



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

SECOND SECTION

CASE OF MEREUTA v. THE REPUBLIC OF MOLDOVA

(Application no. 64401/11)

JUDGMENT

STRASBOURG

15 May 2018

This judgment is final but it may be subject to editorial revision.

In the case of Mereuta v. the Republic of Moldova,

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

Paul Lemmens, *President*,

Valeriu Grițco,

Stéphanie Mourou-Vikström, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having deliberated in private on 10 April 2018,

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

PROCEDURE

1. The case originated in an application (no. 64401/11) 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 Mihail Mereuța (“the applicant”), on 1 October 2011.

2. The applicant was represented by Mr V. Batîr, a lawyer practising in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent at the time, Mr M. Gurin.

3. The applicant alleged, in particular, a breach of Article 3 of the Convention.

4. On 26 November 2015 the complaint concerning Article 3 of the Convention was communicated to the Government 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 1977 and lives in Opaci.

6. On 29 July 2009, the applicant was celebrating his birthday with a group of friends by a lake when they were attacked by S. who was intoxicated and carrying a hunting rifle. S. was angry because the applicant and his friends had allegedly ill-treated his uncle earlier. During the conflict, S. hit one of the applicant’s friends with the barrel of his gun and fired four gunshots at the group’s cars parked nearby. The applicant attempted to prevent S. from continuing shooting but was shot from a distance of some five metres into his right calf. The applicant’s repeated attempts to disarm S.

resulted in his receiving two more gunshots from a very short distance into his already wounded leg.

7. As a result of the attack the applicant sustained serious injuries to his right leg which led to amputation of his leg above the knee.

8. On 31 July 2009 criminal proceedings were instituted against S. on charges of hooliganism with the use of a firearm resulting in the causing of severe harm to the applicant's health.

9. Between 1 and 10 August 2009 twenty-five witnesses were questioned and by 12 September 2009 most of the investigative measures were completed.

10. On 12 August 2009 S. was declared a suspect in the criminal proceedings and on 29 December 2009 he was indicted.

11. On 12 January 2010 S. was heard as an accused. He acknowledged his guilt, but refused to make any declarations.

12. On 23 February 2010 the criminal case-file was remitted for examination from the Căușeni Police Station to the Anenii Noi Police Station.

13. Between March and December 2010 the Anenii Noi police conducted a new investigation into the circumstances of the case and carried out again all the investigative measures.

14. On 14 December 2010 the case-file was transmitted to the Anenii Noi prosecutor's office with the proposal to be remitted to a court for consideration.

15. On 20 December 2010 both the applicant and his representative were notified of the completion of the criminal investigation.

16. On 30 December 2010 the prosecutor's office decided to discontinue the criminal proceedings against S. The prosecutor's office found that according to Article 63(2) of the Code of Criminal Procedure, a person's status as suspect cannot be maintained longer than three months. Since S. was indicted on 29 December 2009, that is four months and seventeen days later, the indictment was unlawful. Therefore, all charges against S. were dropped and the proceedings discontinued.

17. On 18 February 2011 at the request of the applicant's representative, the prosecutor general's office decided to annul its previous decision of 30 December 2010, and to resume the criminal investigation on the ground that new facts had been discovered.

18. On 31 March 2011 the Rascani District Court upheld S.'s objection against the prosecutor's decision of 18 February 2011, ordering its annulment. The applicant and his representative were not summoned or informed about the proceedings.

II. RELEVANT DOMESTIC LAW

19. According to Article 63 (2)(3) of the Code of Criminal Procedure the status of suspect could be maintained only for a period of three months or six months with the authorisation of the Prosecutor General. According to Article 63 (6) of the same Code, the investigation could resume in spite of the expiry of the above time limits. However, on 23 November 2010, the Constitutional Court declared the latter provision unconstitutional.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

20. The applicant complained about the lack of efficiency of the investigation into the circumstances of his ill-treatment. 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

21. 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

22. The applicant argued that the authorities failed to discharge their positive obligations under Article 3 of the Convention and to conduct an effective investigation into the circumstances of the case.

23. The Government submitted that on 23 November 2010 the Constitutional Court declared unconstitutional paragraph 6 of Article 63 for the Code of Criminal Procedure, thus making it impossible for the investigation to continue once the applicant's status as suspect had come to an end. They argued that the investigation authorities did everything they could but they could not know that the Constitutional Court would adopt the above decision.

24. The Court reiterates that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to

ensure that individuals within their jurisdiction are not subjected to torture or inhuman and degrading treatment or punishment, including such treatment administered by private individuals (see *Pretty v. the United Kingdom*, no. 2346/02, §§ 50 and 51, ECHR 2002-III). A positive obligation on the State to provide protection against inhuman or degrading treatment has been found to arise in a number of cases (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, ECHR 2001-V; and *M.C. v. Bulgaria*, no. 39272/98, § 149, ECHR 2003-XII).

25. This positive obligation under Article 3 requires States to set up a legislative framework, notably effective criminal-law provisions, aimed at preventing and punishing the commission of offences against personal integrity administered by private individuals. This framework should be backed up by law-enforcement machinery, so that when aware of an imminent risk of ill-treatment to an identified individual, or when ill-treatment has already occurred, it affords protection to the victims and punishes those responsible for the breaches of such provisions (see *Mudric v. the Republic of Moldova*, no. 74839/10, § 47, 16 July 2013).

26. Turning to the facts of the present case, the Court notes that the applicant suffered very serious injuries as a result of the assault by S. Although the case was relatively simple, namely the principal suspect had already been identified and he had confessed to his crime, the criminal investigation that followed lasted for one year and eight months. Moreover, it ended without the perpetrator being punished because the investigators apparently failed to observe the time-limits provided for by the Code of Criminal Procedure for indicting him. The Court is not prepared to accept the Government's argument that the authorities did everything possible and that the perpetrator's discharge occurred because of an unexpected ruling of the Constitutional Court adopted almost one year and three months after the assault. It finds therefore that the investigation into the applicant's allegations of ill-treatment has not been adequate or sufficiently effective. There has thus been a procedural violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 44,000 euros (EUR) in respect of pecuniary damage and 500,000 Moldovan lei (the equivalent of EUR 25,220) in respect of non-pecuniary damage.

29. The Government submitted that there was no causal link between the pecuniary damage claimed and the alleged violation. As to the non-pecuniary damage claimed, the Government argued that it was excessively high.

30. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 7,500 in respect of non-pecuniary damage.

B. Costs and expenses

31. The applicant also claimed EUR 360 for the costs and expenses incurred before the Court.

32. The Government argued that the applicant failed to present any details concerning the amount claimed and any supporting documents.

33. The Court notes that the applicant has not produced any evidence in support of his claims. The Court therefore decides not to award any sum under this head.

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;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months EUR 7,500 (seven thousand and five hundred euros) for non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 15 May 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Paul Lemmens
President