

# **ECHR ordered Moldova to pay 9,000 euros to a victim, abused and humiliated by guards in a penitentiary in Briceni**



The European Court of Human Rights (ECHR) delivered its judgment on the case Baban v. Moldova, no. 83718/17. The case concerns the application of inhuman and degrading treatment in detention and the consequent award of small amounts for non-pecuniary and pecuniary damage, without regard to the moral and physical suffering caused to the applicant and the ECHR's practice of granting non-pecuniary compensation in similar cases.

## **Decision of the European Court**

According to the [Decision](#), the Court received declarations of amicable settlement, signed by the parties, on the basis of which the applicant agreed to waive any other claims against the Republic of Moldova regarding the facts that gave rise to this request, subject to the government's commitment to pay him 9000 Euro.

## **The factual circumstances which led to the delivery of the Decision**

The applicant, in the Baban case, was detained in Penitentiary No.2 from Lipcani, where he was abused and humiliated by the guards repeatedly. He was denied medical assistance, but also the request for special food insurance, according to national legislation, based on the medical problems he has. The

applicant was suffering from digestive disorders. In response to all his requests, he was punched and kicked multiple times by the guards.

Although he sent a complaint to the Briceni District Prosecutor's Office, in connection with the acts of ill-treatment, for two years the Prosecutor's Office refused to initiate a criminal case. However, a criminal case was initiated and the investigation of the case lasted another two years.

There have been several years in which the applicant fought for his rights in the courts. By the sentence of the Military Court of June 2015, the guards who mistreated him were acquitted. Subsequently, by the decision of the Criminal College of the Chisinau Court of Appeal, they were found guilty and convicted, but released from criminal liability in connection with the intervention of the limitation period. In June 2016, the case was sent for retrial by the hierarchically superior court, and a conviction was subsequently issued. As non-pecuniary damage, the applicant was granted the amount of 14,000 MDL, and the court did not motivate the solution in any way.

According to Promo-LEX lawyer, Vadim Vieru, director of the Human Rights Program: "considering the jurisprudence of the ECHR in Moldovan cases, there is a tendency for national courts to award reduced amounts of moral damages up to 10 times less than ECHR in similar cases. In those circumstances, the applicants continue to be victims of a violation of Article Three of the Convention."

### **Judicial practice of national courts vs. Jurisprudence of the European Court of Human Rights**

In other similar cases, national courts have granted small amounts as non-pecuniary damage, referring only to "constant practice" without taking into account the specific criteria

and circumstances of each case and the ECHR case law on similar cases.

For example, in the case of Ciorap no.2, the Supreme Court offered the applicant the equivalent of 600 Euros as non-pecuniary damage, compared to 4,000 Euros granted by the ECHR. In the case of Gavrilita both applicants received approx. 900 euros from the national court, compared to 9,000 euros and 10,000 euros granted by the European Court. The same goes for the Morgoci and Grecu cases, 958 Euro and 3,200 Euro as non-pecuniary damage offered by the Supreme Court of Justice, compared to 11,000 Euro and 11,800 Euro respectively granted by the High Court of Strasbourg.

The Promo-LEX Association recommends that national courts and, in particular, the Supreme Court of Justice take into account in the process of assessing the amount of non-pecuniary damage the ECHR case-law in similar cases and [Recommendation no. 6 on just satisfaction](#) prepared by the Supreme Court of Justice.