions of the parties

79. The first applicant complained of a violation of Article 3 as a result of the ineffective investigation of his ill-treatment. The investigation was lengthy and affected by procedural shortcomings such as the lack of independence of the prosecutor dealing with the case, the failure to initiate criminal proceedings for a long time, and the failure to sufficiently involve and inform the victim. In respect of the length of the investigation, the applicant submitted that by November 2006 most of the evidence in the case had been collected, and subsequent evidence-gathering measures were sporadic. For over three years the investigation was limited to hearing the few witnesses and obtaining a couple of medical reports. Moreover, the investigation was formally discontinued for 18 months during that period. While the Government referred to the first applicant's alleged refusal to allow access to his medical file in order to verify the issue of epilepsy, they did not mention that the prosecutor had been instructed to do so on 6 July 2007, but in fact requested access only on 11 June 2008 and was granted access on the same day. Finally, the applicant was never asked to provide any kind of medical information, the documents in the file showing simply that he had been summoned and interviewed.

80. The first applicant submitted that he was completely excluded from the investigation and only found out about some of the decisions taken from the Government's observations. Moreover, on some occasions the authorities actively resisted his attempts to access the materials of the investigation. For instance, on 7 December 2007 and 3 July 2008 he requested access to materials and permission to make copies in order to lodge an appeal. Having been granted such access by the higher ranking prosecutor, it was then blocked by the prosecutor dealing with the case. Only after a direct order by an investigating judge on 20 October 2008 did the prosecutor finally give him access to the materials. The first applicant also noted the prosecutor's refusal to grant him access to the minutes of his own interview in February 2009, as well as a medical report on his own injuries in September 2009. Finally, the investigation was not thorough. For instance, there was no attempt to establish whether the first applicant had indeed ejected a boy from the Internet café and whether that boy was the son of one of the alleged attackers; there was no attempt to find that boy and

interview him. No attention was given to the report made by the police on the day of the attack, nor was there any analysis of the discrepancy between the accused's statement concerning the first applicant's alleged epileptic fit and the medical evidence excluding the possibility that the injuries had been the result of a fall, with the obvious conclusion that the first applicant had been hit by someone.

81. The Government submitted that the investigation into the first applicant's alleged ill-treatment had been prompt, as proved by the many investigative measures taken immediately after the complaint had been lodged. The case was examined thoroughly, and the superior prosecutors and courts ordered repeated examinations in order to ensure a complete investigation. Moreover, the contradictory evidence submitted by the parties slowed down the proceedings.

B. The Court's assessment

82. The Court notes that, according to its case-law, 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 level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and 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). Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers*, cited above, § 74).

83. The Court recalls that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals (see, *mutatis mutandis*, *H.L.R. v. France* 29 April 1997, § 40, *Reports of Judgments and Decisions* 1997-III; *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports* 1998-VI; *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 73-75, ECHR 2001-V; *E. and Others v. the United Kingdom*, no. 33218/96, § 88, 26 November 2002; and *M.C. v. Bulgaria*, no. 39272/98, § 149, ECHR 2003-XII).

84. In a number of cases, Article 3 of the Convention gives rise to an obligation to conduct an official investigation (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII). Such an obligation cannot be considered in principle to be limited solely to cases of

ill-treatment by State agents (see, *mutatis mutandis*, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, ECHR 2002-I, and *M.C. v. Bulgaria*, cited above, § 151).

85. An investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always 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 of their decisions (see, *mutatis mutandis*, *Assenov and Others v. Bulgaria*, cited above, § 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 104 et seq., ECHR 1999-IV, and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

86. In the present case, the Court notes that the applicant suffered injuries, allegedly after being attacked by two persons. Given the location of his injuries (the eye and nose as well as the back of his head), it was "unlikely that they could have been caused by a fall", as was established by the medical expert (see paragraph 10 above). The medical evidence would therefore support the applicant's claim that he was the victim of an attack. At the same time, it is undisputed that the applicant lost consciousness and required urgent first aid, followed by several days' in-patient treatment. In the Court's view, such actions putting a person's life and health in danger attain the minimum level of severity so as to fall within the ambit of Article 3 of the Convention. Accordingly, the authorities had to comply with their procedural obligations under Article 3 to investigate the alleged attack thoroughly.

87. Moreover, the procedural obligations under Article 3 took on a special importance after June 2008, when the domestic courts established that C.A., a high ranking police officer accused of having attacked the first applicant, had attacked without any ground a journalist and subsequently made statements in an attempt to deceive the courts with a view to convicting the journalist of resisting the lawful orders of the police and insulting police officers (see *Brega*, cited above, §§ 8, 17 and 18).

88. The investigation into the first applicant's ill-treatment started in October 2006 and is still ongoing after four years. During that period, it was officially suspended or interrupted several times. On one occasion the Prosecutor General's Office noted a certain bias on the part of the prosecutors in the Centru district prosecutor's office, which could have led to the protraction of the investigation, and re-assigned the case to another office (see paragraph 27 above). However, some eight months later the same office referred the case back to the same Centru district prosecutor's office, despite the previously established risk of bias and of delays, and

without giving any reasons except territorial competence (see paragraph 32 above). Two weeks later the Centru district prosecutor's office suspended the investigation, a decision which was annulled after the first applicant's complaint (see paragraph 33 above). The Court finds that the many interruptions in the criminal investigation, all found unwarranted by the domestic authorities, contributed to the delay with which the case has been examined.

89. In the Court's view, the re-assignment of the case to the Centru district prosecutor's office despite the recognised "tendentious circumstances" capable of delaying the investigation raised a legitimate concern for the first applicant that his case was not being examined without bias and unnecessary delay.

90. On 20 October 2008 a court found that evidence in the file could not be used since it had been obtained outside proper criminal proceedings (see paragraph 25 above). The Court has already found that "in accordance with Articles 93, 96 and 109 of the Code of Criminal Procedure, no investigative measures at all could be taken in respect of the offence allegedly committed ... unless criminal proceedings were formally instituted" (see *Guţu v. Moldova*, no. 20289/02, § 61, 7 June 2007). Therefore, by refusing to formally institute criminal proceedings on four occasions the prosecutors knowingly prevented any evidence obtained from being used in court. It follows that the investigation could not be considered to be effective at least until 25 November 2008, when the criminal proceedings were formally instituted. The delay of more than two years before instituting the criminal proceedings is incompatible with the procedural obligation under Article 3 of the Convention (see, for instance, *Valeriu and Nicolae Roşca v. Moldova*, no. 41704/02, §§ 66-70, 20 October 2009, and *Pădureţ v. Moldova*, no. 33134/03, §§ 64 and 68, 5 January 2010).

91. The Court observes that the first applicant was not informed of several important decisions taken by the prosecutors, such as the formal recognition of C.A and D.A. as suspects in the case or the dropping of the charges against them (see paragraphs 29, 31 and 33 above). Moreover, when the prosecutor decided to order a new medical expert report concerning the injuries caused to the first applicant, the latter was not informed, nor given the opportunity to exercise his rights under Article 145 of the CCP (see paragraphs 30 and 61 above). On certain occasions the prosecutor refused to allow the first applicant access to the materials of the case, including those which could not be considered confidential since they concerned evidence obtained from the first applicant himself (see paragraphs 28, 30 and 80 above).

92. The Government commented that the law required the authorities to inform the first applicant of decisions such as the instituting of criminal proceedings, and that it was unclear from the observations whether the first applicant had been informed or not. In any event, access to materials could

only be given on the basis of written requests and the first applicant had made none. The Court notes that the Government did not submit evidence that the first applicant had been informed, as required by law, of all the important decisions taken, while the content of some of the first applicant's complaints suggests that he was not informed (see, for instance, paragraph 33 above). Moreover, it must be emphasised that the first applicant was the victim of an alleged crime. He therefore needed to be kept informed of the course of the events and cannot be held responsible for asking the prosecution to update him only occasionally and not on a constant basis. It appears from the materials in the file that he was often unaware of the course of the proceedings and reacted each time he found out about new decisions taken, each time obtaining the annulment of the relevant decision.

93. The Court finally notes that witness L.C. was never invited to identify the two persons whom the first applicant accused as his aggressors at an identity parade and that no attempt was made to identify witnesses in order to verify the claim that the first applicant had ejected a boy – allegedly one of the attackers' son – from the Internet café.

94. The Court concludes that the investigation into the first applicant's ill-treatment has been inefficient and protracted as a result of repeated refusals to institute criminal proceedings and unwarranted suspension of the investigation, and was affected by serious shortcomings such as a failure to sufficiently inform and involve the first applicant. These shortcomings are incompatible with the procedural obligations under Article 3 of the Convention.

95. There has, therefore, been a violation of that provision. In view of this finding, the Government's objection as to the premature nature of the complaint because of the ongoing investigation is to be dismissed.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

96. The first applicant alleged that the lack of a remedy in domestic law and practice in respect of the inefficient investigation into his ill-treatment had violated his rights guaranteed under Article 13 of the Convention. He noted that under Law no. 1545 he could not claim compensation for the substandard quality of the investigation and that the Government had not referred to other legal provisions – and accompanying practice – to show that an effective remedy had been available.

97. The Government disagreed and submitted that it was open to the first applicant to institute civil proceedings and claim compensation, relying directly on the Convention before the domestic courts.

98. In view of its finding of a violation of Article 3 under its procedural limb, the Court considers that it is not necessary to examine separately the complaint under Article 13 of the Convention taken together with Article 3.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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. Non-pecuniary damage

100. The first applicant claimed EUR 35,000 in compensation for the damage caused to him. He noted that for more than three years the investigation into his ill-treatment had been inefficient and protracted and that he had suffered on account of the biased attitude of prosecutors and the police. His protests against the inefficiency of the investigation were disrupted on a number of occasions and he spent many hours in detention as a result, all of which caused him immense psychological suffering and a feeling of injustice.

101. The second applicant claimed EUR 7,000 for her unlawful detention for seven hours on 29 January 2008 and the disruption of the protest she had staged with the first applicant.

102. The Government submitted that the claims were extremely excessive in the light of the Court's relevant case-law. They considered that the applicants could claim compensation before the domestic courts and that they had therefore failed to exhaust available domestic remedies.

103. The Court notes that it found a violation only in respect of the first applicant and there is no reason to make an award in respect of the second applicant. It also recalls that the violations found concern the procedural aspect of Article 3 and Article 13 of the Convention. Deciding on an equitable basis, the Court awards the first applicant EUR 8,000.

B. Costs and expenses

104. The applicants claimed jointly EUR 12,666 for legal costs. They relied on a contract with their lawyer, as well as an itemised list of hours (87.3 hours) which the lawyer spent on the case at an hourly rate of EUR 120 (EUR 60 for the first applicant's representation at the domestic level). They referred to the complexity of the case, in particular the need to manually search through more than 1,000 decisions adopted by the Supreme Court of Justice in 2009, in the absence of an automatic search engine for that court's database. Finally, they noted that the fees charged were in conformity with the recommendations made by the Moldovan Bar Association.

105. The Government considered that the sum claimed was excessive in the light of the average monthly salary in the Republic of Moldova. They also doubted that the lawyer had spent as much time on the case as he had claimed, especially at the domestic level.

106. In view of the complexity of the case and the substantial amount of work carried out by the lawyer, the Court awards the first applicant EUR 4,000 for costs and expenses.

C. Default interest

107. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits of the case the Government's objection concerning the first applicant's complaints under Articles 3 and 13 of the Convention, *declares* these complaints admissible and *declares* the remainder of the application inadmissible in respect of both applicants;

2. *Holds* that there has been a violation of Article 3 of the Convention in its procedural aspect in respect of the first applicant and *dismisses* in consequence the Government's above-mentioned objection;

3. *Holds* that it is not necessary to examine separately the first applicant's complaint under Article 13 taken in conjunction with Article 3 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the first 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 Moldovan lei at the rate applicable at the date of settlement:

(i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and

(ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to him, 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 applicants' claim for just satisfaction.

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

Lawrence Early Registrar	Nicolas Bratza President