



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

THIRD SECTION

Application no. 64785/11
Adrian REPEȘCU and Constantin REPEȘCO
against the Republic of Moldova
lodged on 30 May 2011

STATEMENT OF FACTS

1. The applicants, Mr Adrian Repeșcu (the first applicant) and Mr Constantin Repeșco (the second applicant), are Moldovan nationals, who were born in 1979 and 1987 respectively and live in Pirlîța. They are represented before the Court by Mr A. Postica, Ms N. Hriplivii, Mr P. Postica and Ms L. Poțîng, from “Promo-Lex”, a non-governmental organisation based in Chișinău.

The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

1. The applicants’ arrest and alleged ill-treatment

3. The applicants are brothers. On 11 August 2007 they were arrested by officers from the Botanica police station on suspicion of having killed their neighbour F. A third person (S.) was subsequently arrested when the applicants made confessions, stating that S. had also participated in the murder.

4. According to the applicants, each of them was ill-treated by a number of police officers at the Botanica police station with a view to obtain self-incriminating statements in respect of the killing of F. The ill-treatment included kicks and blows to various parts of the applicants’ bodies, suspension on a metal bar and the use of gas masks to block oxygen until they lost consciousness, as well as suspending heavy objects to their genitals, blows to both ears, threats of planting drugs in their pockets and of killing them if they refused to make confessions. As a result of the first

applicant's ill-treatment, blood was running from his nose and three broken teeth. As a result of the ill-treatment suffered, the second applicant's hearing was substantially diminished.

5. While *ex-officio* appointed lawyers subsequently saw the injuries on the applicants' bodies and faces, they pretended not to observe anything. No medical assistance was offered to them throughout their detention at the police station. Since the administration of Prison no. 13 refused to accept the applicants on their premises due to the presence of clear signs of ill-treatment, they had been kept at the police station for 45 days in order for the injuries to heal.

2. Investigation of the applicants' complaints of ill-treatment

6. According to the applicants, they continued to be ill-treated from time to time and were threatened with more serious consequences if they complained about ill-treatment. They therefore refrained from making any complaints until such time when they were brought before the court examining the criminal case against them. Their first complaint was thus made at the hearing of the Botanica District Court on 14 April 2008.

7. On 8 May 2008 the Botanica prosecutor's office refused to open an investigation of the applicants' complaint, finding that it had not been established that they had been ill-treated. The applicants were informed of that decision on 22 May 2008. The second applicant, who in the meantime was apparently released pending trial, challenged in court that decision.

8. On 26 June 2008 the Botanica District Court annulled that decision, finding that the prosecution had not even heard the second applicant about his allegations and had not ordered a medical expert report in order to verify the presence and origin of any signs of ill-treatment on his body. Moreover, the court found that the second applicant had been examined by a doctor during his detention and that injuries on his body had been established, while the applicant claimed that he practically lost his hearing. The court ordered a more thorough examination of the case by the prosecutor's office.

9. On 21 and 23 July 2008 the second applicant underwent medical examinations, which revealed that he suffered from the consequences of a cerebral trauma, with a broken temporal bone.

10. On 12 June 2009 the prosecutor again decided not to initiate a criminal investigation of the applicants' complaints. He referred to the first applicant's statement, made during his detention at the police station, that he had struggled with the victim when killing her, which could have been the origin of his injuries. The prosecutor thus concluded that it was unnecessary to order a medical examination of the applicants' injuries since their origin had been clearly shown to have been the struggle with the victim.

11. On 23 September 2009 the Botanica District Court annulled that decision, finding that the first applicant had still not been heard. Moreover, the prosecution had not verified medical records concerning the first applicant's treatment while in detention in order to determine whether such treatment had been necessary due to any injuries following his alleged ill-treatment.

12. On 7 July 2010 the prosecutor again decided not to initiate a criminal investigation of the applicants' complaints. He referred to the statements made by various witnesses, including the first applicant's statement

concerning the struggle with the victim. Three of the witnesses declared that they had seen injuries on the second applicant's body while in detention at the Botanica police station and that he had explained that the officers had ill-treated him. The prison doctor declared that he had found injuries on the second applicant's body on 11 August 2008 and found injuries on his left temporal region, as well as scars on his left hand, produced earlier than the first injury. These injuries, produced at different times and manners, were not usual for cases of ill-treatment. The prosecutor noted that during the various investigation actions made in the presence of their lawyers the applicants never made any complaint of ill-treatment. Moreover, the second applicant did not appear before the prosecutor when summoned in order to be heard and to submit to a medical examination. On 18 July 2010 a higher ranking prosecutor upheld the decision of 7 July 2010.

13. On 27 September 2010 the Botanica District Court annulled the decisions of 7 and 18 July 2010, finding that the first applicant had still not been heard and that the prosecutor had failed to examine the medical records concerning any treatment of the first applicant while in detention in order to determine whether such treatment had been necessary due to any injuries following his alleged ill-treatment.

14. On 26 November 2010 a prosecutor decided to initiate a criminal investigation of the applicants' allegations of ill-treatment. In a letter to the applicants' mother dated 11 January 2011 the Ombudsman stated that the opening of the criminal investigation had been the result of his request.

15. On 19 January 2011 the second applicant was officially declared an injured party.

16. On 11 April 2011 the second applicant asked to be informed about the actions taken within the context of the investigation of his complaint of ill-treatment and to be issued copies of any decision taken.

17. On 15 April 2011 he was informed that under applicable domestic law he could obtain such information only after the investigation was over. His mother received a similar reply on 4 May 2011.

COMPLAINTS

18. The applicants complain under Article 3 of the Convention that they have been ill-treated by the police during their detention.

19. They also complain, under the same provision, that they had not been given medical assistance required by their condition.

20. They further complain, under the same provision, that the investigation of their complaint about ill-treatment was not effective.

21. They finally complain of a violation of Article 13 of the Convention since they did not have effective remedies in respect of their complaints under Article 3 of the Convention.

QUESTIONS TO THE PARTIES

1. Has there been a violation of Article 3 of the Convention? In particular:

- (a) Were the applicants ill-treated while in detention?
- (b) Has there been an effective investigation, within the meaning of Article 3, of their allegations of ill-treatment?
- (c) Did the applicants require medical attention as a result of their alleged ill-treatment and if so did they obtain medical assistance required by their condition?

2. Has there been a violation of Article 13 of the Convention taken in conjunction with Article 3?