CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF STEPULEAC v. MOLDOVA

(Application no. 8207/06)

JUDGMENT

STRASBOURG

6 November 2007

FINAL

06/02/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Stepuleac v. Moldova,

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

Mr J. CASADEVALL, *President,*
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges,*

and Mrs F. ARACI, *Deputy Section Registrar,*

Having deliberated in private on 9 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 8207/06) 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 Gheorghe Stepuleac ("the applicant"), on 1 March 2006.

2. The applicant was represented by Mr A. Tănase, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent at the time, Mr V. Pârlog.

3. The applicant alleged, in particular, that he had been held in inhuman and degrading conditions and deprived of medical assistance, that he had been unlawfully detained and that the courts had not given relevant and sufficient reasons for his detention, and that he had had no access to the relevant parts of his criminal file in order effectively to challenge his detention pending trial.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 23 May 2006 a Chamber of that Section decided to communicate 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. Under Rule 41 of the Rules of the Court, the Chamber decided to give priority to the examination of the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in Chişinău. He is the director of Tantal SRL, a company offering security services.

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

1. The applicant's first arrest

7. On 12 July 2005 the applicant's company was informed by a client (a petrol supply company) of damage caused to the latter by one of the applicant's employees' having stolen fuel and damaged a fuel pump. On 20 July 2005 the applicant responded by revealing the results of an internal inquiry, which had established that one of the applicant's employees responsible for guarding the relevant petrol stations, G.N., had confessed to the above actions, but had refused to pay for the damage. The applicant proposed to send the relevant information to the local police and the client.

8. On 25 November 2005 G.N. made a complaint to the General Directorate for Fighting Organised Crime ("GDFOC"), a subdivision of the Ministry of Internal Affairs, about threats to him and his family by "persons at the office of the Tantal company" who, from 5 July 2005, had threatened him with violence in order to obtain money from him. When he refused, he was coerced into signing a receipt which showed that he had borrowed money from T.G., another employee of the applicant's company. Finally, G.N. complained that he had been illegally detained between 7 and 11 July 2005 at one of the detention centres. The complaint was registered by GDFOC officer O.

9. On 26 November 2005 officer M. from the prosecutor general's Office ordered the opening of a criminal investigation into the allegations made by G.N. and the creation, for that purpose, of a team of twenty investigators from two departments of the Ministry of Internal Affairs. The order described the applicant and T.G. as the alleged perpetrators.

10. On 29 November 2005 the applicant was arrested. The reason given for the arrest was "the victim directly identified the suspect as the perpetrator of the crime; there is reason to believe that the suspect may exert pressure on the victim and witnesses". From that date until 9 March 2006 the applicant was detained in the GDFOC remand centre, except for a few days when he was on bail (see paragraph 11 below).

11. The prosecutor asked a court to remand the applicant in custody, accusing the applicant of unlawfully detaining and blackmailing G.N. in order to obtain 1,000 United States dollars (USD) from him. On 2 December 2005 the Buiucani District Court rejected that request. The

court found that the prosecutor had not provided sufficient evidence to prove the existence of grounds for detaining the applicant. It further found that G.N.'s detention in July 2005 had been sanctioned by the deputy prosecutor of Chişinău and could not therefore be considered unlawful detention; that no evidence had been adduced to substantiate the danger of the applicant's exerting pressure on the victim or witnesses; and that the applicant had a permanent residence, a job, and supported a child. Nonetheless, the court ordered the applicant's house arrest for ten days.

12. On 7 December 2005 the Chişinău Court of Appeal quashed that decision, finding that the court had incorrectly applied the law, which did not allow any preventive measure other than remand in custody of persons accused of especially serious crimes. However, the court accepted the applicant's request for release on bail, which was set at 50,000 Moldovan lei (MDL) (3,300 euros (EUR) at the time). He paid that amount and was released.

13. In the meantime, on 6 December 2005, the applicant's company's licence was revoked at the request of one of the subdivisions of the Ministry of Internal Affairs. The reasons given were the company's failure to observe the rules on the wearing of uniforms of certain colours, and the participation of the applicant in criminal activities.

2. The applicant's second arrest

14. On 12 December 2005 the applicant mentioned to the media that his prosecution and arrest had been the result of efforts by the Ministry of Internal Affairs to monopolise the security services market by destroying competitors, including his company.

15. On 15 December 2005 officer M. ordered the opening of another criminal investigation against the applicant and two others and the creation of a working group consisting of 24 investigators from two departments of the Ministry of Internal Affairs. The reason given was a complaint by H.A and another person about having been blackmailed by the applicant and three other persons between December 2004 and September 2005. The complaint was registered by GDFOC officer O. On the same day, the applicant was arrested, the reasons given in the minutes of arrest being that the victim expressly identified the applicant as the author of the crime.

16. On 18 December 2005 the prosecutor requested a court to remand the applicant in custody. On the same day the Centru District Court accepted that request and ordered the applicant's detention for ten days. The reasons given by the court were that:

> "the crime of which [the applicant] is accused is a serious one for which the law provides a penalty of more than two years; during the initial stage of proceedings the accused could obstruct the investigation, could put pressure on witnesses and the victim and could destroy evidence".

17. The applicant appealed, claiming his innocence and the insufficiency of reasons for choosing the preventive measure of detention. On 22 December 2005 the Chişinău Court of Appeal upheld the lower court's decision, giving similar reasons.

18. At the prosecutor's request, on 23 December 2005 the Buiucani District Court ordered the extension of the applicant's detention by twenty-five days. The court cited the relevant provision of domestic law and found that:

> "[the applicant] is accused of a particularly serious crime, evidence submitted to the court was obtained lawfully, the accused could put pressure on witnesses and the victim, there is a need to verify the submissions of a co-accused and there is a danger of the fabrication of evidence and collusion between the accused. Also, the [applicant] has not made any declarations to the investigating authorities relying on his right to remain silent, which allows him to fabricate defence evidence should he not be detained".

On 30 December 2005 the Chişinău Court of Appeal upheld that decision, giving essentially the same reasons as before.

19. On 6 January 2006 the applicant made a habeas corpus application, claiming that no evidence had been submitted to the courts in support of the alleged risk if he were to be released. He also drew the court's attention to the large number of investigators assigned to his case, which should have allowed them to take all necessary investigative action. Accordingly, his continued detention was not justified by the needs of the investigation.

20. On 11 January 2006 the Buiucani District Court rejected that request, finding that:

> "the grounds on which the detention was ordered remain valid. The court also considers that ... the investigation of [the applicant's] case by a group of officers is not a ground provided by law for changing the preventive measure".

On 18 January 2006 the Chişinău Court of Appeal upheld that decision, giving essentially the same reasons as before.

21. On the same day the Buiucani District Court extended the applicant's detention by a further 15 days. On 25 January 2006 the Chişinău Court of Appeal upheld that decision. Both courts gave essentially the same reasons as before.

22. Also on 25 January 2006 the applicant's wife asked permission to give the applicant food and newspapers on a daily basis. By a letter of 30 January 2006 from the detention centre's management she was informed that, according to a regulation of the Ministry of Internal Affairs, the applicant, with the approval of the investigating officer, was allowed one parcel per week.

23. On 1 February 2006 the Buiucani District Court ordered the extension of the applicant's detention by twenty days, giving essentially the same reasons as before. In his appeal the applicant relied, *inter alia*, on the Convention and the Court's judgment in *Sarban v. Moldova* (no. 3456/05,

4 October 2005), submitting a copy of the judgment. On 6 February 2006 the Chişinău Court of Appeal upheld that decision, giving essentially the same reasons as before.

24. On 17 February 2006 the Buiucani District Court extended the applicant's detention by another ten days. In his appeal the applicant relied on Article 5 of the Convention. On 22 February 2006 the Chişinău Court of Appeal upheld that decision. Both courts gave the same reasons as before for continuing to detain the applicant.

25. The first preliminary hearing of the trial court was scheduled for 27 March 2006, but it was postponed owing to the absence of the prosecutor, who had not informed the court of his non-attendance or the reasons for it. At the same hearing, the applicant made a habeas corpus application, claiming that there was no continuing need to detain him and that the conditions of his detention in the Ministry of Justice detention centre were inhuman and degrading. The court refused to examine the application because of the absence of the prosecutor from the hearing. On 3 April 2006 the Buiucani District Court rejected the habeas corpus request lodged by the applicant.

26. In a further *habeas corpus* request of 22 May 2006 the applicant's lawyer relied, *inter alia*, on statements made in court on 14 and 16 April 2006 by H.A. and another person, whose complaints had earlier served as the basis for the initiation of the second criminal investigation against the applicant (see paragraph 15 above). The lawyer reminded the court that one of the two alleged victims had declared before it that the signature on the complaint was not his and that he had no claims against the applicant. H.A., declared that he had claims against two other persons but that he had also included the applicant's name at the suggestion of the GDFOC officer O. He stated that there had been no threats against him and that none of the accused had committed any acts of violence against him. The Government did not dispute that summary of the statements made in court by these two persons.

27. On 23 May 2006 the Buiucani District Court granted the applicant's habeas corpus request and ordered his release against an undertaking not to leave the city. The court gave the following reasons for its decision:

> "... Both accused have no criminal record, have permanent residence and assure the court that they will not abscond from the law enforcement authorities or the court.
>
> The court also considers that the sole argument of the gravity of the crime alleged to have been committed cannot serve as a ground for detention, in the absence of any specific evidence regarding the person's danger to society, the danger of pressuring witnesses who have already given their statements before the court, where none of the grounds provided for in Article 176 (1) of the Code of Criminal Procedure has been proved, namely that the accused might abscond, obstruct the investigation or re-offend..."

3. Conditions of detention in the GDFOC detention centre

28. On 6 and 7 February 2006 the applicant's lawyer complained to the Prosecutor General's Office about the conditions of detention in the GDFOC detention centre. In particular, he complained, relying on Article 3 of the Convention, of the insufficiency and poor quality of food and that he could not receive food from his wife on a daily basis. He also complained that he had been detained alone in a cell and that unidentified persons had visited him, in the absence of his lawyer, with the aim of subjecting him to psychological intimidation to induce him to give up his business. He asked to be transferred from the GDFOC detention centre, as GDFOC was the institution investigating his case, to a centre under the jurisdiction of the Ministry of Justice, in order to obtain protection from such unlawful pressure.

There was no response to either of the two complaints.

29. On 7 February 2006 the applicant claimed that his health had deteriorated and asked to be transferred to another centre where he could be given medical assistance, claiming that the GDFOC centre had no medical staff.

30. On an unknown date the Head of GDFOC replied that the detention centre under the jurisdiction of the Ministry of Justice was overcrowded and that it would be impossible to transfer the applicant there. Should the applicant need it, he would be given full medical assistance.

31. In an appeal against the decision of 17 February 2006 (see paragraph 24 above), the applicant complained, *inter alia*, of his conditions of detention: the cell had been situated underground and he had had no access to daylight; low-intensity artificial light had never been turned off; there had been very high humidity; there had been no linen for the wood-covered stone platform which served as a bed; loud music had been played all day long; the ceiling had been so low as to prevent him from standing upright in the cell; access to shower facilities had been limited to one shower every ten days, which had only become possible following numerous requests by the applicant's lawyers; there had been no toilet in the cell and access to the toilet had been limited to once a day. There had been no opportunity for daily exercise and the ventilation system had only been switched on when the administration so decided. There had been no medical staff in the detention centre. The applicant also expressed the fear that he might have contracted tuberculosis.

32. On 22 February 2006 the applicant's wife requested the GDFOC authorities to transfer him to another detention centre. As an alternative, she requested permission to give him food on a daily basis and requested that the authorities allow him daily walks and access to daylight, switch off the artificial light at night, allow him to use the toilet whenever he needed it (or transfer him to a cell with a toilet), provide access to shower facilities once a week and permit him to be seen by an independent doctor and be given

necessary medication. It is unclear whether there was any response to these requests.

33. In his submissions to this Court, the applicant stated that only the Head of GDFOC had had the keys to his cell and that the quality of food had been very poor. He reiterated his fears that he might have caught tuberculosis and that it was impossible to verify this without medical assistance.

34. On 9 March 2006 the applicant was transferred to the Ministry of Justice detention centre (Prison no. 13, formerly known as Prison no. 3), where he was detained until his release on 23 May 2006.

II. RELEVANT NON-CONVENTION MATERIALS

A. Relevant domestic law and practice

35. The relevant domestic law and practice was set out in *Sarban* (cited above, §§ 51-56), *Becciev v. Moldova* (no. 9190/03, § 33, 4 October 2005) and *Boicenco v. Moldova* (no. 41088/05, § 64-71, 11 July 2006).

36. In particular, as regards the exhaustion of domestic remedies, the Government referred to Article 53 of the Constitution, Article 1405 of the Civil Code and Law no. 1545 on compensation for damage caused by illegal acts by the criminal investigation organs, prosecution and courts, as well as to the case of *Drugalev v. the Ministry of Internal Affairs and the Ministry of Finance*, mentioned in *Boicenco*, cited above, §§ 68-71). They also referred to the direct applicability of the Convention before the domestic courts, which, as established in the Decision of the Plenary Supreme Court of Justice no. 17 of 19 June 2000, takes precedence over domestic laws if the latter come into conflict with the Convention.

37. In addition, the relevant provisions of the Code of Criminal Procedure read as follows:

> "Article 66
>
> ...
>
> (2) The accused ... has the right:
>
> ...
>
> (21) to read the materials submitted to the court in support of [the need for] his arrest;
>
> Article 116
>
> (1) If the need appears for an identity parade in front of a ... victim ..., the investigating authority shall interview him or her about the circumstances in which

they have seen the person, as well as about special signs and particularities which could help them identify the person. Minutes of this procedure shall be filed.

...

(6) Should the presentation of the person for an identity parade be impossible, the identification shall be made on the basis of his or her photograph, presented together with the photographs of at least four other similar-looking persons. All the photographs shall be annexed to the file.

(7) Minutes of the identity parade shall be filed in accordance with Articles 260 and 261, with the exception that the person to be identified shall not be informed, at the time, of the contents of the minutes and shall not sign them."

38. In an information letter submitted by the Government (annex 8) and apparently written by the GDFOC management it was mentioned, *inter alia*, that the applicant had been detained in a 6 sq. m. cell with tap water, ventilation, bed and bedding, no windows and a toilet situated outside the cell.

B. Documents adopted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

39. The relevant parts of the CPT report concerning the visit to Moldova between 10 and 22 June 2001 read as follows:

"22. During its 2001 visit, the CPT delegation heard widespread allegations of physical ill-treatment of persons in police custody. In a large number of cases, the alleged ill-treatment was of such a severity that it could be deemed as amounting to torture. As in 1998, these allegations concerned operational police departments right across the country. ... The allegations mainly concerned periods of questioning aimed at securing confessions. ...

26. In contrast, the delegation only heard a few allegations of ill-treatment by surveillance staff in the EDPs visited. These mainly concerned the EDP of the Chişinău Police Inspectorate and of the Department for the fight against organised crime and corruption, also in the capital (truncheon blows in response to prisoner requests or as disciplinary measures, handcuffing prisoners to the bars of a grilled door for several hours).

30. It must again be pointed out how important it is for the competent authorities (judges, prosecutors) to examine carefully all the complaints of ill-treatment referred to them and, where relevant, impose appropriate penalties. This will act as a very strong disincentive for those who might otherwise be minded to engage in ill-treatment. In this context, the CPT has to stress that its delegation still received allegations from detained persons that complaints to the relevant prosecutor or judge occasioned hardly any reaction, or even a negative one. It was clear from certain meetings with the competent bodies that, in many cases, the attitude and professional conscience of such instances often left something to be desired. **The CPT**

recommends that judges and prosecutors be made aware of the importance of actively pursuing their key role in preventing ill-treatment.

54. Unfortunately, during the 2001 visit, the delegation found barely any traces of such palliative measures, in fact quite the opposite. For example, the renovation and reconstruction of the cells of the EDP of the Department for the fight against organised crime and corruption in Chişinău (reopened in 2000), which were supposed to reflect the CPT's 1998 recommendations, turned out to have had quite the contrary effect. All the conceptual and organisational shortcomings highlighted by the CPT at the time had been faithfully reproduced: cells without access to natural light, artificial lighting of low intensity and permanently switched on, inadequate ventilation and furnishings consisting exclusively of platforms without mattresses (although certain prisoners did have their own blankets). A similar conclusion can be drawn about the new section of the Bălţi EDP set aside for administrative detainees.

55. One can only regret that in their efforts to renovate these premises - which under the current economic circumstances deserve praise - the Moldovan authorities have paid no attention to the CPT recommendations. In fact, this state of affairs strongly suggests that, setting aside economic considerations, the issue of material conditions of detention in police establishments remains influenced by an outdated concept of deprivation of liberty.

57. The delegation also received numerous complaints about the quantity of food in the EDPs visited. This normally comprised tea without sugar and a slice of bread in the morning, cereal porridge at lunch time and hot water in the evening. In some establishments, food was served just once a day and was confined to a piece of bread and soup.

58. ... Concerning the issue of access to toilets in due time, the CPT wishes to stress that it considers that the practice according to which detainees comply with the needs of nature by using receptacles in the presence of one or several other persons, in a confined space such as the EDP cells which also serve as their living space, is in itself degrading, not only for the individual concerned but also for those forced to witness what is happening. Consequently, **the CPT recommends that clear instructions be given to surveillance staff that detainees placed in cells without toilets should – if they so request – be taken out of their cell without delay during the day in order to go to the toilet.**

62. ... Access to health care during detention was equally poor. ... For smaller EDPs, regular visits by at least a feldsher should be ensured.

63. To summarise, it is clear that the EDPs run by the Ministry of Internal Affairs will never be able to offer suitable detention conditions for persons remanded in custody for prolonged periods, even several months.

The CPT very much regrets that the plans of the Moldovan authorities, already announced in 1998, to transfer the entire responsibility for remand prisoners from the Ministry of Internal Affairs to the Ministry of Justice have not been implemented.

The CPT recommends that the Moldovan authorities intensify their efforts to implement, as rapidly as possible, their plans to transfer total responsibility for remand prisoners to the Ministry of Justice."

THE LAW

40. The applicant complained of a violation of his rights guaranteed by Article 3 of the Convention. Article 3 reads as follows:

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

41. The applicant also complained that his detention had not been based on a reasonable suspicion that he had committed a crime, contrary to Article 5 § 1 of the Convention, the relevant part of which provides:

> "1. 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;"

42. The applicant further complained that his detention pending trial had not been based on "relevant and sufficient" reasons. The relevant part of Article 5 § 3 reads:

> "3. 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."

43. The applicant finally complained under Article 5 § 4 of the Convention that neither he nor his lawyer had had access to the relevant parts of the investigation file concerning the reasons for his detention. Article 5 § 4 reads as follows:

> "4. 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."

I. ADMISSIBILITY

44. The applicant complained that the failure to give him medical assistance in the GDFOC detention centre and the conditions of his detention there and subsequently in Prison no. 13 amounted to inhuman and degrading treatment contrary to Article 3 of the Convention (see paragraphs 26-28 above).

45. The Government argued that the applicant had not exhausted available domestic remedies in respect of the complaints under Article 3 of the Convention. They relied on the *Drugalev* case (see paragraph 36 above).

46. In so far as the remedy of a civil action to request an immediate end to the alleged violation is concerned (the *Drugalev* case), the Court has already found that it did not constitute sufficient evidence that such a remedy was effective at the relevant time (see *Holomiov v. Moldova*, no. 30649/05, § 106, 7 November 2006). Not having been informed of any development since the *Drugalev* decision, the Court does not see any reason for departing from that finding in the present case. It follows that this complaint cannot be rejected for failure to exhaust available domestic remedies. The Court takes note of the direct applicability of the Convention in the Moldovan legal system and its precedence over domestic laws. However, it recalls that the applicant relied on the provisions of the Convention in his complaints to the various authorities and courts and that his complaints were rejected as unfounded or left without examination (see paragraphs 23, 24, 28 and 31 above).

47. The Court considers, in the light of the information in its possession, that the applicant's complaint regarding the inhuman conditions of detention at the Prison no. 13 has not been substantiated. In his initial application the applicant did not give any description of the conditions in that detention centre which he considered contrary to Article 3 of the Convention. In his subsequent observations, the applicant provided details, which focused on overcrowding and insufficient medical assistance. This latter aspect will be taken into account by the Court when examining the level of medical assistance given to the applicant during the whole of his detention. However, the Court considers unsubstantiated the remainder of the complaint regarding the conditions of detention in Prison no. 13.

48. The Court further considers that the applicant's complaints under Articles 3 (except the complaint regarding the conditions of detention in Prison no. 13) and 5 §§ 1, 3 and 4 of the Convention raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits. It therefore declares these complaints admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

1. Arguments of the parties

49. The Government submitted that the applicant's allegations concerning the inhuman conditions of detention at the GDFOC detention centre had been abusive and untrue. The applicant had been detained in four different cells, each measuring six square metres and having access to daylight and electricity, with permanently working ventilation and with wooden beds. The food had been appropriate to his needs and he had

received on a number of occasions parcels of food from his wife and lawyer. The applicant had two hours of exercise daily, when he chose to take advantage of it, and had been able to take a hot bath every ten days. As for the applicant's solitary confinement, it had been necessary in view of the fact that he used to be a policeman and risked ill-treatment from other detainees. There had been no other persons with links to law enforcement at the GDFOC during the applicant's detention who could have been placed with him in the cell. While the applicant's lawyers had complained about alleged visits by unidentified persons to his cell in order to put pressure on him, he had never complained to a court following the lack of response from the Prosecutor General's Office, which suggested that he had not wanted to pursue the matter. On the basis of his failure to give any additional detail and his refusal to make any statements during the investigation, the authorities had concluded there was no need to investigate the complaint.

50. Moreover, the applicant had complained five times about his state of health and each time an ambulance had been called to treat him. At no time had the doctors found any signs of tuberculosis. He had been assured, in response to his request for a transfer to another detention centre, with medical staff, that he would be offered medical treatment when he needed it. As for the applicant's bronchitis, the Government doubted that the family doctor could be sure of her findings in the absence of more in-depth investigations and specialised medical advice.

51. The Government also submitted photographs taken in the GDFOC centre to confirm their statements, as well as documents confirming the provision of food to the centre. It appears from the latter documents that the detainees received one meal per day and in addition some tea and bread.

52. The applicant contested the Government's submissions, stating that the cell's area was four square metres, as was evident also from the pictures submitted by the Government. The applicant had had to bring his own bed linen and his wife was allowed to send him food only once a week, as proved by a letter from the GDFOC head dated 30 January 2006. In the absence of any cold storage, the applicant had not been able to keep such foods as meat, fish or soup. The Government's documents supported the applicant's claim that there was no toilet in the cell but only in a separate facility, which he was allowed to visit once a day. Neither was there any running water in the cell and he was allowed to use lavatories during 10 minutes in the morning. There was no heating in the cell and he had to sleep in his clothes. The applicant also submitted that during his solitary detention for alleged security reasons four other former law enforcement officers and a lawyer had been detained there, thus denying the Government's submission that no other persons could have been placed in the applicant's cell.

53. The applicant submitted that he had asked about ten times for an ambulance to be called and noted that the Government had provided only

two records of ambulance visits to him, on 6 and 7 February 2006, while having confirmed five relevant requests by the applicant. In the ambulance visit records provided by the Government the doctors noted that the applicant had been suffering from nausea, vertigo, anxiety and insomnia. The applicant emphasised that these ambulance visits and complaints had coincided with the period when he had complained through his lawyer about visits to his cell by unidentified persons to intimidate him (see paragraph 28 above). Moreover, on 19 February 2006 the applicant's family doctor had diagnosed him with obstructive chronic bronchitis, which had been confirmed by the same doctor in the presence of the doctor from Prison no. 13 on 18 April 2006. The applicant finally relied on the reports of the CPT, which confirmed his description of the conditions of detention.

2. The Court's assessment

54. The Court refers to the principles established in its case-law on Article 3 of the Convention regarding, in particular, conditions of detention and medical assistance to detainees (see, amongst others, *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI, *Ostrovar v. Moldova*, no. 35207/03, §§ 76-79, 13 September 2005, and *Sarban*, cited above, §§ 75-77).

a. Conditions of detention at the GDFOC detention centre

55. The Court notes that the applicant was given one full meal per day at the GDFOC (see paragraph 51 above). It also notes that the applicant's wife was given the right to send him food once a week. In this regard, the Court observes that the permissions given to the applicant's wife to send him food, submitted by the Government, confirm that he generally received food from her once a week. The Court can but note the clear insufficiency of food given to the applicant, which in itself raises an issue under Article 3 of the Convention (see *Kadiķis v. Latvia (no. 2)*, no. 62393/00, § 55, 4 May 2006).

56. The parties submitted contradicting views regarding access to daylight in the cells. However, the Court notes that one of the documents submitted by the Government and issued apparently by the GDFOC management (annex 8, see paragraph 38 above), expressly mentions that the cells did not have windows. The Court concludes that the applicant was detained in a cell without access to daylight.

57. The Court further notes that the Government did not contradict the applicant's claim that he was allowed to visit the toilet and running water facilities once a day, nor that the cell was not heated and he had to sleep in his clothes and had to use his own bedding.

58. The Court finds that the description of at least some of the above conditions of detention coincides with that made by the CPT in 2001 (see paragraphs 54-57 and 63). The CPT concluded that EDPs (detention centres) run by the Ministry of Internal Affairs (including the GDFOC)

"will never be able to offer suitable detention conditions for persons remanded in custody for prolonged periods, even several months". The Court concludes that the applicant was detained in conditions inconsistent with Article 3 of the Convention.

b. Medical assistance

59. The Court refers to the Government's opinion that it was impossible for a non-specialist doctor to be certain of the applicant's medical diagnosis of bronchitis in the absence of results from in-depth medical tests (see paragraph 50 above). It notes that, despite this preliminary diagnosis which therefore needed confirmation, the applicant was not subjected to any such tests, nor examined by a specialist doctor, at least until the end of his detention at the GDFOC and for two more weeks thereafter (see paragraph 53 above). The Government did not deny that humidity in the cells could contribute to deterioration in the applicant's bronchitis. Moreover, the applicant was not given daily medical care since, as appears also from the Government's observations, there were no medical personnel at the GDFOC detention centre and an ambulance was called in more serious cases. In this respect, the Court notes the answer given to the applicant in response to his request for a transfer to a centre staffed with medical personnel (see paragraph 30 above). He was promised medical assistance whenever he needed it, despite his express claim that he already needed such assistance. As a result, the applicant was in a vicious circle where he could not get assistance until he "really needed" it, while at the same time he could not prove such a medical need in the absence of qualified medical opinion to confirm his fears. It follows that the applicant did not receive sufficient medical treatment while being detained in the GDFOC detention centre.

c. Investigation of alleged intimidation

60. The Court turns to the alleged intimidation of the applicant in his cell by unidentified persons (see paragraph 28 above). The applicant complained about that to the Prosecutor General, but received no reply. In the Government's view, his failure to complain to a court about that lack of action confirmed the absence of any grounds for reacting to his initial complaint. Moreover, he refused to give more details on the matter.

61. The Court notes that it was not argued before it that the law or practice in Moldova required an alleged victim of illegal acts to complain repeatedly to the prosecution before the latter would react. On the contrary, as appears from the information in its possession (see paragraphs 7, 9 and 15 above), the prosecuting authorities twice opened criminal investigations against the applicant which were based on complaints they had received, without waiting for confirmation of their authors' intention to pursue those complaints. At the same time, the applicant did complain twice (see paragraph 28 above) and received no response to either of his complaints.

The Government did not submit any evidence of an investigation into the applicant's complaints or that any attempt had been made to obtain more details from the applicant, as the authorities were obliged to do (see *Boicenco*, cited above, § 123).

62. The Court also notes that the Government did not comment on the applicant's claim that four other former law enforcement officers and a lawyer were detained at the GDFOC detention centre at the same time as he was and that, therefore, there was no reason for his solitary confinement. The applicant's view was that, in such circumstances, the only purpose of his solitary confinement was to create the necessary conditions for his intimidation without witnesses. The Court notes that the applicant did not request solitary confinement and in fact complained about it, and that there was no court order to place him in solitary confinement.

63. The Court also refers to paragraph 63 of the 2001 CPT report in which the Committee regretted the delays in transferring the responsibility for all detention centres from the Ministry of Internal Affairs to the Ministry of Justice (see paragraph 39 above). The Court notes that in 2006 the situation did not change in this respect and that the keeping of an accused person in a detention centre under the same authority as the one prosecuting him created the potential for abuse (see paragraph 26 of the 2001 CPT report, cited in paragraph 39 above).

64. While the Court was not presented with sufficient evidence that the applicant had indeed been intimidated in his cell, it considers that the State did not fulfil its positive obligation of properly investigating allegations of ill-treatment, given all the above-mentioned circumstances of the case (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV; *Poltoratskiy v. Ukraine*, no. 38812/97, § 126, ECHR 2003-V; *Corsacov v. Moldova*, no. 18944/02, § 68, 4 April 2006, and also paragraph 30 of the 2001 CPT report, cited in paragraph 39 above).

d. Conclusion

65. To sum up, the Court finds that the applicant's detention for over three months with insufficient food and no access to daylight for up to 22 hours a day, no access to toilet and tap water whenever needed, and insufficient medical assistance, amount to a violation of Article 3 of the Convention. In addition, the failure to investigate his complaints about intimidation in the prison cell, where he felt particularly vulnerable since he was detained alone, amounts to a violation of the procedural obligations under Article 3 of the Convention.

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

1. Argument of the parties

66. The applicant complained that he had been arrested without a reasonable suspicion of having committed a crime. Rather, the law enforcement system was abused in order to intimidate him into ceding his business to a competitor. The only ground for initiating the criminal investigation had been G.N.'s complaint, which did not mention the applicant's name. Nevertheless, in the decision to initiate the investigation he was mentioned for some unexplained reason. Moreover, the Buiucani District Court had expressed doubts regarding G.N.'s unlawful deprivation of liberty. The second arrest was similarly based only on the alleged complaints by two persons, both of whom denied in court having been victims of any unlawful acts committed by the applicant. Accordingly, the facts of the case did not give any reason to believe that the applicant had committed either of the two crimes with which he was charged.

67. The Government submitted that the applicant's arrest had been in accordance with domestic law. The information available at the time of his arrest had been sufficient to substantiate a reasonable belief of his guilt. As for the absence of the applicant's name from G.N.'s complaint, the Government recalled that the applicant had been arrested three days after the complaint was lodged. While at the beginning G.N. had not been able to identify the perpetrators other than T.G., he had later recognised the applicant, who had only then been arrested. In view of information in their possession and the seriousness of the alleged crimes, it had not been unreasonable for the authorities to detain the applicant.

2. The Court's assessment

68. The Court reiterates that “the 'reasonableness' of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1 (c) of the Convention. Having a 'reasonable suspicion' presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as 'reasonable' will however depend upon all the circumstances”. While special circumstances may affect the extent to which the authorities can disclose information, even “the exigencies of dealing with terrorist crime cannot justify stretching the notion of 'reasonableness' to the point where the essence of the safeguard secured by Article 5 § 1 is impaired” (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, § 32).

a. The applicant's first arrest

69. In the present case, the Court first notes that none of the courts examining the prosecutor's actions and requests for arrest dealt with the issue of whether there was a reasonable suspicion that the applicant had committed a crime, despite the applicant's claim that he was innocent. While assuming that such an exercise was implied in the domestic courts' decisions, the Court will have to be particularly thorough in its own review in the light of the absence of such an express domestic review.

70. The Court notes that the only ground cited by the prosecuting authority when arresting the applicant and when requesting the court to order his pre-trial detention was that the victim (G.N.) had directly identified him as the perpetrator of a crime (see paragraph 9 above). However, it also notes that the complaint lodged by G.N. did not directly indicate the applicant's name, nor did it imply that all the employees of the applicant's company were involved (see paragraph 7 above). Indeed, only T.G. and the applicant were arrested and not all the employees. The prosecutor's decision of 26 November 2005 to initiate the criminal investigation included the applicant's name (see paragraph 9 above). It is unclear why his name was included in that decision at the very start of the investigation and before further evidence could be obtained. It is to be noted that the applicant was never accused of condoning illegal activities on the premises of his company, which might have explained his arrest as Tantal's director, but of personal participation in blackmail.

71. The Court notes the Government's view that G.N. identified the applicant some time after lodging his complaint. However, the Government did not submit any documents confirming such further identification, despite the fact that such procedures should be properly documented according to the law (see Article 116 of the Code of Criminal Procedure, cited in paragraph 37 above). Moreover, the Court doubts that G.N. did not know the director of the company for which he worked given, moreover, the events described in paragraph 7 above.

72. Moreover, the Court notes that the domestic court, when examining the request for a detention order (see paragraph 11 above), established that at least one of the aspects of G.N.'s complaint was abusive. In particular, his complaint of unlawful detention contradicted the official detention order issued by the deputy prosecutor of Chişinău. This should have cast doubt on G.N.'s credibility. The conflict he had with the company's administration (see paragraph 7 above) gives further reasons to doubt his motives. However, rather than verifying this information, which was easily obtainable from the law enforcement authorities, particularly given the large number of prosecutors assigned to the case, the prosecutor arrested the applicant partly on the basis of his alleged kidnapping of G.N. This lends support to the applicant's claim that the investigating authorities did not genuinely verify the facts in order to determine the existence of a reasonable

suspicion that he had committed a crime, but rather pursued his arrest, allegedly for private interests. In this regard, the Court can but note that a subdivision of the Ministry of Internal Affairs, which was the authority which had initiated the investigation into the applicant's case, asked for and obtained the withdrawal of the applicant's company's licence on the ground of his participation in illegal activities before any court had established his guilt (see paragraph 13 above) and just after the Buiucani District Court had found the grounds advanced for his detention in a detention centre unconvincing (see paragraph 11 above).

73. In the light of the above, in particular the prosecutor's decision to include the applicant's name in the list of suspects without a statement by the victim or any other evidence pointing to him (see *Elci and Others v. Turkey*, nos. 23145/93 and 25091/94, § 674, 13 November 2003), as well as the prosecutor's failure to make a genuine inquiry into the basic facts, in order to verify whether the complaint was well-founded, the Court concludes that the information in its possession does not "satisfy an objective observer that the person concerned may have committed the offence".

74. There has, accordingly, been a violation of Article 5 § 1 of the Convention in respect of the applicant's first arrest.

b. The applicant's second arrest

75. The Court notes that the Government did not dispute the content of the statements made in court by H.A. and the other person whose complaints had served as a ground for the initiation of the second investigation against the applicant (see paragraphs 26 and 66 above). Following these statements and at the applicant's request, the domestic court ordered the applicant's release (see paragraph 27 above). It follows from those statements made under oath that one of the two alleged victims had not signed any complaint and did not have any claims against the applicant, while H.A. complained about two other persons but included the applicant's name only at the suggestion of the GDFOC officer O.

76. The Court finds similarities between the two arrests of the applicant. Each time the only ground for his arrest was a complaint by an alleged victim. It has already found that even a *bona fide* or "genuine" suspicion of an investigating authority is not necessarily sufficient to satisfy an objective observer that the suspicion is reasonable (see *Fox, Campbell and Hartley*, cited above, § 35). The Court did not have submitted to it any other evidence supporting a reasonable suspicion that the applicant had committed a crime. On the contrary, the second arrest was based on an alleged crime which had been committed during a period ending in September 2005 (see paragraph 15 above). Had the applicant indeed committed the crime and had he wanted to pressure the victim or witnesses or destroy evidence, he would have had plenty of time to do so before

December 2005, and no evidence was submitted to the Court of any such actions on the part of the applicant. There was, therefore, no urgency for an arrest in order to stop an ongoing criminal activity and the 24 investigators assigned to the case could have used any extra time to verify whether the complaints were *prima facie* well-founded. Instead of such verification, the applicant was arrested on the day when the investigation was initiated (see paragraph 15 above).

77. More disturbingly, it follows from the statements of the two alleged victims that one of the complaints was fabricated and the investigating authority did not verify with him whether he had indeed made that complaint, while the other was the result of the direct influence of officer O., the same person who registered the first complaint against the applicant (see paragraph 7 above; see also *Sultan Öner and Others v. Turkey*, no. 73792/01, §§ 121-123, 17 October 2006). This renders both complaints irrelevant for the purposes of determining the existence of a reasonable suspicion that the applicant had committed a crime, while no other reason for his arrest was cited (see paragraph 15 above).

78. The Court is aware of the possibility of a victim retracting his or her statements because of a change of heart or even coercion. However, whether or not a victim signed a complaint can be verified by objective forensic evidence and there is nothing in the file to suggest that the person had lied to the domestic court about not having signed the complaint. Indeed, if it were shown that the victim had actually signed the complaint but later retracted it under duress, the domestic court would have had serious reasons for refusing the applicant's request for release. No such concerns were expressed by the court (see paragraph 27 above).

79. All of the above, together with the inclusion of the applicant's name in the list of suspects without cause, established in respect of his first arrest (see paragraph 74 above), creates a very troubling impression that the applicant was deliberately targeted.

80. Whether or not the applicant was arrested deliberately or following a failure properly to consider the facts of the case or a *bona fide* mistake, the Court does not see in the file, as in the case of the first arrest, any evidence to support a reasonable suspicion that the applicant committed a crime.

81. There has, accordingly, been a violation of Article 5 § 1 of the Convention in respect of the applicant's second arrest also.

IV. ALLEGED VIOLATIONS OF ARTICLE 5 § 3 AND 4 OF THE CONVENTION

82. The applicant also complained of the insufficiency of reasons given by the courts for ordering his detention pending trial and of lack of access to the relevant parts of the file regarding the grounds for his detention.

83. The Court considers that it does not have to examine these complaints separately, having found that the detention as a whole was contrary to Article 5 § 1 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed EUR 19,000 for non-pecuniary damage. He referred to the stress and helplessness he had suffered as a result of being unlawfully detained in inhuman conditions and relied on the Court's case-law in similar cases.

86. The Government disagreed with the amount claimed by the applicant, arguing that it was excessive in light of the Court's case-law. They submitted that the case-law cited by the applicant dealt with situations which had nothing in common with his case in terms of the nature and seriousness of the alleged violations, the effects on the applicant and the attitude of the State authorities. The authorities had taken all measures to accommodate the applicant's needs and his treatment had not reached the minimum threshold under Article 3 of the Convention. Any finding of a violation of Article 5 of the Convention should constitute of itself just satisfaction.

87. The Court considers that the applicant must have been caused a certain amount of stress and anxiety as a consequence of his detention for six months contrary to Article 5 § 1 of the Convention and in conditions contrary to Article 3 of the Convention. Deciding on an equitable basis, it awards the applicant EUR 12,000 (see *Modarca v. Moldova*, no. 14437/05, § 103, 10 May 2007).

B. Costs and expenses

88. The applicant claimed EUR 8,972 for legal costs and expenses. He submitted a list of hours worked in preparing the case (amounting to 83 hours) and the hourly fee for each type of activity (EUR 60-100). He referred to a decision of the Moldovan Bar Association, adopted on 29 December 2005, which recommended the level of remuneration for

lawyers representing applicants before international courts (an hourly fee of EUR 40-150).

89. The Government considered that these claims were unjustified, given the economic realities of life in Moldova. They argued that the applicant had not submitted a copy of any contract for his legal representation. They questioned the need to spend so many hours researching the Court's case-law and drafting the applicant's observations. The Government referred to the advisory nature of the decision taken by the Moldovan Bar Association, which was therefore not mandatory for Moldovan lawyers. Moreover, the recommended rates were excessive.

90. The Court reiterates that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see *Sarban*, cited above, § 139). According to Rule 60 § 2 of the Rules of Court, itemised particulars of claims made are to be submitted, failing which the Chamber may reject the claim in whole or in part.

91. In the present case, the Court notes that, while the applicant has not submitted a copy of a contract with his lawyer, the lawyer was properly authorised to represent him in the proceedings before this Court and they both signed the itemised list of hours worked in preparing his case. It is also clear that a certain amount of work has been done, considering the quality of the submissions. However, the amount requested is excessive and should only partly be accepted. Regard being had to the itemised list of hours worked, the number and complexity of the issues dealt with, the Court awards the applicant EUR 3,000 for legal costs and expenses (cf. *Sarban*, cited above, § 139).

C. Default interest

92. 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 UNANIMOUSLY

1. *Declares* inadmissible the complaint under Article 3 insofar as it concerns the applicant's conditions of detention in Prison no. 13, and the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant's conditions of detention in the GDFOC detention centre and the insufficient medical assistance given to him;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the failure to investigate the applicant's complaints about intimidation in his cell;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's two arrests in the absence of a reasonable suspicion of having committed a crime;

5. *Holds* that there is no need to examine separately the complaints under Article 5 §§ 3 and 4 of the Convention;

6. *Holds*:
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 12,000 (twelve thousand euros) for non-pecuniary damage and EUR 3,000 (three thousand euros) for costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(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;

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

Done in English, and notified in writing on 6 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Josep CASADEVALL
President