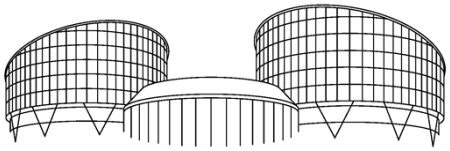

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

# CASE OF I.E. v. THE REPUBLIC OF MOLDOVA

*(Application no. 45422/13)*

JUDGMENT

Art 3 (substantive) • Positive obligations • Failure to prevent ill-treatment in prison • Juvenile with mental disability in pre-trial detention placed in cell with violent crime offenders, plus insufficient reaction to clear and medically confirmed indications of injuries
Art 3 (procedural) • Positive obligations • Investigation into allegations of beating and rape by cellmates • Failure to react at first signs, even without formal complaint • Prison guard aware detainee had been beaten • Belated medical examination rendering it useless
Art 5 § 1 • Lawfulness of detention • Artificial separation of the charges to extend pre-trial detention beyond legal maximum • Element of bad faith on the part of the authorities
Art 5 § 3 • Reasonableness of pre-trial detention • Sufficient reasons given

STRASBOURG

26 May 2020

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of I.E. v. the Republic of Moldova,**

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

Robert Spano, *President,*
Marko Bošnjak,
Valeriu Griţco,
Egidijus Kūris,
Darian Pavli,
Saadet Yüksel,
Peeter Roosma, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 24 March 2020,

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

# PROCEDURE

1. The case originated in an application (no. 45422/13) 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 a Moldovan national, Mr I.E. ("the applicant"), on 21 June 2013. The President of the Section acceded to the applicant's request not to have his name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by Mr T. Suveică, Mr A. Postică and Mr V. Vieru, lawyers practising in Chișinău. The Moldovan Government ("the Government") were represented by their Agent, Mr L. Apostol.

3. The applicant alleged, in particular, that he had been unlawfully detained without any valid reasons and that his complaint of ill-treatment by co-detainees had not been the subject of an effective investigation.

4. On 20 May 2014 the Government were given notice of the complaint under Articles 3 and 5 §§ 1 and 3 of the Convention, and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1995 and is detained in Chișinău.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

## A. The applicant's detention pending trial

7. On 13 August 2012 the applicant, who was aged seventeen at the time of the events, was arrested on suspicion of having murdered P. on 12 August 2012. The prosecutor's decision referred to the applicant's alleged participation in murdering – together with another accused – P., after which the perpetrators had taken objects from the victim and set his car on fire in order to hide the evidence of the crime. Also on 13 August 2012 an investigating judge ordered his detention pending trial for thirty days. His detention was subsequently extended several times, and eventually expired on 9 December 2012. The courts noted, *inter alia*, that (i) during the investigation the applicant had acknowledged that he had committed the crime under the influence of alcohol and with the participation of another accused; (ii) he had no stable job, income or living place; and (iii) he could be easily influenced and thus persuaded to interfere with the course of the investigation.

8. On 6 December 2012 the prosecutor in charge of the case initiated two other criminal investigations against the applicant in regard to, respectively, aggravated robbery and the destruction of the property of the above-mentioned person (P.) during the events of 12 August 2012. On 18 December 2012 the prosecutor decided to join those two investigations with the one started on 13 August 2012 "because the offences [had been] committed by the same persons".

9. On 9 December 2012 the applicant's detention pending trial expired and he was released at 15.30. At 16.20 he was again arrested as part of the second criminal investigation (that is to say on suspicion of robbery and the destruction of P.'s property). On 10 December 2012 the prosecutor in charge of the case asked the investigating judge to order the applicant's detention pending trial for thirty days. He noted, *inter alia*, that the applicant was "accused in another criminal case ..., but on 9 December 2012 he was released from detention owing to the expiry of the four-month time-limit. In such circumstances, we consider it reasonable that [the applicant's] being at large represents a clear and high level of danger to society and that he could commit new offences". On the same day an investigating judge ordered the applicant's detention pending trial for thirty days. The judge noted that the expiry of the four-month time-limit provided by law did not affect the applicant's situation, since detention was now being sought in connection with another criminal case against him.

10. The applicant appealed, the applicant's lawyer noting, *inter alia*, that under Article 186 § 4 of the Code of Criminal Procedure ("the CCP" – see paragraph 31 below) a minor could not be held in detention pending trial for longer than four months.

11. On 27 December 2012 the Chișinău Court of Appeal upheld the decision of 10 December 2012. It did not respond to the lawyer's argument

concerning the maximum length of detention of minors under Article 186 § 4 of the CCP.

### B. The applicant's complaint about ill-treatment and its investigation

12. On 9 October 2012 the governor of prison no. 13, where the applicant was being detained in cell no. 144, noticed an excoriation wound under the applicant's right eyebrow and that he was limping. When asked by prison staff about the origin of those injuries, the applicant responded that he had slipped in the cell while cleaning up damage caused by a burst water pipe. On the same day the applicant was taken to a medical specialist, who noted the injuries that he had found in the report that he subsequently drafted – in particular, an excoriation wound under his right eyebrow and a haematoma on the right frontal side of his head. On the same day the applicant was transferred to cell no. 143, which housed underage detainees.

13. On 16 October 2012 the applicant was again seen by a medical specialist. The expert found injuries on his left shoulder, left elbow, lips, left cheek, and left hip. It was recommended that the applicant undergo an X-ray examination of the left arm.

14. On 17 October 2012 the governor of prison no. 13 and the prison psychologist interviewed the applicant, who stated that either at the end of September or the beginning of October 2012 (he could not remember the precise date) he had been severely beaten and anally raped by his five cellmates, including one S.

15. On 19 October 2012 the applicant lodged an official complaint against his cellmates in respect of his alleged beating and rape.

16. During a preliminary verification of the complaint, the prosecutor in charge of the case heard the applicant, various prison officials and all five co-detainees. Between 19 and 26 October 2012 the applicant was examined by a medical expert (a proctologist), who found no injuries on his body and no indication that he had been anally penetrated. The expert did not respond to an express question, based on the applicant's account, whether there was evidence that he had been shaved around his anus before the alleged abuse.

17. On 16 November 2012 the prosecutor decided not to initiate a criminal investigation into the applicant's complaint, citing a lack of any evidence to support his claim of ill-treatment and rape.

18. On 7 March 2013 the applicant's lawyer lodged a complaint; on 22 March 2013 a higher-ranking prosecutor annulled the decision of 16 November 2012. Subsequently, the applicant's five former cellmates were all indicted on charges of beating and rape.

19. In a new examination on 11 June 2013 medical experts found on the applicant's body signs of past injuries on his left shoulder and hip. The injuries noted in the report of 9 October 2012 had been caused several hours

prior to the drafting of that report. Most of the injuries mentioned in the report dated 16 October 2012 (see paragraph 13 above) were insufficiently described in that report and thus could not be properly analysed in order to determine the time at which or the manner in which they had been inflicted.

20. When he was interviewed by the prosecutor in charge of the case on 12 June 2013, the prison guard, G.T., stated that he had seen the applicant limping at the beginning of October 2012 and that initially the applicant had said that he had slipped while cleaning his cell. However, at the guard's insistence, the applicant had eventually told him that he had been beaten, but had not wanted to talk about that.

21. When he was interviewed by the prosecutor on 16 July 2014, the prison doctor who had examined the applicant on 9 and 16 October 2012 confirmed what she had noted in the medical reports, stating that the injuries noted in the report of 16 October 2012 had appeared during the period between 9 and 16 October 2012. On neither of the two dates on which the reports had been drafted had the applicant complained of having been raped. Only on 16 October 2012 had he complained of having been beaten by cellmates. The doctor added that from the first time she had seen him in prison no. 13 she had suspected that the applicant suffered from "slightly retarded mental development" (*retard mintal*); she had recommended that he be seen by a psychologist. The applicant had subsequently been found to be "slightly mentally retarded", which had not, however, impeded his understanding of what was happening to him.

22. When he was interviewed by the prosecutor, the medical expert who had examined the applicant some time between 16 and 19 October 2012 (see paragraph 16 above) declared that he had not found any signs of anal penetration on the applicant. He added that if such penetration had taken place more than a week prior to the examination, signs thereof may not have been visible owing to healing of the body tissues. Moreover, if the injuries had been small, they would not have been visible.

23. One detainee in cell no. 143, to which the applicant had been transferred on 16 October 2012, confirmed that the applicant had complained to him of having been beaten and raped by his cellmates in cell no. 144. He also stated that the applicant had asked one of his cellmates (S.C.) for several items (a television, a PlayStation, etc.), threatening to complain of having been raped if S.C. did not comply. Another detainee in cell no. 143 made similar statements, adding that he had seen a letter sent by the applicant to S.C. in which the applicant had written "If you want me to forgive you and withdraw my complaint, give me [a list of items]".

24. As can be seen from the case-file, at the time of the events in question his former cellmates in cell no. 144 had all been convicted or were awaiting the outcome of their appeals:

- S.C. had been convicted on 11 November 2011 of raping a ten-year-old girl in June 2011 (that judgment was upheld by the Chișinău Court of

Appeal on 21 March 2012, was apparently not appealed against, and thus became final on 22 May 2012); at the time of the events in question S.C. was being detained pending trial in respect of another case concerning several instances of theft and robbery;

- A.S. had been convicted on 11 June 2012 of aggravated rape;
- I.R. had been convicted on 31 January 2012 of aggravated murder;
- N.C. had been convicted on 19 September 2011 of sexual violence;
- I.H. had been convicted on 17 February, 8 September and 27 December 2011 and 30 March 2012 on different counts of aggravated theft.

25. On 25 June 2015 the applicant was subjected to a polygraph test. He was asked whether he had been raped by four specific persons (his former cellmates in cell no. 144), to which he replied in the affirmative. He replied negatively when asked whether the fifth cellmate had also raped him. The results of the test indicated that he had probably lied when asserting that the fifth cellmate (I.R.) had not raped him. He later explained that I.R. had implored him to deny his participation in the ill-treatment since he risked another harsh prison term.

26. On 17 July 2015 the investigation was completed and the case was sent to the trial court.

27. According to the last information received from the Government, by May 2017 no judgment had been adopted in that case. Subsequently the parties did not inform the Court of any new circumstance relevant to the application (as required by Rule 47 (7) of the Rules of Court).

## II. RELEVANT DOMESTIC AND INTERNATIONAL MATERIALS

28. Under Article 185 of the Code of Criminal Procedure ("the CCP"), detention pending trial (*arestarea preventivă*) consists of detaining a suspect or an accused or indicted person in a state of arrest in the places and in the conditions provided by law.

29. Under Article 186 § 4 of the CCP, the detention pending trial of minors accused of committing an offence can be extended for up to a maximum of four months. Under Article 6 of the CCP, a minor is a person under the age of 18.

30. The European Prison Rules (Recommendation *Rec(2006)2* of the Committee of Ministers to member States, adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies), in so far as relevant, reads as follows:

> "...
>
> 11.1 Children under the age of 18 years should not be detained in a prison for adults, but in an establishment specially designed for the purpose.
>
> ...

18.8 In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain:

*a.* untried prisoners separately from sentenced prisoners;

...”

31. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Nelson Mandela Rules”), adopted by the resolution of the General Assembly of 17 December 2015 (A/RES/70/175), in so far as relevant, read as follows:

“Separation of categories

Rule 11

The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

...

(b) Untried prisoners shall be kept separate from convicted prisoners;

...”

The relevant part of the Convention on the rights of the child (adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989), reads as follows:

“Article 37

States Parties shall ensure that:

...

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

...”

The relevant part of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") adopted by General Assembly resolution 40/33 of 29 November 1985, reads as follows:

“13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.”

The relevant part of the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, reads as follows:

"Article 10

...

2.

...

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

..."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant complained that the authorities had taken insufficient measures to prevent his ill-treatment by cellmates and that the investigation into his complaint of ill-treatment and rape by his cellmates had been ineffective. 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

33. The Government argued that the applicant had not exhausted the available domestic remedies by lodging his application without awaiting the result of the investigation.

34. The Court considers that this matter is closely related to the substance of the complaint regarding the inefficiency of the investigation. It therefore joins this objection to the merits.

35. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

#### *1. The parties' submissions*

36. The applicant submitted that the authorities had not taken sufficient measures to prevent his ill-treatment in detention. In particular, he had been placed in a cell with a convicted rapist. Moreover, the investigation into his complaint about ill-treatment had been ineffective. In particular, the prison authorities had been aware of the injuries on the applicant's body that had been discovered on 9 and 16 October 2012 (see paragraphs 12 and 13 above); even so, they had not started any criminal investigation on their own

initiative, even after the formal complaint made on 19 October 2012. Minors in detention were particularly vulnerable and less prone to report abuse, which meant that the authorities had to show extra vigilance against ill-treatment. He argued that the quality of the medical reports concerning his allegations of ill-treatment had left a lot to be desired. Instead of his being assigned a qualified psychologist to determine the degree of his psychological suffering, he had been placed in a psychiatric institution for testing.

37. The Government argued that they could not have fully assessed the situation before the conclusion of the domestic proceedings in respect of the applicant's allegations. It was not even clear whether the ill-treatment complained of had taken place. The investigation into the alleged ill-treatment by other detainees had been effective: it had been initiated promptly after the complaint had been made and had been extensive and complete. Witnesses had been heard (including the prison psychologist), and forensic examinations had been carried out; those examinations had not revealed any evidence of the applicant having been ill-treated. Moreover, the applicant's initial failure to report his alleged ill-treatment and his unclear submissions regarding the exact date of the abuse and the identity of the abusers had reduced the efficiency of the investigation.

*2. The Court's assessment*

38. The Court reiterates that Article 3, 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 States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports of Judgments and Decisions* 1998-VI; *Z. and Others v. the United Kingdom* [GC], no. 29392/95, §§ 73-75, ECHR 2001-V; and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 115, 25 June 2019).

39. Such measures should provide effective protection, in particular, of children and other vulnerable persons, and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (see, *mutatis mutandis*, *Osman v. the United Kingdom*, judgment of 28 October 1998, § 116, *Reports* 1998-VIII, and *Z. and Others*, cited above, § 73).

40. In such circumstances, the absence of any direct State involvement in acts of violence that meet the condition of severity such as to engage Article 3 of the Convention does not absolve the State from its obligations under this provision (see *Premininy v. Russia*, no. 44973/04, § 71, 10 February 2011). This positive obligation is to be interpreted in such a way as to not impose an excessive burden on the authorities to guarantee,

through the legal system, that inhuman or degrading treatment is never inflicted by one individual on another (see *Premininy*, cited above, § 73, and *Gjini v. Serbia*, no. 1128/16, § 77, 15 January 2019). However, it has been the Court's constant approach that Article 3 imposes on States a duty to protect the physical well-being of persons who find themselves in a vulnerable position by virtue of being within the control of the authorities, such as, for instance, detainees or conscripted servicemen (*Premininy*, cited above, § 73).

41. Article 3 requires that the authorities conduct an effective official investigation into any alleged ill-treatment, even if such treatment has been inflicted by private individuals (see *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003-XII; *Denis Vasilyev v. Russia*, no. 32704/04, §§ 98-99, 17 December 2009; and *Mudric v. the Republic of Moldova*, no. 74839/10, § 42, 16 July 2013). For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case in question and to the identification and – if appropriate – punishment of those responsible (see *Hovhannisyan v. Armenia*, no. 18419/13, § 51, 19 July 2018). This is not an obligation of result, but of means. In cases under Articles 2 and 3 of the Convention where the effectiveness of an official investigation has been at issue, the Court has often assessed whether the authorities in question reacted promptly to the complaints at the relevant time. The Court has given consideration to the opening of investigations, delays in taking statements and the length of time devoted to the initial investigation (see *Denis Vasilyev*, cited above, § 100, with further references, and *Stoica v. Romania*, no. 42722/02, § 67, 4 March 2008).

42. Furthermore, even in the absence of a formal complaint of ill-treatment, once the matter has come to the attention of the authorities, this gives rise, *ipso facto*, to an obligation under Article 3 for the State to carry out an effective investigation (see *Gorgiev v. the former Yugoslav Republic of Macedonia*, no. 26984/05, § 64, 19 April 2012, and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 186, ECHR 2012).

**(a) The State's positive obligation to prevent ill-treatment**

43. The Court refers to the principles concerning detention of juveniles cited in paragraphs 30 and 31 above. In this connection, it recalls that international standards allow for a certain degree of latitude relating to the manner in which the separation of juvenile and adult offenders is to be effected, including the placement of juvenile offenders in separate parts of institutions normally designed for adult inmates. This, in itself, does not amount to a breach of Article 3 of the Convention and the Court needs to assess whether the conditions of detention, taken as a whole, comply with

the State's obligation under Article 3 of the Convention (see, for instance, *Kuparidze v. Georgia*, no. 30743/09, § 60, 21 September 2017).

In the present case, the Court notes that although the applicant was accused of murder, at the time of his placement in prison no. 13 he had not been convicted. As a minor placed for the first time in detention, he was obviously in a particularly vulnerable position. His suspected mental disability (see paragraph 21 above) could only have exacerbated his vulnerability. Nonetheless, he was placed in a cell with five other detainees who had already been convicted at least by a first-instance court of serious offences, such as murder and sexual violence, while one of them had apparently been convicted by a final court judgment for the rape of a minor (see paragraph 24 above). In the Court's view, this situation in itself created the risk of the applicant being abused (see *Gorea v. Moldova*, no. 21984/05, § 47, 17 July 2007). In this respect the Court notes that under both Council of Europe and United Nations prison rules (see paragraphs 30 and 31 above), untried prisoners should be detained separately from sentenced prisoners.

44. Moreover, on 9 October 2012 a prison doctor attested to injuries on the applicant's body. Even though he officially declared that he had slipped and hit himself, the authorities should have been alert (given his vulnerability, as mentioned above) to the possibility that he could refrain from complaining for fear of reprisals. Indeed, one prison guard subsequently stated that when he had insisted that the applicant speak frankly, the applicant had affirmed that he had been beaten (see paragraph 20 above). After receiving that information, the guard nevertheless did not inform his superiors.

45. The insufficiency of the measures taken in response to the ill-treatment of 9 October 2012 resulted in the absence of a strong deterrent to further ill-treatment; such ill-treatment did indeed occur a week later (see paragraph 13 above). Only then did the applicant's former cellmates in cell no. 144 become the subject of investigation (see paragraph 16 above) and were thus much less likely to attack the applicant. The Court refers in this context to the principle that authorities need to react to signs of ill-treatment even in the absence of a formal complaint (see paragraph 42 above), which did not happen in the present case.

46. The Court concludes that (i) the applicant's placement in a cell with persons already convicted of very serious, violent offences, (ii) his special vulnerability as a minor and as a person with mental disability (see paragraph 21 above), and (iii) the insufficient reaction to clear and medically confirmed indications of ill-treatment, all contributed to the creation of conditions in which he was exposed to a serious risk of ill-treatment by co-detainees. The authorities thus did not discharge their positive obligation to protect the applicant from ill-treatment while he was under their full control in detention. In view of the dismissal of the

Government's objection (see paragraph 53 below), the Court finds that there has been a violation of Article 3 of the Convention under its substantive limb.

**(b) Investigation into the applicant's ill-treatment and rape**

47. The Court notes that during the initial verification of the applicant's complaint of 19 October 2012 the prosecutor undertook a number of investigative steps. In particular, the applicant was examined by a proctologist and a psychologist, and witnesses were heard, as well as the applicant and the persons he accused of ill-treatment.

48. However, the prosecutor decided not to open a criminal investigation; a particularly important factor in the prosecutor reaching that decision was the fact that the proctologist had detected no indications of rape. In this latter respect the Court notes with concern that that specialist, while noting on 26 October 2012 that there were no signs of anal penetration (see paragraph 16 above) and while being aware of the applicant's claim that the rape had happened at the end of September or the beginning of October 2012, did not mention in his report the likelihood that no signs were any longer visible because more than a week had elapsed between the alleged rape and the proctologist's examination of the applicant (see paragraph 22 above). This incomplete information meant that the report, rather than implying that medical evidence could neither confirm nor deny the applicant's allegations, was instead cited as constituting definitive proof that he had not been raped. Moreover, the applicant had mentioned a certain aspect of his alleged abuse (namely that his abusers had shaved him around his anus). However, despite a specific question about that allegation which the proctologist had not answered in his report, the prosecutor did not find it necessary to obtain a clear answer. Indeed, the prosecutor did not find it important to interview that specialist until after the reopening of the investigation in 2013. The Government have not explained what prevented him from conducting such an interview in October 2012. As a result, more than four months of valuable time was lost before a criminal investigation was started (see paragraph 18 above).

49. The Court takes note of the Government's argument that the applicant's own failure to report the abuse until several weeks after the events in question contributed to the length of the investigation and to difficulties in verifying the allegations. However, in this respect the Court reiterates that according to the long-standing case-law of the Court, the authorities must take into account the particularly vulnerable situation of victims and the fact that people who have been subjected to serious ill-treatment will often be less ready or willing to make a complaint (see, for instance, *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 133, ECHR 2004-IV).

50. The authorities, despite becoming aware of injuries caused to the applicant while he had been in detention on 9 October 2012 (see paragraph 12 above), and despite the applicant acknowledging to one of the prison guards that he had been beaten (see paragraph 20 above), did not initiate an investigation in respect of the cause of those injuries, even in the absence of a formal complaint. Had such an investigation been initiated on that day (that is to say 9 October 2012), it may have uncovered signs of the applicant's rape that would subsequently not have been observable. Moreover, no such investigation was started after new injuries had been inflicted on him a week later (see paragraph 13 above).

51. It is lastly noted that while the investigation that was opened in March 2013 ended in July 2015, the case was pending before the first-instance court until at least May 2017. Thus, there had been no resolution of the matter at least five years after the events in question (see paragraphs 26 and 27 above).

52. The Court considers that the manner in which the applicant's abuse in prison has been investigated, including the delays due to the authorities not interviewing a key specialist at the relevant time and their failure to react to clear signs of ill-treatment (even before a formal complaint was made) – together with the long overall period during which not a single judgment was adopted – allow it to conclude that the authorities have not properly discharged their positive obligation to investigate effectively.

53. In view of the finding in the previous paragraph, the Government's objection (see paragraph 33 above) must be rejected.

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

## II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

55. The applicant argued that he had been unlawfully detained, contrary to Article 5 § 1 of the Convention, which, in so far as relevant, 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;
>
> ..."

## A. Admissibility

56. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

57. The applicant argued that his detention after 9 December 2012 had been contrary to Article 186 § 4 of the CCP (see paragraph 31 above) and thus unlawful within the meaning of Article 5 § 1 of the Convention. The prosecution had attempted to circumvent the national law by artificially dividing the case against the applicant into three separate cases, despite knowing that the applicant had been accused of one and the same set of actions. This had made it possible to detain a minor for longer than the maximum of four months allowed by law. Thus, the applicant's detention after 9 December 2012 had been secured in bad faith and had therefore been arbitrary.

58. The Government submitted that according to the Court's case-law, it had been primarily for the domestic courts to interpret domestic law. Article 186 of the CCP had to be viewed in its entirety since it distinguished between the respective status of a suspect, an accused and a person indicted for an offence. Moreover, that provision prohibited the detention of a minor as part of one set of criminal proceedings, and there was nothing in it preventing such detention in separate criminal proceedings. Since the applicant had been accused initially of murder and subsequently, in two new criminal investigations, he had been accused of two further, different offences (robbery and destruction of property), his detention had not been contrary to the domestic law, as interpreted by the investigating judge in the instant case.

59. The Court reiterates that Article 5 of the Convention is, together with Articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of the individual, and as such its importance is paramount. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty (see, for example, *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 461, ECHR 2004-VII; and *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 84, 5 July 2016).

60. Any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1, be "lawful" (see, for instance, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008, and *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 135, 4 December 2018). The words "in

accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. While it is normally in the first place for the national authorities – notably the courts – to interpret and apply domestic law, the position is different in relation to cases where failure to comply with such law entails a breach of the Convention. This applies, in particular, to cases in which Article 5 § 1 of the Convention is at stake and the Court must then exercise a certain power to review whether national law has been observed (see *Baranowski v. Poland*, no. 28358/95, § 50, ECHR 2000-III, and *Creangă v. Romania* [GC], no. 29226/03, § 101, 23 February 2012).

61. While the Court has not previously formulated a definition as to what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis. One general principle established in the case-law is that detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see, for example, *Bozano v. France*, 18 December 1986, Series A no. 111; *Čonka v. Belgium*, no. 51564/99, ECHR 2002-I; *Saadi*, cited above, §§ 68 and 69; and *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 76, 22 October 2018).

62. Turning to the circumstances of the present case, the Court notes that Article 186 § 4 of the Code of Criminal Procedure expressly prohibits the holding of a minor in detention pending trial for a period longer than four months, without any distinction as to the minor's legal status during such detention (suspect, accused or indicted – see paragraph 31 above).

63. The Government argued that this provision did not prohibit separate four-month periods of detention for separate offences. The Court has no reason to doubt that such an interpretation is in accordance with both the letter and the spirit of Article 186 § 4 CCP. However, in line with its power to review (mentioned in paragraph 60 above), it needs to ascertain that the domestic authorities applied that provision in the applicant's case in a manner that did not render his detention arbitrary.

64. In this context the Court considers that the applicant's lawyer made a compelling argument, both before the domestic courts (see paragraph 10 above) and in his observations, that the prosecutor in charge of the case had been aware of the entirety of the applicant's alleged actions from the very beginning (see paragraph 7 above). As such, it cannot be said that during the murder investigation that prosecutor became aware of separate offences allegedly committed by the applicant and that in reaction thereto he initiated new criminal investigations. Rather, the applicant was accused of committing, during the same set of events of 12 August 2012, three offences against P. The fact that shortly after the two new criminal investigations were started they were joined with the original one (see paragraph 8 above)

only confirms that. Moreover, one of the two offences presented as separate ones (specifically, the burning of P.'s car) had already been described in the original investigation as an action undertaken with the aim of hiding the evidence of that murder (see paragraph 7 above).

65. It is also revealing that, in asking for a new detention order on 10 December 2010 in respect of what was presented as two offences (separate from the one that concerned the original investigation), the prosecutor felt it necessary to refer to the charge of murder arising from the original investigation, by way of emphasising the high risk of danger to the public that could result from releasing the applicant. Clearly, the prosecutor saw the alleged murder of P. as an important element to be taken into consideration by the judge when deciding whether to remand the applicant in custody in respect of the proceedings concerning the robbery of P. and the destruction of his property during the same set of events of 12 August 2012 (see paragraph 8 above).

66. Moreover, the timing of the initiation of the two new investigations, coinciding as it did with the end of the maximum detention period within the original investigation, is an additional element supporting the applicant's submission that the authorities acted in bad faith. Indeed, the opening of the two new investigations in the last days of the applicant's detention allowed for the newly-ordered detention to last, again, for the maximum time allowed under the law – that is to say, for another four months.

67. The Court considers that such an artificial separation of the charges with the obvious aim of extending the time-limit in respect of the applicant's detention (which would otherwise have been unlawful) constitutes an element of bad faith on the part of the authorities. As such, the applicant's detention in respect of newly opened criminal proceedings after 9 December 2012 was arbitrary, within the meaning of Article 5 § 1 of the Convention.

68. There has, accordingly, been a violation of that provision in the present case.

## III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

69. The applicant furthermore complained that the domestic courts had not given relevant and sufficient reasons for his detention pending trial. He relied on Article 5 § 3 of the Convention, which reads as follows:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

## A. Admissibility

70. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

71. The applicant submitted that his detention until 9 December 2012 had not been based on sufficient reasons. The courts had invoked legal provisions in a "stereotypical manner" and without any attempt to show how those provisions applied to his case. The same had been true for the extension of the detention beyond 9 December 2012.

72. The Government contested that argument. They argued that the courts had given relevant and sufficient reasons.

73. According to the Court's established case-law, under Article 5 § 3, the persistence of a reasonable suspicion is a condition *sine qua non* for the validity of any continuation of detention; however, after a certain lapse of time, it no longer suffices: the Court must then establish (1) whether other grounds cited by the judicial authorities continued to justify the deprivation of liberty and (2), where such grounds were "relevant" and "sufficient", whether the national authorities displayed "special diligence" in the conduct of the proceedings (see, among many other authorities, *Letellier v. France*, 26 June 1991, § 35, Serie's A no. 207; and *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012). The Court has also held that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. When deciding whether a person should be released or detained, the authorities are obliged to consider alternative means of ensuring his or her appearance at trial (ibid.; see also *Buzadji*, cited above, § 87).

74. The Court has also established that the requirement for a judicial officer to give relevant and sufficient reasons for detention – in addition to the persistence of reasonable suspicion – applies already at the time of the first decision ordering detention on remand – that is to say "promptly" after the arrest (see *Buzadji*, cited above, § 102).

75. Turning to the facts of the present case, in respect of the period of time between 13 August and 9 December 2012 the Court notes that the domestic courts relied on a number of elements that indicated the necessity of the applicant's detention (see paragraph 7 above). Unlike the applicant, it finds that those elements were specific to his particular situation and did not simply constitute a recapitulation of legal provisions allowing detention. The courts established convincingly – for the crucial initial period of the investigation – that there was a danger of the applicant re-offending

(notably under the influence of other persons) and interfering with the investigation.

76. Therefore, during the initial four months, the applicant's detention was based on relevant and sufficient grounds. There has been no violation of Article 5 § 3 in respect of that period of detention.

77. In respect of the applicant's detention after 9 December 2012, the Court finds it unnecessary to examine separately the complaint under Article 5 § 3 in view of its finding (see paragraph 68 above) that his detention in itself was arbitrary.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage. He referred to the abuse that he had suffered while in detention and the authorities' failure to take action or to investigate it properly, as well as to his unlawful detention after the expiry of the legal time-limit.

80. The Government considered that in the absence of a breach of any Convention right, no compensation should be awarded. In any event, the sum claimed was excessive.

81. In view of the seriousness of the breaches found, and judging on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage.

### B. Costs and expenses

82. The applicant also claimed a total of EUR 8,603 for the costs and expenses incurred before the domestic courts and before the Court. He relied on contracts with his lawyers and records of hours worked on the case.

83. The Government considered that the sum claimed was excessive.

84. 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 1,500 covering costs under all heads, plus expenses.

### C. Default interest

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

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits* the Government's preliminary objection and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the respondent State's positive obligations to protect from ill-treatment and to investigate such ill-treatment;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

5. *Holds* that there has been no violation of Article 5 § 3 of the Convention in respect of the first four months of the applicant's detention;

6. *Holds* that there is no need to examine the complaint under Article 5 § 3 of the Convention in respect of the applicant's detention after the initial four months;

7. *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 Moldovan lei at the rate applicable at the date of settlement:

      (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

      (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

   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;

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

Done in English, and notified in writing on 26 May 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Stanley Naismith | Robert Spano |
| Registrar | President |