



SECOND SECTION

CASE OF EVGHENII DUCA v. THE REPUBLIC OF MOLDOVA

(Application no. 18521/13)

JUDGMENT

STRASBOURG

28 September 2021

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



In the case of Evghenii Duca v. the Republic of Moldova,

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

Carlo Ranzoni, *President*,

Valeriu Grițco,

Marko Bošnjak, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to:

the application 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 Evghenii Duca (“the applicant”), on 21 February 2013;

the decision to give notice to the Moldovan Government (“the Government”) of the complaint concerning the inefficient investigation into his complaint of ill-treatment and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 7 September 2021,

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

INTRODUCTION

1. The present case concerns the alleged inefficient investigation into the applicant’s beating by another person.

THE FACTS

2. The applicant was born in 1991 and lives in Orhei. The applicant was represented by Mr V. Duca, a lawyer practising in Orhei.

3. The Government were represented by their Agent at the time, Mr M. Gurin.

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

5. On 12 September 2010, at around 3 a.m. the applicant had just come out of a disco club in a village near Orhei when he was attacked and beaten by an unknown person. According to the applicant, S. and G. – who were with that unknown person at the time – witnessed the incident, together with some other individuals. The following day, at around 8.43 p.m., the perpetrator called the applicant on his mobile telephone and threatened him with violence if he complained to the police.

6. On 15 September 2010 the applicant lodged a criminal complaint in respect of the unidentified perpetrator.

7. During the following several days the police interviewed the applicant and several witnesses. S. stated that he did not know G., that at the relevant

time he had been in an advanced state of intoxication, and that he had not witnessed any incident. C. stated that she had seen the perpetrator and gave a detailed description of him. G. was later questioned and stated that he knew S. and had talked to him at the club on the night in question but that he had not witnessed any incident.

8. On 21 September 2010 a forensic report was drawn up on the basis of the applicant's medical records, which stated that the applicant had a first-degree contusion of the right eye and of the nose, an abrasion on the head, an ecchymosis around the right eye, and abrasions on both lips. The report concluded that the injuries did not pose a threat to the applicant's health and could have been caused in the circumstances described.

9. In the meantime, on 20 September 2010, the police had suspended the investigation pending the identification of the perpetrator. The applicant appealed. On 5 October 2010 the Orhei prosecutor's office ("the prosecutor's office") quashed that decision and ordered further investigative measures. The police twice refused to institute criminal proceedings because the facts indicated the elements of an administrative offence and not of a crime. Those decisions were quashed by the prosecutor's office.

10. On 21 March 2011 a criminal investigation was initiated on the basis of a disruption of public order (*huliganism*) by two or more persons. On 18 May 2011 the applicant was acknowledged as a victim.

11. On 23 May 2011 the applicant lodged a complaint, stating that no investigative actions had been carried out since the investigation had been initiated. He claimed that the unidentified perpetrator had telephoned and threatened him on the day after the incident. It does not appear that he received any reply to his complaint.

12. On 27 June 2011 the police proposed discontinuing the investigation because no elements of a crime had been established. However, on 8 July 2011 the prosecutor's office suspended the investigation until the perpetrator could be identified. The applicant appealed. On 11 November 2011 S.B., a hierarchically superior prosecutor quashed the decision of 8 July 2011 and ordered that all witnesses be interviewed – in particular E., who, according to the applicant, would be able to identify the perpetrator.

13. The applicant lodged several complaints with the Orhei investigating judge ("the investigating judge") about the alleged inefficiency of the investigation. By decisions dated 18 October, 24 November and 23 December 2011 those complaints were rejected for failure to respect procedural formalities such as observing time-limits or complaining of the slow progress of the investigation during a period when in fact it had been suspended and had thus not been progressing at all ("slowly" or otherwise).

14. Despite the fact that he had no knowledge about the evolution of the investigation, the applicant lodged repeated complaints with the investigating judge, alleging an undue delay in the progress of the

investigation and inaction on the part of the investigating authority in respect of identifying the caller ID of the perpetrator. His complaints were rejected. However, on 16 March 2012, the investigating judge allowed his complaint and ordered the prosecutor's office to identify the caller ID and the person who had called the applicant on 13 September 2010. He also ordered him to interview E. about the events, to cross-examine S. and G., and to produce a visual likeness of the perpetrator that reflected the description provided by the witnesses.

15. On 17 July 2012 the applicant requested information from the prosecutor's office concerning the investigative measures taken pursuant to the investigating judge's order of 16 March 2012. On 10 August 2012 the prosecutor's office replied that in order to prevent further unnecessary delays, the case had been transferred to a different investigating officer. On 3 September 2012 the applicant lodged a complaint with the investigating judge regarding the inactivity of the investigating authority and the lack of detail in the prosecutor's office's reply. On 13 September 2012 the investigating judge ordered the prosecutor's office to provide the applicant with information about the actions undertaken in compliance with the order of 16 March 2012.

16. On 18 January 2013 the applicant again lodged a request for information about the progress of the investigation. On 28 January 2013 he lodged a complaint with the investigating judge regarding the prosecutor's failure to reply to his request. He subsequently received a reply from the prosecutor's office on 24 January 2013 informing him that an inquiry about the caller ID had been made, but for technical reasons the mobile telephone operator had been unable to provide the requested information. The witnesses had been interviewed repeatedly but it had not been possible to produce a likeness of the perpetrator because the witnesses had no longer been able to remember what he looked like. It had been impossible to cross-examine S. and G. because S. had left the country on 3 October 2012. On 28 January 2013 the applicant lodged a complaint with the investigating judge, alleging that the actions of the prosecutor's office had been insufficient and thus illegal. On 22 February 2013 the investigating judge dismissed the applicant's complaint as ill-founded.

17. On 4 March 2013 the applicant lodged a complaint with the prosecutor's office, asking why the mobile telephone operator had been unable to provide information about the perpetrator's caller ID. No reply was forthcoming, so on 8 April 2013 the applicant lodged a similar complaint with the investigating judge. At a hearing held on 22 April 2013 the prosecutor's office stated that the investigation had been initiated five months after the incident but that the request for the perpetrator's caller ID information had not been authorised until 2012, and under domestic law mobile telephone operators were obliged to keep such information for only thirteen months. At the end of the hearing the investigating judge allowed

the applicant's complaint and found that the prosecutor's office had unduly delayed the investigation. He ordered the prosecutor's office to respond to the applicant's request of 4 March 2013 for information concerning the progress of the execution of the investigating judge's order of 16 March 2012 (see paragraph 14 above).

18. In May 2013 the applicant obtained from the prosecutor's office the mobile telephone operator's reply to his enquiry regarding the reasons for not releasing information about the perpetrator's caller ID, which stated that it had been impossible in 2013 to provide information about calls made in 2010 because such information was kept for one year only.

19. On 17 July 2013 the prosecutor's office suspended the criminal investigation pending the identification of the perpetrator. The applicant appealed and, on 3 December 2013, the investigating judge quashed the decision and ordered an additional investigation in respect of the case. The judge noted, *inter alia*, that there was no evidence that the applicant had received a copy of the decision of 17 July 2013 in due time.

20. On 13 February 2014 the applicant lodged a request for information about the progress of the investigation. No reply was given. On 3 and 18 March 2014 the applicant lodged a complaint regarding the alleged inaction of the investigating officers. On 18 March 2014 his complaint was rejected by the prosecutor's office as ill-founded.

21. On the same day the applicant was informed that on 14 March 2014 the investigation had been suspended for the same reasons as before. The applicant appealed. On 15 May 2014 the investigating judge dismissed the applicant's appeal and upheld the decision to suspend the investigation. He found that the investigating authority had undertaken all possible actions, but had been unable to identify the perpetrator.

22. On 6 June 2014 and 16 June 2015 the applicant lodged a request for information about the actions taken in order to identify the perpetrator. Fresh complaints lodged on 30 July 2014 with the investigating judge and on 26 June 2015 with the S.S., another hierarchically superior prosecutor, about the investigators' alleged lack of action were dismissed on 16 October 2014 and 30 June 2015, respectively.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

23. The applicant complained that the investigation into his complaint of ill-treatment had not been effective. 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. Submissions by the parties

24. The Government submitted that the authorities had discharged their positive obligation of investigating the applicant's complaint of ill-treatment. Immediately after the complaint had been made, an investigation had been initiated into the administrative offence of causing bodily harm, in accordance with the initial complaint made. Over the following days the police had heard witnesses and had ordered a forensic report regarding the bruising on the applicant's body. Subsequently a criminal investigation had been initiated, but it had still been impossible to determine who had attacked the applicant, given the contradictory evidence gathered from witnesses. During the proceedings, all of the applicant's complaints – including his ever changing and contradictory statements – had been examined. In particular, the person whom the applicant had eventually identified as potentially being the perpetrator had submitted evidence indicating that he had been abroad at the time of the attack.

25. The Government added that while the investigation had been suspended several times and then reopened, eventually all possible investigative actions had been carried out. Owing to the impossibility of establishing the identity of the person who had attacked the applicant, it had been impossible to continue the proceedings, but that did not prevent the prosecutor from reopening them if new evidence were to become available. Moreover, the applicant had been involved in the proceedings and had lodged a number of requests and complaints, which had each time been examined and taken into account by the authorities.

26. The applicant submitted that a few days after he had lodged his complaint with the police, a witness (C.) had been heard; that witness had provided a detailed description of the unknown assailant. However, the police had not produced a visual likeness of the perpetrator on the basis of that description. Moreover, he had not been kept informed of the course of the investigation and had had to lodge numerous complaints in that regard. The investigating authorities had not acted diligently. They had allowed significant delays, leading to the fading of details in the memories of the applicant and witnesses and undermining the effectiveness of the investigation.

B. Admissibility

27. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other of the grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

28. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment. The obligation on 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 or degrading treatment, including such ill-treatment administered by private individuals (see, for instance, *O’Keeffe v. Ireland* [GC], no. 35810/09, § 144, ECHR 2014 (extracts)).

29. Article 3 requires authorities to conduct an effective official investigation into alleged ill-treatment inflicted by private individuals; that investigation should, in principle, be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. That investigation should be conducted independently, promptly and with reasonable expedition. The victim should be able to participate effectively (see *C.A.S. and C.S. v. Romania*, no. 26692/05, § 83, 20 March 2012, and *O’Keeffe*, cited above, § 166).

30. In the present case, the Court notes that although an investigation into the applicant’s complaint of ill-treatment by an unknown person started promptly, it was limited to administrative proceedings. A proper criminal investigation did not begin until approximately half a year later (see paragraph 10 above), which in itself limits the usefulness of any evidence gathered (see, for instance, *Guțu v. Moldova*, no. 20289/02, § 61, 7 June 2007; *Mătășaru and Savițchi v. Moldova*, no. 38281/08, §§ 25 and 90, 2 November 2010; *Gasanov v. the Republic of Moldova*, no. 39441/09, § 53, 18 December 2012; and *Ciorap v. the Republic of Moldova* (no. 5), no. 7232/07, § 62, 15 March 2016).

31. The Court also notes that despite being informed from the very beginning of the threats which the applicant had received in a phone call and despite the request lodged by the applicant for the identity of the caller to be determined, the investigators waited for a year and a half before the caller’s identification was ordered by a judge (see paragraphs 11, 14 and 17 above). By that time the relevant information had been destroyed, in accordance with the law (of which the law enforcement agencies should have been aware). Thus, a potentially important piece of evidence was knowingly left to be destroyed, despite the repeated requests by the applicant for that evidence to be gathered. That aspect of the investigator’s failure to act diligently was also confirmed by the investigating judge (see paragraph 17 above).

32. A similar delay was allowed in respect of the producing of a visual likeness of the perpetrator on the basis of the description furnished by the

witnesses. Such an action was all the more important given the difficulty of identifying the perpetrator, but it was only after a court ordered the investigator to do so – following a complaint lodged by the applicant – that the authorities reacted (see paragraph 14 above). Such a long passage of time (a year and a half from the time of the events) could naturally have led to the fading of important details in the memory of the witnesses, thus undermining the efforts to identify the perpetrator.

33. The Court observes that the applicant was not allowed to be sufficiently involved in the proceedings. In particular, he was apparently not kept informed of the course of the investigation and had to lodge numerous requests for information and complaints about the investigator's inactivity (see paragraphs 11, 14, 15, 16 and 20 above). Moreover, on one occasion the applicant obtained a court order in an effort to receive a reply to his request for information – an order that was not fully enforced until he obtained a second court order (see paragraphs 14 and 15 above).

34. The foregoing considerations are sufficient to enable the Court to conclude that the investigation into the applicant's ill-treatment has been protracted, with unexplained delays leading to the destruction of potential evidence and with the loss of details owing to the passage of time – and all the while, the applicant was insufficiently involved in the proceedings.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

36. The applicant complained of a breach of Article 13 of the Convention, which reads as follows:

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

37. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible. However, it considers that in respect of procedural shortcomings that result in an inefficient investigation the procedural aspect of Article 3 is a *lex specialis*. No separate issue arises under Article 13 in this respect, which will therefore not be examined separately.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Non-pecuniary damage

39. The applicant claimed 9,000 euros (EUR) in respect of non-pecuniary damage.

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

41. Having regard to the violation found above, the Court considers that an award for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000.

B. Costs and expenses

42. The applicant also claimed EUR 150 for the costs and expenses incurred before the domestic courts and EUR 915 for those incurred before the Court.

43. The Government noted that the applicant had not submitted any contract binding him to pay any sum to his representative, or any other evidence that he had made any payments.

44. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria – notably the absence of any contract with the applicant’s representative binding under domestic law – the Court considers it reasonable to award the sum of EUR 15 covering postal costs, for which the applicant provided payment receipts.

C. Default interest

45. 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;

3. *Holds*, that there is no need to examine the complaint under Article 13 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, the following amounts, to be converted into Moldovan lei at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 15 (fifteen euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Hasan Bakırcı
Deputy Registrar

Carlo Ranzoni
President