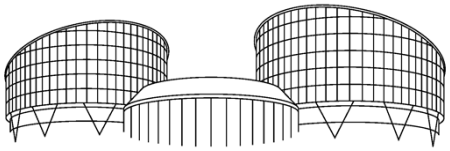

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF TROCIN v. THE REPUBLIC OF MOLDOVA

(Application no. 23847/19)

JUDGMENT

Art 3 (substantive and procedural) • Inhuman and degrading treatment • Failure of Government to provide plausible explanation for injuries sustained while in detention • Effective investigation • No genuine efforts to investigate the case, with unexplained delays and unreserved acceptance without verification of accused police officers' version of events

STRASBOURG

16 March 2021

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 Trocin v. the Republic of Moldova,

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

Jon Fridrik Kjølbro, *President,*
Marko Bošnjak,
Valeriu Griţco,
Egidijus Kūris,
Branko Lubarda,
Carlo Ranzoni,
Saadet Yüksel, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the application (no. 23847/19) 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 Evgheni Trocin ("the applicant"), on 12 April 2019;

the decision to give notice to the Moldovan Government ("the Government") of the complaint concerning Article 3 of the Convention;

the parties' observations;

Having deliberated in private on 9 February 2021,

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

INTRODUCTION

1. The case concerns the subjection of the applicant to acts of torture, namely Palestinian hanging while in pre-trial detention.

THE FACTS

2. The applicant was born in 1988 and lives in Durleşti. He was represented by Mr V. Ciuperca, a lawyer practising in Chișinău.

3. The Government were represented by their Agent, Mr O. Rotari.

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

5. On 10 June 2014 the applicant was arrested and placed in pre-trial detention on suspicion of having participated with another person in the commission of a murder.

6. On 7 August 2014 the applicant was escorted by police officers V.B. and S.T. to the office of Prosecutor D.R. in the building of the Prosecutor General's Office for questioning. According to the applicant, upon his arrival, the prosecutor informed him that since his lawyer was absent, the questioning would be adjourned. He also asked police officers V.B. and S.T. to escort the applicant back to the detention facility where he was normally detained. According to the police officers, upon arriving at the

Prosecutor General's Office, they waited for some thirty to forty minutes in the corridor, before being told by the prosecutor that the questioning was to be adjourned due to the lawyer's absence. After that, the applicant was escorted back to the detention facility.

7. According to the applicant, instead of taking him back to the detention facility, police officers V.B. and S.T. and two other officers wearing balaclavas took him out of the building through a back door and, after putting something resembling a sock on his head, drove him to an unknown location that looked like a garage or a warehouse. At that location one of the officers wearing a balaclava cocked a machine gun, put it to his head and demanded that he admit to the murder of which he was being accused. He told the applicant that if he did not comply, he would be shot for an alleged attempted escape. Since the applicant refused to comply, several persons wearing balaclavas took off his shoes and handcuffs, covered his wrists and ankles with towels or cloths resembling towels and then tied them together behind his back with ropes and suspended him on a metal bar placed on two adjacent tables (a position called "swallow" akin to Palestinian hanging). Then police officers V.B. and S.T. repeated the demand that he admit to having committed the murder of which he was being accused. Since the applicant refused again, they put a gas mask on his head, attached wires to his ears and started giving him electric shocks while at the same time covering the airflow to the gas mask and hitting his head with a two-litre plastic bottle full of water. The applicant lost consciousness three times and after about forty minutes of such ill-treatment he agreed to write everything the officers dictated to him and to sign everything as instructed. He was also told to repeat the same story in front of the prosecutor and was threatened with repeated acts of torture in case of non-compliance or if he told anyone about the ill-treatment. Immediately after that, police officers V.B. and S.T. took him to the central police station, where prosecutor D.R. was waiting in an office. The Government disputed the above allegations and argued that the applicant had not been subjected to any acts of ill-treatment on 7 August 2014.

8. At the police station the applicant met his lawyer and told him about the ill-treatment suffered at the hands of the police. The lawyer demanded immediately that the applicant be subjected to a medical check-up and the prosecutor ordered that such a check-up be carried out. At approximately 5 p.m. the applicant was taken by police officers V.B. and S.T. to the institute of forensic medicine, where he was examined by a doctor.

9. In a medical report dated 8 August 2014, the doctor who had examined the applicant stated that the latter complained of suffering from a headache and that he had two bruises on his face which were three to four days old and that he also had circular contusions of the soft tissues on his wrists and his ankles, possibly from handcuffs. The age of those contusions

was not specified. The doctor concluded that the injuries on the applicant's body amounted to insignificant bodily harm.

10. It appeared later that the applicant's co-accused complained of identical acts of torture on the same date and had identical injuries on his face, wrists and ankles. It also appeared that they were held in different cells and did not have contact with one another.

11. On 14 August 2014 a criminal investigation was initiated into the circumstances of the alleged ill-treatment of the applicant.

12. On 29 August 2014 the prosecutor in charge of the case decided to discontinue the investigation on the ground of absence of *prima facie* evidence that an offence had been committed. The applicant appealed against that decision to the hierarchically superior prosecutor.

13. On 2 September 2014 the hierarchically superior prosecutor quashed the above decision and ordered a further investigation into the circumstances of the case.

14. On 15 September 2014 the investigation was discontinued again and, on 24 November 2014, the hierarchically superior prosecutor again quashed the decision and ordered a further investigation.

15. On 19 November 2014 the investigation was discontinued for the third time, on the ground that the applicant's complaint concerning the ill-treatment of 7 August 2014 was not consistent with the findings in the forensic medical report of 8 August 2014 to the effect that the bruises on his face were three to four days old and thus could not have been caused on 7 August. The investigators concluded that since the applicant had not complained about any ill-treatment pre-dating 7 August 2014, his complaint was thus ill-founded.

16. On 12 January 2015 the hierarchically superior prosecutor again quashed the above decision and ordered that the investigation be resumed.

17. On 6 February 2015 the prosecutor in charge of the case formally initiated criminal proceedings concerning the intentional causing of physical pain and suffering to the applicant, representing inhuman and degrading treatment. The scope of the criminal proceedings was limited to the determination of the origin of the bruises on the applicant's face which were three to four days old on 7 August 2014.

18. During the investigation, the prosecutor in charge of the case ordered a new forensic investigation which confirmed the findings of the first forensic investigation and added that the contusions on the applicant's wrists and ankles found on 7 August 2014 were not older than twenty-four hours. A psychological assessment was also conducted and the expert concluded that, in order to defend himself, the applicant was capable of lying and distorting reality. The criminal proceedings were discontinued by a final decision of 15 June 2016.

19. On 20 July 2016 a new set of criminal proceedings was initiated concerning the alleged subjection of the applicant to acts of torture on 7 August 2014. On 26 September 2016 and on 12 December 2016 police officers V.B. and S.T. were declared suspects.

20. During the investigation, the prosecutor in charge of the case questioned officer V.B. and conducted a confrontation between him and the applicant. Officer V.B. stated that he and officer S.T. had brought the applicant to the office of prosecutor D.R. in the building of the Prosecutor General's Office on 7 August 2014. Since the applicant's lawyer was not present, they had waited in the corridor for some thirty to forty minutes and then taken the applicant back to the detention facility. They had had information that the applicant was planning to escape and therefore, they cuffed both his wrists and ankles. Nobody had used force against the applicant. The applicant had been in their custody for a total time of forty to fifty minutes. Officer S.T. refused to make any statements but pleaded not guilty.

21. The prosecutor in charge of the case also obtained the journal of the record of the prisoners' entering and leaving the detention facility where the applicant was detained at the material time. According to it, the applicant had left the detention facility on 7 August 2014 at 3.50 p.m. and had returned on the same day at 7.40 p.m. According to the journal from the institute of forensic medicine, the applicant had been brought there at 5.15 p.m. on 7 August 2014.

22. The prosecutor also obtained information from the detention facility where the applicant was being detained at the time and found out that he had been held alone in cell no. 4, while his co-accused had also been held alone in cell no. 13. No video recordings were saved because they were normally destroyed after fifteen days.

23. Prosecutor D.R. stated that he had not seen any bruises on the applicant's face when he had seen him the first time on 7 August 2014.

24. The forensic expert who had examined the applicant on 7 August 2014 stated that the marks on the applicant's wrists and ankles were most probably caused by cuffs. At the same time, he stated that had the applicant been suspended by the whole weight of his body on cuffs, those would most probably have caused lesions and not only contusions. The expert also stated that the possible use of a gas mask and the blocking of the airflow could not leave any signs on the applicant's body. As to the electrocution of the applicant's ears, the expert stated that had the intensity of the electricity been high enough, it could have left burns on the applicant's ears, which was not the case. Had the applicant lost consciousness as a result of electrocution, the intensity of the electricity must have been high enough to leave burns.

25. The prosecutor also obtained from unknown sources an audio recording of a conversation between two persons, whose voices were alleged to resemble those of the applicant and of his co-accused, in which the two discussed the declarations made by each of them and in which one of them, allegedly the applicant, said that he was going to bang his head against a cabinet.

26. In decisions of 26 December 2016 and 10 March 2017 the prosecutor concluded that in the light of all the above, there was no evidence to prove that the applicant had been subjected to any form of ill-treatment on 7 August 2014. He concluded that there were serious grounds to believe that the applicant could have invented the story about the ill-treatment as a method of defence against the accusations brought against him and had inflicted the bruises on his face himself. As to the contusions on his wrists and ankles, they had been created as a result of cuffing the applicant's limbs. Had the applicant been suspended on the cuffs, the weight of his body would have created lesions and not only bruises. The prosecutor therefore decided to discharge officers V.B. and S.T. The applicant appealed.

27. On 18 January and 24 March 2017 a hierarchically superior prosecutor dismissed the appeals lodged by the applicant against the above decisions.

28. On 6 and 14 July 2017 the Centru District Court dismissed the applicant's appeals. The applicant lodged appeals on points of law before the Court of Appeal.

29. On 11 October 2017 the Chisinau Court of Appeal upheld the applicant's appeals after finding that the investigation conducted into the applicant's allegations had been superficial and that the prosecutors had failed to give answers to some important questions such as, for instance, where exactly the applicant was between 3.50 p.m. and 7.40 p.m.

30. In the meantime, on 31 July 2017 the prosecutor in charge of the case decided to discontinue the criminal proceedings on the same grounds as those indicated in his decisions of 26 December 2016 and 10 March 2017 (see paragraph 26 above). The applicant appealed against this decision.

31. On 24 August 2017 the hierarchically superior prosecutor dismissed the applicant's appeal.

32. On 19 December 2017 the Centru District Court upheld the applicant's appeal and quashed the decisions of 24 August 2017 and 31 July 2017.

33. On 23 March 2018 the prosecutor in charge of the case again decided to discontinue the criminal proceedings on the same grounds as those indicated in his decisions of 26 December 2016 and 10 March 2017 (see paragraph 26 above). The applicant appealed against this decision.

34. The above decision was upheld by the hierarchically superior prosecutor on 26 April 2018 and by the Centru District Court on 19 June 2018.

35. In his appeal on points of law the applicant argued that his feet were never cuffed when he was escorted on 7 August 2014 and that on 8 August 2014 he underwent an X-ray in a hospital in relation to problems with his back caused by the acts of torture of 7 August 2014. The applicant complained that the prosecutor had refused to take into consideration the results of the X-ray procedure and attach it to the file. He also submitted that the prosecutor had refused to order an expert evaluation of the audio recording of the alleged conversation between him and his co-accused.

36. On 15 October 2018 the Chisinau Court of Appeal dismissed the applicant's appeal on points of law.

RELEVANT LEGAL FRAMEWORK

37. The domestic law in force at the material time did not provide for any other forms of restraint of persons detained in pre-trial detention except handcuffing. It did not contain any provisions concerning ankle, leg, finger or other forms of cuffing. The only other form of restraint provided for by law was the straight-jackets which were used for persons suffering from psychiatric disorders.

38. The Government's decision No. 583 of 26 May 2006 concerning the manner of execution of sanctions by convicted persons, in so far as relevant, reads as follows:

> "1. The provisions of the present Rules concerning the conditions of detention, rights and obligations of convicted persons... shall be applied also to persons detained on remand...
>
> 219. Handcuffs shall be applied to detainees in the following cases:
>
> when resisting the personnel of the detention facilities, the control team (guards), and when enraged – until he or she calms down;
>
> when refusing to be escorted or when taken to a disciplinary cell, during the escorting, if there are reasons to believe that the detainee might escape;
>
> in case of attempted suicide, auto-mutilation, attack against other detainees – until he or she calms down;
>
> when escorting after apprehension of an escaped detainee.
>
> 220. When applying the handcuffs, the detainee's hands must be behind his or her back.
>
> 221. After two hours the handcuffs must be removed for a period of 5-10 minutes, and applied back if necessary.
>
> 222. The handcuffs shall be removed during eating, sleeping, going to the toilet, disinfection, medical examination, in case of sudden illness, after arrival of the escorted person at destination, as well as in case of danger for the detainees' life and

health (fire, flood, earthquake, etc.), during court hearings or at the request of persons who had ordered the handcuffing and of superiors. The fact of applying the handcuffs must be mentioned in special minutes (*proces verbal*). The persons who have admitted unreasoned application of handcuffs shall be sanctioned in the manner provided for by law."

39. The Government's decision No. 474 of 19 June 2014 concerning the approval of the list of the special equipment and the types of firearms and ammunition and the rules of applying them, in so far as relevant, reads as follows:

"12 (2) Handcuffs

The locking mechanism shall be checked periodically. When applying the handcuffs, the hands of the delinquent must be behind his back or in front. The handcuffs shall be removed during eating, sleeping, going to the toilet, disinfection, medical examination, in case of sudden illness, after arrival of the escorted person at destination, as well as in case of danger for the detainees' life and health etc., except in cases provided for by the law."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

40. The applicant complained under Article 3 of the Convention that he had been tortured by the police. He also complained that the domestic authorities had failed to investigate his complaints of torture properly. Article 3 of the Convention reads as follows:

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

A. Admissibility

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

B. Merits

1. Submissions of the parties

42. The applicant submitted that he had been tortured during his detention and that the authorities had failed to properly investigate his complaint. He denied having been shackled on 7 August 2014 and argued that there is no such practice as using ankle cuffs on detainees in Moldova.

43. The Government submitted that the applicant had not been ill-treated during his detention. Although the investigation took time, the authorities took all reasonable measures in order to investigate the circumstances of the

applicant's alleged ill-treatment. The applicant was subjected to a forensic examination on the very day when he complained about ill-treatment, i.e. on 7 August 2014, and the forensic doctor took coloured photographs of his injuries. An official investigation was initiated shortly thereafter, on 14 August 2014. During the criminal investigation a large number of persons were heard. The applicant was subjected to a psychological assessment, was acknowledged as a victim and the alleged perpetrators were heard as suspects. Experts and witnesses were heard and those with diverging statements were confronted.

44. As a result of the investigation, the authorities were unable to determine the origin of the injuries on the applicant's face because the applicant denied having been ill-treated before 7 August 2014. In so far as the injuries to his wrists and ankles were concerned, it was established that they had been caused as a result of the normal use of handcuffs and ankle cuffs.

45. The Government also pointed to the results of the report concluded as a result of the applicant psychological examination which stated that the applicant had an inclination to be dishonest and distort reality. Proof of the applicant's dishonesty is the fact that in two different statements, one made on 15 August 2014 to the prison authorities and another made on 22 August 2014 the applicant made contradictory statements concerning the identity of his alleged torturers. In the first case he submitted that it had been officers wearing balaclavas who had allegedly tortured him, whilst in the second case he also named officers V.B. and S.T.

46. In the light of the above, the Government speculated that the applicant could have inflicted the injuries on himself with a view to getting revenge against law enforcement officers and attempting to avoid criminal liability for the crime he was suspected of having committed. The Government underlined that the applicant's predisposition to self-mutilation was also proved by a recording of his conversation with his co-accused.

47. In so far as the duration of the period during which the applicant was absent from the detention facility on 7 August 2014, namely three hours and fifty minutes, the Government submitted that such a duration was reasonable given the fact that he had to be taken to the Prosecutor General's Office, then to the Police Department and to the institute of forensic medicine.

2. The Court's assessment

(a) Concerning the alleged ill-treatment

48. 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).

49. 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 *Seagal v. Cyprus*, no. 50756/13, § 118, 26 April 2016). 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*, cited above, § 87).

50. Turning to the facts of the present case, the Court notes that the applicant sustained injuries on 7 August 2014 while in detention. According to the medical reports in the Court's possession the applicant had bruises on his face which were three to four days old on 7 August 2014 and circular contusions of the soft tissues around his wrists and ankles which were not older than twenty-four hours on that date.

51. Since the applicant did not complain about being hit in the face, and in view of its findings below, the Court will refrain from examining the circumstances which led to his bruised face. It shall, however, look into the circumstances in which the other injuries were caused.

52. It was the accused police officers' version before the domestic authorities and it is the Government's case before the Court that the circular contusions of the soft tissues around the applicant's wrists and ankles were a result of normal use of handcuffs and ankle cuffs. The applicant did not deny having been handcuffed but denied having been shackled and argued that the injuries resulted from his being suspended on a metal bar after his wrists and ankles were tied together with a rope behind his back. Whilst the forensic expert stated that Palestinian hanging using cuffs would have left more obvious signs of injury (see paragraph 24 above), the applicant in fact claimed that the policemen had removed the cuffs and put towels around his wrists and ankles before tying his limbs, apparently in an effort to avoid visible injuries.

53. In spite of the above divergence between the applicant and the accused police officers and of the great importance of the matter, the Court notes with concern that the prosecutor in charge of the case did not appear interested at all in questioning the soundness of the police officers' allegation that the applicant had been cuffed by the ankles on 7 August 2014. The prosecutor's actions seem all the more worrisome since the domestic legislation in force at the material time did not provide for such a form of restraint as ankle cuffing. Not only was ankle cuffing not authorised

under the law in force, but even the use of handcuffs was subjected to strict regulation and every time handcuffs were applied, those applying them were obliged to draw up a special document (*proces verbal*) about it (see paragraph 38 above). It is noted that no such document was advanced by the accused police officers in support of their allegation that they had used ankle cuffs on the applicant.

54. Moreover, the Court cannot but observe another very serious flaw in the defence of the police officers and in that of the Government. Namely, it notes that according to the version of the events as submitted by police officer V.B., after having brought the applicant to the Prosecutor General's Office and having learned that the questioning was to be adjourned, the police officers took him back to the detention facility. According to him, the applicant was in his and his colleague's custody for a period of no more than forty to fifty minutes before being brought back to the detention facility (see paragraph 20 above). If that version of the facts is to be accepted, then, bearing in mind that the applicant was taken out of the detention facility at 3.50 p.m., he should have been brought back not later than approximately 4.40 p.m. However, it is noted that the applicant was not back at the detention facility before 7.40 p.m. (see paragraph 21 above). It is also noted that according to the journal from the institute of forensic medicine, the applicant was brought there at 5.15 p.m. In such circumstances, it would appear that police officer V.B. did not tell the truth when saying that, after leaving the Prosecutor General's Office, the applicant had been taken to the detention facility. It would appear that the applicant remained in the custody of police officers V.B. and S.T. for a certain period of time between 4 and 5 p.m., a period of time for which they have not accounted.

55. In view of the foregoing, the Court considers that there is no convincing evidence supporting the Government's contention that the injuries found on the applicant's wrists and ankles had been caused by the cuffs and shackles used by the accused police officers. Nor has it been convincingly shown that the recourse to physical force by the police officers was made strictly necessary by the applicant's own conduct. Although the findings in the medical reports do not fully confirm or infirm the applicant's description of the forms of ill-treatment allegedly suffered by him, the Court cannot but conclude that the Government failed to provide a plausible explanation of how the injuries to the applicant's ankles were caused.

56. This being so, the Court finds it established that the applicant was subjected to treatment contrary to Article 3 of the Convention. There has therefore been a substantive violation of that provision.

(b) Concerning the alleged inadequacy of the investigation

57. 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*, 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, ECHR 1999-IV, § 104 et seq., 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. In addition, the investigation should be capable of leading to the identification and punishment of those responsible (see *Aksoy v. Turkey*, 18 December 1996, § 98, *Reports of Judgments and Decisions* 1996-VI). Otherwise, the general legal prohibition of torture and inhuman or degrading treatment or 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 *Bati and Others v. Turkey*, *nos.* 33097/96 *and* 57834/00, § 134, 3 June 2004).

58. It is beyond doubt that a requirement of promptness and reasonable expedition is implicit in this context. A prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, among other authorities, *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001, and *Özgür Kılıç v. Turkey* (dec.), no. 42591/98, 24 September 2002). While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, it may generally be regarded as essential for the authorities to launch an investigation promptly in order to maintain public confidence in their adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts (see, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 72, ECHR 2002-II).

59. The Court notes a series of serious shortcomings in the investigation conducted by the national authorities. The Court will confine itself to only several matters which it finds of particular concern.

60. In the first place, despite the applicant's complaint about torture on 7 August 2014 and the medical evidence consistent with his allegations, after repeated quashing of the prosecutor's decisions (see paragraphs 11-16 above) the authorities initiated criminal proceedings only in respect of the injuries on the applicant's face on 6 February 2015. That investigation was limited in scope and did not concern the other injuries on the applicant's body (see paragraph 17 above). It was only on 20 July 2016 that the prosecutors initiated criminal proceedings concerning the other injuries on the applicant body and the accused police officers were heard for the first time only in September and December 2016 (see paragraph 19 above),

i.e. after more than two years. Due to the unexplained delays, the prosecutors were unable to obtain such important evidence as video footage of the applicant on the day of the alleged ill-treatment (see paragraph 22 above) which could have shed light on the dispute about the applicant's alleged wearing of ankle cuffs on that day.

61. Next, the Court notes that the prosecutor in charge of the case accepted without any reservation and without verification the accused police officers' version of the events which were disputed by the applicant and according to which the applicant had been shackled (see paragraph 53 above). The prosecutors also failed to reconcile the accused police officers' account of the events with the records of the entry and exit times in the journal of the detention facility where the applicant was detained (see paragraph 55 above). They also failed to verify the exact time at which the applicant was taken out of the building of the Prosecutor General's Office in order to determine the period of time during which the applicant was in the custody of officers V.B. and S.T. between his leaving the building and being brought to the central police station where he met Prosecutor D.R. and his lawyer (see paragraph 7 avove).

62. The manner in which the investigation was conducted allows the Court to conclude that the prosecutor's office did not make any genuine efforts to investigate the case and discover the truth.

63. In the light of the serious deficiencies referred to above, the Court considers that the domestic authorities did not fulfil their obligation to investigate the applicant's complaints of ill-treatment. Accordingly, there has also been a procedural violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 20,000 euros (EUR) for non-pecuniary damage suffered as a result of the torture and the failure of the authorities properly to investigate his case.

66. The Government argued that the applicant's claims were excessive and that in any event no award of damages was justified in the present case.

67. The Court considers that in the circumstances of the case and the given the gravity of the breaches found above, the applicant is entitled to non-pecuniary damage. Judging on an equitable basis, the Court awards him EUR 12,000.

B. Costs and expenses

68. The applicant also claimed EUR 850 for the costs and expenses he incurred before the Court. He submitted details concerning the level of the lawyer's fees and the number of hours spent by his lawyer.

69. The Government objected and argued that no copy of the contract between the applicant and his lawyer had been attached to the observations. They asked the Court to dismiss the claims for costs and expenses.

70. Regard being had to the circumstances of the case and to the documents submitted by the applicant, the Court considers it reasonable to award the applicant the entire amount claimed for costs and expenses.

C. Default interest

71. 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 substantive violation of Article 3 of the Convention;

3. *Holds* that there has been a procedural violation of Article 3 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 the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 850 (eight hundred and fifty 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.

Done in English, and notified in writing on 16 March 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Jon Fridrik Kjølbro
Deputy Registrar	President