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

FOURTH SECTION

CASE OF HOLOMIOV v. MOLDOVA

(Application no. 30649/05)

JUDGMENT

STRASBOURG

7 November 2006

FINAL

07/02/2007

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 Holomiov v. Moldova,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr J. ŠIKUTA, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 17 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 30649/05) 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 Victor Holomiov ("the applicant") on 10 August 2005.

2. The applicant was represented by Mr Sergiu Gogu, a lawyer practising in Chişinău and a member of the non-governmental organisation "Promo-Lex". The Moldovan Government ("the Government") were represented by their Agent, Mr Vitalie Pârlog.

3. The applicant alleged that he had been detained in inhuman and degrading conditions of detention and that he was not provided with proper medical care in breach of Article 3 of the Convention. He also complained under Article 5 of the Convention about a breach of his right to liberty.

4. The application was allocated to the Fourth Section. On 11 November 2005 the President of that Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, the Section decided to examine the merits of the application at the same time as its admissibility. It also decided to give priority to the case under Rule 41 of the Rules of Court in view of the applicant's poor state of health.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1955 and lives in Chişinău.

1. The applicant's arrest and detention on remand

7. The applicant was arrested on 24 January 2002 on suspicion of abetting bribery.

8. On 26 January 2002 the Centru District Court issued an order remanding the applicant in custody for a period of thirty days. The court's reasoning was the following: "the suspect has reached the age at which he may be criminally prosecuted, he is suspected of having committed a serious offence and he is unemployed".

9. On 4 February 2002 the applicant was indicted *inter alia* for the offence of aiding and abetting bribery, involving large sums of money, which was punishable by up to twenty years' imprisonment.

10. On 14 February 2002, the Centru District Court examined a *habeas corpus* request lodged by the applicant and a request lodged by the prosecutor to prolong the detention. In his *habeas corpus* request the applicant argued that he was married, had three children and was employed. The court dismissed the applicant's request but upheld the prosecutor's request and prolonged the detention.

11. Similar prolongations were ordered up until 23 May 2002, when the investigation was completed and the criminal case file was sent by the prosecution to the Chişinău Regional Court. After that date, the applicant remained in detention without having his detention warrant prolonged. He submitted numerous *habeas corpus* requests relying *inter alia* on his medical condition (see paragraph 17 below) and on the impossibility of receiving appropriate medical care in prison due to a lack of specialised doctors and medication, but they were all rejected.

12. On 13 February 2003 the applicant complained *inter alia* that from 23 May 2002 he had been detained without any warrant. His request was dismissed.

13. On 19 December 2005 the applicant lodged a *habeas corpus* request with the Centru District Court arguing *inter alia* that his detention was incompatible with his medical condition due to the lack of appropriate medical care in prison. He asked to be released from detention.

14. On 28 December 2005 Judges Catană, Gordilă and Pitic from the Centru District Court found the applicant's request well-founded and decided to replace the applicant's remand in custody with house arrest.

15. It appears that at the time of adoption of the present judgment the applicant was still under house arrest.

2. The applicant's medical condition while in detention and the medical care provided to him

16. From 26 January 2002 the applicant was detained in Remand Centre No. 3 of the Ministry of Justice *(Izolatorul Anchetei Preliminare Nr. 3)*. On several occasions he was hospitalised in the Prison Hospital.

17. According to medical certificates submitted by the applicant, and not contested by the Government, he suffered from numerous diseases such as chronic hepatitis, second-degree hydronephrosis (accumulation of urine in the kidney because of an obstruction in the urethra), uric diathesis, increased ecogenicity of pancreatic parenchyma, chronic bilateral pyelonephritis (inflammation of the kidney and pelvis caused by bacterial infection) with functional impairment of the right kidney, hydronephrosis of the right kidney with functional impairment, stones in the urinary tract, somatoform disorder, chronic renal failure, head trauma and generalised anxiety disorder of hypertensive type.

18. On numerous occasions he was prescribed treatment in hospital and even surgery on his right kidney. On 21 October 2002 and 22 April 2003 the applicant was consulted by Dr Spânu, an urologist from the Central Republican Hospital, a hospital belonging to the Ministry of Health, who recommended urgent surgery on his right kidney in order to eliminate an obstruction of the urethra. The doctor advised that a delay might result in the degradation of the kidney and its extirpation. A similar recommendation was reiterated on 23 June 2003 by the Doctor in Chief of the Prison Hospital, Dr. Cuţitaru, who recommended that the operation be carried out in a specialised urological hospital of the Ministry of Health. It does not appear from the Government's submissions that this recommendation was ever followed up.

19. The Government argued that the applicant was provided with sufficient medical care, but the applicant disputed this.

20. The Government submitted numerous reports drawn up by prison doctors stating that the applicant refused to submit to medical checks and treatment and requested to be transferred to a normal hospital. According to some such reports the applicant argued that the treatment in prison was ineffective and that he needed medication which was not available there.

21. According to a letter addressed to the Centru District Court and to the Prosecutor's Office by the prison authorities on 15 November 2004, the applicant started a hunger strike to protest against his being treated in the prison.

22. On an unspecified date the applicant complained to the Ministry of Justice about the lack of adequate medical treatment. By a letter dated 23 September 2003 the applicant's complaint was rejected and he was informed *inter alia* that he had had medical checks on 43 occasions by prison doctors and by doctors from outside the prison. He had been offered medical treatment in accordance with the "modest possibilities" of the

prison medical service and with the medication brought by his relatives. He had been hospitalised in the medical section of the prison on four occasions, where he had received adequate medical treatment, and on two occasions in the Prison Hospital.

23. The applicant submitted a letter from the Doctor in Chief of the Prison Hospital addressed to his lawyer, dated 7 October 2003, in which it was stated that there were no urologists, cardiologists and neurosurgeons among the doctors of the Prison Hospital.

24. In another letter addressed to the applicant's lawyer by the Chief of the Prison where the applicant was detained, dated 12 October 2005, the latter was informed that there were no such doctors at the prison either and that in the event of an emergency the applicant would be transferred to the Prison Hospital.

3. The criminal proceedings against the applicant

25. On 24 January 2002 the General Prosecutor's Office initiated criminal proceedings against the applicant and another co-accused on charges of abetting bribery.

26. On 12 February 2002 the General Prosecutor's Office initiated new criminal proceedings against the applicant on charges of fraudulently dispossessing a person of 1,200 United States dollars (USD).

27. On 25 February 2002 the General Prosecutor's Office initiated new criminal proceedings against the applicant on charges of fraudulent dispossession of two persons of their apartments.

28. All of the above criminal proceedings were joined in one single case file and the criminal investigation lasted until 23 May 2002, when the General Prosecutor's Office sent the criminal file to the Chişinău Regional Court.

29. On 30 May 2002 the Chişinău Regional Court received the criminal file and a judge was assigned to the case.

30. On 10 June 2002 the judge set 21 June 2002 as the date of the first hearing.

31. On 21 June 2002 the applicant was unable to come to the hearing due to high blood pressure. He was examined by a doctor who issued him a certificate confirming that the applicant had high blood pressure and was not able to attend the hearing. The hearing was adjourned until 1 July 2002.

32. On 1 July 2002 the hearing did not take place since the prosecutor and two of the alleged victims were absent. It was adjourned until 16 July 2002.

33. On 16 July 2002 the hearing was adjourned until 30 July 2002 due to the absence of three of the alleged victims and the applicant's lawyers.

34. On 30 July 2002 the applicant informed the court that he was not feeling well and asked to be hospitalised. The court decided to send the applicant for a medical examination at the Central Republican Hospital, a

hospital belonging to the Ministry of Health. The hearing appears to have been adjourned indefinitely.

35. On 20 August 2002 the applicant complained to the court that the authorities were refusing to send him for a medical examination, and that he had therefore commenced a hunger strike on 15 August 2002.

36. On 12 September 2002 the judge assigned to the case wrote to the prison authorities and asked them to comply with the decision of 30 July 2002.

37. On 26 September 2002 the applicant complained to the Ministry of Justice about the non-enforcement of the decision of 30 July 2002.

38. It appears that on an unspecified date the prison authorities had attempted to take the applicant to the Prison Hospital, but that he had refused on the ground that the decision of 30 July 2002 provided for his examination in the Central Republican Hospital. The prison authorities informed the judge assigned to the case about the applicant's refusal.

39. On 10 October 2002 the applicant wrote again to the judge informing him that the prison authorities had refused to take him to the Central Republican Hospital as provided in the decision of 30 July 2002, and as a result his medical condition was becoming worse. He informed the judge that he had no other solution but to go on hunger strike again.

40. It appears that one week later the applicant was taken to the Central Republican Hospital for examination since the criminal file contains medical documents from the Central Republican Hospital dated 17 October 2002.

41. On 24 October 2002 the resumption of the hearings was scheduled. However, the proceedings were adjourned due to the applicant's medical condition. The applicant was seen by a doctor, who concluded that he was suffering from the consequences of a brain disease *(consecinţele afecţiunii organice a creierului cu sindrom cerebral astenic)* and noted that he refused the treatment prescribed to him.

42. On 28 October 2002 the prosecutor and one of the applicant's lawyers were absent. The applicant declared that he was not satisfied with his lawyers and that he wanted to instruct other lawyers. He requested an adjournment. The hearing was adjourned until 12 November 2002.

43. On 12 November 2002 the hearing was adjourned due to the fact that the applicant had not instructed a new lawyer.

44. On 19 November 2002 the hearing was adjourned until 22 November 2002 at the request of the applicant's new lawyer, who intended to present evidence confirming the applicant's serious medical condition.

45. On 22 November 2002 the applicant's lawyer presented medical documents and requested that the applicant undertake a psychiatric examination in order to establish his competence to plead to the charges.

The request was allowed and a psychiatric examination of the applicant was ordered.

46. On 11 December 2002 a commission of psychiatric doctors concluded that a psychiatric examination would only be possible after the applicant's admission to the Psychiatric Hospital.

47. On 4 January 2003 Judge Buruiană ordered that the applicant be admitted to the Psychiatric Hospital in order to carry out the psychiatric examination ordered on 22 November 2002.

48. On 21 January 2003 the psychiatric examination was completed and the applicant was found competent to plead to the criminal charges. The medical report was sent to the court on 28 January 2003.

49. On 13 February 2003 the applicant asked the court *inter alia* about the state of the proceedings and was informed on 20 February by Judge Buruiană that the hearings would be resumed in March 2003 after the lawyer of the other co-accused had returned from a business trip to the Russian Federation.

50. On 11 March 2003 a hearing was adjourned until 8 April 2003 on the ground of the applicant's request for a change of lawyer.

51. On 8 April 2003 the applicant challenged the judge assigned to his case on the ground *inter alia* that this judge would prolong the examination of the case, would not allow him to undergo surgery on his kidney as recommended by Dr Spânu, would be biased and would reject his *habeas corpus* requests. The challenge was dismissed and the hearing was adjourned in order to request information from the prison authorities about the applicant's medical condition.

52. On 21 April 2003 the applicant requested an adjournment of the hearing on the ground that he was not feeling well and that he needed medical treatment. The hearing was adjourned until 25 April 2003.

53. On 22 April 2003 the applicant was examined by Dr Spânu, an urologist, who prescribed urgent surgery on his kidney (see paragraph 18 above).

54. On 25 April 2003 the hearing was resumed and the court examined and dismissed a *habeas corpus* request lodged by the applicant who relied mainly on his medical condition. The hearing was then adjourned.

55. On 13 May 2003 the applicant again challenged the judge on the ground that he refused to allow his release on medical grounds; the challenge was dismissed. He also asked that an ambulance be called; this request was also dismissed, the court observing that the applicant was attempting to prolong the criminal proceedings against him. The court also gave the applicant an official warning since he had raised his voice to the judge. The applicant finally dismissed his lawyer and he was given time to sign a contract with another lawyer.

56. On 21 May 2003 the applicant was absent from the hearing on grounds of health and the court adjourned it until 6 June 2003.

57. On 6 June 2003 the applicant was absent again and the court adjourned the hearing until 23 June 2003.

58. On 23 June 2003 the prosecutor informed the court that, according to the new Code of Criminal Procedure which entered into force on 12 June 2003, the Chişinău Regional Court no longer had jurisdiction to examine the criminal case against the applicant. He requested that the case be transmitted to the Centru District Court for examination. The court allowed the Prosecutor's request and the criminal file was sent to the Centru District Court.

59. On 21 October 2003 the President of the Centru District Court wrote to the Supreme Court of Justice and asked it to order that the case be transferred to the Court of Appeal because, *inter alia*, following the judiciary reform of 2003 the Court of Appeal was the successor instance of the Chişinău Regional Court which had already started to examine the case.

60. On 31 October 2003 the Supreme Court of Justice rejected the request of the President of the Centru District Court and drew her attention to the need to ensure the examination of the case within a reasonable time.

61. On 18 November 2003 a hearing was held for the first time before the Centru District Court. The applicant challenged the newly appointed judge, Mr Alerguş, on the ground that he would dismiss all his requests. The challenge was dismissed the same day and the hearing was adjourned.

62. On 16 December 2003 the hearing was adjourned until 19 January 2004 due to the absence of the prosecutor and one of the alleged victims.

63. On 19 January and 11 February 2004 the hearings were adjourned because the judge was ill.

64. On 25 February 2004 the judge was involved in a conference and the hearing was adjourned until 25 March 2004.

65. On 25 March 2004 the judge was involved in a hearing in an unrelated case and the hearing was adjourned until 29 April 2004.

66. On 29 April 2004 the applicant was absent due to his hospitalisation in the Prison Hospital and the hearing was adjourned until 27 May 2004.

67. On 27 May 2004 the court started to examine the merits of the case by questioning one of the victims. Since other victims and witnesses were absent, the court adjourned the hearing until 28 June 2004.

68. On 28 June 2004 the lawyer of the applicant's co-accused was absent and the co-accused requested an adjournment. The court decided to adjourn the hearing for 23 September 2004 in view of the impending judicial vacation.

69. On 23 September 2004 the hearing was adjourned until 18 October 2004 because Judge Alerguş had resigned from his functions.

70. On 1 October 2004 the applicant complained to the Superior Council of Magistrates about the excessive length of the criminal proceedings against him. He received an answer dated 1 November 2004 in which he was informed *inter alia* that the President of the Centru District Court had

been requested to take all necessary measures to ensure the examination of the case within a reasonable time.

71. On 18 October 2004 the hearing was adjourned until 18 November 2004 because the same judge, Judge Alergus, was ill.

72. On 18 November 2004 the applicant dismissed his lawyer and a *pro bono* lawyer was appointed. The applicant requested to be examined by a medical commission, but his request was dismissed. He unsuccessfully challenged the judges who rejected his request.

73. On 19 November 2004 the applicant requested that his *pro bono* lawyer be dismissed on grounds of lack of experience and asked to be examined by a medical commission; however, his requests were dismissed. One of the alleged victims was heard and the hearing was adjourned until 24 November 2004.

74. On 24 November 2004 the court heard a witness and adjourned the hearing until 26 November 2004.

75. On 26 November 2004 the applicant concluded a representation contract with another lawyer and the hearing was adjourned until 21 December 2004.

76. On 21 December 2004 the applicant's new lawyer was involved in another case and could not attend the hearing. The court adjourned the hearing until 23 February 2005.

77. On 23 February and 1 March 2005 the judge was ill and the hearing was adjourned until 1 April 2005.

78. On 1 April 2005 the applicant was hospitalised in the Prison Hospital and the prosecutor was absent. The hearing was adjourned until 5 May 2005.

79. On 5 May 2005 there was a change of prosecutors and the new prosecutor requested an adjournment in order to study the case file. The hearing was adjourned until 1 June 2005.

80. On 1 and 2 June 2005 the court heard the statements of the applicant and his co-accused in respect of the charges against them. The applicant also submitted that he was ill and was unable to participate in the court hearing. The court adjourned the hearing until 28 June 2005.

81. On 28 June 2005 the court read out the declarations of several witnesses made during the investigation stage of the proceedings. The applicant requested again to be examined by a medical commission, but his request was dismissed and he was warned not to attempt to prolong the examination of the case. The court adjourned the hearing until 15 September 2005.

82. On 15 September 2005 the hearing was adjourned until 7 October 2005 due to the illness of the judge.

83. It appears that between 15 September 2005 and 11 January 2006 (the date on which the Government submitted a copy of the criminal case file to the Court) no hearings took place.

84. At the date of the adoption of its judgment the Court had not been informed by the parties that the criminal proceedings before the Centru District Court had been concluded.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Detention on remand

85. Article 25 of the Constitution of the Republic of Moldova, insofar as relevant, states as follows:

> "(4) Detention takes place on the basis of a warrant issued by a judge for a maximum period of 30 days. The lawfulness of the warrant may be challenged, in accordance with the law, before a hierarchically superior court. The period of detention may be extended only by a court, in accordance with the law, to a maximum period of twelve months."

86. The relevant parts of the old Code of Criminal Procedure, in force until 12 June 2003, read as follows:

> "Section 79. The length of detention on remand and its prolongation
>
> Detention takes place on the basis of a warrant issued by a judge for a maximum period of 30 days. The period of detention on remand may be extended... to a maximum of six months, while in exceptional cases... to a maximum period of twelve months. The prolongation of the detention shall be ordered by a judge on the basis of a motivated request by the prosecutor.
>
> After the criminal case file has been sent to a court, the accused may be detained until the final resolution of the case, which should take place within a reasonable time."

87. The relevant provisions of the new Code of Criminal Procedure, in force since 12 June 2003, read as follows:

> Section 176
>
> "(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 re-offend, or they can be applied by the court in order to ensure the enforcement of a sentence.
>
> (2) Detention on remand 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 § (1).
>
> (3) In deciding on the necessity of applying preventive measures, the prosecuting authority and the court will take into consideration the following additional criteria:

1) the character 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 existence of any dependants,

6) his/her economic status,

7) the existence of a permanent place of abode,

8) other essential circumstances.

...

Section 177

...

(2) Detention on remand ... can be applied only on the basis of a court decision...

Section 185. Detention on remand

(1) Detention on remand means the detention of the suspect, accused or indicted person in a state of arrest in places and in conditions provided for by law.

(2) Detention on remand may be applied to someone in the circumstances and in the conditions provided for in Article 176, as well as when:

1) the suspect, the accused or the indicted person does not have a permanent place of residence on the territory of the Republic of Moldova;

2) the suspect, the accused or the indicted person is unknown;

3) the suspect, the accused or the indicted person has breached the conditions imposed on him/her concerning other preventive measures.

...

(4) The decision by which detention on remand is ordered can be challenged by way of an appeal before the hierarchically superior court.

Section 186. The length of the remand and its prolongation

(1) The duration of a person's remand starts to run from the moment of his or her arrest, or, if the person was not arrested, from the moment of enforcement of the court decision ordering the remand. ...

(2) Remand during the investigation stage of the proceedings, before the case file is sent to the competent court [by the prosecutor] shall not be longer than thirty days, except in cases provided for in the present code. The running of the duration of the remand during the investigation stage of the proceedings ceases on the date when the prosecutor sends the criminal case file to a court and when the detention on remand is revoked or is replaced by another preventive measure which does not involve a deprivation of liberty.

...

(5) Any prolongation of detention on remand may not be for a period longer than 30 days.

(6) If it is necessary to prolong the duration of detention on remand of an accused, the prosecutor shall, not later than 5 days before the expiry of the remand order, make a request in that respect to the investigating judge.

(7) When deciding on the prosecutor's request for the prolongation of the remand, the investigating judge, or, as the case may be, the court, has the right to replace detention on remand by home detention, release under judicial control or bail.

(8) After the sending of the bill of indictment to a court all requests concerning detention on remand shall be examined by the court in charge of the criminal case.

(9) The prolongation of the duration of remand for up to 6 months shall be decided by the investigating judge on the basis of a request of the district prosecutor. In case of a necessity to prolong the duration of remand for over 6 months the request shall be lodged by the district prosecutor with the consent of the Prosecutor General or his deputies.

(10) The decision concerning the prolongation of the detention on remand may be challenged by way of an appeal to the hierarchically superior court.

Section 190

A person detained on remand under the provisions of Article 185 may request, at any time during the criminal investigation, his provisional release under judicial control or on bail.

Section 191. Provisional release under judicial control of a remanded person

(1) A provisional release under judicial control of a remanded person, or of a person in respect of whom a request for detention on remand has been made, may be granted by the investigating judge or by a court only in case of offences committed through negligence or intentional offences punishable with less than 10 years of imprisonment.

(2) A provisional release under judicial control may not be granted to an accused who has outstanding criminal convictions for serious, very serious or exceptionally serious offences or if there exists information that he or she will commit another offence, will try to influence witnesses, will try to destroy evidence or will abscond.

(3) A provisional release under judicial control of a remanded person shall be accompanied by one or more of the following obligations:

1) not to leave the town of residence except in the conditions set by the investigating judge or by the court;

2) to inform the investigation organ or the court of any change of address;

3) not to go to certain places;

4) to appear before the investigation organ or the court when summonsed;

5) not to make contact with certain persons;

6) not to commit acts capable of hindering the discovery of the truth;

7) not to drive cars or exercise any profession of the kind used for committing of the offence.

...

Section 195

(1) A preventive measure applied may be replaced by a harsher one, if the need for it is proved by evidence, or by a lighter one, if by applying it the proper behaviour of ... the accused is ensured, with the aim of ensuring the normal course of the criminal investigation and of enforcing the sentence imposed.

Section 329

(1) In examining a case the court, *ex-officio* or at the request of the parties and having heard their opinion, shall have the power to apply, revoke or discontinue the preventive measure applied to the accused. A new request for the application, replacement or revocation of a preventive measure may be submitted if there are grounds for such a request, but not earlier than one month from the date of entry into force of the last decision in this respect or if new circumstances have arisen.

Section 345

(1) Within ten days from the date on which the case was distributed for judgment, the judge or the bench, having examined the case-file, shall set a date for the preliminary hearing. The preliminary hearing in cases where the person is arrested shall be held urgently and given priority.

... (4) At the preliminary hearing the following issues shall be examined:

... 6) preventive and protective measures.

Section 351

> ... (7) In setting a date for the examination of the case, the court shall order the maintenance, revocation or discontinuation of preventive measures, in conformity with the present Code."

B. Domestic remedies invoked by the Government

88. In *Drugalev v. the Ministry of Internal Affairs and the Ministry of Finance* (final judgment of the Chişinău Court of Appeal of 26 October 2004), three years after being released from detention on remand, the applicant claimed and obtained compensation in the amount of approximately 950 euros (EUR) for having been held in inhuman and degrading conditions for approximately six months. The case was examined by only two instances, since the judgment of the Chisinau Court of Appeal was not challenged before the Supreme Court of Justice and the overall length of the proceedings was approximately 1 year and 5 months. The court based its award on Articles 2 and 3 of the Convention.

89. In *Eleonora Bologan v. the Ministry of Internal Affairs and the Ministry of Finance* (civil judgment of the Balti Court of Appeal of 21 March 2006), the applicant was awarded EUR 3,160 for being subjected to torture by three male policemen during the investigation stage of the criminal proceedings against her. The domestic courts based their judgment on a final criminal judgment against the policemen, by which they were found guilty and sentenced for committing acts of torture.

90. In the cases of *Cotorobai* and *Castraveţ* (judgments of 9 December 2004 and of 1 October 2005 of the Centru District Court and of the Botanica District Court respectively) the courts examining *habeas corpus* requests lodged by the applicants and ordered their release on the basis *inter alia* of their poor state of health. In particular in the case of *Cotorobai* the court stated that "according to medical certificates and to the applicant's medical records, he suffers from an ophthalmologic disease which needs treatment". In the case of *Castraveţ* the Botanica District Court stated that "the applicant's lengthy detention contributed to the aggravation of some of his diseases".

91. Article 53 of the Constitution reads as follows:

> "(1) A person whose rights are violated by a public authority through an administrative act or through the failure to examine a request within the statutory period, is entitled to obtain the recognition of the right claimed, the annulment of the act and compensation for damage.
>
> (2) The State bears pecuniary liability, according to the law, for harm caused through errors committed in criminal proceedings by the investigating authorities and courts."

92. The relevant provisions of the Civil Code read as follows:

"Section 1405. Liability of the State for damage caused by the actions of the criminal investigation organs, prosecution and courts

(1) Damage caused to a natural person through illegal conviction, illegal prosecution, illegal application of preventive measures in the form of detention on remand or of a written undertaking not to leave the city, and illegal subjection to the administrative sanction of arrest or of non-remunerated community work, is to be fully compensated by the State, whether or not officers in the criminal investigation organs, the prosecution or judges were at fault. ..."

THE LAW

93. The applicant complained under Article 3 of the Convention about the inhuman and degrading conditions of detention in Prison No. 3 and in particular about the lack of adequate medical assistance. Article 3 of the Convention reads as follows:

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

94. He further complained that his detention after the expiry of the last detention warrant, in May 2002, had not been "lawful" within the meaning of Article 5 §§ 1 and 3 of the Convention. The Court will examine this complaint under Article 5 § 1. The relevant part of Article 5 § 1 reads:

"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;

..."

95. The applicant also complained that his detention on remand was not based on "relevant and sufficient" reasons. 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."

96. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement provided for in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

97. The applicant finally argued that the length of his remand amounted to a breach of his right to be presumed innocent guaranteed by Article 6 § 2 of the Convention, which reads as follows:

"2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

I. ADMISSIBILITY OF THE COMPLAINTS

A. The complaints about the lack of "relevant and sufficient" reasons for detention on remand and about the breach of the presumption of innocence

98. The Court notes that the applicant complained that his detention on remand was not based on "relevant and sufficient" reasons. Insofar as the detention based on the remand warrants up to May 2002 is concerned, the Court notes that the applicant did not complain about it within six months of the date when his appeals against the remand warrants were rejected by the hierarchically superior court. Accordingly this complaint should be declared inadmissible under Article 35 § 1 of the Convention.

99. As regards the complaint about the alleged breach of the presumption of innocence, the Court recalls that the presumption of innocence guaranteed by Article 6 § 2 of the Convention requires, *inter alia*, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused (see, among other authorities, the *Barberà, Messegué and Jabardo v. Spain* judgment of 6 December 1988, Series A no. 146, § 77).

100. The Court, however, finds no indication that the trial court started from the presumption that the applicant had committed the offences with which he had been charged. Thus, there is no appearance of a violation of Article 6 § 2 of the Convention and this complaint must be declared inadmissible as manifestly ill-founded.

B. Failure to exhaust domestic remedies

101. The Government submitted that the applicant had not exhausted all the domestic remedies available to him in respect of his complaint under Article 3 of the Convention. In particular, they reasoned that he could have, but did not, make use of the provisions of Article 53 of the Constitution (see

paragraph 91 above) and section 1405 of the Civil Code (see paragraph 92 above). Moreover, he could have invoked directly Article 3 of the Convention.

102. They argued that a *habeas corpus* request in which an applicant complains directly or in substance about a breach of Article 3 of the Convention (inhuman and degrading treatment) represents an effective remedy in respect of bad conditions of detention. They relied on the cases of *Cotorobai* and *Castraveț* (see paragraph 90 above) and submitted that a court examining a *habeas corpus* request would normally consider a prisoner's submissions concerning alleged breaches of Article 3 together with other reasons arguing for or against detention.

103. At the same time, the Government submitted that if a person wants an immediate end to the violations of his or her Article 3 rights and compensation for such violations, he or she should institute civil proceedings as the complainants did in the cases of *Drugalev* and *Bologan* (see paragraphs 88 and 89 above). Since the present applicant did not institute such proceedings, he failed to exhaust domestic remedies.

104. The applicant disagreed and argued that he had exhausted all the domestic remedies available to him. He also submitted that the remedies suggested by the Government were in any event irrelevant to his case.

105. The Court recalls that an individual is not required to try more than one avenue of redress when there are several available (see, for example, *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, p. 12, § 23). It clearly appears from the documents submitted by the parties to the Court that the applicant complained *inter alia* to the domestic courts in his *habeas corpus* requests about the alleged lack of adequate medical care (see paragraph 11 above), not to mention his numerous requests to other authorities. The Government have admitted that such a procedure constitutes an effective remedy against alleged breaches of Article 3 (see paragraph 102 above).

106. Insofar as the other remedy invoked by the Government is concerned, namely a civil action to request an immediate end to the alleged violation (see paragraph 103 above), the Court has doubts as to its effectiveness. It notes that in the case of *Drugalev* the plaintiff asked for compensation for his bad conditions of detention three years after he had been released and that the civil proceedings lasted approximately one year and five months over two instances. This case, encouraging as it is, does not therefore establish the existence of a power in the domestic courts effectively to order a prisoner's immediate release where his conditions of detention breach Article 3 requirements.

As to the other domestic case relied upon by the Government, *Bologan*, the Court notes that it refers to the possibility to obtain compensation for torture by way of civil proceedings after having obtained a favourable criminal judgment against the torturer. The Court notes that such a remedy

was never a matter of dispute before it and it therefore has no connection with the dispute concerning the existence of effective remedies against bad conditions of detention, which is the subject matter of the present case.

107. In such circumstances, the Court does not consider that, at the present time, the existence of an effective remedy before the national courts for the applicant's complaint about the lack of adequate medical care in his place of detention has been clearly established. However, the Court may in future reconsider its position if it is informed of consistent application of the Convention by the domestic courts. It considers, therefore that the complaint under Article 3 of the Convention cannot be declared inadmissible for non-exhaustion of domestic remedies and accordingly the Government's objection must be dismissed.

C. Conclusion on admissibility

108. The Court considers that the applicant's complaints under Articles 3, 5 § 1 and 6 § 1 of the Convention raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits. No other grounds for declaring them inadmissible have been established. The Court 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

109. The Government argued that the conditions of detention in Prison No. 3, where the applicant was detained, could not be considered inhuman and degrading. They showed that public expenditure on the prison system had increased in the years 2005-2006 and argued that much had been done of late to improve the conditions of detention in this prison.

110. According to the Government, the applicant had received all necessary medical care while in Prison No. 3. They submitted that during his stay there he had been seen by the prison medical personnel on approximately 70 occasions and on almost 30 occasions he had refused to see them. According to the Government, the medical personnel from the prison were well qualified and licensed to practice by the Ministry of Health. The applicant twice claimed to be suffering from high blood pressure, which showed that he was capable of exaggerating his health problems.

111. The applicant argued that there were no urologists, cardiologists or neurologists in the prison or the Prison Hospital. His state of health was serious enough to be incompatible with his prolonged detention.

112. The Court recalls that although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005).

113. The Court has to determine whether the applicant needed regular medical assistance, whether he was deprived of it, as he claims, and, if so, whether this amounted to treatment contrary to Article 3 of the Convention (cf. *Farbtuhs v. Latvia*, no. 4672/02, § 53, 2 December 2004).

114. The Government do not appear to dispute that the applicant suffered from numerous serious urological diseases, some of which were chronic, and that he was prescribed treatment and even surgery on one of his kidneys (see paragraphs 17 and 18 above).

115. The Court notes the disagreement between the parties as to the availability of medical care in Prison No. 3. The core issue, however, appears to be not the lack of medical care in general but rather the lack of adequate medical care for the applicant's particular condition, namely chronic hepatitis, second-degree hydronephrosis, uric diathesis, increased ecogenicity of pancreatic parenchyma, chronic bilateral pyelonephritis with functional impairment of the right kidney, hydronephrosis of the right kidney with functional impairment, stones in the urinary tract, somatoform disorder, chronic renal failure, head trauma and generalised anxiety disorder of hypertensive type.

116. When communicating this case, the Court asked the Government to present it with full information on the medical treatment received by the applicant in respect of all his health problems. Unfortunately, no such information was presented and the Government focused mainly on proving the applicant's bad faith in refusing to be seen by the prison doctors, the high number of consultations which he had had with doctors and the many occasions on which he had been hospitalised in the medical section of the prison or in the Prison Hospital.

117. The Court is not convinced by the Government's submission. Having the applicant seen by doctors, without later following up their recommendations, is not enough. It is noted in that respect that the applicant was prescribed *inter alia* urgent surgery on one of his kidneys in 2002 and 2003 (see paragraph 18 above); however, it appears that the recommendations have never been followed up. One of the doctors who prescribed surgery stressed the seriousness of the applicant's condition and pointed to the risk that the applicant could loose his kidney if surgery was not performed. It appears that even this serious prognosis failed to convince the authorities to act.

118. Moreover, the Court notes that the domestic courts accepted that there was a lack of appropriate medical care during the applicant's detention

in Remand Centre No. 3. The applicant's remand in custody was for this reason changed to home arrest (see paragraphs 13 and 14 above).

119. As to the Government's arguments about the applicant's bad faith, the Court notes that there were no doctors specialised in the treatment of the applicant's condition either in prison or in the Prison Hospital, where he was hospitalised on occasion (see paragraphs 23 and 24 above). Moreover, it appears from the letter of the Ministry of Justice of 23 September 2003 (see paragraph 22 above) that the treatment was inadequate and that the applicant had to rely on his relatives to obtain the necessary medication. He even went on hunger strike to protest against the conditions of his treatment in the prison (see paragraph 21 above). Accordingly, the Court cannot conclude that the applicant's refusal to accept medical treatment in such conditions could be interpreted as bad faith.

120. An important factor to be taken into consideration is the time spent by the applicant in detention without appropriate medical care. It is to be noted that he was detained in prison for almost four years, between January 2002 and December 2005. While noting that the applicant was partly responsible for the length of proceedings and consequently for the length of his remand in custody (see paragraph 144 below), it was nonetheless incumbent on the State to ensure that he was detained in conditions which did not breach Article 3.

121. In the light of the above, the Court concludes that while suffering from serious kidney diseases entailing serious risks for his health, the applicant was detained for a very long period of time without appropriate medical care. The Court finds that the applicant's suffering went beyond the threshold of severity under Article 3 of the Convention and constituted inhuman and degrading treatment.

122. The Court therefore finds that the denial of adequate medical care to the applicant was contrary to Article 3 of the Convention.

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

123. The Government stated that after the applicant's case file was submitted to the trial court on 23 May 2002, it was for the trial court to deal with any requests regarding the applicant's detention on remand, which detention was based on the clear provisions of the law, namely section 79 of the old Code of Criminal Procedure and sections 186 (2) and (8), 329(1), 351(7) and 345(1) and (4) of the new Code of Criminal Procedure (see paragraphs 86-87 above). This and the fact that the applicant's detention was ordered by an investigating judge and not a prosecutor distinguished the case from *Baranowski v. Poland*, no. 28358/95, ECHR 2000-III.

124. The applicant did not submit any observations on the merits of this complaint.

125. The Court reiterates that the "lawfulness" of detention under domestic law is the primary but not always decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 which is to prevent persons from being deprived of their liberty in an arbitrary fashion. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein (*Baranowski*, cited above, § 51).

126. On this last point, the Court stresses 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 the law at issue 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 the *Steel and Others v. the United Kingdom* judgment of 23 September 1998, *Reports* 1998-VII, § 54).

127. In the present case the Court notes that after 23 May 2002 no detention warrant was ever issued by a court, authorising or prolonging the applicant's detention.

128. The Government invoked several sections of the old and new Code of Criminal Procedure which in their view constituted a legal basis for the applicant's detention after the expiry of his last detention warrant. However, their submissions in respect of these sections have already been rejected by the Court in *Boicenco v. Moldova*, no. 41088/05, § 152, 11 July 2006.

129. It follows from the above that the applicant's detention after the expiry of his detention warrant in May 2002 to date was not based on a legal provision.

130. There has, accordingly, been a violation of Article 5 § 1 of the Convention.

131. As regards the applicant's complaint concerning the lack of "relevant and sufficient" reasons for his detention after the expiry of the last remand warrant in May 2002 to date, the Court considers that in view of its findings above concerning the legality of that part of the detention under Article 5 § 1 of the Convention, there is no need to examine this complaint separately.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

132. The Government submitted first that the criminal case at issue was of a certain complexity, which was partly the cause of the duration of the

proceedings. However, notwithstanding that fact, the overall length of the proceedings was not excessive.

133. They argued that during the last three years the applicant falsely claimed to be suffering from high blood pressure and other health problems and refused to participate in the court hearings. It was established by two medical commissions that his medical condition was satisfactory.

134. The court hearings were adjourned on numerous occasions at the applicant's request on alleged health grounds. For example, on 24 October 2002 the applicant refused to go to the hearing due to health problems, but at the same time he refused the proposed medical treatment. On 20 November 2002, 12 December 2002, 10 June 2003, 18 December 2003 the applicant simulated health problems and that had the effect of prolonging the length of the proceedings. On 4 and 17 May 2005 and on 8 August and 25 November 2005 the applicant was seen by doctors who concluded that his medical condition was satisfactory and that he was able to attend the court hearings.

135. The applicant submitted that the examination of the merits of his criminal case started only two years after the case was transmitted by the prosecutor to the competent court. He also argued that the delay of two months between hearings was excessive.

136. The Court notes that the criminal proceedings against the applicant were commenced on 24 January 2002 and that they are still pending before the first-instance court. Thus, the period to be taken into consideration is 4 years, 9 months and 14 days.

137. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

138. As regards the complexity of the case, the Court notes that the proceedings at issue concerned several incidents of fraud and one charge of abetting bribery and required the questioning of victims and witnesses. Moreover, there was another co-accused in the proceedings who was charged together with the applicant with abetting bribery. It observes, however, that during the court proceedings between 23 May 2002 and 11 January 2006 (the date on which the Government sent the Court a copy of the criminal case file) only four persons had been questioned. It is also to be noted that the Supreme Court of Justice and the Superior Council of Magistrates urged the trial court to expedite the proceedings (see paragraphs 60 and 70 above).

139. Insofar as the applicant's conduct is concerned, the Court notes that throughout the domestic court proceedings the applicant filed numerous

requests in connection with his case concerning medical care, *habeas corpus* and challenges to the judges. He also changed his lawyers on at least five occasions. The proceedings were heard before the Chişinău Regional Court until 23 June 2003 and later before the Centru District Court. During the first part of the proceedings twenty-one hearings took place of which eleven were adjourned due to the applicant's health problems or his change of lawyers. During the second part of the proceedings, until 11 January 2006, twenty-three hearings took place of which four were adjourned due to the applicant's medical condition or his decision to change lawyers.

140. The applicant's requests were found by the trial court to have obstructed the examination of his case on two occasions (see paragraphs 55 and 81 above). However, there is no indication that during other trial periods the applicant's behaviour could be said to have been in any way obstructive.

141. As regards the Government's submission that on 24 October 2002 the applicant refused to attend a court hearing, the Court notes that it clearly appears from the medical certificate submitted by the Government that the applicant had not simulated his symptoms (see paragraph 41 above). The fact that he refused the medical treatment proposed to him does not appear to have had any negative impact on the length of the proceedings.

142. As to the Government's submission that on 20 November 2002, 12 December 2002, 10 June 2003 and 18 December 2003 the applicant simulated health problems thereby contributing to the length of the proceedings (see paragraph 134 above), the Court can only note that the criminal case file submitted to the Court by the Government contains no information of any court hearings having been scheduled on those dates.

143. The Court recalls that Article 6 does not require a person charged with a criminal offence to co-operate actively with the judicial authorities (see, for example, the *Dobbertin v. France* judgment of 25 February 1993, Series A no. 256-D, p. 117, § 43) and that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his or her interests (see, *mutatis mutandis, Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66).

144. In conclusion, the Court considers that, whilst the applicant can be held responsible for significant periods of delay during the first part of the proceedings (before 23 June 2003), his conduct after that date appears not to have contributed substantially to the length of the proceedings.

145. As regards the conduct of the domestic authorities, the Court notes that their actions or rather failures to act contributed to many delays especially in the second part of the proceedings (after 23 June 2003). In this connection it notes that no hearings were held for almost five months between June and November 2003 due to a conflict of jurisdiction between the Chişinău Regional Court and the Centru District Court. After this was resolved, the hearings were adjourned on many occasions due to the absence

of the judge or the prosecutor. Moreover, the hearings were often scheduled at long intervals.

146. The Court finally observes that throughout the proceedings the applicant, who was undoubtedly suffering from ill-health, was kept in custody without appropriate medical care (see paragraph 117 above) - a fact which required particular diligence on the part of the courts dealing with the case to administer justice expeditiously.

147. Having regard to the above considerations, the Court considers that the length of the proceedings did not satisfy the "reasonable time" requirement. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

148. 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. Pecuniary damage

149. The applicant claimed damages in respect of the following items:

(1) 4,600 USD and 1,200 Moldovan lei (MDL) - the money paid by him to his lawyers during the domestic proceedings;

(2) MDL 74,300 being the money spent by his family on his food while in detention;

(3) MDL 4,190 being the money spent by his family on his medication while in detention;

150. The Government contested these claims.

151. The Court notes that the applicant failed to adduce convincing evidence that he had actually incurred the above pecuniary losses and/or that the above sums had any causal link with the violations found in this case. The Court therefore rejects the applicant's claim under this head.

B. Non-pecuniary damage

152. The applicant claimed EUR 105,500 for non-pecuniary damage.

153. The Government contested the applicant's claim.

154. The Court considers that the applicant must have been caused a certain amount of suffering in view of the violations found above. It recalls that it has found that he was detained unlawfully for more than four years and that he was held in conditions of detention contrary to Article 3 of the

Convention, without being provided with appropriate medical care. Moreover, the criminal proceedings against him were found to be excessively long.

155. Deciding on an equitable basis, the Court awards the applicant EUR 25,000 in respect of non-pecuniary damage.

C. Costs and expenses

156. The applicant claimed EUR 2,400 for costs and expenses.

157. The Government considered this claim to be unsubstantiated and excessive.

158. The Court recalls that in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

159. In the present case, regard being had to the above criteria, the Court awards the applicant EUR 800 for costs and expenses.

D. Default interest

160. 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. *Declares* admissible, unanimously, the applicant's complaints under Articles 3, 5 § 1 and 6 § 1 of the Convention;

2. *Declares* unanimously the remainder of the application inadmissible;

3. *Holds* unanimously that there has been a violation of Article 3 of the Convention on account of the authorities' failure to provide him with medical care appropriate to his condition;

4. *Holds* unanimously that there has been a violation of Article 5 § 1 of the Convention;

5. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;

6. *Holds* by six votes to one, 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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable:

   (i) EUR 25,000 (twenty-five thousand euros) in respect of non-pecuniary damage;

   (ii) EUR 800 (eight hundred euros) in respect of costs and expenses;

   (iii) 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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY	Nicolas BRATZA
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly concurring and partly dissenting opinion of Mr Pavlovschi is annexed to this judgment.

N.B.
T.L.E.

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE PAVLOVSCHI

This case, in my view, deserved a little more attention on the part of the Chamber as regards the finding of a violation of Article 5 § 1 of the Convention. The seriousness of the problem revealed in the case called for a somewhat more detailed examination.

Let me first point out that both the arrest and the detention of the applicant in the case before us were perfectly legal in terms of the criminal procedural legislation of the Republic of Moldova, and can in no way be considered arbitrary. At the same time, the applicant's detention during the judicial stage of the examination of the case was contrary to the standards of the Convention as seen from the angle of the Court's very well-established case-law[1] because it was not prolonged by a court after its validity had expired.

It is quite clear from the description of the facts and the law that in the Republic of Moldova, at least partly – as regards the lack of official prolongation of detention or the lack of automatic review by the courts of the legality of keeping inmates in jail during the judicial examination of criminal cases – the former Soviet-type criminal procedure is still in place. This results in what one might call a kind of "tacit prolongation".

The Code of Criminal Procedure of the Republic of Moldova does not contain any legal provisions which either envisage clear and precise procedures for extension of the term of detention at the stage of adjudicating on criminal cases or/and automatic judicial review of such detentions. Here, reference may be made to the Court's finding in *Nakhmanovich v. Russia* (no. 55669/00, § 67, 2 March 2006):

> "The Court has already examined and found a violation of Article 5 § 1 of the Convention in a number of cases concerning the practice of holding defendants in custody solely on the basis of the fact that a bill of indictment has been lodged with the trial court. The Court has held that the practice of keeping defendants in detention without a specific legal basis or clear rules governing their situation – with the result that they may be deprived of their liberty for an unlimited period without judicial authorisation – was incompatible with the principles of legal certainty and protection from arbitrariness, which are common threads throughout the Convention and the rule of law..."

I agree that, as in *Nakhmanovich* (ibid., § 68), there is "...no reason to reach a different conclusion in the present case", seeing that "[f]or the detention to meet the standard of 'lawfulness', it must have a basis in domestic law. The Government, however, did not point to any legal provision which permitted a defendant to continue to be held once the authorised detention period had expired..."

1. See, for instance, *Baranowski v. Poland*, no. 28358/95, ECHR 2000-III.

Of course, in order to fill the gap, there is a need for urgent legislative measures to be taken to bring national legislation into line with Convention standards.

In this context – as in the case of *Broniowski v. Poland* ([GC], no. 31443/96, § 189, ECHR 2004-V) – we are faced with a "...widespread problem which resulted from a malfunctioning of [Moldovan] legislation and [judicial] practice and which has affected and remains capable of affecting a large number of persons..."

And these very circumstances entitle us to speak about the systemic or structural nature of this problem. As the Court stated in *Broniowski* (ibid., § 190):

> "As part of a package of measures to guarantee the effectiveness of the Convention machinery, the Committee of Ministers of the Council of Europe adopted on 12 May 2004 a Resolution (Res(2004)3) on judgments revealing an underlying systemic problem, in which, after emphasising the interest in helping the State concerned to identify the underlying problems and the necessary execution measures (seventh paragraph of the preamble), it invited the Court 'to identify in its judgments finding a violation of the Convention what it considers to be an underlying systemic problem and the source of that problem, in particular when it is likely to give rise to numerous applications, so as to assist States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments' (paragraph I of the resolution). That resolution has to be seen in the context of the growth in the Court's caseload, particularly as a result of series of cases deriving from the same structural or systemic cause."

In the same case the Court went on to say (ibid., § 191):

> "... In the same context, the Court would draw attention to the Committee of Ministers' Recommendation of 12 May 2004 (Rec(2004)6) on the improvement of domestic remedies, in which it is emphasised that, in addition to the obligation under Article 13 of the Convention to provide an individual who has an arguable claim with an effective remedy before a national authority, States have a general obligation to solve the problems underlying the violations found. Mindful that the improvement of remedies at the national level, particularly in respect of repetitive cases, should also contribute to reducing the workload of the Court, the Committee of Ministers recommended that the Contracting States, following Court judgments which point to structural or general deficiencies in national law or practice, review and, 'where necessary, set up effective remedies, in order to avoid repetitive cases being brought before the Court'."

All this reasoning is perfectly valid in the present case and it merely remains for me to regret that the majority missed a very good opportunity to underline this in the judgment by mentioning the structural character of the problem identified and urging the Moldovan authorities to take some legislative steps to have this problem resolved in the shortest time possible.

While agreeing with the amount awarded for costs and expenses, I respectfully disagree with the majority, however, as regards the amount awarded in respect of non-pecuniary damage. I consider that this amount,

EUR 25,000, is far too excessive and does not take into consideration either the realities of life in the Republic of Moldova or our previous case-law.

Let me give some examples. In the case of *Sarban v. Moldova* (no. 3456/05, 4 October 2005) the Court found violations of Article 3, Article 5 § 3 in respect of insufficient reasons for the applicant's detention, and Article 5 § 4. The award made was EUR 4,000. In the case of *Becciev v. Moldova* (no. 9190/03, 4 October 2005) the same violations were found and the same amount of compensation was awarded. If we take into consideration the fact that an additional violation was found in the present case – that of Article 6 § 1 – this could lead us to award maybe EUR 3,000 or 4,000 more. In addition to this, a certain amount should be awarded for the prolonged period of detention – somewhere in the region of EUR 4,000 to 5,000. All these calculations would lead us to the conclusion that the amount of compensation in the present case should not have exceeded a lump sum of between EUR 12,000 and EUR 15,000.

This is the maximum amount I consider acceptable in theory for an award in respect of non-pecuniary damage in such situations, because even the means of calculation I have used above is a speculative one and has never been applied by this Court.

Awarding such huge amounts of compensation as in the present case may be regarded as an unjust act towards those who, despite being in a much more difficult situation, were granted smaller sums of money. By way of example, I would like to mention the case of *Bursuc v. Romania* (no. 42066, § 91, 12 October 2004), in which a gentleman who had been badly beaten up by eight policemen and received craniocerebral trauma as a result of being subjected "to violence ... of a particularly serious nature, capable of causing severe pain and suffering which must be regarded as acts of torture within the meaning of Article 3 of the Convention". Some years later Mr Bursuc died as a consequence of the trauma received, as his widow claimed. In that case the applicant's widow was awarded EUR 10,000, although the level of her suffering combined with the suffering of her late husband had been much higher than the level of suffering experienced by the applicant in the present case simply on account of a gap in legislation.

To be fair, just and reasonable, the level of compensation in the present case should not have exceeded EUR 15,000 – an amount which would have been both in conformity with the realities of Moldovan standards of living and in proportion with the level of suffering experienced by the applicant in the present case. Even assuming that the applicant may have suffered some "anxiety" as a result of the above-mentioned gap in legislation, he did not submit any evidence to confirm that had there been a separate procedure for extending the terms of detention during trials, he would have been able to regain his freedom.

These are the points on which I disagree with the majority in the present case.