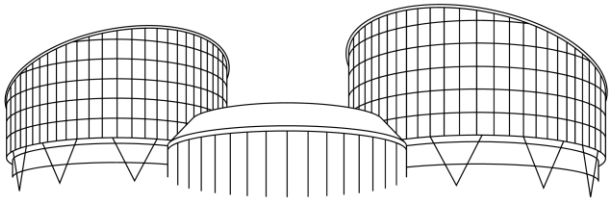

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FOURTH SECTION

CASE OF PETRU ROŞCA v. MOLDOVA

(Application no. 2638/05)

JUDGMENT

STRASBOURG

6 October 2009

FINAL

06/01/2010

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 Petru Roşca v. Moldova,

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

Nicolas Bratza, *President*,
Lech Garlicki,
Giovanni Bonello,
Ljiljana Mijović,
David Thór Björgvinsson,
Ledi Bianku,
Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 2638/05) 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 Petru Roşca ("the applicant"), on 29 November 2004.

2. The applicant was represented by Mr A. Postica from Promo-Lex, a non-governmental organisation based in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that the police had made excessive use of force during his arrest and detention, and that he had been convicted of an administrative offence without having had sufficient time and facilities to prepare his defence or to use the assistance of a lawyer.

4. On 17 January 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956 and lives in Cahul.

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

1. The applicant's arrest and alleged ill-treatment

7. The applicant is a school teacher with twenty-five years of teaching experience and is a person with a third-degree disability as a result of spinal cord and leg injuries.

8. According to the applicant, on 9 May 2004, the 59th anniversary of the end of World War II as celebrated in Moldova, he was in a bar with a friend. At approximately 8.30 p.m. he went home but was stopped by two persons wearing police uniforms. Without identifying themselves or giving any explanation, the persons took him by the hands and forced him to follow them. The applicant protested, identifying himself and asking who they were and where he was being taken. He was told that he would find out all the reasons on arrival at the local police station.

9. The applicant alleges that during the arrest and while being taken to the police station he received blows from the police officers. Two women intervened in his defence, but he was taken to the police station. At the police station he received more blows and was then placed in a detention cell together with four other men, most of them sleeping on the bare floor. When he made a complaint about the conditions of detention he was transferred to a solitary cell with even worse conditions. No information was given to him about the reasons for his arrest and he was not allowed to call his twelve-year-old son, who remained alone at home, nor to call a lawyer.

10. The next morning at approximately 8 a.m. he was given the record of his arrest to sign, but was not allowed to read it. He was also told the reasons for his arrest, following which he signed the documents but noted his disagreement with the charges against him. The record was dated 9 May 2004 and indicated the applicant's full name and home address. It described his behaviour as contrary to Article 164/1 and 174/6 of the Code of Administrative Offences (“the CAO”). According to the Government, the applicant signed the reports on 9 May 2004.

11. The two police officers wrote reports to the head of the police station, stating that on 9 May 2004 at approximately 8.30 p.m. the applicant had disturbed the public order by insulting certain public figures, including the deputy mayor of Cahul. Their request to follow them to the police station went unheeded, following which they had to use force to take him to

the police station, since he was "playing to the public". On the way to the police station he tried to escape but was tripped by one of the officers and fell down, hitting his face on the pavement. He was arrested again and taken to the police station.

12. Witness statements by O. N. and N. N. were annexed to the file, in which they described having seen the applicant being escorted by two police officers. When he attempted to escape, one of the officers tripped him and the applicant fell to the ground, hitting it with his face.

13. On 10 May 2004 at approximately 10 a.m. the applicant was brought before a judge, who examined his administrative case. The applicant alleges that his request for assistance by a lawyer was left unanswered. The Government submit that no such request was made. The judge found the applicant guilty of minor hooliganism and refusal to comply with lawful requests from the police, contrary to Articles 164/1 and 174/6 of the CAO. The court found, in particular, that the applicant had breached public order by insulting members of the public and the police. The applicant was fined 36 Moldovan lei (approximately 2.6 euros (EUR)) and released immediately.

14. Between 10 and 26 May 2004 the applicant was excused from work, his doctor noting "head trauma" as his preliminary diagnosis and later confirming it as the final diagnosis.

15. On 17 May 2004 the applicant underwent an examination by a forensic doctor, at a prosecutor's request of the same date (see paragraph 18 below). The doctor found a bruise under the applicant's right eye and diagnosed him with cranial trauma caused by a hard object on approximately the date mentioned by the applicant (9 May 2004). In reaching his conclusions he also referred to the findings made by the applicant's doctor on 10 May 2004 and by a neuropathology doctor on 17 May 2004.

16. On 18 May 2004 the applicant appealed against the decision of 10 May 2004. He complained of ill-treatment by the police, that he had not been allowed to be represented by a lawyer and that his arrest had not been recorded on the evening he was arrested, contrary to legal requirements. He also referred to the sleepless night he had gone through and that as a result he had been unable to present his case properly to the judge. He noted that no secretary or lawyer was present at the hearing, and that the officer who had ill-treated him threatened him with further ill-treatment if he complained.

17. On 1 June 2004 the Cahul Court of Appeal dismissed his appeal as unfounded. The court noted the statements made by O. N. and N. N., referred to above, as conclusive evidence that the applicant had insulted the police. Since the applicant himself confirmed that he was in normal relations with both witnesses, this excluded any bad faith on their part. Moreover, the applicant confirmed having consumed 100 ml of vodka and a

bottle of beer on 9 May 2004. The reports written by the arresting officers were evidence that the applicant was guilty of insulting members of the public.

2. Investigation of the applicant's complaint of ill-treatment

18. On 15 May 2004 the applicant asked a prosecutor to initiate criminal proceedings against the two officers in order to investigate his alleged ill-treatment. On 17 May 2004 the prosecutor requested a forensic doctor to examine the applicant. On 30 June 2004 the prosecutor refused to initiate criminal proceedings. Referring to the statements made by the police officers and by O. and N. and eight other witnesses, as well as the applicant's statements and the materials in the file, the prosecutor considered the applicant's complaint ill-founded. The content of the statements by the eight witnesses was not mentioned. The prosecutor added that the applicant's detention overnight was in accordance with Article 249 of the CAO.

19. At the applicant's request, on 22 July 2004 the Cahul District Court annulled the prosecutor's decision of 30 June 2004. The court found that a thorough verification of the applicant's complaints had not been made; in particular two witnesses who had allegedly intervened in his defence when he was being taken to the police station had not been identified or interviewed and there was no evidence in the file that any attempt had been made to find them. Moreover, the prosecution had not heard N.O and had failed to establish how the injuries to the applicant had been caused, whether as a result of a fall or blows.

20. On 29 October 2004 the prosecutor refused to open a criminal investigation against the two officers. The decision mostly repeated the reasons of the decision dated 30 June 2004. The new element included testimony from three witnesses, according to whom the applicant fell to the ground and then received a punch to the face and a blow to the leg with a police truncheon. However, "they were not present at the moment of [the applicant's] arrest itself". These new witnesses also confirmed that the applicant had resisted the police. It appears that the statements made by these three witnesses were not annexed to the file and were only mentioned in the prosecutor's decision.

21. The applicant appealed against that decision, stating that it was an almost identical copy of the decision dated 30 June 2004, except for the additional statements of three witnesses. He referred to the court decision of 22 July 2004, which had annulled the previous identical refusal to open a criminal investigation. He claimed that he had identified the three new witnesses and not the prosecutor, who had not made any attempt to find the witnesses. According to him, these witnesses confirmed that he had been thrown to the ground by the police officers and hit, and that this had happened near the square where he had been arrested, and not near a bar as

stated by the officers and witnesses O. N. and N. N. This undermined the credibility of those two witnesses. Moreover, O. N. had not been interviewed by the prosecutor. The applicant further pointed to the prosecutor's failure to order any new medical examinations or other measures to establish the source of his injuries, despite the court's order to do so.

22. On 19 November 2004 the Cahul District Court dismissed the applicant's appeal on points of law. The court found that the applicant had been found guilty of two administrative offences, as established by a final court decision. This confirmed that he had committed acts of hooliganism and insulted the police, which in turn allowed the police to use all necessary means to secure his arrest. Moreover, witnesses had confirmed that the applicant had resisted the police and there was nothing in the file to support his allegations of unlawful acts by the police.

23. The applicant requested the Prosecutor General's Office to lodge an extraordinary appeal, but this was rejected as unfounded.

II. RELEVANT DOMESTIC LAW

24. The relevant provisions of the Code of Administrative Offences read as follows:

Article 164. Minor hooliganism

"Minor hooliganism, namely injurious expressions uttered in public places, insulting behaviour towards citizens or other similar acts, which disturb public order and the peace of citizens, shall be punished by a fine of up to five times the conventional unit. If, due to the circumstances of the case and taking into consideration the offender's personality, such a sanction is considered insufficient, [an order can be made for] administrative arrest for up to fifteen days."

Article 174/6. Insulting a police officer or a bailiff.

"Insulting a police officer, namely the premeditated insulting of his or her honour and dignity, ... in the form of action, verbally or in writing, shall be punished by a fine of up to ten conventional units or administrative detention for up to fifteen days. ..."

THE LAW

25. The applicant complained under Article 3 of the Convention of excessive use of force during his arrest and about the conditions of his detention following his arrest. Article 3 reads as follows:

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

26. He also complained under Article 5 of the Convention of unlawful detention, since the law allowed him to be detained for an undetermined period of time pending an examination of his case by a court. He also complained under the same Article that he had not been informed promptly of the reasons for his detention. The relevant part of Article 5 reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;"
>
> ...
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

27. The applicant further complained, under Article 6 of the Convention, of a refusal to allow him to be represented by a lawyer, of a failure to identify and hear two witnesses and of a lack of adequate time and facilities to prepare his defence. The relevant part of Article 6 reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an ... impartial tribunal established by law.
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> ..."

28. The applicant finally complained that his arrest was prompted by his criticism of the ruling party and was thus contrary to Article 10 of the Convention. The relevant part of Article 10 reads:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ..."

I. ADMISSIBILITY

29. The applicant complained that the conditions of his detention for twelve hours at the Cahul police station were degrading. The Court considers that, in view of the lack of any evidence to support the applicant's claims concerning his conditions of detention and in view of the short period of his detention, this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected as inadmissible pursuant to Article 35 § 4 of the Convention.

30. The applicant complained that he had been arrested in the absence of a reasonable suspicion that he had committed a crime, in violation of Article 5 § 1 of the Convention.

31. The Court notes, however, that all the witnesses, even those he mentioned supporting his case, noted his resistance to the police. Some of them noted that he had used insulting language against the police and members of the public and the applicant himself acknowledged in court that he had consumed alcohol on the evening of his arrest. The Court concludes that the applicant's arrest could be justified by the need to bring him before a judge on the basis of a reasonable suspicion that he had engaged in hooliganism and resisted the lawful orders of the police.

32. Accordingly, the Court concludes that the complaint under Article 5 § 1 of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected as inadmissible pursuant to Article 35 § 4 of the Convention.

33. For the same reasons as noted above, and in the light of the Court's case-law (see, for instance, *Janowski v. Poland* [GC], no. 25716/94, ECHR 1999-I), the Court considers that the complaint under Article 10 of the Convention is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected as inadmissible pursuant to Article 35 § 4 of the Convention.

34. The applicant also complained that he had not been informed promptly of the reasons for his arrest. However, it appears that on the evening of 9 May 2004 he signed the record of his arrest, which included information about the reasons for his arrest. Moreover, given the circumstances, the reasons for the applicant's arrest must have been apparent to him (see *Murray v. the United Kingdom*, 28 October 1994, § 77, Series A no. 300-A). This complaint is therefore also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected as inadmissible pursuant to Article 35 § 4 of the Convention.

35. The Court considers that the applicant's complaints under Article 3 (except for his conditions of detention) and Article 6 § 3 of the Convention raise questions of law which are sufficiently serious that their determination should depend on an examination of the merits. No grounds for declaring them inadmissible have been established. The Court therefore declares these

complaints admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. The applicant submitted that he had been ill-treated during his arrest. He considered that the police had used excessive use force. Moreover, the investigation into his complaint of excessive use of force was not thorough, and the judge who examined him on 10 May 2004 did not respond to his complaint of ill-treatment.

37. The Government conceded that the police had used force, which had been provoked by the applicant's own actions. Moreover, the use of force had been limited to the minimum necessary under the circumstances, given that the law allowed much more serious measures to be taken by the police to deal with resistance to arrest. The Government considered that the investigation into the alleged excessive use of force had been thorough and prompt. Moreover, the applicant had opportunities to complain of his alleged ill-treatment when he signed the record of his arrest and during the hearing of 10 May 2004, but had failed to do so. He only went to a forensic doctor six days after his release, which allowed sufficient time for him to sustain injuries not related to his arrest and detention. The forensic doctor had only made a visual inspection of the applicant, and did not carry out any in-depth analysis necessary for reaching a conclusion that the applicant was suffering from head trauma. This made his conclusions insufficient to establish guilt on the part of the police officers in respect of the applicant's injuries.

1. Concerning the alleged ill-treatment

38. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII).

39. Where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment (see *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004). It is incumbent on the State to

provide a plausible explanation of how the injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni v. France*, cited above, § 87).

40. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

41. The Court notes that in the present case the parties disagree as to the manner in which the applicant received his injuries, notably his black eye and head trauma. Unlike cases where a person is injured while in detention, the applicant was injured during his arrest and the entire incident was witnessed by members of the public (see *Rehbock v. Slovenia*, no. 29462/95, § 71, ECHR 2000-XII). A number of witnesses noted that the applicant had fallen to the ground after trying to escape from the police and after he had been tripped by an officer. On the other hand, other witnesses deposed that the applicant had been hit by the officers after he had been immobilised on the ground (see paragraph 20 above).

42. The Court for its part finds it impossible to establish on the basis of the evidence before it whether or not the applicant's injuries were caused as alleged. The evidence referred to above supports both the applicant's and the Government's case. However it would observe at the same time that the difficulty in determining whether there was a plausible explanation for the applicant's injuries or whether there was any substance to his allegations of ill-treatment rests with the failure of the authorities to investigate effectively his complaints (see *Veznedaroğlu v. Turkey*, no. 32357/96, § 31, 11 April 2000). The Court will now examine this matter further.

2. Investigation of the alleged excessive use of force

43. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other agents of the State, that provision, 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 by implication that there should be an effective official investigation. As with an investigation under Article 2, such an investigation should be capable of leading to the identification and

punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV, and *Boicenco v. Moldova*, no. 41088/05, § 120, 11 July 2006).

44. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others v. Bulgaria*, cited above, § 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 104 et seq., ECHR 1999-IV, and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

45. In the present case, the Court notes that following the applicant's complaint the prosecutor's office carried out an initial assessment and decided not to initiate a criminal investigation (see paragraph 18 above). On 22 July 2004 the Cahul District Court annulled that decision, finding that the investigation had not been thorough since three witnesses mentioned by the applicant had not been identified and heard. Witness N.O. had not been heard either, and the manner in which the injuries had been caused to the applicant had not been established.

46. The Court observes that following that decision the prosecutor again refused to initiate criminal proceedings on 29 October 2004, and that the new refusal was formulated in a virtually identical manner to the previous one. Indeed, the only new information contained in that decision related to statements made by witnesses confirming the applicant's claim that he had been hit by the police while already on the ground. However, the same court which had earlier annulled the prosecutor's decision due to the lack of a thorough investigation accepted the decision of 29 October 2004.

47. The Court considers that it was difficult, if at all possible, for the prosecutor to determine how the applicant had received his injuries, in the absence of an in-depth medical examination. It notes however that no additional medical investigation was ordered, and no other measure aimed at finding out how the injuries were caused is apparent from the prosecutor's decision, despite an express indication to that effect by the domestic court in its decision of 22 July 2004. Moreover, another indication by the court concerning the identification of the two witnesses mentioned by the applicant was also not reflected in the prosecutor's decision, nor was there

any mention of interviewing N.O. Since these three elements were the only ones mentioned by the court in its decision of 22 July 2004 as amounting to a lack of a thorough investigation, it is unclear how the same court could reach another conclusion several months later in the absence of any clarification of the three points. Moreover, the new evidence which was mentioned by the prosecutor supported the applicant's version of events. In their observations submitted to the Court, the Government insisted that the lack of an in-depth analysis by the forensic doctor prevented any definitive conclusion as to the officers' guilt. However, an in-depth medical examination was clearly necessary after the court's decision of 22 July 2004 and was one of the crucial elements for a thorough investigation of the case. It was never carried out, just as no real attempt was made to verify the extent to which a forty-eight-year old person with a third-degree disability could offer any serious resistance to two younger officers specially trained to deal with any resistance.

48. It is to be noted, moreover, that when he was brought to the Cahul police station the applicant was not given a medical examination, despite the acknowledgment by the arresting officers that he had fallen and hit his face on the ground. This would not only have eliminated any doubt as to the nature and extent of the injuries caused to him during his arrest, but it would also have clarified the need for any medical assistance while in detention (see *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 45, 2 November 2004), regardless of whether the injuries had been caused in response to the applicant's own actions (see *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336). This was even more important in the light of the applicant's disability, of which he informed the police at the time of his arrest.

49. As for the Government's arguments that the applicant had not initially complained about his alleged ill-treatment and had gone to the forensic doctor only six days later, the Court notes that the applicant was seen by a doctor as early as 10 May 2004 – the day of his release – and was initially diagnosed with head trauma, a diagnosis later confirmed by the same doctor (see paragraph 14 above). The forensic doctor partly relied on that initial examination (see paragraph 15 above). Moreover, the police officers, the courts and the Government in their observations did not deny that force had been used against the applicant.

50. In the light of the above-mentioned deficiencies, the Court considers that the domestic authorities did not make a serious attempt to investigate the applicant's complaints of excessive use of force. Accordingly, there has been a violation of Article 3 of the Convention in this respect.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 IN CONJUNCTION WITH ARTICLE 6 § 3 (c) and (d) OF THE CONVENTION

51. The applicant complained of his conviction in the absence of a lawyer and without giving him sufficient time and facilities to prepare his defence. He pointed out that the Government had not contested the absence, at the hearing of 10 May 2004, of a secretary (see paragraph 16 above). Accordingly, no one was present to make a record of that hearing, and there was accordingly no means of verifying his claim that he had indeed asked for a lawyer and time to prepare his defence. Moreover, having been locked in a detention cell overnight and brought to the court hearing the next morning, the applicant did not have the opportunity to prepare for that hearing. His health had worsened overnight and he was generally unfit to stand trial.

52. The Government submitted that the applicant had been given the opportunity to examine the record of his arrest, which described the case against him in sufficient detail. He had also been given the opportunity – which he had used – to comment on that record. Moreover, the proceedings concerning administrative offences were in a simplified form, with time-limits of twenty-four to seventy-two hours from the moment of arrest. The applicant did not ask for a postponement of the hearing. He did not ask to be assisted by a lawyer and in administrative proceedings the participation of a lawyer was not mandatory. Finally, even though he was assisted by a lawyer before the higher court, the applicant failed to mention the alleged violation of his right to be assisted by a lawyer in his appeal of 17 May 2004, thus confirming the absence of a violation.

53. The Court recalls that the guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair trial set forth in paragraph 1 (see *Edwards v. the United Kingdom*, 16 December 1992, § 33, Series A no. 247-B). It will therefore examine the applicant's complaints from the standpoint of both paragraphs read together.

54. The Court reiterates that in the case of *Ziliberberg v. Moldova* (no. 61821/00, § 35, 1 February 2005) it found that Article 6 of the Convention was applicable under its criminal head to proceedings concerning an administrative offence. It sees no reason to depart from that conclusion in the present case, given moreover that the applicant risked up to fifteen days' detention (see paragraph 24 above). Accordingly, Article 6 was applicable to the proceedings in the applicant's case, since they involved “the determination of a criminal charge” against him.

55. The Court notes that the parties dispute whether the applicant had asked to be assisted by a lawyer or to have time and facilities to prepare for the hearing. It agrees with the applicant that one reliable manner of proving that such requests had or had not been made was to examine the record of the hearing. The Government did not dispute that no such record had been

made and did not submit a copy of it to the Court. Since the domestic court had not arranged for a record to be made, and in the absence of any evidence to the contrary submitted by the Government, the Court can presume that the applicant requested the assistance of a lawyer and time to prepare his case. This finding is supported by the fact that he had claimed that witnesses could confirm his version of events, witnesses who had not been heard by the court before adopting its decision.

56. Moreover, even in the absence of such a request, the domestic court must have realised that after a night in detention and having seen only the record of his arrest, the applicant could not have prepared for the hearing, for instance by identifying witnesses on his behalf or undergoing a medical examination. The only circumstance where such procedural safeguards could be dispensed with was where the applicant acknowledged his guilt and accepted a summary procedure, which was not the case here. Therefore, under the circumstances, regardless of any request to offer the applicant time and facilities to prepare his case, such an opportunity should have been given to him by the court *ex officio*, the more so since he risked fifteen days' administrative detention as punishment.

57. As for the Government's argument that the applicant had not mentioned these shortcomings in his appeal of 17 May 2004, the Court notes that in fact that appeal did mention all these shortcomings (see paragraph 16 above). The higher court did not respond to this complaint.

58. In the light of the above, the Court concludes that there was a violation of Article 6 § 1 taken in conjunction with Article 6 § 3 (c) and (d) of the Convention in the present case.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed EUR 9,000 for non-pecuniary damage caused to him as a result of violations of his Convention rights. He submitted that in the small town of Cahul a lot of people knew him and that his arrest and punishment had caused serious damage to his reputation and feelings of frustration.

61. The Government considered that no compensation was due in the absence of a violation of the applicant's Convention rights, and that in any event the amount claimed was excessive.

62. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the failure to properly investigate the allegedly excessive force used against him and to allow him time and facilities to prepare his defence. However, the amount claimed is excessive. Ruling on an equitable basis, the Court awards the applicant EUR 2,500 in respect of non-pecuniary damage.

B. Costs and expenses

63. The applicant also claimed EUR 2,500 in compensation for the costs and expenses incurred before the Court. The lawyer had spent twenty-five hours on the case.

64. The Government considered that the applicant's claims were exaggerated and unsubstantiated.

65. The Court awards EUR 1,000 for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaints under Article 3 of the Convention (except for the complaint concerning the conditions of detention) and Article 6 § 1 taken in conjunction with Article 6 § 3 (c) and (d) of the Convention, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 6 § 1 taken in conjunction with Article 6 § 3 (c) and (d) of the Convention;

4. *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, EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage and EUR 1,000 (one

thousand euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 6 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Nicolas Bratza
Deputy Registrar	President