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

GRAND CHAMBER

CASE OF PALADI v. MOLDOVA

(Application no. 39806/05)

JUDGMENT

STRASBOURG

10 March 2009

This judgment is final but may be subject to editorial revision.

In the case of Paladi v. Moldova,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Jean-Paul Costa, *President,*
Peer Lorenzen,
Françoise Tulkens,
Karel Jungwiert,
Elisabet Fura-Sandström,
Egbert Myjer,
Sverre Erik Jebens,
Ján Šikuta,
Ineta Ziemele,
Mark Villiger,
Giorgio Malinverni,
Luis López Guerra,
András Sajó,
Mirjana Lazarova Trajkovska,
Nona Tsotsoria,
Işıl Karakaş,
Mihai Poalelungi, *judges,*
and Vincent Berger, *Jurisconsult,*

Having deliberated in private on 14 May 2008 and on 28 January 2009,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 39806/05) 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 Ion Paladi ("the applicant"), on 9 November 2005.

2. The applicant was represented by Mr G. Ulianovschi, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that he had not been given proper medical assistance and that he had been detained without a lawful basis and in the absence of a reasonable suspicion that he had committed a crime. He complained of the absence of relevant reasons for prolonging his detention pending trial and the length of time taken to decide on his *habeas corpus* requests, as well as the refusal to examine an appeal and a fresh *habeas corpus* request lodged by him. He subsequently complained of the failure of

the authorities to comply swiftly with the interim measure indicated by the Court on 10 November 2005 under Rule 39 of the Rules of Court.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court), composed of Judges Bratza, Casadevall, Bonello, Traja, Pavlovschi, Garlicki and Mijović, and also of Lawrence Early, Section Registrar. On 10 November 2005 the Chamber President decided to indicate to the Government an interim measure under Rule 39 of the Rules of Court aimed at ensuring the applicant's continued treatment in the Republican Neurological Centre ("the RNC"). On 22 November 2005 the Chamber decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. On 10 July 2007 the Chamber delivered a judgment in which it unanimously declared the application partly admissible, held unanimously that there had been a violation of Articles 3 and 5 § 1 of the Convention and that it was not necessary to examine separately the applicant's complaints under Article 5 §§ 3 and 4 and held, by six votes to one, that there had been a violation of Article 34 of the Convention.

6. On 30 January 2008, pursuant to a request by the Government dated 10 October 2007, a panel of the Grand Chamber decided to refer the case to the Grand Chamber in accordance with Article 43 of the Convention.

7. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24 of the Rules of Court.

8. The applicant and the Government each filed written observations.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 14 May 2008.

There appeared before the Court:

(a) for the Government
Mr V. GROSU, *Agent,*
Mrs L. GRIMALSCHI,
Mrs R. SECRIERU, *Counsel;*

(b) *for the applicant*
Mr G. ULIANOVSCHI, *Counsel,*
Mr N. PALADI, *Adviser.*

The Court heard addresses by Mr Grosu and Mr Ulianovschi, as well as their answers to questions put by the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1953 and lives in Chişinău.

11. The facts of the case, as submitted by the parties, may be summarised as follows.

12. The applicant was a deputy mayor of Chişinău and was also a lecturer at the Academy of Economic Studies in Moldova. Between 24 September 2004 and 25 February 2005 he was held in the remand centre of the Centre for Fighting Economic Crime and Corruption ("the CFECC"). On 25 February 2005 he was transferred to Ministry of Justice Remand Centre no. 3 in Chişinău (also known as "Prison no. 3", subsequently re-named "Prison no. 13"). The applicant suffers from a number of illnesses (see paragraphs 22 and 25 below).

A. The proceedings against the applicant

13. The applicant was accused in three separate sets of criminal proceedings under Article 185 (3) of the old Criminal Code and Article 327 (2) of the new Criminal Code ("the CP") of abuse of power and acting in excess of authority (*excesul de putere sau depăşirea atribuţiilor de serviciu*; *abuzul de putere sau abuzul de serviciu*).

14. On 17 September 2004 the CFECC opened a criminal investigation concerning the applicant and on 24 September 2004 he was taken into custody.

15. On 27 September 2004 the Buiucani District Court issued a warrant for his arrest and detention for thirty days. The reasons given by the court for issuing the warrant were that:

> "[The applicant] is dangerous to society. If released he may reoffend, destroy evidence or abscond from the law-enforcement authorities, obstruct the normal course of the investigation or the taking of evidence and influence evidence and witnesses."

On 4 October 2004 the Chişinău Court of Appeal upheld that decision. Judge M.B. dissented, finding no reason to detain the applicant as the prosecution had not submitted any evidence of the alleged danger of his absconding or interfering with the investigation. The applicant had a family and a permanent residence in Chişinău, was ill and had no criminal record.

16. The applicant made *habeas corpus* requests on 5, 13 and 19 October, 2 November and 29 December 2004 and 22 February, 23 June and 20 September 2005. He relied on the following elements: his poor state of health; the fact that he had no criminal record; his impeccable reputation as a doctor of economics and a university lecturer; the fact that his identity

documents had been seized by the prosecuting authorities so that he could not leave the country; the fact that his family and permanent residence were in Chişinău; the fact that he was supporting his 75-year-old mother who was an invalid; the fact that he had the personal guarantee of three well-known persons (who had already deposited 3,000 Moldovan lei (MDL) and each of whom was prepared to pay the further MDL 8,000 initially requested by the court); and the lack of reasons for his arrest. All these requests were rejected on grounds similar to those cited in the decision of 27 September 2004.

17. On 22 October 2004 the case file was submitted to the trial court.

18. On an unspecified date in October 2004 the prosecution submitted to the trial court a second case file in which the applicant was also identified as one of the accused. The investigation into that case had begun on 28 March 2003. The investigators had twice closed it for lack of evidence (on 15 July and 26 September 2003) but on both occasions a prosecutor had ordered its reopening. On 27 October 2004 both cases were joined.

19. On 2 November 2004 Judge L.V., President of the Centru District Court, rejected the applicant's request for release against the personal guarantee of three well-known persons, without giving any reasons.

20. The applicant appealed but Judge L.V. refused to forward his appeal to the Court of Appeal, on the ground that the law did not provide for an appeal against such decisions. The applicant submitted the appeal to the Chişinău Court of Appeal directly, which also refused to examine it for the same reason. A similar response was given to appeals lodged on 25 February and 27 September 2005.

21. On 30 December 2004 a third criminal case file was submitted to the trial court, accusing the applicant of abuse of power in his own personal interest. This case was also joined to the two cases against the applicant referred to above.

B. The applicant's medical condition and treatment received

22. On 24 September 2004 the applicant was detained in the CFECC remand centre. On 29 September 2004 a medical advisory board examined the applicant's medical file at his wife's request and made the following diagnosis: type II diabetes (insulin-dependent), polyneuropathy, diabetic angiospasm, stage II autoimmune thyroiditis, after-effects of trauma to the head with intracranial hypertension, vagovagal spasms, chronic obstructive bronchitis, recurrent chronic pancreatitis with endocrine failure, chronic active hepatitis and asthenic syndrome. On 14 November 2004 the applicant's wife informed the trial court of the findings of the medical board.

23. According to the applicant, the CFECC remand centre had no medical personnel until late February 2005, when a general practitioner was hired to work there. He claimed that he had requested medical assistance on a number of occasions but had received treatment only from doctors from

other institutions who visited him when there was an emergency. On 28 September 2004 an ambulance was called to treat the applicant for acute hypertension. The doctor prescribed a consultation with an endocrinology specialist, who saw the applicant on 21 December 2004. The applicant also informed the prosecutor and the court of his special dietary and medical needs but received no reply. He submitted copies of complaints from his wife, his mother and a parliamentary group to the CFECC authorities, the Prisons Department, the trial court, the President of Moldova, the Minister of Justice and other authorities. The applicant's wife received several formal replies, essentially informing her that her husband had been seen on a number of occasions by various doctors and that he would be given medical assistance should the need arise.

24. On 15 February 2005 the applicant was seen by Doctor B.E., a psychoneurologist, who concluded that his state of health was "unstable with a slight improvement" and that he needed to continue treatment under supervision. On 25 February 2005 the applicant was transferred to the remand centre of Prison no. 3 in Chişinău.

25. On 2 March 2005, in accordance with a court order, the applicant was examined by a medical board of the Ministry of Health and Social Welfare. B.I., a neurologist and member of the board, diagnosed him with encephalopathy, polyneuropathy of endocrinal origin, hypertension, peripheral vascular disease and inferior paraplegia. He recommended that the applicant be treated on an in-patient basis. Z.A., an endocrinologist and member of the board, diagnosed the applicant with diabetes, macro- and micro-angiopathy, cardiomyopathy, arterial hypertension, diabetic steatorrhoeic hepatosis, thyroiditis, hypothyroiditis and encephalopathy. He recommended a special diet and treatment on an in-patient basis in specialised clinics (endocrinology-cardiology-neurology). E.V., head of the Cardiology Department of the Ministry of Health and Social Welfare and a member of the board, diagnosed the applicant with ischaemic cardiomyopathy and mixed cardiopathy, unstable pectoral angina, prolonged attacks during the previous two weeks, third-degree arterial hypertension, second-degree congestive heart failure, hypertension and endocrinal renal failure, diabetic vascular disease and thoracic dilatation. E.V. recommended that the applicant be treated on an in-patient basis in a cardiology unit in order to investigate and prevent the risk of myocardial infarction. She considered it necessary to undertake anti-coagulant treatment but noted that, given the risk of gastric haemorrhage, such treatment could take place only under conditions of strict supervision and with surgeons at hand to intervene if necessary.

26. On the basis of these recommendations, the trial court ordered the applicant's transfer to a prison hospital.

27. On the basis of an order by the Ministry of Health and Social Welfare, Doctor V.P., a neurologist from the Republican Neurology Centre

of the Ministry of Health and Social Welfare ("the RNC"), examined the applicant on 20 May 2005. He confirmed the earlier diagnoses and recommended complex treatment in a specialised neurological unit of the Ministry of Health and Social Welfare, including treatment with hyperbaric oxygen (HBO) therapy.

28. On 30 May 2005 the director of the prison hospital where the applicant was being held informed the court of V.P.'s recommendations and said that the applicant was being given the medication prescribed but not HBO therapy, which it was impossible to administer at the prison hospital due to the lack of the necessary equipment. He also informed the court that the applicant's condition prevented him from attending court hearings.

29. On 1 June 2005 the Centru District Court found that the condition of the applicant and of another co-accused had worsened, and suspended examination of their cases "until recovery". The court did not respond to the applicant's wife's request for his release to allow treatment or to the above-mentioned letter from the director of the prison hospital.

30. By letters of 9, 17 and 22 June, 5 July and 1 August 2005 the director of the prison hospital again informed the court of the lack of the necessary equipment at the hospital for the treatment prescribed by V.P.

31. On 7 and 15 September 2005 a medical board of the Ministry of Health and Social Welfare which included doctors from the RNC examined the applicant and on 16 September 2005 recommended, *inter alia*, HBO treatment in a specialised neurological unit.

32. On 16 September 2005 the director of the prison hospital confirmed on the applicant's behalf that the hospital did not have the necessary equipment for the recommended neurological treatment. That information was submitted to the Centru District Court.

33. On 19 September 2005 the Helsinki Committee for Human Rights filed an *amicus curiae* brief with the court after visiting the applicant in hospital. It considered that the applicant's state of health was irreconcilable with his conditions of detention and treatment and protested against the decision to suspend examination of the case pending his recovery.

34. In view of the findings of the Ministry of Health and Social Welfare medical board of 16 September 2005 recommending that the applicant be treated in a specialised neurological unit, the Centru District Court on 20 September 2005 ordered his transfer to the RNC, a State-run institution, for thirty days. According to the Government, the usual period of treatment at the RNC in September-November 2005 was eight to nine days.

35. On 27 September 2005 the applicant requested the Centru District Court to order an expert report on his state of health before and after his arrest as well as his condition on the date of lodging the request. In its decision of the same day the Centru District Court rejected the applicant's request on the ground that no doubts had been raised regarding his state of health.

36. On an unspecified date the applicant requested the RNC management to provide a description of his state of health and the treatment received. He received no answer. On 17 October 2005 the court ordered the RNC to answer immediately and the court received its answer on 20 October 2005. In it, the RNC set out its diagnosis of the applicant's condition and found that his health was unstable and that he needed further treatment. On 20 October 2005 the Centru District Court extended the applicant's treatment until 10 November 2005 on the basis of the letter from the RNC.

37. According to a certificate issued by the HBO therapy unit of the Republican Clinical Hospital ("the RCH"), the applicant received five HBO therapy sessions there starting on 2 November 2005. The applicant was prescribed a twelve-session course, scheduled to continue until 28 November 2005. According to the applicant, he was escorted from the RNC to the RCH every other day for the procedure and also began a course of acupuncture there. The applicant submitted a copy of the certificate to the Centru District Court, which on 10 November 2005 decided that he should be transferred to the prison hospital. The court based its decision on the RNC's letter of 9 November 2005, which stated that the applicant's condition had stabilised and that he would be discharged on 10 November 2005. The applicant's diagnosis as stated in the letter of 9 November 2005 was as follows: serious, subcompensated type II diabetes (insulin-dependent), diabetic retinopathy, autoimmune thyroiditis, hypothyroiditis, ischaemic cardiomyopathy, pectoral angina, second-degree arterial hypertension with very high risk, mixed cardiopathy, rare supraventricular extrasystolia, stage II dyscirculatory mixed encephalopathy, cerebral atrophy, pyramidal insufficiency, particularly on the right side, diabetic polyneuropathy and astheno-depressive syndrome. The letter also noted that the applicant's continued detention would "contribute to a permanent state of psycho-emotional tension which, in turn, [would] cause fluctuations in arterial pressure and blood-sugar levels". The same diagnosis was noted in the medical form for the applicant's discharge from the RNC on 10 November 2005.

38. Since the RNC letter did not include HBO therapy among its recommendations for treatment, the court found the schedule of HBO treatment extending until the end of November to be irrelevant.

39. On 16 November 2005 the Ministry of Health and Social Welfare replied to the Government Agent's questions regarding the need to treat the applicant. The letter stated that on 17 November 2005 the applicant's medical records had been examined by a group of doctors, who found that he did not need in-patient treatment "in any medical establishment, including the [RNC]" and that he could be treated as an outpatient.

40. On 24 November 2005 the applicant was examined by a psychotherapist, who diagnosed him with cerebral-organic asthenic

disturbance, anxious-depressive disturbance of organic-psychogenic origin and severe existential stress.

41. On 29 November 2005 the applicant was due to be discharged from the RNC. The medical form for the applicant's discharge from the RNC on 29 November 2005 repeated the diagnosis made on 9 November 2005, adding a diagnosis of prostate abscess. Amongst the recommendations made by the RNC was HBO treatment every second day. On 30 November 2005 the trial court ordered the applicant's transfer to the Republican Clinical Hospital ("the RCH") for ten days in order to receive HBO treatment. After the hearing the applicant lost consciousness and was taken by ambulance to the Municipal Clinical Hospital ("the MCH") with suspected myocardial failure. As a result, the trial court amended its decision of the same date and ordered that the applicant be treated in the MCH.

42. In a letter of 12 February 2007 the applicant submitted to the Court a certificate stating that on 20 June 2006 he had been recognised as having a second-degree disability.

43. On 11 March 2008 the Minister of Health ordered the setting-up of a medical commission for the purpose of determining the applicant's state of health during the period from 21 September to 30 November 2005. The commission established that the applicant had been given all the treatment prescribed by the RNC while in detention in the prison hospital. It further found that HBO treatment had not been required in the applicant's case but was simply an additional treatment for diabetes and its complications. The interruption of the applicant's HBO treatment had not affected his state of health, as proved by his stable blood-sugar levels before and after interruption.

C. The applicant's *habeas corpus* requests

44. On 23 June 2005 the trial court rejected a *habeas corpus* request made by the applicant, on the following grounds:

> "... the reasons for prolonging the accused's detention pending trial remain valid because the charges against him are based on circumstances not yet examined by the court, and altering the preventive measure may hinder the establishment of the truth in the criminal trial."

45. On 8 July 2005 the applicant made another *habeas corpus* request, relying on Articles 2 and 3 of the Convention and emphasising that while examination of his case had been suspended pending his recovery, he had been refused the medical treatment necessary to ensure such recovery. The court postponed examination of the request. Examination of the request was again postponed on 11 July 2005 for an indefinite period.

46. On 18 July Judge L.V. was absent and examination of the case was postponed. On 22 July 2005 other members of the court were absent and examination of the case was once more postponed.

47. On 25 July 2005 the applicant requested a copy of the court transcripts of 8 and 11 July 2005 and informed the court of the worsening of his condition. The request was refused. On 3 August 2005 the Centru District Court informed the applicant that examination of his *habeas corpus* request had been postponed pending an answer from the Ministry of Health and Social Welfare to its enquiry of 7 July 2005 regarding his condition.

48. On 20 September 2005 the Centru District Court rejected the applicant's *habeas corpus* request "because the reasons for prolonging his detention remain valid". The court also rejected the applicant's complaint that the inadequate medical treatment he had received amounted to inhuman and degrading treatment:

> "... because the representative of the [prison hospital] declared that [the applicant] had been given the necessary medical treatment on an in-patient basis; there is no evidence of inhuman or degrading treatment."

At the same time, however, the court ordered the applicant's transfer to the RNC (see paragraph 34 above).

49. On 27 September 2005 an appeal by the applicant against the refusal of his *habeas corpus* request was not examined, the court finding that no further appeal was possible. The court also rejected his request for a medical examination to establish his current state of health and the manner in which he had been treated during his detention.

50. On 11 October 2005 the applicant made another *habeas corpus* request challenging, *inter alia*, the persistence of any reasonable suspicion justifying his continued detention. He referred to the finding of a violation of Article 5 of the Convention in the case of *Sarban v. Moldova* (no. 3456/05, 4 October 2005) as a new circumstance warranting re-examination of the need to detain him. The court rejected the request, finding that it could not be submitted until one month at least after the last such request had been examined. It also found that the judgment referred to was not a new circumstance, as it related only to Mr Sarban and not to the applicant.

51. On 10 November 2005 the applicant asked the Centru District Court to order his continued treatment at the RNC or his release based on his *habeas corpus* request. The court rejected the request to continue treatment at the RNC (see paragraph 37 above) and did not examine the *habeas corpus* request.

52. On 15 November 2005 the Centru District Court rejected the applicant's *habeas corpus* request of 10 November 2005, finding that:

> "... not all the evidence has been examined; [the applicant] has worked as a deputy mayor of Chişinău and continues to have influence over witnesses yet to be questioned; he may obstruct the presentation to the court of authentic evidence still being kept by Chişinău Municipality."

53. On 15 December 2005 the applicant's detention pending trial was replaced with an obligation not to leave his city of residence.

D. Interim measure indicated by the Court

54. On the evening of Thursday 10 November 2005 the Court indicated by facsimile to the Moldovan Government an interim measure under Rule 39 of the Rules of Court, stating that "the applicant should not be transferred from the [RNC]. This interim measure will be valid until the Court will have the opportunity to examine the case, i.e. until 29 November 2005 at the latest". The same message was sent several times by facsimile during the morning of Friday 11 November 2005. On 11 November 2005, the Deputy Registrar of the Fourth Section made several calls to the telephone numbers indicated by the Government Agent, but received no response.

55. On the morning of Friday 11 November 2005 the applicant's lawyer requested the trial court to stay execution of its decision of 10 November 2005 and to prevent the applicant's transfer from the RNC. He submitted a copy of the facsimile from the European Court of Human Rights regarding the interim measure. The Centru District Court did not hold a hearing and did not reply to his request. The applicant was finally transferred to the prison hospital on the same day.

56. On Monday 14 November 2005 the applicant's lawyer informed the President of the Supreme Council of the Judiciary (*Consiliul Superior al Magistraturii*) of the failure of Judge L.V., President of the Centru District Court, to examine his request of 11 November 2005, and asked for urgent action in order to ensure compliance with the Court's directions for interim measures. On the same day the lawyer submitted a similar request to the Agent of the Moldovan Government before the Court and to the Prosecutor General's Office, noting that the prosecutor in charge of the case had supported the applicant's request to continue being treated at the RNC. He also noted that the decision to transfer the applicant to the prison hospital had not been enforced by 10 a.m., when he had lodged his request with the Centru District Court.

57. On the same date and following the Government Agent's request, the Centru District Court ordered the applicant's readmission to the RNC until 29 November 2005. The subsequent events are disputed by the parties. According to the applicant, he was brought to the RNC at 6.30 p.m., but for six hours the management refused to admit him. When the applicant began to feel ill, the management admitted him after midnight. According to the Government, the applicant was admitted on the day the Centru District Court ordered his admission and the delay resulted from the doctors' view that the applicant did not require further treatment at the RNC. The Government Agent personally oversaw execution of the order.

58. The applicant submitted a copy of a news report broadcast on the PRO-TV television channel, which showed the events at the RNC. The reporter stated that the applicant had been kept waiting for six hours for a decision and that he had finally been admitted after midnight. The doctors informed the reporter that they had refused initially to admit the applicant because they did not have his personal medical file, and had admitted him only when the medical file was brought to them. In an interview given to the same reporter, the Government Agent stated that the reason for the delay in admitting the applicant had been "certain technical, organisational issues". This was confirmed by a statement from the deputy head of the Prisons Department.

59. On 12 December 2005 the Supreme Council of the Judiciary informed the applicant's lawyer, in response to his letter of Monday 14 November 2005, that the Centru District Court had been officially informed of the European Court's directions for interim measures via a facsimile from the Government Agent on 14 November 2005 at 2.19 p.m. Following an urgent court hearing, the trial court had ordered the applicant's readmission to the RNC.

II. RELEVANT LAW AND PRACTICE

A. Domestic law and practice

60. The relevant provisions of the Code of Criminal Procedure ("the CCP") read as follows:

Article 176

Grounds for ordering preventive measures

"1. Preventive measures may be applied by the prosecuting authority or by the court only in those cases where there are serious grounds for believing that an accused ... will abscond, obstruct the establishment of the truth during the criminal proceedings or reoffend; alternatively, they can be applied by the court in order to ensure the enforcement of a sentence.

2. Detention pending trial and alternative preventive measures may be imposed only in cases concerning offences in respect of which the law provides for a custodial sentence exceeding two years. In cases concerning offences in respect of which the law provides for a custodial sentence of less than two years, they may be applied if ... the accused has already committed the acts mentioned in paragraph 1.

3. In deciding on the necessity of applying preventive measures, the prosecuting authority and the court shall take into consideration the following additional criteria:

(1) the nature and degree of harm caused by the offence;

(2) the character of the ... accused;

(3) his/her age and state of health;

(4) his/her occupation;

(5) his/her family status and the existence of any dependants;

(6) his/her economic status;

(7) the existence of a permanent place of abode;

(8) other essential circumstances...”

Article 246

Time-limits for examining requests

“1. Requests ... shall be examined and decided upon immediately after being lodged. If the authority to which the request is addressed cannot decide upon it immediately, it shall give its decision within three days from the date of receipt. ...”

61. Following the entry into force of the new Code of Criminal Procedure on 12 June 2003, the first-instance courts were obliged to ensure that a judge was on duty at weekends and on public holidays to deal with any urgent matters. According to a certificate issued by the President of the Centru District Court, that court had put in place a duty roster of this kind.

B. Case-law of the International Court of Justice

62. In its judgment in *LaGrand* (judgment of 27 June 2001, ICJ Reports 2001, §§ 111-115)), the International Court of Justice decided that:

“111. As regards the question whether the United States has complied with the obligation incumbent upon it as a result of the Order of 3 March 1999, the Court observes that the Order indicated two provisional measures, the first of which states that

'[t]he United States of America should take al1 measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of al1 the measures which it has taken in implementation of this Order'.

The second measure required the Government of the United States to 'transmit this Order to the Governor of the State of Arizona'. ... the State Department had transmitted to the Governor of Arizona a copy of the Court's Order. ...

The United States authorities have thus limited themselves to the mere transmission of the text of the Order to the Governor of Arizona. This certainly met the requirement of the second of the two measures indicated. As to the first measure, the Court notes

that it did not create an obligation of result, but that the United States was asked to 'take al1 measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings'. The Court agrees that due to the extremely late presentation of the request for provisional measures, there was certainly very little time for the United States authorities to act.

112. The Court observes, nevertheless, that the mere transmission of its Order to the Governor of Arizona without any comment, particularly without even so much as a plea for a temporary stay and an explanation that there is no general agreement on the position of the United States that orders of the International Court of Justice on provisional measures are non-binding, was certainly less than could have been done even in the short time available. ...

113. It is also noteworthy that the Governor of Arizona, to whom the Court's Order had been transmitted, decided not to give effect to it, even though the Arizona Clemency Board had recommended a stay of execution for Walter LaGrand.

114. Finally, the United States Supreme Court rejected a separate application by Germany for a stay of execution, '[g]iven the tardiness of the pleas and the jurisdictional barriers they implicate'. Yet it would have been open to the Supreme Court, as one of its members urged, to grant a preliminary stay, which would have given it 'time to consider, after briefing from al1 interested parties, the jurisdictional and international legal issues involved . . .' *(Federal Republic of Germany et al.* v. *United States et al.,* United States Supreme Court, 3 March 1999).

115. The review of the above steps taken by the authorities of the United States with regard to the Order of the International Court of Justice of 3 March 1999 indicates that the various competent United States authorities failed to take al1 the steps they could have taken to give effect to the Court's Order. The Order did not require the United States to exercise powers it did not have: but it did impose the obligation to 'take al1 measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings ...'. The Court finds that the United States did not discharge this obligation.

Under these circumstances the Court concludes that the United States has not complied with the Order of 3 March 1999."

THE LAW

63. The applicant complained of a violation of his rights guaranteed by Article 3 of the Convention, as a result of the inadequate medical assistance he received while in detention. Article 3 reads as follows:

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

64. The applicant also considered that his detention had been contrary to Article 5 § 1 of the Convention as there had been no legal basis for his detention pending trial and he had been arrested in the absence of a

reasonable suspicion that he had committed a crime. Article 5 § 1, in so far as relevant, reads as follows:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;"

65. The applicant complained under Article 5 § 3 of the Convention that his detention pending trial had not been based on "relevant and sufficient" reasons. He also complained about the decision to suspend examination of his case until his return to health. The relevant part of Article 5 § 3 reads:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

66. The applicant also asserted that the length of time taken to examine a *habeas corpus* request made by him, the refusal to examine his appeal against the rejection of that request and the rejection of a further *habeas corpus* request based on new circumstances each amounted to a breach of Article 5 § 4 of the Convention, which reads:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

67. Finally, the applicant complained of the failure to comply with the interim measure indicated by the Court. He considered that this amounted to a violation of Article 34 of the Convention, which reads:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. The Chamber judgment

68. The Chamber unanimously found a violation of Article 3 of the Convention in view of the applicant's undisputed need for constant specialised medical assistance and the absence or limited extent of such

assistance during his detention (see paragraphs 73 to 85 of the Chamber judgment).

B. The parties' submissions

1. The Government

69. The Government submitted that the applicant had not been suffering from any illness incompatible with his detention. He had been given all the medical care recommended during his detention, with the exception of hyperbaric oxygen (HBO) treatment. However, the latter was only an additional treatment that had not been proven in clinical trials to have any discernible effect on patients with medical conditions similar to the applicant's. The applicant had been seen by a number of doctors during his detention and had subsequently been placed under the medical supervision of prison hospital doctors, who had followed all the treatment prescribed to him by specialist doctors. His conditions of detention and treatment had not therefore amounted to treatment contrary to Article 3 of the Convention.

2. The applicant

70. The applicant submitted that he had not received adequate medical assistance while in detention, as found by the Chamber. He submitted documents which had not been in the case file examined by the Chamber, according to which he had been taken seriously ill soon after the authorities' refusal to ensure his continued treatment in a neurological unit. Half a year later he had been officially recognised as having a second-degree disability related to illnesses which had been inadequately treated during his detention.

C. The Grand Chamber's assessment

71. The Court reiterates that "the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, 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 and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance" (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

72. The Grand Chamber notes that the applicant had a serious medical condition which was confirmed by a number of medical specialists (see paragraphs 22-43 above). It is also clear from the facts of the case that the applicant was not provided with the level of medical assistance required by

his condition, as detailed in the Chamber's judgment (see Chamber judgment, §§ 76-85). The Grand Chamber agrees with the Chamber that, in view of the applicant's medical condition and the overall level of medical assistance he received while in detention, the treatment to which he was subjected was contrary to Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

73. The Chamber unanimously found a violation of Article 5 § 1 of the Convention, relying on well-established case-law concerning the domestic authorities' practice of detaining an accused pending trial without at the same time extending the court order providing a legal basis for such detention (see, for instance, *Boicenco v. Moldova*, no. 41088/05, § 154, 11 July 2006, and *Holomiov v. Moldova*, no. 30649/05, § 130, 7 November 2006).

74. The Court reiterates that "where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of 'lawfulness' set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail" (see *Baranowski v. Poland*, no. 28358/95, § 52, ECHR 2000-III, and *Steel and Others v. the United Kingdom*, 23 September 1998, § 54, *Reports of Judgments and Decisions* 1998-VII).

75. The parties did not object to the Chamber's finding in their submissions to the Grand Chamber. The Grand Chamber sees no reason to reach a different conclusion on this point.

III. ALLEGED VIOLATION OF ARTICLE 5 §§ 3 AND 4 OF THE CONVENTION

76. The Chamber unanimously found that, given that the applicant's detention lacked any legal basis as of 22 October 2004, there was no need to examine separately the applicant's complaints under Article 5 §§ 3 and 4.

77. The parties did not comment. The Grand Chamber agrees with the Chamber's approach in respect of these two complaints.

IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

78. Article 34 of the Convention reads as follows:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. The Chamber judgment

79. The Chamber found, by six votes to one, that there had been a violation of Article 34 of the Convention in the present case. It stated, in particular, as follows (§§ 97-100):

"97. The Court notes the sequence of events after it had indicated interim measures to the Government ... It is apparent that there were serious deficiencies at each stage of the process of complying with the interim measures, starting with the absence, in the Government Agent's Office, of officials to answer urgent calls from the Registry and continuing with the lack of action taken by that office between the morning of 11 November 2005 and the afternoon of 14 November 2005..., coupled with the Centru District Court's failure to deal urgently with the issue when it was asked to do so on 11 November 2005 by the applicant's lawyer. Finally, the refusal for six hours to admit the applicant to the RNC despite the Court's interim measures and the domestic court's decision is also a matter of concern.

98. The Court notes that the applicant was in a serious condition which, as appeared from the documents available at the relevant time, put his health at immediate and irremediable risk. That risk was the very reason for the Court's decision to indicate the interim measure. By good fortune no adverse consequences for the applicant's life or health resulted from the delay in implementing that measure. However, the Court cannot accept that a State's responsibility for failing to comply with their obligations undertaken under the Convention should depend on unpredictable circumstances such as the (non-)occurrence of a medical emergency during the period of non-compliance with interim measures. It would be contrary to the object and purpose of the Convention for the Court to require evidence not only of a risk of irremediable damage to one of the core Convention rights (such as those protected by Article 3, see for instance *Aoulmi v. France*, no. 50278/99, § 103, ECHR 2006-I (extracts)), but also of actual damage before it was empowered to find a State in breach of its obligation to comply with interim measures.

99. The Court considers that the failure of the domestic authorities to comply as a matter of urgency with the interim measure indicated by the Court in itself jeopardised the applicant's ability to pursue his application before the Court and was thus contrary to the requirements of Article 34 of the Convention. This was compounded, firstly, by the apparent lack in the domestic law and practice of clear provisions requiring a domestic court to deal urgently with an interim measure; and, secondly, the deficiencies in organising the activity of the Government Agent's Office, resulting in its failure to react promptly to the interim measure and to ensure that the hospital authorities had at their disposal all the necessary medical documents...

100. In the light of the very serious risk to which the applicant was exposed as a result of the delay in complying with the interim measure and notwithstanding the

relatively short period of such delay, the Court finds that there has been a violation of Article 34 of the Convention in the present case."

B. The parties' submissions

1. The applicant

80. The applicant asked the Grand Chamber to uphold the Chamber's judgment, which had found a violation of Article 34 of the Convention. He considered that by transferring him to the prison hospital, the respondent Government had failed to comply with the interim measure indicated by the Court. The Government Agent and the trial court had "deliberately disregarded the interim measure", as had the medical authorities. There was sufficient evidence of the untruth of the Agent's assertion that he had taken action aimed at complying with the interim measure as early as Friday 11 November 2005.

81. The applicant argued that his transfer from the RNC, in manifest disregard of the interim measure indicated by the Court, had caused him particular feelings of distress and contributed to a worsening of his health, as proved by subsequent medical evidence. As a result, he had experienced "anxiety and inferiority, a state of desperation and of fear that not even the interim measure indicated by the Court could help him obtain the medical assistance required to treat his illnesses". This had hindered the exercise of his rights under Article 34 of the Convention.

2. The Government

82. The Government submitted that they had complied with the interim measure indicated by the Court. The short delay of three days in implementing the measure, which included a weekend, had been due to circumstances beyond the Government's control. In particular, the Court had not sent the relevant letter by electronic mail as well as by fax as agreed earlier in respect of all correspondence with the Government. In addition, it had been impossible for the trial court to gather all the interested parties on Friday 11 November 2005, and this had been done on the next working day, following the Government Agent's urgent request of 11 November 2005 to the trial court. Moreover, transferring the applicant from the RNC had not resulted in the automatic interruption of his HBO treatment, which had been carried out at another medical centre to which he could be escorted. The nature and essence of the interim measure did not concern the applicant's immediate admission to hospital, but rather his continued HBO treatment. The three-day delay in providing such treatment could not and did not cause any irreparable damage to the applicant's health.

83. The Government added that they had had no intention of disregarding the interim measure, and had indeed taken all the necessary steps to ensure compliance as a matter of urgency. Moreover, the short delay in complying with the interim measure had not in any way impeded the applicant in pursuing his application before the Court or communicating with the latter. Neither had there been a risk of irreparable damage to his health capable of depriving the proceedings before the Court of their object. The existence of such a risk was, however, a mandatory condition for finding a violation of Article 34 of the Convention. The Government relied on an order of the International Court of Justice (*Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Order of 13 July 2006 on a request for the indication of provisional measures), submitting that that court had also taken the existence of a risk of irremediable damage to the interests of the parties as the basis for its decisions concerning compliance with interim measures.

C. The Grand Chamber's assessment

1. General principles

84. Article 34 of the Convention requires Member States not to hinder in any way the effective exercise of an applicant's right of access to the Court. As the Court held in *Mamatkulov and Askarov v. Turkey* [GC] (nos. 46827/99 and 46951/99, § 100, ECHR 2005-I):

> "... the provision concerning the right of individual application (Article 34, formerly Article 25 of the Convention before Protocol No. 11 came into force) is one of the fundamental guarantees of the effectiveness of the Convention system of human rights protection. In interpreting such a key provision, the Court must have regard to the special character of the Convention as a treaty for the collective enforcement of human rights and fundamental freedoms. Unlike international treaties of the classic kind, the Convention comprises more than mere reciprocal engagements between Contracting States. It creates, over and above a network of mutual, bilateral undertakings, objective obligations which, in the words of the Preamble, benefit from a 'collective enforcement' (see, *mutatis mutandis*, *Loizidou v. Turkey* (preliminary objections), judgment of 23 March 1995, Series A no. 310, p. 26, § 70)."

85. The Court has held that "[t]he obligation in Article 34 not to interfere with an individual's effective exercise of the right to submit and pursue a complaint before the Court confers upon an applicant a right of a procedural nature – which can be asserted in Convention proceedings – distinguishable from the substantive rights set out under Section I of the Convention or its Protocols" (see, for instance, *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 470, ECHR 2005-III).

86. In *Mamatkulov* (cited above), the Court held that failure to comply with an interim measure indicated under Rule 39 of the Rules of Court could give rise to a violation of Article 34 of the Convention:

> "104. Interim measures have been indicated only in limited spheres. Although it does receive a number of requests for interim measures, in practice the Court applies Rule 39 only if there is an imminent risk of irreparable damage. While there is no specific provision in the Convention concerning the domains in which Rule 39 will apply, requests for its application usually concern the right to life (Article 2), the right not to be subjected to torture or inhuman treatment (Article 3) and, exceptionally, the right to respect for private and family life (Article 8) or other rights guaranteed by the Convention. The vast majority of cases in which interim measures have been indicated concern deportation and extradition proceedings.
>
> ...
>
> 125. ... under the Convention system, interim measures, as they have consistently been applied in practice ..., play a vital role in avoiding irreversible situations that would prevent the Court from properly examining the application and, where appropriate, securing to the applicant the practical and effective benefit of the Convention rights asserted. Accordingly, in these conditions a failure by a respondent State to comply with interim measures will undermine the effectiveness of the right of individual application guaranteed by Article 34 and the State's formal undertaking in Article 1 to protect the rights and freedoms set forth in the Convention.
>
> Indications of interim measures given by the Court, as in the present case, permit it not only to carry out an effective examination of the application but also to ensure that the protection afforded to the applicant by the Convention is effective; such indications also subsequently allow the Committee of Ministers to supervise execution of the final judgment. Such measures thus enable the State concerned to discharge its obligation to comply with the final judgment of the Court, which is legally binding by virtue of Article 46 of the Convention.
>
> ...
>
> 128. ... A failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34."

87. The Court reiterates that the obligation laid down in Article 34 *in fine* requires the Contracting States to refrain not only from exerting pressure on applicants, but also from any act or omission which, by destroying or removing the subject matter of an application, would make it pointless or otherwise prevent the Court from considering it under its normal procedure (ibid., § 102). It is clear from the purpose of this rule, which is to ensure the effectiveness of the right of individual petition (see paragraph 86 above), that the intentions or reasons underlying the acts or omissions in question are of little relevance when assessing whether Article 34 of the Convention was complied with (see paragraph 78 above). What matters is whether the situation created as a result of the authorities' act or omission conforms to Article 34.

88. The same holds true as regards compliance with interim measures as provided for by Rule 39, since such measures are indicated by the Court for

the purpose of ensuring the effectiveness of the right of individual petition (see paragraph 86 above). It follows that Article 34 will be breached if the authorities of a Contracting State fail to take all steps which could reasonably have been taken in order to comply with the measure indicated by the Court.

89. Furthermore, the Court would stress that where there is plausibly asserted to be a risk of irreparable damage to the enjoyment by the applicant of one of the core rights under the Convention, the object of an interim measure is to preserve and protect the rights and interests of the parties in a dispute before the Court, pending the final decision. It follows from the very nature of interim measures that a decision on whether they should be indicated in a given case will often have to be made within a very short lapse of time, with a view to preventing imminent potential harm from being done. Consequently, the full facts of the case will often remain undetermined until the Court's judgment on the merits of the complaint to which the measure is related. It is precisely for the purpose of preserving the Court's ability to render such a judgment after an effective examination of the complaint that such measures are indicated. Until that time, it may be unavoidable for the Court to indicate interim measures on the basis of facts which, despite making a *prima facie* case in favour of such measures, are subsequently added to or challenged to the point of calling into question the measures' justification.

For the same reasons, the fact that the damage which an interim measure was designed to prevent subsequently turns out not to have occurred despite a State's failure to act in full compliance with the interim measure is equally irrelevant for the assessment of whether this State has fulfilled its obligations under Article 34.

90. Consequently, it is not open to a Contracting State to substitute its own judgment for that of the Court in verifying whether or not there existed a real risk of immediate and irreparable damage to an applicant at the time when the interim measure was indicated. Neither is it for the domestic authorities to decide on the time-limits for complying with an interim measure or on the extent to which it should be complied with. It is for the Court to verify compliance with the interim measure, while a State which considers that it is in possession of materials capable of convincing the Court to annul the interim measure should inform the Court accordingly (see, *mutatis mutandis*, *Olaechea Cahuas v. Spain*, no. 24668/03, § 70, ECHR 2006-X; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 131, ECHR 1999-IV; and *Orhan v. Turkey*, no. 25656/94, § 409, 18 June 2002).

91. The point of departure for verifying whether the respondent State has complied with the measure is the formulation of the interim measure itself (see, *mutatis mutandis*, the International Court of Justice's analysis of the formulation of its interim measure and actual compliance with it in *LaGrand*, cited in paragraph 62 above). The Court will therefore examine

whether the respondent State complied with the letter and the spirit of the interim measure indicated to it.

92. In examining a complaint under Article 34 concerning the alleged failure of a Contracting State to comply with an interim measure, the Court will therefore not re-examine whether its decision to apply interim measures was correct. It is for the respondent Government to demonstrate to the Court that the interim measure was complied with or, in an exceptional case, that there was an objective impediment which prevented compliance and that the Government took all reasonable steps to remove the impediment and to keep the Court informed about the situation.

2. Application of the above principles to the present case

93. The Court notes that in the present case, the Government did not dispute their obligation, under Article 34 of the Convention, to comply with the measure indicated by the Court. Rather, they contended that the competent authorities had done everything in their power to comply with that measure. The delay which occurred in doing so had been limited and entirely due to a number of unfortunate and objective circumstances beyond the authorities' control. In any case, the delay had not caused irreparable damage to the applicant's health and had not prevented him from pursuing his application before the Court; for those reasons, it could not amount to a breach of Article 34 of the Convention.

The Court will now examine whether the domestic authorities complied with their obligations under Article 34.

(a) Whether there was a failure to comply with the interim measure

94. The Court notes that the interim measure, issued on Thursday 10 November 2005, included instructions to the authorities to refrain from an act, namely from transferring the applicant from the neurological centre. However, despite becoming aware of the interim measure at the latest on the morning of Friday 11 November 2005 (see paragraph 54 above), the authorities did not prevent the applicant's transfer on that day. It should be noted that the applicant's lawyer's request, submitted to the trial court on the morning of 11 November 2005, expressly noted that the applicant could be transferred at any moment from the neurological centre and asked for an urgent injunction to prevent such a move, on the basis of the interim measure indicated by the Court (see paragraphs 55 and 56 above). Despite their submission that the applicant had been transferred from the neurological centre on 10 November 2005, the Government provided no evidence to that effect. At the same time, the Government submitted a document attesting that the applicant's treatment at the prison hospital began on 11 November 2005. Given the strict requirements concerning the recording of admissions to the institution, which is a prison hospital, the exact date of the applicant's arrival should necessarily have been recorded.

However, the Government chose not to submit any such record in support of their assertion that the applicant had been transferred on the earlier date. The Court therefore cannot find it established that the applicant had been transferred to the prison hospital before the Government found out about the interim measure indicated by the Court.

It follows that the interim measure was not complied with.

(b) Whether there were objective impediments to compliance with the interim measure

95. The Government also submitted that it had been impossible to comply with the interim measure until late on Monday 14 November 2005, when the measure was in fact implemented. A decision concerning the applicant's place of detention pending trial could only be taken by the trial court, and the Government Agent's Office had written to that court on Friday 11 November 2005, the day when they became aware of the interim measure. The court had attempted to summon all the parties on that day and when that had proved impossible at such short notice it had held a meeting on the next working day, 14 November 2005. Finally, the Government contended that their Agent's Office had taken immediate action to ensure compliance with the interim measure by writing to the trial court on 11 November 2005.

96. The Court notes the reply of the Supreme Council of the Judiciary to the applicant's lawyer (see paragraph 59 above), from which it emerges that the letter did not reach the trial court until the afternoon of Monday 14 November 2005. Since it was sent by facsimile, it can hardly have been sent on Friday 11 November 2005, as demonstrated by the letter itself, which bears an entry stamp of the Centru District Court dated 14 November 2005. According to the decision taken by the court on that date, a request to comply with the interim measure had been submitted to the court by the Government Agent on the same day. Even assuming that the letter was indeed signed on 11 November 2005 but not sent until 14 November 2005, or that it was dispatched on 11 November 2005 by surface mail and was thus subject to a delay in reaching the trial court, this would amount to negligence incompatible with the requirement to take all reasonable steps to ensure immediate compliance with the interim measure.

97. Such negligence is also apparent in the fact that on Friday 11 November 2005, a working day in Moldova, nobody in the Government Agent's Office was available to answer the urgent calls from the Registry. The Court finds this troubling, since regardless of the urgency and seriousness of any matter that could have been the subject of interim measures on Thursday 10 November 2005, the domestic authorities displayed a lack of commitment to assisting the Court in preventing the commission of irreparable damage. Deficiencies of this kind are incompatible with the duties incumbent on the Contracting States under

Article 34 with regard to their capacity to comply with interim measures with the required promptness.

98. As to the domestic court's actions, the Court reiterates that interim measures are to be complied with as a matter of urgency (paragraph 86 above). In this connection it observes that there is nothing in the file to support the Government's contention that the trial court attempted to summon the parties to the proceedings against the applicant on Friday 11 November 2005. In fact, there were only two parties to those proceedings: the applicant and the prosecution. The applicant and his lawyer were obviously willing to participate. The Court doubts that it was impossible for the prosecutor's office to send a prosecutor to an urgent hearing called by the trial court. The hearing did not concern the merits of the criminal case against the applicant, but a procedural issue as to whether to continue detaining him in the medical institution where he was already being detained. There was no claim that the applicant's continued treatment at the neurological centre posed any threat to the course of the investigation or public order. It was thus hardly necessary to ensure the presence of the prosecutor dealing with the applicant's criminal case, and any other prosecutor could have been summoned.

99. In any event, even assuming that the court considered that the presence of a specific prosecutor was necessary and that that prosecutor could not be found, or that there was some other impediment to holding the hearing, the trial court was under an obligation, under Article 246 of the Code of Criminal Procedure (see paragraph 60 above), to adopt a decision explaining its reasons. However, the court did not adopt any decision on Friday 11 November 2005 and failed to react in any manner to the applicant's lawyer's request made that day.

The Court notes that, in contrast with these events, on Monday 14 November 2005 the same trial court was able to decide within a few hours on a request for a change in the place where the applicant was to receive his medical treatment (see paragraph 41 above). A similar situation occurred on 29 November 2005 (see paragraph 57 above). This shows that it was possible for the court to react swiftly to important developments. However, for some unexplained reason, the trial court did not react in the same manner to the request to comply with the interim measure.

100. Even assuming that the trial court was prevented in some way from examining the applicant's lawyer's request on Friday 11 November 2005, it could have examined the request much sooner than it eventually did. According to established practice (see paragraph 61 above), first-instance courts are obliged to designate judges for a duty roster, to respond to any urgent requests made during weekends and public holidays. The judge dealing with the applicant's case, to whom the complaint of 11 November 2005 was personally addressed, was the President of the Centru District Court. She could not therefore have been unaware of the fact that a judge

was on duty and that, accordingly, the interim measure indicated by the Court could have been examined during the weekend.

101. It is for the domestic courts to assess the evidence before them, including unilateral evidence from an applicant or his representative concerning the existence of an interim measure indicated by the Court. In doing so, they will often need an official notification from the competent State authority, such as the Government Agent. In the present case, when the Centru District Court received a copy of the Court's letter sent by facsimile to the applicant's lawyer, it did not express any doubts as to the letter's authenticity. Nor did it call an urgent hearing so as to verify the authenticity of the interim measure in the light of the parties' submissions. Finally, the trial court reacted only after receiving the letter from the Government Agent by facsimile (see paragraph 59 above) on Monday 14 November 2005 at 2.19 p.m.

102. In the light of all of the above, the Court concludes that the Government have not shown that there was any objective impediment to compliance with the interim measure indicated to the respondent State in the present case.

(c) Whether the applicant's medical condition should be taken into account in assessing compliance with Article 34 of the Convention

103. In their observations before the Grand Chamber, the Government for the first time submitted arguments and medical evidence to show that the risk to the applicant had not been as serious as previously thought and, in particular, that hyperbaric oxygen therapy was not essential for treating any of the applicant's illnesses. Hence, they argued, the fact that the authorities had complied with the interim measure three days after being informed of it had not affected the applicant's ability to pursue his application before the Court and had not exposed him to a risk of irreparable damage. Accordingly, Article 34 had not been breached.

104. However, the Court has found a violation of Article 34 on a number of occasions having established that the domestic authorities had taken steps aimed at dissuading an applicant or preventing the Court from properly examining the case, even if, ultimately, such efforts were unsuccessful (see, *mutatis mutandis*, *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 482, ECHR 2004-VII, and *Shtukaturov v. Russia*, no. 44009/05, § 148, 27 March 2008). It appears from the file in the present case that the Moldovan authorities were unaware of the alleged absence of a risk to the applicant's life and health at the time of the events and even much later. They did not inform the Court of any evidence they may have had raising doubts as to the applicant's state of health or the necessity of one treatment or another. In such circumstances, there was no explanation whatsoever at that moment in time for their failure to take immediate action aimed at complying with the interim measure and at reducing the presumed

risk to the applicant. Such failure to comply is to be regarded as at least negligently allowing a situation to continue which, as far as was known at the material time, could have led to irreparable damage to the applicant and could thus have deprived the proceedings of their object. The fact that, ultimately, the risk did not materialise and that information obtained subsequently suggests that the risk may have been exaggerated does not alter the fact that the attitude and lack of action on the part of the authorities were incompatible with their obligations under Article 34 of the Convention.

(d) Conclusion

105. The Court concludes that the domestic authorities did not fulfil their obligation to comply with the interim measure at issue and that in the circumstances of the present case there was nothing to absolve them from that obligation.

106. Accordingly, there has been a violation of Article 34 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. 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

108. The applicant did not claim any damages in addition to those awarded by the Chamber, namely 2,080 euros (EUR) in respect of pecuniary damage and EUR 15,000 in respect of non-pecuniary damage.

109. The Government asked the Court to reduce the amount awarded by the Chamber for non-pecuniary damage if it found no violation of Article 34 of the Convention in the present case.

110. The Court refers to its finding of a violation of Article 34 (see paragraph 106 above) and to its endorsement of all the other findings of the Chamber in the present case. It does not consider it necessary to amend in any way the amount awarded by the Chamber for non-pecuniary damage.

B. Costs and expenses

111. The applicant claimed EUR 3,759 for costs and expenses related to the participation of his representatives in the proceedings and the hearing

before the Grand Chamber, in addition to the EUR 4,000 already awarded by the Chamber.

112. The Government considered this claim exaggerated. The applicant's representative had largely reiterated his previous submissions made before the Chamber. Moreover, if the Grand Chamber found no violation of Article 34 in the present case, no compensation would be payable in respect of the applicant's representation before either the Chamber or the Grand Chamber concerning this issue. Finally, regarding the travel and accommodation expenses related to the hearing before the Grand Chamber, the applicant had failed to ask the Court to grant him legal aid. He was therefore prevented from claiming it from the Government.

113. The Court recalls that it has upheld the Chamber's judgment in its entirety. It also upholds the award made by the Chamber, which is to be increased on account of the additional costs and expenses related to the proceedings before the Grand Chamber. In view of the above and deciding on an equitable basis, the Court awards the applicant EUR 7,000 for costs and expenses.

C. Default interest

114. The Court considers it appropriate that the default interest 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

1. *Holds* by fifteen votes to two that there has been a violation of Article 3 of the Convention;

2. *Holds* by sixteen votes to one that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* unanimously that it is not necessary to examine separately the applicant's complaints under Article 5 §§ 3 and 4 of the Convention;

4. *Holds* by nine votes to eight that there has been a violation of Article 34 of the Convention;

5. *Holds* by fifteen votes to two
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the national

currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 2,080 (two thousand and eighty euros) in respect of pecuniary damage, plus any tax that may be chargeable;

(ii) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;

(iii) EUR 7,000 (seven thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;

(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;

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

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 10 March 2009.

Vincent Berger	Jean-Paul Costa
Jurisconsult	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Partly dissenting opinion of Judge Costa;

(b) Partly dissenting opinion of Judge Šikuta;

(c) Partly dissenting opinion of Judge Malinverni, joined by Judges Costa, Jungwiert, Myjer, Sajó, Lazarova Trajkovska and Kakakaş;

(d) Joint dissenting opinion of Judges Myjer and Sajó;

(e) Dissenting opinion of Judge Sajó.

J.-P.C.
V.B.

PARTLY DISSENTING OPINION OF JUDGE COSTA

(Translation)

I do not consider Moldova to have been in breach of Article 34 of the Convention in the instant case, as it did not hinder the effective exercise of Mr Paladi's right of individual petition. Admittedly, it would have been preferable for the authorities to have complied even more promptly with the interim measure indicated by our Court. However, an overly rigid attitude seems to me to go too far and to fail to take account of the full circumstances of each case. I am not convinced by such an approach.

For more detailed reasons as to why I voted this way, I would refer to the remarks made by Judge Malinverni in his opinion, in which he has been joined by several of our colleagues and with which I concur.

PARTLY DISSENTING OPINION OF JUDGE ŠIKUTA

To my great regret I cannot share the opinion of the majority in finding a violation of Article 34 of the Convention. I wish to explain briefly my main reasons for not concurring.

As I understand it, in the instant case there was a clash of timing between the execution of the Centru District Court decision of 10 November 2005 ordering the transfer of the applicant from the RNC to the prison hospital and the interim measure issued by our Court on the evening of the same day. The latter, for practical purposes, reached the Government on the morning of the next day, 11 November 2005, by which time the decision ordering the transfer of the applicant from the RNC had most likely already been executed. In that case the only way to remedy the situation was for the national trial court to issue a new order for the applicant to be readmitted to the RNC. This clash of timing between two different communications, compounded by the lack of precise communication and coordination between the different actors involved, led to a slight delay in implementation of the interim measure.

1. As the Court stated in *Mamatkulov*: "...by virtue of Article 34 of the Convention Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of an individual applicant's right of application. A ***failure*** by a Contracting State ***to comply*** with interim measures is to be regarded as preventing the Court from effectively examining the applicant's complaint and as ***hindering the effective exercise of his or her right*** and, accordingly, as a violation of Article 34" (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 128, ECHR 2005-I).

I am not of the opinion that in the instant case all the conditions and criteria laid down in Article 34 of the Convention were met, and in particular that (a) the Government ***failed to comply*** with the interim measure of the Court and (b) the Government ***hindered the effective exercise*** of the applicant's individual right.

(a) The Government acknowledged reception of two letters from the Court by facsimile on the evening of 10 November 2005 (Thursday), but stressed that the Court's Registry had not sent the relevant letters also by electronic mail, as previously agreed in respect of general correspondence. Having received the fax on the morning of 11 November 2005 (Friday), the Government Agent, Mr V. Pârlog, took immediate steps to comply with the interim measure indicated. He was not entitled to make a decision in this matter by himself, and in order to implement the interim measure indicated by the Court had to cooperate with the national judiciary. In particular, the Agent wrote a letter to the President of the trial court on the same day (Friday). The national judiciary had the responsibility to guarantee and ensure observance of the right to a fair trial by ensuring that all the parties

involved were present. In this context it was questionable whether the trial court would be able, in practical terms, to summon all the parties to the case for the Friday afternoon since this process, which includes complying with the procedural provisions, can be reasonably expected to take a certain amount of time. Since it was impossible to convene all the parties for a hearing on the same day, the court summoned them for the next working day, 14 November 2005 (Monday). On that day the applicant was transferred back to the RNC.

Therefore, I am of the opinion that, in overall terms, and in view of the time available and the circumstances, all reasonable steps were taken ***to comply with the interim measure***.

(b) Although there were some problems in communication between the institutions involved at the national level as well as certain delays, for instance in admitting the applicant to the hospital on 14 November 2005, in my view it is not automatically the case that a delay of whatever kind amounts to disregard of the interim measure; in my opinion **there was no disregard of the interim measure,** nor any **intention** to disregard it on the part of the national authorities, who, once they became aware that Rule 39 had been applied, sought to comply with the Court's directions by returning the applicant to the RNC.

I do not therefore see **any hindrance of the effective exercise of the right** of individual petition within the meaning of Article 34 of the Convention. In this respect the case is very different from those where the removal of an applicant from a country has inevitable consequences for the life or treatment of the person in question.

2. The very **purpose of applying interim measures** is to avoid a risk of irreparable damage being caused to the physical or mental integrity or health of an applicant as the result of a proposed course of action.

The following are also important elements or indicators in assessing whether there was irreparable damage or risk of damage:

(a) the **RNC's letter dated 9 November 2005, according to which the applicant's condition had stabilised;**

(b) **the findings of the medical commission** set up by the Ministry of Health on 11 March 2008 for the purpose of determining the applicant's state of health during the period from 21 September to 30 November 2005, which established that the applicant had been given all the treatment prescribed by the RNC while in detention in the prison hospital. The interruption of the applicant's HBO treatment had not affected his state of health, as proved by his stable blood-sugar levels before and after interruption.

(c) the HBO treatment was not prescribed but merely recommended by the doctor, as confirmed by the applicant's representative at the Grand Chamber hearing held on 14 May 2008.

Bearing that in mind, I am not of the opinion that this short delay could have caused a reasonable risk of irreparable damage to the applicant and put him at severe risk to his life or health.

On the basis of all the above considerations I have come to the conclusion that the Government did not act in a manner contrary to the purpose of Article 34 of the Convention, and therefore that there has been no breach of Article 34 of the Convention.

PARTLY DISSENTING OPINION OF JUDGE MALINVERNI JOINED BY JUDGES COSTA, JUNGWIERT, MYJER, SAJÓ, LAZAROVA TRAJKOVSKA AND KARAKAŞ

To my great regret I cannot share the opinion of the majority that there has been a violation of Article 34 of the Convention in this case, for the following three reasons.

Firstly, in my opinion, the applicant was not in a situation in which he suffered irreparable damage, nor was the Court prevented from examining the case.

Secondly, there is nothing to suggest that the domestic authorities were unwilling to comply with the interim measure indicated to them or that they acted in bad faith.

Thirdly, compliance with the interim measure was merely delayed for three days. Such a delay cannot be said to have hindered the effective exercise of the applicant's right of individual petition (Article 34 of the Convention).

1. The very purpose of applying interim measures is the prevention of an imminent risk of irreparable damage to applicants' physical or mental integrity or health while their complaints of a violation of core Convention rights are examined by the Court (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 104 and 108, ECHR 2005-I).[1] Of course, the Court could find a violation of Article 34 of the Convention if it were shown that during the period of non-compliance the applicant had been subject to a risk of irreparable damage to his life or health capable of depriving the proceedings of their object. However, in my view, the applicant's state of health, although serious, was not put at risk as the result of his transfer to the prison hospital, where qualified medical personnel could administer all the treatment which had been prescribed for him. In these circumstances I conclude that the applicant was not exposed to a risk of irreparable damage capable of depriving the proceedings of their object and that the Court was not prevented from examining the case.

2. Secondly, in my view, the respondent Government took – with some delay, it is true – all steps to ensure compliance, in good faith, with the interim measure indicated by the Court. When the Government's Agent asked the trial court to take all necessary measures to ensure compliance with the interim measure, the court examined that request as soon as possible, ordering the applicant's immediate transfer back to the neurological centre on 14 November 2005. There is nothing to suggest that the domestic authorities were unwilling to comply with the interim measure indicated to them. While an initial misunderstanding between the various

[1] See also ICJ, Pulp Mills on the River Uruguay *(Argentine v. Uruguay)*, Order of 13 July 2006, §§ 62 and 73.

domestic authorities and a certain lack of organisation in the work of the Agent's office resulted in a regrettable delay in ensuring the applicant's continued treatment at the neurological centre, all the necessary steps were taken during the next working day, by the end of which he was admitted back to the centre.

3. The applicant was transferred from the neurological centre to a prison hospital on Friday 11 November 2005. On Monday 14 November 2005, the next working day, he was transferred back to the neurological centre. It follows that compliance with the interim measure was merely delayed for three days. On the particular facts of the present case, I am unable to find that the delay in implementing the interim measure can be said to have hindered the effective exercise of the applicant's right of individual petition within the meaning of Article 34 of the Convention. In this respect the case is very different from those where the removal of an applicant from a country in disregard of the terms of a Rule 39 indication has the inevitable consequence of rendering nugatory the exercise of the right by preventing the Court from conducting an effective examination of the Convention complaint and, ultimately, from protecting the applicant against potential violations of the Convention rights invoked.

I agree with the majority that a delay in complying with an interim measure may in some cases expose the applicant to a real risk and amount to hindrance to the effective exercise of Convention rights. However, in the circumstances of the present case and having regard, in particular, to the fact that the applicant's condition was found to have stabilised before he was discharged from the neurological centre on 10 November 2005 and transferred to the prison hospital, I consider that the relatively short delay before the applicant was returned to that centre and was able to complete his course of HBO therapy did not expose him to an immediate or particularly severe risk to his life or health.

JOINT DISSENTING OPINION OF JUDGES MYJER AND SAJÓ IN RESPECT OF THE COMPLAINT UNDER ARTICLE 3 OF THE CONVENTION

We voted against finding a violation of Article 3.

There is no doubt that the applicant had a serious medical condition.

We just do not agree that – while deprived of his liberty – the applicant was not provided with the medical assistance required by his condition.

From the facts (paragraphs 22-43) it is clear that during his detention he was seen on a number of occasions by various doctors and that he was given all kinds of specialised medical assistance. He was not only transferred to the prison hospital when that was considered necessary from a medical point of view, but was even allowed to undergo the recommended 'hyperbaric oxygen' (HBO) treatment in a specialised neurological unit outside the prison.

It is not within our competence to pronounce on the medical necessity of this special treatment.

Since we also voted against finding a violation of Article 34 – and, in Judge Sajó's case, against a violation of Article 5 § 1 – we did not vote in favour of awarding any compensation to the applicant.

DISSENTING OPINION OF JUDGE SAJÓ IN RESPECT OF THE COMPLAINT UNDER ARTICLE 5 § 1 OF THE CONVENTION

There can be no doubt that the Court's finding regarding the violation of Article 5 § 1 is correct. The reason I did not vote with the majority was to underline how abusive many of the applicant's claims are, bordering in some respects on the situation contemplated in Article 17 of the Convention. In that regard see also my dissent concerning the applicant's Article 3 claims.