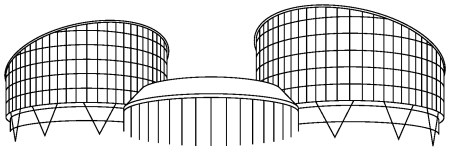

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF GORIUNOV v. THE REPUBLIC OF MOLDOVA

(Application no. 14466/12)

JUDGMENT

STRASBOURG

29 May 2018

FINAL

29/08/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Goriunov v. the Republic of Moldova,

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

Robert Spano, *President,*
Paul Lemmens,
Ledi Bianku,
Işıl Karakaş,
Nebojša Vučinić,
Valeriu Griţco,
Jon Fridrik Kjølbro, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 7 May 2018,

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

PROCEDURE

1. The case originated in an application (no. 14466/12) 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 Igor Goriunov ("the applicant"), on 1 March 2012.

2. The applicant, who had been granted legal aid, was represented by Mr E. Markov, a lawyer practising in Strasbourg. The Moldovan Government ("the Government") were represented by their Agent at the time, Mr L. Apostol.

3. The applicant alleged, in particular, that over a period of five months he had been subjected to inhuman and degrading treatment, contrary to Article 3 of the Convention, as a result of being handcuffed each time he moved outside his cell.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and is detained in Rezina.

6. The applicant was sentenced to life imprisonment on an unknown date some 10 years prior to the relevant events and is serving his sentence in

prison no. 17 in Rezina. On 16 March 2011 the prison administration found a mobile phone in his cell. Since this is an object possession of which is prohibited by prison rules, on 23 March 2011 the prison administration sanctioned him with a reprimand.

7. On 26 July 2011 the prison board decided that the applicant was always to be handcuffed when moving outside his cell. An extract from the decision of the prison board issued to the applicant noted that the prison board had "examined [the applicant]" and had decided to apply handcuffs. No further reasons were given and the length of the period for which the measure was to apply was not specified. It appears from the applicant's submissions that the measure was revoked at an extraordinary meeting of the prison board five months after it was imposed.

8. On 28 July 2011 the applicant asked the prison administration on what grounds the prison board had decided that he should be handcuffed. On 3 August 2011 he was informed that the sanction had been applied on the basis of order no. 4 of the Prisons Department (see paragraph 17 below). No further details were given.

9. In a letter dated 26 September 2011 the Prisons Department informed the applicant, in response to his request, that the use of handcuffs and other restraints was prescribed by the Regulation Concerning the Serving of Sentences, adopted by Government Decision no. 583 of 26 May 2006 ("the Regulation" – see paragraphs 14 and 16 below).

10. Also on 26 September 2011 the applicant challenged the prison board's decision before the investigating judge, arguing that he had been sanctioned twice for the same offence, contrary to the express legal requirements, and that he had not been informed of the reasons for the decision to handcuff him. He noted that handcuffing was a sanction and relied on the reply of the Prisons Department (see the preceding paragraph) in arguing that that sanction could only be applied on the basis of the Regulation and not some secret order. None of the circumstances in respect of which the Regulation provided for the use of handcuffs had been cited by the prison board.

11. In their submissions to the court, the prison administration argued that the sanction had been lawfully applied and that the applicant had been properly informed. The prosecutor, who also participated in the hearing, added that the sanction had been necessary in order to prevent the applicant posing any danger to other detainees.

12. On 25 November 2011 the Rezina District Court dismissed the applicant's complaint as unfounded. It found that the measure in question had been applied lawfully and in order to prevent the applicant posing any danger to other detainees. That decision was final.

13. The applicant attempted to have the decision quashed by using an extraordinary remedy, but on 3 October 2012 the Supreme Court of Justice refused his request.

II. RELEVANT DOMESTIC AND INTERNATIONAL MATERIAL

14. Under Article 593 of the Regulation Concerning the Serving of Sentences, adopted by Government Decision no. 583 of 26 May 2006 ("the Regulation"), only one sanction may be applied in respect of a disciplinary offence.

15. Under Article 95 of the Regulation, as modified on 26 September 2008, persons serving life imprisonment shall be handcuffed when moving outside their cells if it is established during the last evaluation that the absence of such a measure will pose an immediate danger to other detainees, prison staff or other persons. Evaluations of this kind shall be carried out at least once every six months.

16. Under Article 219 of the Regulation, a detainee may be handcuffed if (i) he or she physically resists prison staff or "is infuriated" (until he or she calms down), (ii) he or she refuses to move under escort, (iii) there are grounds for believing that there is a risk of the detainee escaping, (iv) he or she attempts suicide or self-mutilation, or attacks other detainees (until the detainee calms down), or (v) during the escorting of a detainee after his or her escape and subsequent apprehension.

17. According to the Government, order no. 4 of the Prisons Department adopted on 13 January 2009 provides, in section 39/1, that the prison board may decide on whether there is any need to handcuff a person sentenced to imprisonment for life or whether to remove handcuffs from such a person, depending on the degree of danger posed by him or her.

18. The European Prison Rules (annex to Recommendation Rec(2006)2 of the Committee of Ministers to member States of 11 January 2006), in so far relevant, read as follows:

> "...
>
> 60.2 The severity of any punishment shall be proportionate to the offence.
>
> ...
>
> 60.6 Instruments of restraint shall never be applied as a punishment.
>
> ...
>
> 63. A prisoner shall never be punished twice for the same act or conduct.
>
> ...
>
> 68.2 Handcuffs, restraint jackets and other body restraints shall not be used except:
>
> *a.* if necessary, as a precaution against escape during a transfer, provided that they are removed when the prisoner appears before a judicial or administrative authority, unless that authority decides otherwise; or
>
> *b.* by order of the director, if other methods of control fail, in order to protect a prisoner from self-injury [or] injury to others or to prevent serious damage to property, provided that in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority.

68.3 Instruments of restraint shall not be applied for any longer time than is strictly necessary.

..."

19. The relevant parts of the 25th General Report (April 2016) of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (2016) 10) provide as follows:

"The basic objectives and principles for the treatment of life-sentenced prisoners

74. In the CPT's view, the objectives and principles for the treatment of life-sentenced prisoners enunciated by the Committee of Ministers in Recommendation Rec (2003) 23 on the management by prison administrations of life sentence and other long-term prisoners remains the most pertinent and comprehensive reference document for this group of prisoners. In summary, these principles are:

...

- *the normalisation principle*: life-sentenced prisoners should, like all prisoners, be subject only to the restrictions that are necessary for their safe and orderly confinement;

...

Conclusion

81. The CPT calls upon member states to review their treatment of life-sentenced prisoners to ensure that this is in accordance with their individual risk they present, both in custody and to the outside community, and not simply in response to the sentence which has been imposed on them. In particular, steps should be taken by the member states concerned to abolish the legal obligation of keeping life-sentenced prisoners separate from other (long-term) sentenced prisoners and to put an end to the systematic use of security measures such as handcuffs inside the prison."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

20. The applicant complains under Article 3 of the Convention that he was subjected to inhuman and degrading treatment through being forced to wear handcuffs for no any particular reason. Article 3 reads as follows:

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

A. Admissibility

21. The Court notes that the application 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

22. The applicant submitted that handcuffs had been applied to him as punishment for breaking prison rules and as a warning to him and to others of the harsh consequences of doing so. He stated that he had spent much more time outside his cell than the Government suggested, not only given the fact that his trips to the daily exercise area, the prison doctor or the prison administration had lasted for some eight to ten minutes each time, but also because once at doctor or the administration he had continued to wear handcuffs. Moreover, he had had an active social life in prison, taking part in amateur concerts, playing table tennis and visiting the sports room and computer room on a regular basis. Being brought in handcuffs to all these activities had debased and humiliated him in front of the other detainees.

23. The applicant argued that the sanction had been unlawful since it had breached two provisions in the Regulation, namely that a detainee could only be handcuffed in response to an immediate danger posed by that detainee, and that a detainee could not be sanctioned twice for the same offence. Moreover, the additional rule allowing the prison board to impose handcuffing in response to a breach of any prison rule was introduced by means of an order issued by the Prisons Department. That additional rule simply provided a framework for the practical application of the Regulation; it could not lawfully extend the legal provisions thereof. Lastly, the applicant pointed to the fact that the original decision of the prison board did not make any reference to a security threat and it was only during the court proceedings that such an argument had appeared. Therefore, his handcuffing could not be justified as a security measure and could not be considered as being proportionate to his misconduct, in contrast to the case-law relied on by the Government, where security was at the heart of decisions to apply handcuffs.

(b) The Government

24. The Government submitted that the handcuffing had not been a sanction against the applicant; rather, it had been a protective measure imposed in addition to the main sanction, which in the applicant's case had been the reprimand. This type of additional measure was similar to those imposed for other types of offences, such as the deduction of points from a driver's licence in addition to a fine for breaching a traffic regulation. Therefore, the applicant had not been sanctioned twice for the same actions.

The measure was, moreover, lawful since it had been provided for in order no. 4 of the Prisons Department.

25. The Government added that the applicant had spent very short periods of time (between three and five minutes) being escorted to the daily exercise area or the offices of the prison doctor and the prison administration, which had all been near his cell. Thus the inconvenience had been minimal, the more so given that his hands had been handcuffed in front of him and not (as prescribed by the Regulation) behind his back. The measure had been proportionate to the applicant's situation. The Government argued that the handcuffing had been "a measure necessary for ensuring the special regime of enforcing the measure of life imprisonment, [and] a form of guarantee of proper behaviour and discipline during the enforcement of the criminal sanction of life imprisonment".

26. Moreover, according to the Court's case-law, the use of handcuffs does not raise an issue under Article 3 of the Convention as long as it is imposed as part of a lawful arrest or detention and does not involve the use of excessive force or unnecessary public exposure.

27. Therefore, the treatment to which he had been exposed, being of a preventive and protective nature, had not been intended to humiliate and had not crossed the threshold for the application of Article 3 of the Convention.

2. The Court's assessment

(a) General principles

28. As the Court has repeatedly stated, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

29. 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 is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; *Enea v. Italy* [GC], no. 74912/01, § 55, ECHR 2009; *Bouyid v. Belgium* [GC], no. 23380/09, § 86, ECHR 2015; and *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 159, ECHR 2016 (extracts)). Although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see, among other authorities, *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 114, ECHR 2014 (extracts), and *Khlaifia and Others*, cited above, § 160(a)).

30. Treatment is considered to be "degrading" within the meaning of Article 3 when it humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or when it arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 220, ECHR 2011, and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 202, ECHR 2012).

31. In order for treatment to be "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment (see *V. v. the United Kingdom*, cited above, § 71, and *Svinarenko and Slyadnev*, cited above, § 116, ECHR 2014 (extracts)). Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that the execution of detention on remand in itself raises an issue under Article 3. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

32. As regards measures of restraint such as handcuffing, these do not normally give rise to an issue under Article 3 of the Convention ("degrading treatment") where the measure has been imposed in connection with lawful arrest or detention and does not entail use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances. In this regard, it is of importance for instance whether there is reason to believe that the person concerned would resist arrest or abscond, cause injury or damage or suppress evidence (see, for instance, *Raninen v. Finland*, 16 December 1997, § 56, *Reports of Judgments and Decisions* 1997-VIII; *Öcalan v. Turkey* [GC], no. 46221/99, § 182, ECHR 2005-IV; *Gorodnitchev v. Russia*, no. 52058/99, §§ 101, 102, 105 and 108, 24 May 2007; *Mirosław Garlicki v. Poland*, no. 36921/07, §§ 73-75, 14 June 2011; and *Svinarenko and Slyadnev*, cited above, § 117).

(b) Application of these principles to the present case

33. The Court must first decide whether Article 3 was applicable in the present case, that is to say whether the measure applied to the applicant could be considered as constituting "degrading treatment" within the meaning of that provision. It notes that the measure complained of caused, as the Government conceded, a certain degree of inconvenience. It is important that this measure was imposed on the applicant – over a period of five months – every time he left his cell. Moreover, the Court agrees with the applicant's argument that it cast him in a negative light in the eyes of other detainees, who were not required to wear handcuffs. While there was

no truly public exposure of his handcuffing (since all those who saw the applicant were presumably either detained or worked in the prison), the Court cannot exclude that, especially for a detainee sentenced to a lengthy term of imprisonment, his appearance and relationship with other inmates and even prison staff may be important to his own self-esteem. Therefore, any measure which diminishes such self-esteem or self-image in the eyes of others, especially when lasting for extended periods of time, must be considered as potentially "degrading". The final determination of whether the measure did in fact have such an effect will depend on the overall circumstances – notably the reason for such treatment, its compliance with domestic law and its proportionality to the detainee's misconduct.

34. The Court observes that the applicant breached prison rules by being in possession of a mobile phone, a prohibited item. However, handcuffs were not applied to the applicant "until he calmed down" (see paragraph 16 above), in a situation where he was in an agitated state and potentially posed a security risk. Indeed, the prison board did not indicate any security risk as being the reason for the measure taken. Nor did it indicate any other reason, its decision simply stating that it "had examined [the applicant]" (see paragraph 7 above).

35. The decision to handcuff the applicant was taken more than four months after the discovery of the phone. The Court considers that if unlawful possession of a phone posed a real security risk, action should have been taken immediately. It is unclear what risk the applicant posed four months after the phone had been taken from him. In any event, the prison authorities never gave an explanation in that respect. Moreover, given that there is no evidence in the file of any risk assessment undertaken by the authority in charge of the applicant, it is unclear how the prosecutor and the court could have reached their conclusions that the measure applied had been prompted by such a risk (see paragraphs 8, 11 and 12 above). In view of the absence of any allegation that the applicant was aggressive or dangerous to himself or others, or otherwise undermined security in prison at any particular moment, the Court cannot agree with the Government's argument that the measure was applied to him for security reasons.

36. The Court also notes that the handcuffing was apparently applied to the applicant for an indefinite period of time, since in its decision the prison board did not specify how long the measure was to last or what circumstances would trigger a review of whether or not it continued to be necessary (see paragraph 7 above). Rather, it appears that the measure was intended to last until the prison board, at one of its subsequent sessions, decided to discontinue it. The Court considers that such a rigid system does not allow the prison authorities to react quickly to changes in prison security. It thus does not allow for an adequate mechanism to limit the application of the restraint measure to the time that is strictly necessary (see Rule 68.3 of the European Prison Rules, quoted in paragraph 18 above), that

is to the extent necessary for the safe and orderly confinement of the detainee in question (see 25th General Report of the CPT, § 74, quoted in paragraph 19 above).

37. The Court notes the Government's submission that the measure applied to the applicant was not a sanction, but rather a guarantee of the proper enforcement of life sentences, and that as such the applicant could not have been punished twice for the same act. However, the Court cannot accept this argument since both the prison administration and the prosecutor called the handcuffing a "sanction" (see paragraph 11 above). Moreover, the nature of that measure, which as established above was not expressly related to any security risk but was apparently applied in order to force the applicant to behave in a specific manner, also confirms that this was a sanction that had both punitive and preventive aims.

38. More importantly, the Court notes the CPT's recommendation that restraint measures should not be used systematically against life-sentenced prisoners (25th General Report, § 81, quoted in paragraph 19 above). It considers that they should only be undertaken as a proportionate reaction to a specific risk; furthermore, they should last only for the time strictly necessary to counter such a risk (see paragraph 36 above).

39. Lastly, the Court cannot overlook the fact that the applicable legal provisions (notably Article 95 of the Regulation – see paragraph 15 above) provide for handcuffing only in specific circumstances, all of which are linked to potential security or health risks. It considers that order no. 4 (see paragraph 17 above) could not extend the provisions of the Regulation by introducing an additional ground for handcuffing – namely a breach of prison rules unconnected to security risks. This was implicitly confirmed by the prison administration when it informed the applicant that the use of handcuffs was regulated by the Regulation (see paragraph 9 above). In addition, the Regulation prohibited the sanctioning of detainees twice for the same act (see paragraph 14 above), but the applicant was nevertheless sanctioned for the same act firstly by means of a reprimand and then by handcuffing.

40. It would thus appear that the applicant's handcuffing for this type of a breach of prison rules was not provided by the Regulation and was thus unlawful. The Court also notes that the domestic court did not comment in any manner on the applicant's express reference to this apparent breach of domestic law.

41. The Court concludes that the applicant was sanctioned by being handcuffed at all times when outside his cell (moreover, for an unspecified period of time) in the absence of any allegation or evidence that he posed a health or security risk, apparently for punitive and preventive purposes and on the basis of an order that extended the limits of the legal provision allowing for such a measure. He must thus have felt unjustly and disproportionately punished, which made his daily appearance in handcuffs

in front of other detainees appear as detrimental to his human dignity. For these reasons, the Court considers that the applicant was subjected to "degrading treatment" within the meaning of Article 3 of the Convention.

There has accordingly been a violation of that provision in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage caused by the suffering, humiliation, debasement and feeling of injustice resulting from the violation of his rights.

44. The Government considered that the sum claimed was excessive and demonstrated that the applicant's real aim in the case was to make a profit.

45. The Court awards the applicant EUR 4,500 in respect of non-pecuniary damage.

B. Costs and expenses

46. The applicant also claimed EUR 300 for the costs and expenses incurred before the domestic courts and EUR 3,100 for those incurred before the Court. He submitted a contract with his lawyer (based in Strasbourg), according to which he would pay the lawyer only such sums as would be awarded by the Court. He also submitted an itemised list of the hours that his lawyer had worked on the case (twenty-five hours, at an hourly rate of EUR 120), as well as copies of documents confirming expenses relating to communication between the applicant and his lawyer.

47. The Government argued that contracts in which the final sum to be paid to the lawyer depended upon the successful litigation of the case were not binding on the Court. Therefore, only expenses which were reasonably incurred were to be reimbursed. The applicant had probably never met in person with the lawyer based in Strasbourg and had not paid him anything. Therefore, the contract between them masked the real agreement, which was for a foreign lawyer to intervene at an advanced stage of the proceedings lodged by the applicant without any assistance in order to claim a sum from the Government.

48. According to the Court's case-law (see for a recent example *Merabishvili v. Georgia* [GC], no. 72508/13, § 370, ECHR 2017 (extracts)), 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, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 covering costs under all heads, less EUR 850 already paid by way of legal aid.

C. Default interest

49. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Moldovan lei at the rate applicable at the date of settlement:
      (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 650 (six 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 May 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Robert Spano
Deputy Registrar	President