



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

FOURTH SECTION

**CASE OF DINU v. ROMANIA**

*(Application no. 64356/14)*

JUDGMENT

STRASBOURG

7 February 2017

*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 Dinu v. Romania,**

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

András Sajó, *President*,  
Vincent A. De Gaetano,  
Nona Tsotsoria,  
Krzysztof Wojtyczek,  
Egidijus Kūris,  
Iulia Motoc,  
Marko Bošnjak, *judges*,

and Andrea Tamietti, *Deputy Section Registrar*,

Having deliberated in private on 17 January 2017,

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

**PROCEDURE**

1. The case originated in an application (no. 64356/14) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Florian Dinu (“the applicant”), on 17 September 2014.

2. The Romanian Government (“the Government”) were represented by their Agent, Ms C. Brumar, from the Romanian Ministry of Foreign Affairs. On 16 March 2016 the President of the Section granted the applicant leave to represent himself, pursuant to Rule 36 § 2 of the Rules of Court.

3. Relying in substance on Article 3 of the Convention, and expressly on Articles 6 and 13 of the Convention, the applicant alleged that he had been ill-treated by police officers, and that the subsequent criminal investigation into the incident had been ineffective, for reasons which included the fact that the Balș District Court had examined his complaint in private and without summoning the parties.

4. On 15 April 2015 the application was communicated to the Government.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1972 and lives in Șopârlița.

## **A. The parties' version of events**

### *1. The applicant*

6. On 30 June 2013 the applicant's sister called the emergency services and reported that the applicant was causing a disturbance in respect of his family (*a făcut scandal în familie*). Two police officers from the Bobicești police, C.B. and M.D.B., were dispatched to the applicant's home.

7. Once they arrived at the applicant's home, the police officers proceeded to handcuff him in order to take him to the police station, because they claimed that he was aggressive towards them. The officers immobilised him and pushed him to the ground with his face down, even though he was not resisting arrest. They handcuffed him with his hands behind his back, dragged him towards a police car, and banged his head against a metal gate owned by a neighbour, M.V.

### *2. The Government*

8. The Government acknowledged that the police officers had put the applicant to the ground and had forcibly handcuffed him. They stated, however, that the applicant's allegations of ill-treatment and of being thrown against a metal gate by the police officers were contradicted by the available evidence. The evidence proved that his injuries were not caused deliberately by the police officers.

## **B. Criminal investigation into the incident**

9. On 30 June 2013 one of the police officers who had been dispatched to the applicant's home produced a contravention report, and fined the applicant 1,000 Romanian lei (RON – approximately 230 euros (EUR)). According to the report, the applicant had offended his father, had been inebriated, and had admitted his actions. The report was signed by the applicant.

10. From 1 to 3 July 2013 the applicant was in Bagdasar-Arseni Emergency Hospital in Bucharest. According to a medical report produced upon his discharge from hospital, he was diagnosed with a cervical spine injury and a minor cranial cerebral trauma.

11. On 3 July 2013 the applicant's father lodged a criminal complaint against police officers C.B. and M.D.B., on the grounds that they had physically abused his son. On 12 September 2013 the applicant took up (*și-a însușit*) the criminal complaint lodged by his father against the police officers.

12. On 14 August 2013 the Olt prosecutor's office interviewed the applicant's father with regard to the circumstances of the case. He stated, *inter alia*, that his son had not been suffering from a psychological illness.

On the day of the incident the applicant had been inebriated and had made a scene, but he had not hurt either of his parents. Neither parent had called the police, and the applicant's father was unaware of who could have done so. The police officers had produced a contravention report in the applicant's name and had asked him to sign the report without informing him why. The applicant had complied and had signed the contravention report. Subsequently, he had agreed to accompany the police officers to the hospital, but had informed them that he needed to go inside the house to get dressed. The police officers had stopped him from entering the house, pushed him to the ground with his face down, and handcuffed him. Afterwards, they had dragged him away and banged his head against a metal gate owned by M.V. When they had put the applicant in the ambulance he had had blood on his face, and they had left him in the ambulance face down and wearing handcuffs. The following day, Dr B. from the psychiatric unit of Slatina Emergency Hospital had informed him (the applicant's father) that his son had been seriously beaten, and that he had been transferred to a different hospital because he had suffered a cervical spine injury.

13. On 12 September 2013 the Olt prosecutor's office interviewed the applicant. In his statement, *inter alia*, he asked the investigating authorities to also interview his mother and N.B. with regard to the incident. He also stated that he had signed the contravention report produced by the two police officers, even though he had not been informed by them about its content. One of the police officers had travelled with him in the ambulance. That officer had refused to remove his handcuffs and had punched him in the face.

14. On the same date the Olt prosecutor's office interviewed both the applicant's mother and N.B. His mother stated, *inter alia*, that the police officers had not allowed her son to get dressed, had chased him through the courtyard, and had tripped him. After he had fallen to the ground they had twisted his hands behind his back and handcuffed him. Because the applicant had been agitated after he had been handcuffed, and had refused to accompany the police officers, they had repeatedly banged his head against the gate owned by M.V. One of the police officers had travelled with the applicant in the ambulance and had continued to beat him until he had been asked by the medical staff in the ambulance to stop the violence.

15. N.B. stated, *inter alia*, that he had been on the street on the day of the incident and had seen two police officers handcuff the applicant. Afterwards, they had grabbed him by his hands and had banged his head repeatedly on the gate owned by M.V. N.B. further stated that he had worked with the applicant, and he had not been suffering from any psychological condition or drinking alcohol.

16. On an unspecified date in 2013 the Olt prosecutor's office asked the Olt County Forensic Medical Service to examine the available medical

documents and produce a forensic expert report in the case. The prosecutor's office asked the forensic service to determine: the applicant's injuries and their cause; the number of days of medical care needed for healing; if there was a direct link between the applicant's injuries and their cause; and if the injuries could also have been caused by something other than intentional force.

17. On 31 October 2013 the Olt County Forensic Medical Service examined the applicant and the available medical documents.

18. On 18 November 2013 the Olt County Forensic Medical Service produced a forensic expert report. It noted that on the day of the incident the applicant had been transferred by ambulance to Slatina Emergency Hospital because he had been extremely agitated and his breath had smelled of alcohol. Subsequently, he had been transferred to the hospital's psychiatric unit and had been sedated. The following day he had started complaining of pain in his cervical spine area, and of paralysis of his right hand. He had been examined and had been diagnosed with a cervical spine injury. The interdisciplinary medical examination carried out by, *inter alia*, a neurologist, a surgeon and an orthopaedist had not identified any signs of trauma. Eventually, the applicant had been admitted to a specialist hospital and had been operated on in relation to the cervical spine injury.

19. The forensic report concluded that the applicant's injury could have been caused on 30 June 2013. Most probably, the injury had been caused by a forced rotation movement of the neck when the applicant had been immobilised and handcuffed. No signs of trauma specific to intentional force had been identified on the applicant's head, body or limbs during the interdisciplinary examinations carried out after his admissions to Slatina Emergency Hospital and Bagdasar-Arseni Emergency Hospital. The applicant had needed seventy to eighty days of medical care from the moment of his injury.

20. On 10 January 2014 a prosecutor attached to the Olt prosecutor's office decided not to open a criminal investigation against the two police officers for abusive behaviour, on the grounds that their actions had lacked the elements of an offence. The prosecutor held that a third party had called the emergency services at the applicant's sister's request, because the applicant, who had a history of psychological problems and who had been drunk, had been aggressive and had endangered his own life and safety and that of his family. Once police officers C.B. and M.D.B. had arrived at the scene of the incident, they had asked the applicant to calm down and accompany them to the police station. The applicant had refused the police officers' demand, and had become aggressive and had verbally abused them.

21. The prosecutor further held that the applicant's father had confirmed the fact that the applicant had been drunk at the time of the incident. However, his statements that his son had not been aggressive and that he

had been unaware of the identity of the person who had called the emergency services had not been confirmed by the rest of the evidence adduced in the file. Moreover, in such a case, it would have been highly unlikely that an individual would call the emergency services for no reason. According to the prosecutor, those arguments were also supported by the fact that, in the medical report produced by the psychiatric unit of Slatina Emergency Hospital, where the applicant had been taken after the incident, it was stated that the applicant was suffering from a polymorphic personality disorder, which was aggravated by alcohol consumption. Also, his father had acknowledged that the applicant would generally act normally when he was sober, but transformed into a verbally and physically aggressive person once he drank alcohol.

22. The prosecutor also held that the applicant was known in his village as a violent and aggressive person with psychological problems. He had been investigated in relation to several other criminal files concerning alleged violent acts committed against the members of his family, and for theft, but the investigations had been discontinued after his parents had withdrawn their complaints.

23. The prosecutor noted that, according to the reports describing the police officers' intervention and the use of force and handcuffs, once the officers had arrived at the applicant's home they had realised that he was drunk, and they had been forced to immobilise him and take him to Slatina Emergency Hospital. Also, according to the available medical documents, the applicant had been transferred to the hospital by ambulance, he had been extremely agitated, and his breath had smelled of alcohol. Subsequently, he had been transferred to the hospital's psychiatric unit and had been sedated. The following day he had started complaining of a cervical spine injury, which had eventually required surgical treatment. In addition, according to the information provided by the psychiatric unit of Slatina Emergency Hospital, since 1998 the applicant had repeatedly been admitted to the unit for similar reasons.

24. The prosecutor held that the conclusions of the forensic expert report produced on 18 November 2013 contradicted N.B.'s and the applicant's parents' testimonies that the applicant's head had repeatedly been banged against M.V.'s gate by the police officers.

25. By referring to Article 34 §§ 1 and 2 of Law no. 218/2002, but expressly citing the relevant provisions of Article 33 §§ 1 and 2 of the same aforementioned Law, the prosecutor further held that, given the available evidence, the police officers had not injured the applicant deliberately. His injuries could have been the result of a forced rotation of his neck, which could have happened at the moment when he had been immobilised by the officers. Also, the police officers had stated that they had not hurt the applicant, and had confirmed that he had been drunk, and that he had been transported and admitted to hospital.

26. The applicant challenged the decision of 10 January 2014 before a more senior prosecutor.

27. On 29 January 2014 a more senior prosecutor attached to the Olt prosecutor's office dismissed the applicant's challenge as ill-founded, and upheld the decision of 10 January 2014.

28. The applicant appealed against the decision of 29 January 2014 before the Slatina District Court. In his written submissions he argued that the forensic expert report produced in the case was incomplete and superficial. The report had failed to determine if his injury would have been possible considering the physical characteristics of the parties involved in the incident and the standard procedure which had to be followed in cases of handcuffing. Also, the report had not explained how the forced rotation of his neck had happened, as he would not have made such a painful movement instinctively. In addition, the prosecutor's office had wrongfully dismissed his parents' and N.B.'s testimonies, as those witnesses had confirmed the police violence, and the forensic report had acknowledged that his injury had most probably been caused as a result of the forced rotation of his neck. Consequently, the applicant argued that the available forensic expert report had to be complemented by another report (*completat*), and that the second report had to be submitted for the approval of a higher review commission.

29. The applicant further argued that none of the circumstances set out in sections 1 and 2 of Article 34 of Law no. 218/2002 had applied in his case. Also, even assuming that he had resisted immobilisation, as claimed by the authorities, the handcuffing measure could only have been taken against him if there had been a reasonable suspicion that his behaviour could endanger the police officers' physical integrity or lives. Even assuming that such a situation had existed, the police officers had still had a lawful duty to use their handcuffs without seriously injuring him.

30. Lastly, the applicant contended that the prosecuting authorities' conclusion that the police officers had not hurt him intentionally had been ill-founded, given that the officers had indirectly acted with intent. In particular, they had foreseen the result of their actions, and even if they had not intended that result, they had accepted that it was a possibility.

31. On 12 March 2014 the Slatina District Court referred the case to the Balş District Court for examination.

32. By a final judgment of 9 April 2014 the Balş District Court, sitting in private as a pre-trial chamber judge, and without the parties being present, dismissed the applicant's appeal against the more senior prosecutor's decision and upheld that decision. It noted that it had notified the parties about the date of the hearing, but they had failed to submit written observations. The court held that the Olt prosecutor's office had correctly established that officers C.B. and M.D.B. had not committed the offence of abusive behaviour. Also, the available forensic report did not need to be



complemented by an additional report or submitted for approval. The forensic report had examined extensively the available medical evidence, and had concluded that no evidence of trauma as a result of deliberate force had been identified on the applicant's head, body or limbs during the multidisciplinary examinations.

33. The court further held that, according to the available medical evidence, the applicant had been in an extreme state of psychomotor agitation, and the cranial X-ray had not shown any post-traumatic injury of the skull. Consequently, the court considered that the existence of a minor cranial cerebral trauma had not contradicted the conclusions of the forensic medical report, which had taken that trauma's presence into account.

34. The court also considered that it had been unnecessary for the forensic expert report to explain how the forced rotation of the applicant's neck had happened, given that the victim would not have made such movements instinctively, because he had been drunk and extremely agitated at the time of the incident, and his behaviour could not have been compared with the normal behaviour of another person.

35. The court further considered that the prosecutor had correctly dismissed the testimonies in the case, given that, according to the forensic expert report, no trauma as a result of deliberate force had been identified, and the forensic pathologist had had the opportunity to consider the possibility of the applicant's head being banged repeatedly against a metal gate.

36. The court held that it was true that the police officers had had a duty to use their handcuffs without seriously injuring the applicant. However, the applicant's injuries had not been the direct result of the police officers' actions. They had occurred in circumstances where he had been drunk, violent and extremely agitated, and therefore the police officers could not have controlled their actions towards him.

37. The court also held that the violent actions towards the applicant had been carried out by the police officers within the framework of their work duties. In addition, the actions had been lawfully justified in order to alleviate the danger the applicant had represented to society and himself, given that he had been drunk, agitated and aggressive, and had been suffering from an organic personality disorder as a result of drinking alcohol. The police officers had not acted with the intent of hitting or hurting the applicant. His injuries had been the result of his immobilisation and handcuffing measures to stop his aggressive actions and transport him to the hospital. Therefore, the police officers' actions had been justified.

38. On 22 October 2014 the applicant underwent a medical examination at a private medical establishment, the Medical Civil Association for the Brain. According to a medical report produced by that establishment, the applicant had an organic personality disorder with "polymorphic decompensation" (*decompensare polimorfă*). The report noted that the

applicant's symptoms included a moderate intrapsychological tension, concentration difficulties, mixed insomnia and a low resilience to frustration and annoyances. It further noted, *inter alia*, that the applicant had repeatedly been admitted to psychiatric hospitals, had poor social and family support, and persistent symptoms for which he was receiving treatment.

39. On 6 January 2015 the applicant underwent a medical examination at Schitu-Greci Psychiatric Hospital, because he was suffering from psychomotor agitation, a conflicted personality disorder, headaches, dizziness and mixed insomnia. According to a medical report produced by the hospital, he was diagnosed with an organic personality disorder and received treatment for his condition. The report also noted that alcohol and coffee consumption, as well as conflict, amounted to risk factors in relation to the applicant's medical condition.

40. On 26 May 2015 a neurologist attached to Bagdasar-Arseni Emergency Hospital in Bucharest produced a medical report in respect of the applicant's medical condition, following his operation for his cervical spine injury. According to the report, *inter alia*, the applicant continued to experience movement difficulties. Consequently, the report considered it appropriate that the applicant's ability to work be assessed by a local expert commission, with a view to his potential retirement.

41. On 8 June 2015 the Caracal branch of an office specialising in expert medical assessment of a person's ability to work, which was attached to the Olt Retirement Agency, acknowledged that the applicant was suffering from a serious functional deficiency and had completely lost his ability to work.

## II. RELEVANT DOMESTIC LAW

42. The relevant provisions of the Romanian Civil Code on civil liability in tort read:

### Article 1349

"1. Any individual has a duty to observe the rules of conduct required by law ... and not to interfere by his actions or inaction with the rights and legitimate interests of others.

2. A person with legal capacity who breaches the aforementioned duty is liable for all the consequent damage caused and must make full reparation for it.

3. In circumstances expressly provided for by law a person must make reparation for the damage caused by the act of another person, objects or animals under his control ..."

43. The relevant provisions of Law no. 218/2002 on the organisation and operation of the Romanian police read:

**Article 33**

“1. Police officers may use ... handcuffs ... and other means of restraint which do not endanger life or cause serious bodily harm for deterring, preventing and neutralising the aggressive actions of individuals who disturb public order and peace, in the case of actions that cannot be prevented or stopped by employing other means.

2. The means described in section 1 may be used against individuals who:

(a) carry out actions which endanger another person's physical integrity, health or property;

...

(c) abuse individuals who occupy positions which involve the exercise of public authority;

(d) resist or do not obey, by any means, the lawful demands of police officers, only if there is a reasonable suspicion that they may endanger the lives or physical integrity of police officers by their actions ...

3. With the exception of extreme cases, the means described in section 1 shall be used gradually against people carrying out aggressive actions, after they are forewarned that such means shall be used and are given the necessary time to desist and comply with the police officers' lawful demands...

4. The use of the means described in section 1 may not exceed the real need to prevent or neutralise aggressive actions.”

44. The relevant provisions of the former Romanian Criminal Code concerning abusive behaviour read:

**Article 250**

“1. Offensive statements towards a person by a public servant during the exercise of his duties is punishable by imprisonment ... or a fine.

...

5. Serious physical harm caused by a public servant in the circumstances described in paragraph 1 is punishable by imprisonment ...”

45. On 1 February 2014 a new Code of Criminal Procedure (“the CCP”) entered into force in Romania.

**THE LAW****I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION**

46. Relying in substance on Article 3 of the Convention, and expressly on Articles 6 and 13 of the Convention, the applicant alleged that on 30 June 2013 he had been ill-treated by police officers, and that the subsequent criminal investigation into the incident had been ineffective for reasons which included the fact that the Balş District Court, in particular the

pre-trial chamber judge, had examined his complaint in private and without summoning the parties.

47. The Court reiterates that it is the master of the characterisation to be given in law to the facts of a case and is not bound by the characterisation given by an applicant or a government (see, for instance, *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 43, ECHR 2012).

48. Having regard to the facts of the present application, the Court considers that the case must be examined solely under the substantive and procedural heads of Article 3 of the Convention (see *Șercău v. Romania*, no. 41775/06, § 62, 5 June 2012). This provision reads:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

## **A. Admissibility**

### *1. The parties' submissions*

#### **(a) The Government**

49. The Government submitted that the applicant had failed to exhaust the available domestic remedies. Given that the decision of the domestic authorities not to open a criminal investigation against the police officers had been based on the involuntary character of the aggression, the applicant could have initiated civil proceedings in order to obtain redress.

50. The Government submitted that the applicant's injury had not been inflicted deliberately by the police officers. Consequently, they asserted that it could reasonably be argued that civil damages would in fact constitute an effective remedy in respect of ill-treatment in the absence of guilt, or ill-treatment by a person who had acted with the lowest degree of culpability, and in circumstances where the victim had been aggressive and where a thorough criminal investigation had established a lack of intent.

51. The Government argued that, if the applicant had initiated civil proceedings, a civil court would have examined the facts of the case by applying the standards specific to civil-law cases. Thus, even if the investigating authorities had not established the police officers' criminal liability, this would not have prevented the civil courts from establishing the officers' civil liability and awarding the applicant damages. According to well-established civil-law principles, a person who had caused damage to other people might be held liable and forced to pay compensation, even if that person had acted with the lowest degree of culpability.

52. The Government contended that the procedure provided for by the Romanian Civil Code had been adequate, efficient and effective. Also, it would not have been time-barred until June 2018. The applicant's civil claims could also have covered the deterioration in his health, and would not have represented an excessive burden for him, because he could have

used copies of the documents from the criminal file, and he would have been exempted from paying judicial tax.

**(b) The applicant**

53. The applicant submitted that exhausting all the available remedies would have been unnecessary in his case, as the investigation had not been thorough and the witness testimonies had been dismissed.

*2. The Court's assessment*

54. The Court reiterates that it has already established in the context of alleged excessive use of force by the police during an arrest, that the acts of State agents in breach of Article 3 of the Convention cannot be remedied exclusively through an award of compensation to the victim (see *Holodenko v. Latvia*, no. 17215/07, § 57, 2 July 2013), as such a remedy is aimed at awarding damages rather than identifying and punishing those responsible (see *Balajevs v. Latvia*, no. 8347/07, § 73, 28 April 2016).

55. In any event, the Court notes that the Government have not submitted any examples of domestic case-law dealing with compensation claims for damage caused as a result of the unlawful acts of State agents, and in particular examples concerning claims resulting from the allegedly excessive use of force by the police during arrest (contrast *Holodenko*, cited above, § 57).

56. The Court therefore dismisses the Government's objection regarding non-exhaustion of domestic remedies.

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

**B. Merits**

*1. The parties' submissions*

**(a) The applicant**

58. The applicant submitted that he had not been violent and had not resisted the police officers. Their behaviour had been disproportionate, unlawful and unjustified. Also, they could have restrained him without deliberately hurting him. He contended that the two police officers had assessed his situation superficially based on his medical history, and they had called an ambulance unnecessarily.

59. The applicant argued that the criminal investigation had not explained the exact cause of his injury, and had dismissed his claims without providing reasons. Also, he contested the authorities' conclusion

that the police officers had not acted with intent, given that they had acted unlawfully and should have realised that their actions would injure him. They should have acted with more restraint, given that they had outnumbered him, been fitter than him and been better equipped.

60. The applicant contended that the prosecuting authorities had unjustifiably ignored his medical situation, and had lacked impartiality. Also, they had refused to take into account the witness testimonies confirming the ill-treatment he had been subjected to by the police officers.

61. The applicant submitted that his health had worsened, both physically and mentally, and that he was cared for by his elderly parents.

**(b) The Government**

62. The Government submitted that an assessment of the factual circumstances of the case should rely on the findings of the domestic judicial authorities. They argued that, in the applicant's case, it had been acknowledged that he had been forcibly handcuffed by the police officers on 30 June 2013, after they had been alerted that he posed a danger to his relatives and public order.

63. The Government contended that the injuries suffered by the applicant during his immobilisation had not been caused intentionally by the State agents. The injuries had been the involuntary result of a lawful operation aimed at protecting the applicant and his relatives from his aggressive behaviour. Also, to a certain extent, the applicant's medical history and his criminal record had justified the firm intervention by the police.

64. The Government submitted that the police officers' decision to immobilise and handcuff the applicant had not been taken hastily, and their actions had been based on an assessment of the facts, and had complied with the relevant legal provisions. They had been fully aware of the applicant's criminal and psychological history, which in itself had rendered the need for additional caution when they arrived at his home. Also, when the applicant had been taken to hospital he had been aggressive, agitated, and had smelled of alcohol.

65. The Government submitted that the domestic authorities had investigated the circumstances of the incident of 30 June 2013 seriously and thoroughly. They had adduced a substantial amount of evidence for the file, such as the testimonies of witnesses and the parties, medical and criminal records, as well as a forensic expert report. Three witnesses had been interviewed on the applicant's behalf. The authorities had also taken statements from the two police officers involved in the incident, and the officers had denied the applicant's accusations.

66. The Government argued that the witness testimonies confirming that the applicant had been thrown against a metal gate had been made by individuals interested in the outcome of the investigation, and had been

contradicted by a well-reasoned forensic report concluding that the applicant had not had injuries on his body which had been caused deliberately. The report had also concluded that his injury had been caused by an overstretch of his cervical spine during the incident.

67. The Government submitted that the domestic authorities had taken numerous procedural steps in order to clarify the circumstances of the case, and the mere fact that the applicant disagreed with the outcome of the investigation could not render the investigation inadequate or ineffective. Also, according to the relevant legal provisions in force at the material time, a new forensic expert report could have been ordered if the investigating authorities or the court had had doubts in respect of the clarity of the conclusions of the existing report.

## *2. The Court's assessment*

### **(a) General principles**

68. The relevant principles concerning the State's obligation inherent in Article 3 of the Convention in cases of police violence, including in circumstances of allegations that the force used by the police during an arrest was excessive, are set out in *Bouyid v. Belgium* ([GC] no. 23380/09, § 81, 28 September 2015) and *Samachișă v. Romania* (no. 57467/10, §§ 60-64, 16 July 2015).

### **(b) The application of those principles to the instant case**

#### *(i) Alleged ill-treatment by the police*

69. The Court notes that some of the applicant's allegations in his statement given to the investigating authorities concerning the injuries he sustained at the hands of the police, namely being punched in the face in the ambulance which transported him to the hospital, are not supported by any available medical evidence. That being so, both the medical evidence produced shortly after the incident and the subsequent forensic expert report attested that the applicant had suffered a minor cranial cerebral trauma and a cervical spine injury, and that the latter injury had required seventy to eighty days of medical care.

70. In their submissions, the Government relied on the findings of the domestic authorities. Consequently, they did not dispute that on 30 June 2013, at the time of the incident, the applicant had been under the control of State agents, or that the injuries he had suffered had been the result of the police officers' actions.

71. However, the parties disagreed about how and when the applicant's injury had actually come about. The Government submitted that the injuries had been inflicted during his handcuffing, as a result of his obstinate

resistance, whilst the applicant argued that they had been sustained as a result of ill-treatment by the police, both during and after his handcuffing.

72. Although the Court is not in a position to determine the exact timing and cause of the applicant's injuries, it remains to be considered whether the force used by the police in his case was necessary and proportionate.

73. The Court notes that, according to the available evidence, particularly the witness statements, the contravention report and the conclusions of the prosecutor's office (see paragraph 20 above), the applicant's initial conduct during his conversations with the police officers, although uncooperative and agitated, was neither violent nor disproportionate.

74. The violence erupted when the police officers asked the applicant to accompany them to the police station, at which point he did not comply with their demand.

75. The Court further notes that there is no evidence in the file that the two police officers involved in the incident were injured in any way by the applicant. However, it appears that the applicant was inebriated and agitated both before and after the police officers arrived at his home, and that he showed some resistance to them.

76. In these circumstances, the Court is prepared to accept that some form of restraint was needed in order to avoid further outbursts from the applicant, and to prevent him from becoming physically violent. However, even if his restraint as such was rendered necessary by his obstinate behaviour, the domestic authorities did not provide sufficient explanation on whether the measure was proportionate.

77. In this connection, the Court notes that the two officers who were present at the applicant's home in order to control the situation were fully trained and equipped. Moreover, it notes that the Government's account of the arrest, which relied on the findings of the domestic investigation, is quite general. It does not determine the exact sequence of events, or the individual roles of the particular officers in restraining the applicant. Likewise, it does not explain which specific techniques were applied, and how they correlated to the applicant's particular actions (see, *Danilov v. Ukraine*, no. 2585/06, § 65, 13 March 2014, and *Klaas v. Germany*, judgment of 22 September 1993, §§ 13, 17 and 30-31, Series A no. 269). Furthermore, while the medical evidence found that the applicant's more serious injury had probably been caused by a forced rotation movement of the neck, and the domestic court hinted that the rotation had been the result of the applicant's voluntary movement, the authorities dismissed the applicant's request for additional expert evidence that could have dispelled any speculation or doubt on whether a person, even one in the applicant's condition, could have withstood a voluntary rotation of his neck to such an extent as to incur such a serious injury without immediately desisting from such a rotation.



78. The Court also notes that none of the available evidence indicates that the applicant resisted being handcuffed to such an extent as to justify such a severe response – a response which necessitated seventy to eighty days of medical care and caused him a serious functional deficiency, leaving him unable to work.

79. Consequently, the Court considers that neither the domestic authorities investigating the case nor the Government have convincingly shown that, in the particular circumstances of the present case, the force employed by the police officers against the applicant was proportionate (see, *mutatis mutandis*, *Sarigiannis v. Italy*, no. 14569/05, § 65, 5 April 2011 and contrast *Đekić and Others v. Serbia*, no. 32277/07, § 28, 29 April 2014). Consequently, it considers that the measures taken against the applicant amounted to inhuman and degrading treatment.

80. Accordingly, there has been a breach of Article 3 of the Convention under its substantive limb.

(ii) *Alleged ineffectiveness of the investigation*

81. The Court observes that, following the applicant's complaint, the domestic authorities carried out an inquiry into his allegations of ill-treatment. The Court accepts that the authorities reacted to the complaints of the applicant and his family; it is not, however, convinced that their response to his allegations was sufficiently thorough or "effective" to meet the requirements of Article 3.

82. In this connection, the Court notes that, although the applicant's father lodged a criminal complaint against the two police officers three days after the incident of 30 June 2013, no other steps to clarify the circumstances of the case, except interviewing the applicant's father, seem to have been taken by the authorities before 12 September 2013, when the applicant took up his father's criminal complaint against the officers and the authorities proceeded to interview two other witnesses to the incident at the applicant's request. In this connection, the Court reiterates that it has repeatedly underlined the importance of contacting and questioning witnesses in the immediate aftermath of such incidents, when memories are fresh (see, for example, *Doiciu v. Romania*, no. 1454/09, § 62, 5 May 2015). Furthermore, a forensic expert report was produced in the case four and a half months after the incident, and more than two months after the applicant had taken up his father's criminal complaint against the officers.

83. The Court also notes that in examining the applicant's case the authorities dismissed his request for expert evidence on whether a person could have been capable of a voluntary rotation of his neck to such an extent as to incur such a serious injury without immediately desisting from such a rotation, even though an in-depth examination of the matter would have alleviated any speculation or doubt with regard to the exact circumstances of the incident involving him.

84. The Court further notes that the domestic authorities acknowledged that the police officers had immobilised and handcuffed the applicant, and considered that the officers had acted within the framework of their work duties. However, while in examining the circumstances of the case the domestic authorities automatically applied the relevant legal provisions, they did not consider the question of the proportionality of the force used by the police officers (see *Petruş Iacob v. Romania*, no. 3524/05, § 49, 4 December 2012).

85. The Court considers that the examination of the question of the proportionality of the force used by the police officers would have been even more important, given that the relevant domestic legislation relied on by the domestic authorities allowed for such interventions in various situations, and required that certain procedural steps be observed in the process.

86. In view of the above findings, the Court considers that the investigation cannot be said to have been thorough and “effective”. Accordingly, there has been a violation of Article 3 of the Convention under its procedural limb.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. 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

88. The applicant claimed 20,000 euros (EUR) in respect of pecuniary damage for the significant deterioration in his physical and intellectual abilities following his ill-treatment by the police officers. In addition, he claimed a pension for life of EUR 700 per month (*pensie viageră*), because from the moment he had been ill-treated by the police officers he had needed a special carer (*însotitor special*). He submitted: several receipts for fuel (allegedly purchased during his journeys between his village and Bucharest for medical examinations) and tests, amounting to RON 1,182 (approximately EUR 275); a restaurant receipt for a meal allegedly purchased for the witnesses who had testified on his behalf, amounting to RON 59 (approximately EUR 14); and a receipt for a magnetic resonance imaging scan, amounting to RON 480 (approximately EUR 112). He also claimed EUR 700,000 in respect of non-pecuniary damage for the treatment he had been subjected to by the authorities at the time of his arrest.

89. The Government argued that the documents submitted by the applicant in support of his just satisfaction claims were only travel and restaurant receipts, which could only support his claims for costs and expenses. Moreover, the applicant's diminished physical and intellectual capacity and his inability to work meant that Law no. 448/2006 on the rights of people with disabilities was applicable. That law contained provisions in respect of the financial benefits which individuals with disabilities could enjoy, including financial provision for special carers. Furthermore, the Government argued that the applicant's claims in respect of non-pecuniary damage were not justified by the circumstances of the case, and in any event were excessive.

90. The Court notes that the applicant supported part of his claim for pecuniary damage by submitting travel and restaurant receipts. Like the Government, the Court considers that those documents are better suited to support the applicant's claim for costs and expenses. Moreover, the Court notes that the applicant has not submitted any medical documents attesting that he has been prescribed or advised to have a special carer and there is no evidence in the file that he initiated proceedings by relying on the relevant domestic legislation in order to obtain such aid. It therefore rejects this part of the applicant's claim in respect of pecuniary damage. He did, however, submit an invoice totalling EUR 112 for a magnetic resonance imaging scan, and the Court therefore awards him that amount in respect of pecuniary damage, plus any tax that may be chargeable.

91. The Court also accepts that the applicant suffered some non-pecuniary damage as a result of the infringement of his rights under Article 3 of the Convention. Making an assessment on an equitable basis, it awards the applicant EUR 11,700 under this head, plus any tax that may be chargeable.

## **B. Costs and expenses**

92. The applicant also claimed EUR 1,250 for costs and expenses incurred in respect of legal assistance and legal proceedings. In addition to the transport and restaurant receipts mentioned above (see paragraph 88), he also submitted invoices for a lawyer's fee totalling RON 1,000 (approximately EUR 233), and two receipts for translation services totalling RON 233 (approximately EUR 54), paid for by his father.

93. The Government argued that the applicant had not submitted any relevant documents to support his claim for the lawyer's fee.

94. 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, having regard to the above criteria, the supporting documents submitted, the nature of the issues dealt with, the fact

that the applicant was granted permission to represent himself in the case, and the fact that he must have incurred some travel and translation expenses, the Court considers it reasonable to award the sum of EUR 329 to cover the applicant's costs and expenses.

### **C. Default interest**

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

**FOR THESE REASONS, THE COURT, UNANIMOUSLY,**

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention both under its substantive and procedural limbs;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement:
    - (i) EUR 112 (one hundred and twelve euros), plus any tax that may be chargeable, in respect of pecuniary damage;
    - (ii) EUR 11,700 (eleven thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (iii) EUR 329 (three hundred and twenty-nine euros), plus any tax that may be chargeable, 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;

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

Done in English, and notified in writing on 7 February 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti  
Deputy Registrar

András Sajó  
President