



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

THIRD SECTION

**CASE OF SAMACHIȘĂ v. ROMANIA**

*(Application no. 57467/10)*

JUDGMENT

STRASBOURG

16 July 2015

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

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**In the case of Samachișă v. Romania,**

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

Josep Casadevall, *President*,

Luis López Guerra,

Ján Šikuta,

Kristina Pardalos,

Valeriu Grițco,

Iulia Antoanella Motoc,

Branko Lubarda, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 23 June 2015,

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

**PROCEDURE**

1. The case originated in an application (no. 57467/10) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an American and Romanian national, Mr Liviu Samachișă (“the applicant”), on 17 August 2010.

2. The applicant was represented by Mr M.V. Coltuc, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that Article 3 of the Convention had been breached because on 31 July 2008 he had been unlawfully assaulted by police officers and the authorities conducting the ensuing criminal investigation had been biased, had breached his defence rights, misinterpreted the applicable legislation and investigated the case only superficially.

4. On 17 April 2014 the aforementioned complaint was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Article 54 § 3 of the Rules of Court.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

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

## A. The incident of 31 July 2008

### 1. *The applicant's account of the events*

6. On 31 July 2008, the applicant was driving to Galați accompanied by C.P. in a car registered in the United States of America. At about 7 p.m. they visited a mutual friend, O.C. Shortly thereafter, all three of them returned to his car, which was parked near O.C.'s home. They found it surrounded by three police cars, approximately ten police officers and dozens of curious civilians.

7. The applicant overheard one of the police officers informing his colleagues that they had found out the car registered in America had been involved in that accident in which some pedestrians had been injured. He informed the police officers that he was the owner of the car and denied that he had been involved in an accident.

8. The police officers immediately proceeded to detain the applicant aggressively, without checking his identity papers. Police officer G.S. twisted the applicant's arm behind his back and hit him in the legs. The blow was so powerful that the applicant had to grab one of the police car's wing mirrors and window in order to avoid falling down. At the same time he was hit on the head and his mouth was covered because he was shouting for, amongst other things, his identity documents, which were in his car. Police officer I.V.V. also punched the applicant repeatedly.

9. Once he was in the police car, the applicant was handcuffed with his hands behind his back and two police officers, who remained unidentified, continued to hit him. He lost his dentures and eventually fainted. Police officer R.P. travelled in a separate car and police officer M.G. drove the police car in which the applicant was detained. Consequently, the applicant concluded that those two officers could not have hit him.

10. At the police station police officer C.M. removed the handcuffs from the applicant.

### 2. *The Government's account of the events*

11. On 31 July 2008, the applicant was caught speeding and refused to stop his car at a police officer's request. When the police eventually found his car parked in an area surrounded by blocks of flats, the applicant and his friends became very agitated and the applicant refused to show his identity papers to the police officers. He claimed that he was immune to prosecution because he was an American citizen.

12. The police officers lawfully took the applicant to the police station in order to establish his identity and to fine him for speeding. According to eyewitness statements, the police officers handcuffed the applicant in a stern, but not abusive manner. They confirmed that the applicant and his friends had been verbally abusive towards the police officers.

## **B. The applicant's medical examination**

13. On 1 August 2008, following a request by the applicant, the Galați Forensic Medical Service produced an expert report concluding that the applicant had suffered traumatic lesions which could have been sustained on 31 July 2008. It also concluded that he had suffered an injury to the lower lip and damage to the dental prosthesis next to his upper-right canine as a result of his being struck with a solid object, possibly on the chin. In addition, the skin on the bridge of his nose and the left side of his neck had been scratched by a hard and sharp nail-like object. The bruises located on his left shoulder and below his left clavicle had resulted from being struck with a solid object. The bruise on the inside of his right arm had resulted from finger compression. Also his left forearm and the back of his left hand had been scratched with or by solid sharp objects. The report concluded that the contusion of his thorax together with the bruise below his left clavicle would require, in the absence of any complications, four to five days of medical care in order to heal. The rest of the lesions would require one to two days of medical care to heal and he might have to have the prosthesis next to his upper-right canine repaired.

14. The forensic report stated that on 31 July 2008 the emergency unit of the Galați County Hospital had diagnosed the applicant with cranio-cerebral and thorax trauma, as well as a severe thorax contusion. The thorax X-ray that had been produced on the same date did not show any broken ribs or post-traumatic lung damage. Also the dental emergency unit attached to the same hospital had diagnosed the applicant with a contusion in the chin area as a result of a blow which had damaged the dental work on his upper-right canine. It stated that the repairs to his upper-right canine could require the destruction of his fixed maxillary prosthesis.

15. On 14 August 2008 the applicant underwent an encephalography at the Baia Mare County Hospital. He was advised to rest for ten days on account of anxiety.

16. At the applicant's request, on 18 August 2008 the Suceava Forensic Medical Service produced a forensic expert report. The report stated that according to a dental specialist, the dental-alveolar lesions suffered by the applicant as a result of the assault of 31 July 2008 would require twenty-eight to thirty days of medical care to heal and repair.

17. The forensic report further stated that according to the medical documents presented by the applicant, he had been prescribed treatment with pain killers for five days for his dental-alveolar lesions. In addition, his fixed maxillary prosthesis needed to be repaired as a result of the damage caused to his upper-right canine; the report estimated that the repairs would take thirty days.

### C. Criminal investigation proceedings

18. On 4 August 2008 the applicant brought criminal proceedings against the police officers who had been involved in the incident of 31 July 2008 for violent behaviour. In addition, he requested that those responsible for the impugned events be brought to justice. He claimed that on 31 July 2008 he had been ill-treated by police officers and had suffered physical injuries, including damage to his dental prosthesis.

19. On 11 August 2008 O.C. and A.C., friends of the applicant and C.P., submitted two statements before the Galați Police Department. O.C. stated that when the applicant had returned to his car, police officers had already been waiting for him, claiming that the car had been involved in an accident, even though there had been no visible damage to the car. Although the applicant had attempted to present his identity papers to the police, they had abusively and violently grabbed him and handcuffed him. Subsequently, the applicant had been thrown into a police car and hit until he fainted. When O.C. had attempted to find out what police station the applicant was being taken to, one of the officers had elbowed him in the chest.

20. A.C. stated that on arrival at the police station she had noticed a smell of alcohol on the breath of one of the prosecution witnesses. The witness had been collected by the police officers from the terrace of a restaurant located near the scene of the incident. He had been insulting the applicant on account of his American citizenship. He had admitted that he had been drinking and when he had started becoming aggressive, one of the officers had asked him to leave the room.

21. On 14 August 2008 the investigating authorities heard D.Z. as a witness. He stated that he had seen the applicant park his car at the scene of the incident and run together with C.P. through the blocks of flats. The police had arrived shortly afterwards and waited for the applicant to return. When the applicant had returned the officers had asked him politely to identify himself. The applicant had refused vehemently to identify himself and claimed that the police officers could not touch him because he was an American citizen. As the police officers had been unable to reason with him, they had been forced to immobilise him in order to place him in the police car, which the applicant had almost wrecked. At the same time the applicant had continued to verbally offend the officers and him. He had seen the applicant being placed in the police car; the applicant had not been beaten by the police officers. Moreover, the applicant had not been abused, either physically or verbally, by the police officers at the police station.

22. On 20 August 2008 the investigating authorities heard M.M. and I.P. as witnesses. They both stated that they had seen police officers speak to the applicant and attempt politely to identify him. The applicant had refused to give his identity by shouting that he was an American citizen. The police

officers had made several more attempts to politely reason with the applicant and once that had failed they had proceeded to immobilise him and to place him in a police car. Once inside the police car, the applicant had started shouting again, at which point several other bystanders, including M.M., had started to remonstrate with him. Consequently, C.P. had started insulting them. The witnesses further stated that they had not seen the police officers hit the applicant.

23. On an unspecified date C.P. stated before the investigating authorities that on 31 July 2008 when the applicant had been driving to Galați, she had noticed a police car on the road and had seen a police officer make a signal. However, it had not been the correct signal for a motorist to stop. The applicant had not stopped the car but had continued to drive. When they had arrived in Galați she had seen another police car, but the police had not signaled the applicant to stop.

24. On 3 February 2009 the prosecutor's office attached to the Galați District Court discontinued the criminal proceedings brought by the applicant against the police officers, on the grounds that the police officers had not committed the offences of which they had been accused or that the alleged offences were not provided for by criminal law. It held, on the basis of the police officers' statements corroborated by the statements of M.M., I.P. and D.Z. that the applicant had repeatedly refused to show the police officers his identity papers, despite warnings that he would be taken to a police station if he failed to provide proof of his identity. The police officers had attempted to take the applicant to the police station, but he had resisted. Consequently, the officers had immobilised him. When they had attempted to place him in the police car, he had continued to resist, physically struggling and being verbally aggressive towards them. The prosecutor's office further held that the time required for medical care could not be confused with the time required for full recovery. In this connection, it noted that in the applicant's case the reconstruction work that was needed on his upper teeth would take thirty days. Consequently, the thirty days referred to by the forensic expert report of 18 August 2008 could not be understood to mean days of medical care within the meaning of the law. Lastly, the use of force by the police officers had not been disproportionate and had been aimed solely at immobilising him.

25. The applicant challenged the decision before the superior prosecutor attached to the Galați District Court. He argued that the witnesses who had been heard had committed perjury, probably because they had been influenced by the police.

26. By a final decision of 19 March 2009 the superior prosecutor dismissed the applicant's challenge. He held, amongst other things, based on the eyewitness statements, that the police officers' actions had been in response to the applicant's aggressive and offensive behaviour. Consequently, the police officers had not overstepped their bounds. Also,

the number of days of medical care required by the applicant, according to the forensic expert report produced on 18 August 2008, concerned the period required for the reconstruction of his upper dental prosthesis and not the time it would take for the dental-alveolar lesions to heal.

27. The applicant appealed against the decision before the domestic courts. He argued that the authorities had failed to investigate how the injuries attested by the forensic expert reports had been caused.

#### **D. Court proceedings**

28. By a judgment of 16 October 2009 the Galați District Court dismissed the applicant's appeal and upheld the decision of 3 February 2009. It noted, amongst other things, that according to the forensic expert report of 1 October 2008, the applicant had suffered injuries which required, depending on their severity, one to five days of medical care. In addition, according to the criminal investigation carried out in respect of the case, the police officers who had been involved in the events of 31 July 2008 were R.P., I.V.V., M.G., G.S., C.M. and T.R. as well as two Police Academy students, I.M. and A.I. According to the statements of C.M. and T.R., the applicant had been caught speeding. He had ignored T.R.'s signals to stop and had continued to drive. Consequently, C.M. and T.R. had asked their colleagues to locate and stop the applicant's car. I.M. had made a second attempt to stop the applicant, but he had ignored the police sirens and the signals to stop. The police officers had searched for the applicant's car and had eventually found it parked near O.C.'s home. According to the statements of R.P., M.G., I.V.V. and G.S., when the applicant returned to his car he refused the police officers' request to show his identity papers on the grounds that he was an American citizen and was not subject to Romanian law. Even though he was informed that he had broken the law, he continued to refuse to show his identity papers to the police or to accompany them to the police station.

29. The court also noted that M.G. and R.P. stated that G.S. and I.V.V. had had to handcuff the applicant and force him into the police car, because he had refused to climb into the car and had resisted by grabbing the car door and wing mirror. G.S. and I.V.V. stated that after the applicant had been immobilised and forced into the police vehicle, during the drive to the police station he had continued to bang his head against the windows of the police car. At the police station C.M. had fined the applicant for the offence and prepared a police report, which had eventually been signed by the applicant. C.M. stated that from the time the applicant had arrived at the police station, he had had no further contact with the other police officers and had shown no signs of violence.

30. The court further noted that according to C.P.'s statement, she had seen the applicant being handcuffed and how several police officers had



tried to place him in the police car, even though he had wanted to prove to them that he was an American citizen. She had not been allowed to travel with the applicant to the police station and when she had arrived there his clothes had been dirty and he had blood stains on his face. According to O.C., the applicant had been handcuffed prior to being placed in the police car and had not been asked to identify himself or told why was he being taken to a police station. O.C. had seen the applicant resisting getting into the police car, but the police officers had used force. He also contradicted the applicant's statement that after leaving the police station they had gone to the Galați County Hospital.

31. The court also noted that D.Z. had seen the whole incident and had stated that the applicant had refused to identify himself because he was an American citizen and together with C.P. he had insulted the police officers and the other witnesses. Also the applicant had been forcefully placed in the police car because he had been behaving aggressively and had been grabbing the car door and wing mirror. D.Z.'s statement concerning the applicant's behaviour had also been confirmed by witnesses I.P. and M.M.

32. The court held that according to the available evidence, in particular the witness statements of D.Z., G.S. and I.V.V., the applicant had had to be handcuffed because he had been behaving aggressively both prior to and after being placed in the police car as well as during the drive to the police station. The court noted that the applicant had claimed that the injuries he had suffered at the hands of the police had amounted to ill-treatment in breach of the guarantees set out in Article 3 of the European Convention on Human Rights. However, the European Court of Human Rights had been reluctant to sanction the behaviour of State agents if they had used force in order to counteract the aggressive behaviour of an arrested person. The applicant's refusal to show the police officers his identity papers and his aggressive conduct on account of his foreign nationality had not been justified given that he had been informed that he had committed an offence and had a duty to observe the laws of the State. Consequently, the force used by the State agents did not appear excessive.

33. The applicant appealed on points of law (*recurs*) against the judgment. He argued that the prosecutor's office attached to the Galați District Court had not been competent *ratione materiae* to carry out the criminal investigation in his case. The investigation had been superficial because not all the police officers involved in the events had been identified and because the police officers who had informed their colleagues that the applicant's car had been involved in a car accident had not been heard. The authorities had refused to allow him to identify the individuals against whom the criminal proceedings had been brought, and witnesses C.M. and A.I. had committed perjury. At the time of the incident he had been denied the right to contact the American Embassy or a lawyer. The statements of witnesses C.P. and O.C. had been incomplete, and the first-instance court

had ignored the fact that the authorities had failed to investigate how the injuries attested by the forensic expert reports had been caused.

34. By a final judgment of 18 February 2010 the Galați District Court dismissed the applicant's appeal on points of law. It held that the prosecutor's office attached to the Galați District Court had been competent *ratione materiae* to carry out the criminal investigation in the case. Also the investigation had not been superficial and the authorities had identified and heard the four police officers who had handcuffed the applicant and had driven him to the police station. Other police officers had been heard, including the two Police Academy students as well as relevant eyewitnesses who were not police officers.

35. The court also held that the investigation had focused on all the applicant's allegations and the authorities had heard the defence witnesses requested by him, namely C.P. and O.C. The fact that the authorities had not adduced all the data considered relevant by the applicant was not unlawful, considering that a preliminary investigation could be limited in respect of both quality and quantity by its lawful purpose. Moreover, the applicant's allegation that some of the witnesses had committed perjury had been refuted by the corroboration of their statements by other evidence. The prosecutor's office solution remained valid given that most of the witnesses had confirmed that the applicant had refused to go to the police station and had behaved aggressively, both verbally and physically, and that none of the witnesses had confirmed that he had been hit before being placed in the police car. Consequently, the measures taken against him had not been excessive or unjustified and had met the requirements of section 31 of Law no. 218/2002 on the organisation and operation of the Romanian police force.

36. The court further held that the fact that the statements of the applicant's friends had contradicted those of the remaining witnesses was a consequence of their friendly relations with the applicant.

37. The court considered that the authorities had correctly interpreted the available medical documents. The scratches on the left side of the applicant's neck, on his left forearm and the back of his left hand, as well as the bruises on his left shoulder, below his left clavicle and on the inside of his right arm had been inflicted by the police officers when they had handcuffed him and placed him in the police car. Their actions had been proportionate given his strong opposition. It was clear that handcuffing and the operation of placing a person in a police vehicle, if that person physically resisted the measure, would cause injuries. The superficial nature of the injuries and the areas of the body where the bruises and scratches had been sustained merely confirmed the proportional nature of the police officers' actions. It was clear that the applicant had exaggerated the nature of his injuries in his complaint against the officers, given that there was no evidence in the file suggesting that he had been repeatedly kicked. It

appeared that the internal lip injury and the dental damage suffered by the applicant had been caused by an impact to the chin, possibly when he had been resisting his handcuffing and placement in the car. The police officers could not be considered guilty as long as the applicant had continued to behave violently in the police vehicle. He had not suffered any external lesions in the chin area which could have been caused by an impact with a solid object.

#### **E. Other relevant information**

38. On 31 July 2008 the applicant was fined for speeding and for failure to stop when signaled to do so by a police officer.

39. By a final judgment of 3 May 2010 the Galați County Court dismissed on the merits the applicant's action seeking the annulment of the speeding fine imposed on 31 July 2008 and of the suspension of his driving licence.

## **II. RELEVANT DOMESTIC LAW**

40. Excerpts from the relevant provisions of the former Criminal Code concerning the offence of violent behaviour, from the former Criminal Procedure Code with regard to the complaint against the prosecutor's decisions, and from section 31 of Law no. 218/2002 on the organisation and functioning of the police, can be found in *Toma v. Romania*, no. 42716/02, §§ 25-27, 24 February 2009; and *Andrișcă v. Romania*, no. 65804/09, § 51, 3 February 2015.

41. Excerpts from Law no. 360/2002 on the Status of Police Officers and from Law no. 218/2002 on the Organisation of the Romanian Police concerning the duties and obligations of police officers can be found in *Kilyen v. Romania*, no. 44817/04, §§ 17-18, 25 February 2014).

## **THE LAW**

### **I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION**

42. Relying on Articles 5, 6 and 7 of the Convention, the applicant complained that on 31 July 2008 he had been unlawfully assaulted by police officers and that the authorities conducting the ensuing criminal investigation had been biased, had breached his defence rights, misinterpreted the applicable legislation and investigated the case only superficially.

43. The Court reiterates that since it is master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by an applicant or a government. By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by those appearing before it. A complaint is characterised by the matters alleged in it and not merely by the legal grounds or arguments relied on (see, *mutatis mutandis*, *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, § 29; *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports* 1998-I, § 44; *Berktaş v. Turkey*, no. 22493/93, § 167, 1 March 2001; and *Eugenia Lazăr v. Romania*, no. 32146/05, § 60, 16 February 2010).

44. Having regard to the facts of the present application, the Court considers that the case must be examined under the substantive and procedural heads of Article 3 of the Convention (see *Șercău v. Romania*, no. 41775/06, § 62, 5 June 2012). Article 3 reads as follows:

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

#### **A. Admissibility**

45. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

#### **B. Merits**

##### *1. The parties' submissions*

##### **(a) The applicant**

46. The applicant denied that he had been asked by the police to stop his car or that he had been fined for not doing so. He argued that according to the police officer's conversations, the reason for the police operation against him had been an alleged accident that had resulted in three victims.

47. The applicant submitted that although he had informed two of the police officers that his driving licence was in his car and he had attempted to present it to them, two other police officers had started hitting him and had taken him away. The first two police officers had never been identified by the prosecutor's office investigating his case.

48. The applicant also submitted that some of the eyewitnesses used by the prosecution had been drunk at the time of the incident. The fact that he had been agitated in the presence of the police officers had been justified by

the fact that there had been so many of them and their refusal to grant him access to his car where he kept his identity documents. Police officer G.S. had twisted the applicant's hands behind his back and hit him in the leg, even though he had not been behaving violently or aggressively. He had simply been trying to avoid falling down and to make himself heard saying that his identity documents were in his car.

49. The applicant argued that the criminal investigation had failed to determine the exact identity of those officers who had assaulted him and caused him to faint. He further contended that he had not attempted to flee the scene of the incident and in any event could not have done so given the large number of police officers present. Consequently, their violent reaction had been unjustified.

50. The applicant contested the assertion of police officer G.S. that he had banged his head against the car window during his transfer to the police station. In any event, even if he had done so, that could not have resulted in his dentures being knocked out.

51. The applicant submitted that the number of days' medical care required, according to the first forensic expert report, had been low because the forensic expert had been intimidated by the fact that the applicant had been beaten by police officers. In addition, the authorities had disregarded the second forensic expert report by ignoring the fact that the repairs to his prosthesis would involve suffering and a prolonged healing time.

52. The applicant also argued that the criminal investigation had been superficial and ineffective and had ignored relevant evidence.

**(b) The Government**

53. The Government submitted that in accordance with the Court's case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention.

54. They contended that according to the available evidence and the finding of the domestic courts, the applicant had been taken to the police station because he had failed to stop his car when asked to do so by the police, he had failed to present his identity papers to the police officers and had behaved aggressively towards them. In addition, the police officers had not been excessively aggressive towards the applicant.

55. The Government also contended that the domestic authorities were better placed to assess the facts accurately. They considered that the authorities' findings were reliable given the large quantity of evidence they had relied on.

56. The Government argued that the applicant had acted in bad faith in describing the events of 31 July 2008 and alleging that he had been seriously beaten on that day. However, as attested by the forensic evidence, the injuries sustained by him were specific to the harsh, but not exaggerated, physical intervention aimed at immobilising him.

57. Relying on the case of *Kopcyh v. Poland* ((dec.) 32733/96, 21 October 1998), the Government contended that the actual degree of physical force employed by the police against the applicant did not seem to be disproportionate to the circumstances in which it had occurred. It had left slight injuries on his body, such as livid marks and grazes and a feeling of pain. Consequently, they urged the Court not to depart from its findings in the aforementioned case.

58. The Government further submitted that the criminal investigation carried out by the domestic authorities in respect of the applicant's case had been thorough, adequate and effective. The outcome of the proceedings, even if inconvenient for the applicant, had been based on the consistent evidence in the file. The applicant had been afforded all the necessary procedural safeguards against abuse and the opportunity to have witnesses heard by the prosecutor. The prosecutor's office had considered the seriousness of the applicant's bruises attested by the forensic reports and had examined the proportionality of the police officers' reactions.

## 2. *The Court's assessment*

### (a) **General principles**

59. The Court reiterates that Article 3 enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or 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 of the Convention, even in the event of a public emergency threatening the life of the nation (see *Assenov and Others v. Bulgaria*, § 93, 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII; *Cobzaru v. Romania*, no. 48254/99, § 60, 26 July 2007; and *Șercău v. Romania*, no. 41775/06, § 69, 5 June 2012).

60. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI, and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III).

61. The Court reiterates its case-law confirming the standard of proof "beyond reasonable doubt" in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Șercău*, cited above, § 74). In respect of a person deprived of his liberty, any recourse to

physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 38, and *Habimi and Others v. Serbia*, no.19072/08, § 86, 3 June 2014).

62. In addition, in respect of recourse to physical force during an arrest, the Court reiterates that while Article 3 does not prohibit the use of force in order to carry out a lawful arrest, such force must not be excessive and must be necessary given the circumstances of the case (see, among others, *Altay v. Turkey*, no. 22279/93, § 54, 22 May 2001; *Polyakov v. Russia*, no. 77018/01, § 25, 29 January 2009; and *Ryabtsev v. Russia*, no. 13642/06, § 65, 14 November 2013). Whatever the outcome of the domestic proceedings, the police officers' conviction or acquittal does not absolve the respondent State from its responsibility under the Convention. The State is accordingly under an obligation to provide a plausible explanation of how the injuries were caused (see *Selmouni v. France* [GC], no. 25803/94, § 95, CEDH 1999-V, and *Sarigiannis v. Italy*, no. 14569/05, § 54, 5 April 2011).

63. The Court also reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, 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. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would 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 *Assenov and Others*, cited above, § 102).

64. Where allegations are made under Article 3 of the Convention the Court must apply a particularly thorough scrutiny (see *Cobzaru*, cited above, § 65). Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 29, and *Vladimir Romanov v. Russia*, no. 41461/02, § 59, 24 July 2008). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006, and *Sarigiannis*, cited above, § 55).

**(b) The application of those principles in the instant case**

*(i) Alleged ill-treatment by the police*

65. In the instant case, the Court notes that in their submissions, the Government relied on the findings of the domestic authorities. Consequently, they did not dispute that on 31 July 2008 the applicant had been under the control of State agents at the time of the incident or that the injuries suffered by the applicant as recorded by the available medical evidence had been the result of the police officers' actions.

66. In so far as the Government's submissions before the Court may be understood as an argument that the injuries suffered by the applicant did not meet the level of severity required to fall within the scope of Article 3 of the Convention, the Court notes that the medical evidence produced shortly after the incident attested that the applicant had suffered cranio-cerebral and thorax traumas; several scratches, contusions and bruises on the upper limbs, neck and face as well as damage to one of his teeth. Given the available medical evidence, the Court considers that the degree of bodily harm suffered by the applicant indicates that his injuries were sufficiently serious to amount to treatment which meets the level of severity required to fall within the scope of Article 3 of the Convention (see, for example, *Stoica v. Romania*, no. 42722/02, § 62, 4 March 2008).

67. The Court also notes that the parties disagreed about the origin of the applicant's injuries. The Government submitted that the injuries had been inflicted during his arrest as a result of his obstinate resistance, whilst the applicant argued that they had been sustained as a result of ill-treatment by the police during and after his arrest, initially at the scene of the incident and then during his transfer to the police station.

68. Although the Court has no facilities to determine the exact timing of the applicant's injuries, it remains to be considered whether the force used by the police in the applicant's case was necessary and proportionate.

69. In this connection, the Court notes that some of the applicant's allegations concerning the injuries sustained at the hands of the police, namely the hitting of his legs, are not supported by any available medical evidence.

70. At the same time, however, the Court observes that according to the available evidence, particularly the witness statements, the applicant's initial conduct during his conversations with the police officers, although uncooperative, was neither violent nor disproportionate.

71. The violence erupted when the police officers attempted to take the applicant to the police station in order to establish his identity, after it seems that he had refused to show them his identity papers and had contested the lawfulness of their request.

72. Although the parties' submissions concerning the exact sequence of events are contradictory, the Court notes that there is no evidence in the file



that the police officers or the Police Academy students involved in the incident were injured in any way by the applicant. However, the applicant acknowledged that he had been agitated in the presence of the police officers and the Court notes that according to the available evidence, he showed some resistance to them.

73. In these circumstances, the Court is prepared to accept that some form of restraint was needed in order to avoid further outbursts from the applicant and to prevent him from becoming violent. However, even if the applicant's restraint as such was rendered necessary by his refractory behaviour, the Court, unlike the domestic authorities, is not convinced that the measure was proportionate.

74. In this connection, the Court notes that six police officers and two Police Academy students were present at the scene of the incident in order to master the situation. Moreover, although the domestic courts determined in general terms that only four of the officers actually tried to handcuff the applicant and drive him to the police station, the individual role of each of the particular officers involved in restraining him remained undetermined. Also, no explanation was provided in respect of the specific techniques applied and how they correlated with the applicant's particular actions (see *Danilov v. Ukraine*, no. 2585/06, § 65, 13 March 2014). Furthermore, while a number of the injuries suffered by the applicant, in particular the scratches and bruises on his arms and neck and below his clavicle, appear compatible with the police officers' attempt to immobilise and handcuff him, neither the domestic authorities nor the Government expressly explained the origin of the severe thorax contusion suffered by the applicant or of the diagnosis of a cranio-cerebral trauma.

75. Consequently, the Court considers that neither the domestic courts nor the Government have convincingly shown that, in the particular circumstances of the present case, the force employed by the police officers against the applicant was proportionate (see, *mutatis mutandis*, *Sarigiannis*, cited above, § 65, and contrast *Đekić and Others v. Serbia*, no. 32277/07, § 28, 29 April 2014). Consequently, it considers that the measures taken against the applicant amounted to inhuman and degrading treatment.

76. Accordingly, there has been a breach of Article 3 of the Convention under its substantive limb.

● (c) **Alleged ineffectiveness of the investigation**

77. The Court has already established that some of the injuries which the applicant suffered at the hands of the police officers were confirmed by the medical evidence and that they were sufficiently serious to reach the "minimum level of severity" required under Article 3 of the Convention. Consequently, his allegations were "arguable" and thus required an investigation by the national authorities.

78. The Court observes that following the applicant's complaint, the domestic authorities carried out an inquiry into his allegations of ill-treatment. The Court accepts that the authorities reacted promptly to the applicant's complaint; it is not, however, convinced that their response to his allegations was sufficiently thorough to meet the requirements of Article 3.

79. In this connection, the Court notes that although it must have been clear by the time the applicant left the police station that he had suffered some injuries following his encounter with the police, there is no evidence in the file that he was presented before a medical professional or that one was called in order to examine him, or that records were made of the injuries suffered by him and their exact context.

80. In addition, the Court notes that although the medical papers presented by the applicant contained some inconsistencies, it does not appear that any efforts were made to clarify them.

81. The Court has already established that neither the domestic authorities nor the Government expressly explained the origin of the diagnosis of the cranio-cerebral trauma recorded in the medical papers issued by the emergency unit of the Galați County Hospital on 31 July 2008. In addition, it does not appear from the available evidence that the authorities took any express steps to determine the exact location of the trauma, its causes and intensity or to verify its existence. Although the domestic courts noted the assertion of two of the police officers that during his transfer to the police station the applicant had continued to bang his head against the car window even after he had been immobilised and handcuffed, in the absence of an express examination of the issue by the domestic authorities, the Court remains unconvinced that the acknowledgment by the domestic courts of the police officers' statements was sufficient to clarify the issue.

82. Moreover, the Court notes that the domestic courts accepted that the dental work required on the applicant's upper-right canine had been caused by an impact to the chin. By relying on the applicant's behaviour and the finding that he had not suffered any external lesions in the chin area which could have been caused by an impact with a solid object, the domestic courts exonerated the police officers.

83. The Court observes, however, that the domestic courts' finding appears to sit ill with the medical evidence available in the case. The dental emergency unit attached to the Galați County Hospital diagnosed the applicant on 31 July 2008 as having a contusion in the chin area as a result of a blow. Also the forensic report produced on 1 August 2008 concluded that the applicant's lip injury and dental damage had been caused by an impact with a solid object.

84. In view of the above findings, the Court considers that the investigation cannot be said to have been thorough and "effective". There

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

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed 10,200 euros (EUR) in respect of pecuniary damage for the damage to his teeth, for his broken ribs and his headaches. He submitted an invoice for a dental implant amounting to 10,560 Romanian Lei (RON) (approximately EUR 2,400), a medical note stating that the total dental repair costs would amount to EUR 5,500, and four invoices for various medical examinations amounting to RON 96 (approximately EUR 20). He also claimed EUR 200,000 in respect of non-pecuniary damage for the mental and physical suffering he had incurred as well as the loss of his job.

87. The Government considered that there was no causal link between the applicant's claim for pecuniary damage and the alleged violation of the Convention. They also argued that the amount submitted by the applicant was speculative and was not fully supported by the invoices submitted by him. Moreover, they argued that his claims in respect of non-pecuniary damage were not justified, and in any event were excessive.

88. The Court notes that there is no evidence in the file that the applicant's ribs had been broken or that there was a direct causal link between his headaches and the violation found. It therefore rejects this part of the applicant's claim in respect of pecuniary damage. He submitted, however, an invoice totalling EUR 2,400 for a dental implant; it therefore awards the applicant the said amount in respect of pecuniary damage, plus any tax that may be chargeable.

89. The Court also accepts that the applicant suffered some non-pecuniary damage as a result of the infringement of his rights guaranteed by Article 3 of the Convention. Making an assessment on an equitable basis, it awards the applicant EUR 11,700 under this head, plus any tax that may be chargeable.

## B. Costs and expenses

90. The applicant also claimed EUR 12,100 for costs and expenses incurred for legal assistance, for the registration of his application before the Court and for transportation. He submitted two invoices for lawyer's fees totalling RON 472 (approximately EUR 107), numerous receipts for fuel and bus travel totalling RON 3,358 (approximately EUR 760), and several receipts for postal services totalling RON 18 (approximately EUR 4).

91. The Government considered that the amount claimed by the applicant was excessive. They argued that the proof he had submitted for travelling costs was inconclusive given that there was no evidence that the impugned costs had been relevant to the proceedings. In addition, he had substantiated only part of the alleged costs incurred for lawyer's fees and for correspondence.

92. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the above criteria, the supporting documents submitted, the nature of the issues dealt with and the fact that the applicant must have incurred some travel expenses, the Court considers it reasonable to award the sum of EUR 300 to cover the applicant's costs and expenses.

## C. Default interest

93. 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 both under its substantive and procedural limbs;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months of 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 national currency of the respondent State at the rate applicable on the date of settlement:

- (i) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
  - (ii) EUR 11,700 (eleven thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (iii) EUR 300 (three hundred euros), plus any tax that may be chargeable, 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mariarena Tsirli  
Deputy Registrar

Josep Casadevall  
President