

Press release issued by the Registrar

**CHAMBER JUDGMENT
COBZARU v. ROMANIA**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Cobzaru v. Romania* (application no. 48254/99).

The Court held unanimously that there had been:

- **a violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights concerning the ill-treatment of the applicant – who is of Roma origin – by the police;
- **a violation of Article 3** concerning the inadequate investigation into the applicant's allegations of ill-treatment;
- **a violation of Article 13** (right to an effective remedy) of the Convention; and
- **a violation of Article 14** (prohibition of discrimination) concerning the Romanian authorities failure to investigate possible racial motives in the applicant's ill-treatment and their attitude during the investigation.

Under Article 41 (just satisfaction), the Court awarded the applicant 8,000 euros (EUR) for non-pecuniary damage and EUR 14,271 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicant, Belmondo Cobzaru, is a Romanian national who was born in 1973 and lives in Mangalia (Romania).

According to the applicant, in the evening of 4 July 1997 he went to the flat where he lived with his girlfriend Steluța M. (the flat belonged to her) and found the door locked. He asked his neighbours whether they had seen Steluța, but was told nobody had seen her. Fearing that she might have attempted to take her life, as she had already done in the past, he forced open the door of the flat in the presence of his neighbour, Rita G. He found nobody there. As he was leaving the apartment block, he met Steluța's brother-in-law, Crinel M., accompanied by three men armed with knives, who tried to attack him.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

On 4 July 1997 at around 8 p.m. Crinel M. called the police and lodged a complaint against the applicant for trying to break into Steluța's flat. The police report concluded that there were no traces of rummaging or violence in the flat. Rita G., who was present during the investigation, stated that the applicant had broken into the flat in her presence, fearing that Steluța might have committed suicide.

Between 8 and 9 p.m., the applicant claimed that he went to Mangalia City Police Department, accompanied by his cousin Venușa L and complained to the duty police officer that some individuals had attempted to beat him up as he was leaving his flat.

At around 10 p.m. police officers Gheorghe G., Curti D. and Ion M. came back from the on-site investigation they had carried out at Steluța's flat. The applicant maintained that they punched and kicked him and that he was hit with a wooden stick. Four plainclothes officers observed the assault, but did not intervene. He was then forced to sign a document stating that he had been beaten up by Crinel M. and other individuals. On leaving, the applicant showed Venușa the bumps on his head and the other marks caused by the blows to his back.

Later that evening the applicant was admitted to the emergency ward of Mangalia Hospital with injuries diagnosed as craniocerebral trauma.

On 8 July 1997 he was examined by a forensic medical expert, who noted in his report that the applicant had severe headaches and stomach aches, difficulty in walking and extensive bruising. The report concluded that the injuries were the result of the applicant having been hit "with painful and hard objects" and that he would need 14-15 days to recover.

On 8 July 1997 the applicant lodged a complaint with the head of the Mangalia Police Department against police officers Curti D. and Gheorghe G..

On 10 or 11 July 1997 written statements were taken from police officers Gheorghe G., Curti D. and Ion M, who all denied having beaten the applicant. None of them mentioned having seen any bruises on the applicant's face on his arrival at the police station.

The police officer on duty on 4 July 1997 also made a statement in which he said that the applicant arrived at the police station before the police patrol returned from the flat and in which he made no mention of any bruises on the applicant's face on his arrival at the police station.

The applicant and his father lodged complaints with two military prosecutor's offices concerning the alleged ill-treatment and the applicant claimed pecuniary and non-pecuniary damages.

On 18 September 1997 Venușa L. made a statement that she had gone with the applicant to the police station and that about 30 minutes later he had come out and shown her the bruises on his hand, back and fingers.

On 6 October 1997 the three accused police officers presented a new version of events, stating that the applicant arrived at the police station after they came back from the on-site investigation of 4 July 1997, and that he had bruises on his body on his arrival.

On 12 November 1997 the military prosecutor of Constanța refused to open a criminal investigation in respect of the applicant's complaints against police officers Gheorghe G. and Curti D., on the ground that the facts had not been established. The prosecutor noted that both the applicant and his father were known as “antisocial elements prone to violence and theft”, in constant conflict with “fellow members of their ethnic group”. The prosecutor considered that the statement given by Venușa L. could not be taken into consideration since she was also a gypsy – and, moreover, the applicant's cousin – and therefore her testimony was insincere and subjective.

The applicant appealed. On 4 May 1998 the Constanța Chief Military Prosecutor dismissed the appeal on the ground that no evidence had been adduced that the police officers had beaten the applicant, “a 25-year-old gypsy” “well known for causing scandals and always getting into fights”.

The applicant appealed unsuccessfully.

The Government submitted that the applicant had been beaten up by Crinel M. and that those facts had been confirmed by some of the witnesses heard during the investigation, in particular by the applicant's girlfriend and by three police officers, who had noted very recent marks of violence on the applicant's face when he arrived at the police station. The Government indicated that the medical forensic report did not mention bruises on the applicant's face.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 11 May 1999.

Judgment was given by a Chamber of seven judges, composed as follows:

Elisabet **Fura-Sandström** (Swedish), *President*,
Corneliu **Bîrsan** (Romanian),
Alvina **Gyulumyan** (Armenian),
Egbert **Myjer** (Dutch),
David Thór **Björgvinsson** (Icelandic),
Ineta **Ziemele** (Latvian),
Isabelle **Berro-Lefèvre** (Monegasque), *judges*,

and also Santiago **Quesada**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicant complained that he was subjected to inhuman and degrading treatment while in police custody and that the authorities failed to carry out a prompt, impartial and effective investigation into his allegations. He relied on Article 3, Article 13, Article 14 and Article 6 § 1 (right to a fair hearing) of the Convention.

¹ This summary by the Registry does not bind the Court.

Decision of the Court

Article 3

The Court considered that the degree of bruising found by the doctors who examined Mr Cobzaru indicated that his injuries were sufficiently serious to amount to ill-treatment within the scope of Article 3.

It was not disputed that the applicant was the victim of violence on 4 July 1997 either shortly before going to the police station or while he was there. Having regard to the seriousness of his injuries, the Court found it inconceivable that, had the applicant arrived at the police station with bruises on his body, the police officers would not have noticed them. Moreover, had the police noticed any bruises, they should normally have questioned him as to their origin and either taken him to the hospital or called a doctor.

The Court observed that there was no evidence of anyone hitting the applicant before he entered the police station.

It was not until 6 October 1997 that three police officers presented a new version of events, stating that the applicant had bruises on his body on his arrival at the police station. None of the eyewitnesses to the altercation between the applicant and Crinel M. confirmed that version of events (that Crinel M. had beaten up the applicant) and Crinel M. had consistently denied it.

The findings of fact made by the prosecutors were entirely based on the accounts of October 1997 given by the police officers accused of ill-treatment or their colleagues. Not only did the prosecutors accept without reserve the submissions of those police officers, they also appeared to have disregarded crucial statements from eyewitnesses, Rita G. and Venuşa L.

The investigation carried out by the domestic authorities appeared to have had other shortcomings. In particular, a failure to question certain key witnesses or to pursue obvious lines of questioning.

Finally, the Court noted a number of contradictions in the investigation file, including the time when the applicant arrived at the police station.

The Court concluded that the Government had not satisfactorily established that the applicant's injuries were caused otherwise than by the treatment inflicted on him while he was under police control at the police station on the evening of 4 July 1997 and that those injuries were the result of inhuman and degrading treatment. Accordingly, there has been a violation of Article 3 concerning the ill-treatment of the applicant.

The Court further concluded that the State authorities failed to conduct a proper investigation into the applicant's allegations of ill-treatment, in violation of Article 3.

Article 6 § 1 and 13

The Court found it unnecessary to determine whether there had been a violation of Article 6 § 1 and decided to examine, under Article 13, the applicant's complaint that he did not have a civil remedy.

The Court noted that the authorities had had an obligation to carry out an effective investigation into his allegations against the police officers, but had failed to do so. Consequently, any other remedy available to the applicant, including a claim for damages, had limited chances of success. While the civil courts had the capacity to make an independent assessment of fact, in practice the weight attached to a preceding criminal inquiry was so important that even the most convincing evidence to the contrary would often be discarded and such a remedy would prove to be only theoretical and illusory. The Court concluded that, in the particular circumstances of the applicant's case, the possibility of suing the police for damages was merely theoretical. It therefore found that the applicant had been denied an effective remedy in respect of his alleged ill-treatment by the police, in violation of Article 13.

Article 14

Was the ill-treatment based on racial prejudice?

The Court noted that the applicant did not refer to any specific facts in order to substantiate his claim that the violence he sustained was racially motivated. Instead, he argued that his allegation should be evaluated within the context of documented and repeated failure by the Romanian authorities to remedy instances of anti-Roma violence and to provide redress for discrimination.

However, the expression of concern by various organisations about the numerous allegations of violence against Roma by Romanian law enforcement officers and the repeated failure of the Romanian authorities to remedy the situation and provide redress for discrimination did not suffice to allow the Court to consider that it had been established that racist attitudes played a role in the applicant's ill-treatment.

Were possible racist motives investigated?

The Court observed that the numerous anti-Roma incidents which often involved State agents following the fall of the communist regime in 1990, and other documented evidence of repeated failure by the authorities to remedy instances of such violence were known to the public at large, as they were regularly covered by the media. It appeared from the evidence submitted by the applicant that all those incidents had been officially brought to the attention of the authorities and that, as a result, various programmes had been set up to eradicate such discrimination. Undoubtedly, such incidents, as well as the policies adopted by the highest Romanian authorities in order to fight discrimination against Roma were known to the investigating authorities in the applicant's case, or should have been known, and therefore special care should have been taken in investigating possible racist motives behind the violence against him.

However, there was no attempt on the part of the prosecutors to verify the behaviour of the police officers involved in the violence, ascertaining, for instance, whether they had been involved in the past in similar incidents or whether they had been accused of displaying anti-Roma sentiment.

Did the authorities racially discriminate against the applicant?

The Court noted that prosecutors made tendentious remarks in relation to the applicant's Roma origin throughout the investigation and that no justification was provided by the Government for those remarks.

The Court recalled that it had already found that similar remarks made by the Romanian judicial authorities regarding an applicant's Roma origin were purely discriminatory. In the applicant's case, the Court found that the tendentious remarks made by the prosecutors in relation to his Roma origin disclosed a general discriminatory attitude of the authorities, which reinforced the applicant's belief that any remedy in his case was purely illusory.

Conclusion

The Court concluded that the failure of the law enforcement agents to investigate possible racial motives in the applicant's ill-treatment combined with their attitude during the investigation constituted discrimination in violation of Article 14 taken in conjunction with Articles 3 and 13.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.