



## Sarban v. Moldova

Application No. 3456/05

**Country:** Moldova

**Region:** Europe

**Year:** 2006

**Court:** European Court of Human Rights European Court of Human Rights

**Health Topics:** Child and adolescent health, Health care and health services, Mental health, Prisons

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to health, Right to liberty and security of person, Right to privacy

### Facts

The applicant is Mr. Vladimir Sarban, a Moldovan National. He was a secretary of ChiÅŸinău Municipal Council. He was held in detention on the charges of abuse of power regarding the purchase of 40 ambulances on behalf of the municipal council. However, the Court noted that the prosecutor "essentially stated" that the arrest was done for political reasons.

The applicant submitted multiple habeas corpus requests to be released on bail. He emphasized that there was no need to detain him and that he suffered from complex and serious preexisting medical conditions that required specialized care, which was a guarantee against absconding. Even though at least during part of his time in detention local law granted him a right to be released, his appeals were unsuccessful and he was never released.

During his detention, the applicant sought unsuccessfully to receive the specialized care his medical condition required. He suffered from "progressive cervical osteoarthritis" (mielopatie) with displacement of vertebrae C5-C6-C7, with pain disorder and must always wear an immobilizing neck brace to reduce the risk of fatal spinal cord injuries. He also suffers from gout and hypertension. During his detention, there were periods where his family doctor was not able to attend to him and where he even was not able to receive care at all. The applicant's wife made multiple attempts for permission to check on the applicant's health status and provide various health-related items, which only later were granted.

Finally, the applicant also complained of non-health related issues, including being kept in a metal cage during hearings, being held in an overcrowded and hot cell and difficulties communicating with his lawyer due to the presence of a glass and net barrier in the room reserved for meetings with inmates.

### Decision and Reasoning

The Court held that there had been violations of Article 3 (prohibition of torture), Article 5(3) (right to release pending trial) but only with respect to the claim of insufficient reasons for detention, and Article 5(4) (right to a speedy judicial decision concerning the lawfulness of detention).

With respect to Article 3, the Court found that the medical care provided to the applicant had been insufficient. No serious medical problems resulted, nor was the applicant exposed to severe or prolonged pain, so the Court found that the treatment did not amount to inhuman treatment. However, the failure to provide adequate care coupled with the anxiety and distress this must have caused the applicant (given his knowledge of his own medical condition) amounted to degrading treatment for the purposes of Article 3.

With respect to the violation of Article 5(3), the Court found that the Moldovan courts had failed to meet the relevant standards for ordering pretrial detention, as they failed to provide a reasoned decision to support his detention based on an examination of the facts. Most courts simply repeated in an "abstract and stereotyped way the formal grounds for detention." The Court found that the judges had been competent to order the applicant's release and found no violation of Article 5(3) on this issue.

With respect to the violation of Article 5(4), the Court found that the period of 21 days which elapsed before the applicant's habeas corpus motion was heard did not correspond to the requirement of a "speedy judicial decision" demanded by Article 5(4).

The Court found no violation of Article 8 with respect to lack of privacy in legal communications, noting that any impediments had not prevented the applicant from mounting an effective legal defense.

### **Decision Excerpts**

“The applicant clearly suffered from the effects of his medical condition, even while in hospital (see paragraph 31 above). From the beginning he was well informed about his medical condition and the risks associated with it, as well as about the need to maintain a level of psychological stability, already affected by the accusation of a serious crime. He must have known that he risked at any moment a medical emergency with very serious results and that no immediate medical assistance was available. This must have given rise to considerable anxiety on his part.

The fact that he could be transported to a hospital does not affect this finding, since in order for a call for an ambulance to be made the CFEC administration had first to give permission, a difficult decision to take in the absence of professional medical advice.” (Para. 87)

“In the Court’s view, the failure to provide basic medical assistance to the applicant when he clearly needed and had requested it, as well as the refusal to allow independent specialised medical assistance, together with other forms of humiliation as noted in paragraph 88 above, amounted to degrading treatment within the meaning of Article 3 of the Convention.” (Para. 90)

“The Court attaches particular importance to the fact that the applicant had based his habeas corpus request on such circumstances as his poor state of health and absence of medical care in the remand centre. He also referred to a new and relevant fact, namely the statement of his former investigator G.G. (see paragraph 18 above). These two elements added urgency to the request which should have been taken into account by the domestic court. This was also the first opportunity for the trial court to examine the applicant’s habeas corpus request after it received the entirety of the prosecution’s case and was in the position to form a more informed opinion than earlier on both the lawfulness of the detention and on any alleged danger posed by releasing the applicant pending trial. However, the court waited for three weeks before making use of that opportunity.” (Para. 122)