CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF MODARCA v. MOLDOVA

(Application no. 14437/05)

JUDGMENT

STRASBOURG

10 May 2007

FINAL

10/08/2007

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 Modarca 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 K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 12 April 2007,

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

PROCEDURE

1. The case originated in an application (no. 14437/05) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moldovan national, Mr Vladimir Modârcă ("the applicant"), on 20 April 2005.

2. The applicant was represented by Mr A. Tănase, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, 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, that he had had no access to the relevant parts of his criminal file in order effectively to challenge his detention pending trial and that he had been prevented from holding confidential meetings with his lawyer.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 16 September 2005 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Chişinău.

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

7. The applicant worked as the Head of the Architecture and Planning Department of the Municipal Council of Chişinău, one of the branches of the Chişinău Mayor's Office. Between 24 September 2004 and 23 February 2005 he was held in the remand centre of the Centre for Fighting Economic Crime and Corruption (CFECC). On 23 February 2005 he was transferred to the Remand Centre No. 3 of the Ministry of Justice in Chişinău ("prison no. 3", which was subsequently re-named "prison no. 13"). The applicant suffers from "diffuse osteoporosis, discopathy at L3-L4-L5-S1, hernia of the L5-S1 disc, radiculopathy at L5-S1 and sciatic pain".

1. The criminal file against the applicant and his detention pending trial

8. On 23 September 2004 the CFECC opened a criminal investigation against the applicant under Article 327(2)(c) of the Criminal Code for abuse of power in connection with the privatisation of a plot of land. On 24 September 2004 he was taken into custody by CFECC officers.

9. On 27 September 2004 the Buiucani District Court issued an order for his detention pending trial for 30 days. The reasons given by the court for issuing the order were as follows:

> "The criminal case was opened in accordance with the law, on the basis of Article 327 § 2 of the Criminal Code. [The applicant] is suspected of committing a serious offence punishable under the law by deprivation of liberty for more than two years; the evidence presented to the court was obtained lawfully and the investigating judge was shown relevant evidence that [the applicant] was indeed a danger to society, was liable to reoffend if at large and to destroy evidence, abscond from justice, obstruct the normal progress of the criminal investigation and influence evidence and witnesses".

10. The applicant claimed that his lawyer had requested access to certain documents from the criminal file in order to challenge the grounds of his detention pending trial but had been denied access.

11. In his appeal against his detention pending trial, the applicant submitted, *inter alia*, that he was ill and required medical treatment in order to prevent a worsening of his state of health and that no evidence had been submitted to the court about the danger of his absconding or influencing witnesses. He submitted that he had a family and permanent residence in Chişinău, a job and no previous convictions. On 1 October 2004 the

Chişinău Court of Appeal upheld the decision of the Buiucani District Court of 22 November 2004. The court gave similar reasons for detaining the applicant pending trial, adding that his state of health was not incompatible with detention.

12. On 8 October 2004 the prosecution initiated a new criminal investigation in respect of the applicant under Article 327 of the Criminal Code for abuse of power in connection with the granting of a construction permit to a private company in breach of a municipal decision. The two cases against the applicant were joined on 3 January 2005.

13. The applicant requested replacement of his detention pending trial with house arrest. On 19 October 2004 the investigating judge of the Buiucani District Court rejected that request. Recalling general provisions of the Criminal Procedure Code regarding preventive measures, including detention and house arrest, he found that the applicant and his lawyer had not requested that the detention order be rescinded and replaced with alternative measures. The judge went on to find that his detention pending trial continued to be necessary because:

> "... the circumstances which formed the basis for detention remain valid; [the applicant] is liable to obstruct the normal progress of the criminal investigation and the establishment of the truth, to influence witnesses and abscond from justice."

On 24 October 2004 the case file was submitted to the trial court.

14. On 26 October 2004 the Chişinău Court of Appeal found that on 24 October 2004 the 30 days of detention pending trial ordered by the lower court had expired and that it was primarily for the trial court to examine any matters concerning the applicant's detention pending trial. The lawyer's request for access to certain elements of the case file against the applicant was allegedly again refused.

15. On 1 November 2004 the applicant requested that the charges against him be dropped as unfounded and that the order for his detention pending trial be rescinded or replaced by a personal guarantee from three well-known citizens.

16. On 2 November 2004 the Centru District Court rejected these requests as unfounded. It found that the grounds for detention remained valid and that there was no reason to believe that the applicant could not be given medical assistance in the remand centre of the CFECC. The applicant appealed twice but the appeals were not examined, the courts finding that no appeal lay against such decisions in the course of preliminary proceedings.

17. On 15 November 2005 the court ordered the replacement of the applicant's detention with house arrest.

2. Alleged interference with communication between the applicant and his lawyer

18. The applicant's lawyer asked for permission to hold confidential meetings with his client. They were offered a room where they were separated by a glass partition and allegedly had to shout to hear each other. It appears from the video recording submitted by the Government that in the lawyer-client meeting room of the CFECC detention centre, the space for detainees is separated from the rest of the room by a door and a window. The window appears to be made of two plates of glass. Both plates have small holes pierced with a drill. Moreover, there is a dense green net made either of thin wire or plastic between the glass plates, covering the pierced area of the window. There appears to be no space for passing documents between the lawyer and his or her client.

19. Having refused to meet under such conditions on several occasions, the applicant requested the Buiucani District Court to oblige the authorities in the CFECC remand centre to allow confidential meetings. On 13 October 2004 the court rejected that request as unfounded, finding that no rights of the applicant had been violated and that the meeting had taken place "in the conditions of the remand centre of the CFECC and in conformity with Article 187 of the Criminal Procedure Code".

20. On 1 November 2004 his lawyer again requested the court to oblige the remand centre authorities to allow confidential meetings with his client. On 2 November the Centru District Court granted this request.

21. On 4 November 2004 the applicant's lawyer presented that decision to the CFECC authorities and asked for a separate room in order to meet with his client in confidence. However, they had to meet in the same office separated by a glass partition.

22. On 16 November 2004 the applicant's lawyer again requested the Centru District Court to oblige the CFECC authorities to allow confidential meetings with his client. On 19 November 2004 he informed the Prosecutor General of his and his client's inability to meet on five separate occasions between September and November 2004 because of the lack of confidentiality, and of the applicant's hunger strike in protest against this situation, a strike which he had ended only when the court had granted his request for confidential meetings on 2 November 2004. He referred to a strike by the Moldovan Bar Association in April-May 2003 in protest at the lack of confidentiality of meetings with clients. Moreover, the prosecutor in charge of his case supported his request for confidential meetings.

23. On 23 November 2004 the Centru District Court found that its decision of 2 November 2004 had not been enforced and ordered the Head of the CFECC to pay a fine to the State.

24. On 26 November 2004 the applicant's lawyer again requested the Centru District Court to oblige the CFECC authorities to allow confidential meetings. In its decision of 3 December 2004 the court cited a letter from

the remand centre authorities declaring that no recording devices had been installed in the meeting room. The court also found that the glass partition did not prevent confidential discussion and that it was necessary to protect the applicant's health and safety and prevent "any destructive action aimed at impeding determination of the truth". The court ordered the CFECC to allow confidential meetings in the same meeting room as before. It did not set aside its decision of 2 November 2004.

25. According to the applicant, in early February 2005 he held discussions with his lawyer in the meeting room about certain documents relevant to his case and told him the whereabouts of those documents. When the lawyer went to pick up the relevant documents, CFECC officers were already at the address. During the same period, he was allegedly asked by the CFECC authorities to refrain from using impolite words about them, words which he had used in a discussion with his lawyer in the meeting room. The Government have not commented on these allegations.

3. Conditions of detention and medical assistance in the remand centres

26. According to the applicant, he had not been given any medical assistance while he was detained in the CFECC remand centre, in the absence of any medical personnel there. He complained in several of his *habeas corpus* requests of the possible worsening of his state of health as a result of his detention. Moreover, the medical assistance given in Prison no. 3 had been inadequate and he had had to rely on medication sent to him by his wife.

27. The applicant's doctor had recommended that he receive osteopathic treatment once every three months and during flare-ups in pain, that he avoid cold and damp and be given balneotherapy every six months.

28. According to the applicant, the cell in which he had been detained between 23 February 2005 and 15 November 2005 in prison no. 3 provided an area of $10m^2$ for four detainees. Since more than half that surface was occupied by bunk beds, a table, a sink and a toilet, the free space left amounted to $4.78m^2$ or $1.19m^2$ per detainee. The cell had very limited access to daylight since the window was covered with three layers of metal netting. It was not properly heated or ventilated. The applicant and other detainees had to bring their own clothing and bed linen and to repair and furnish the cell. Moreover, the State allocated approximately EUR 0.28 per day for purchasing food for each detainee (representing 35-40% of the sum required for food, as estimated by the authorities), and the food was inedible. Water and electricity were only provided on a schedule and were unavailable for certain periods, including during the entire night. Detainees had to refrain from using the toilet during such periods in order to limit the smell. On bath day there was virtually no running water in the cell throughout the day. The toilet was situated right across the table and smelt

bad. Finally, the area for daily walks was situated just under the exhaust opening of the ventilation system in the part of the remand centre where detainees with tuberculosis were treated, creating a real danger of infection. The Government have not commented on this latter allegation.

29. According to the Government, the conditions of the applicant's detention were appropriate, as shown on a videotape of the cell and other parts of the prison. The cell was in a good hygienic state and was properly furnished, ventilated and heated and was designed to accommodate persons whose previous functions exposed them to the threat of violence from other detainees. One hour daily walk and a weekly visit to the shower facility were allowed. Moreover, the applicant had been visited regularly by various doctors from a prison hospital and received all the necessary assistance. Finally, the Government submitted medical evidence demonstrating that the doctor's recommendation regarding osteopathic treatment had not been followed during the year prior to the applicant's arrest.

II. RELEVANT NON-CONVENTION MATERIAL

A. Relevant domestic law and practice

30. The relevant domestic law and practice have been set out in *Boicenco v. Moldova*, no. 41088/05, § 64-71, 11 July 2006. In particular, as regards the exhaustion of domestic remedies, the Government relied on the following.

31. 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 the illegal acts of the criminal investigation organs, prosecution and courts, as well as to the case of *Drugalev v. the Ministry of Internal Afairs and the Ministry of Finance*, mentioned in *Boicenco*, cited above, §§ 68-71).

32. The relevant part of Article 66 of the Code of Criminal Procedure reads as follows:

> "...
>
> (2) The accused ... has the right:
>
> ...
>
> (21) to read the materials submitted to the court in support of [the need for] his arrest;"

33. Between 1 and 3 December 2004 the Moldovan Bar Association held another strike, refusing to participate in any proceedings regarding persons detained in the remand centre of the CFECC until the authorities

had agreed to provide lawyers with rooms for confidential meetings with their clients. The demands of the Bar Association were refused (see *Sarban v. Moldova*, no. 3456/05, § 126, 4 October 2005).

34. On 26 March 2005 the Moldovan Bar Association held a meeting at which the President of the Bar Association and the applicant's lawyer informed the participants that they had taken part, together with representatives of the Ministry of Justice, in a commission which had inspected the CFECC detention centre. During the inspection they had asked that the glass partition be taken down in order to check that there were no listening devices. They pointed out that it would only be necessary to remove a number of screws and proposed that all the expenses linked to the verification be covered by the Bar Association. The CFECC authorities rejected the proposal.

35. The applicant referred to the case of *Paladi* (decision of 20 September 2005), in which a complaint about the insufficiency of medical assistance in a prison hospital and a request to receive such assistance in a specialised hospital had not been examined for almost three months, despite an express invocation of Article 3 of the Convention.

36. On 24 October 2003 the Parliament adopted decision no. 415-XV, regarding the National Plan of Action in the Sphere of Human Rights for 2004-2008. The plan includes a number of objectives for 2004-2008 aimed at improving the conditions of detention, including the reduction of overcrowding, improvement of medical treatment, involvement in work and reintegration of detainees, as well as the training of personnel. Regular reports are to be drawn up on the implementation of the Plan. On 31 December 2003 the Government adopted a decision on the Concept of reorganisation of the penitentiaries' system and the Plan of Action for 2004-2013 for the implementation of the Concept of reorganisation of the penitentiaries' system, both having the aim, *inter alia*, of improving the conditions of detention in penitentiaries.

37. At an unspecified date the Ministry of Justice adopted its "Report on the implementing by the Ministry of Justice of Chapter 14 of the National Plan of Action in the sphere of human rights for 2004-2008, approved by the Parliament Decision no. 415-XV of 24 October 2003". On 25 November 2005 the Parliamentary Commission for Human Rights adopted a report on the implementation of the National Plan of Action. Both those reports confirmed the insufficient funding of the prison system and the resulting failure to fully implement the action plan in respect of the remand centres in Moldova, including prison no. 3 in Chişinău. The first of these reports mentioned, *inter alia*, that "as long as the aims and actions in [the National Plan of Action] do not have the necessary financial support ... it will remain only a good attempt of the State to observe human rights, described in Parliament Decision no. 415-XV of 24 October 2003, the fate of which is non-implementation, or partial implementation."

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

38. In its report of the visit on 20-30 September 2004, the CPT found that (unofficial translation):

> "55. The situation in the majority of penitentiaries visited, faced with the economic situation in the country, remained difficult and one recounted a number of problems already identified during the visits in 1998 and 2001 in terms of material conditions and detention regimes.
>
> Added to this is the problem of overcrowding, which remains serious. In fact, even if the penitentiaries visited did not work at their full capacity – as is the case of prison no. 3 in which the number of detainees was sensibly reduced in comparison with that during the last visit of the Committee – they continued to be extremely congested. In fact, the receiving capacity was still based on a very criticisable $2m^2$ per detainee; in practice often even less.
>
> 79. The follow-up visit to prison no.3 in Chişinău does not give rise to satisfaction. The progress found was in fact minimal, limited to some current repair. The repair of the ventilation system could be done due primarily to the financial support of civil society (especially NGOs), and the creation of places for daily walk was due to support by the detainees and their families.
>
> The repair, renovation and maintenance of cells is entirely the responsibility of detainees themselves and of their families, who also pay for the necessary materials. They must also obtain their own bed sheets and blankets, the institution being able to give them only used mattresses.
>
> In sum, the conditions of life in the great majority of cells in Blocks I-II and the transit cells continue to be miserable. ...
>
> Finally, despite the drastic reduction of the overcrowding, one still observes a very high, even intolerable, level of occupancy rate in the cells.
>
> 83. ... everywhere the quantity and quality of detainees' food constitutes a source of high preoccupation. The delegation was flooded with complaints regarding the absence of meat, dairy products. The findings of the delegation, regarding both the food stock and the communicated menus, confirm the credibility of these complaints. Its findings also confirmed that in certain places (in Prison no.3, [...]), the food served was repulsive and virtually inedible (for instance, presence of insects and vermin). This is not surprising, given the general state of the kitchens and their modest equipment.
>
> Moldovan authorities have always emphasized financial difficulties in ensuring the adequate feeding of detainees. However, the Committee insists that this is a fundamental requirement of life which must be ensured by the State to persons in its charge and that nothing can exonerate it from such responsibility. ..."

C. Acts of the Committee of Ministers of the Council of Europe

39. Resolution (73) 5 of the Committee of Ministers of the Council of Europe concerning the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Committee of Ministers on 19 January 1973), in so far as relevant, reads as follows:

> "93. An untried prisoner shall be entitled, as soon as he is imprisoned, to choose his legal representative, or shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him, and to receive, confidential instructions. At his request he shall be given all necessary facilities for this purpose. In particular, he shall be given the free assistance of an interpreter for all essential contacts with the administration and for his defence. Interviews between the prisoner and his legal adviser may be within sight but not within hearing, either direct or indirect, of a police or institution official."

40. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies), insofar as relevant, reads as follows:

> "23.1 All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice. ...
>
> 23.4 Consultations and other communications including correspondence about legal matters between prisoners and their legal advisers shall be confidential. ...
>
> 23.6 Prisoners shall have access to, or be allowed to keep in their possession, documents relating to their legal proceedings."

THE LAW

41. 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."

42. The applicant also complained that his detention after the expiry of the last detention order, on 24 October 2004, had not been "lawful" within the meaning of 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;"

43. The applicant also 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."

44. The applicant also complained under Article 8 of the Convention that conversations with his lawyer were conducted through a glass partition and were overheard or possibly even recorded and that the authorities had failed to provide proper conditions for private discussions with his lawyer. Although his complaint was not communicated, the Government nevertheless submitted comments on it. In his observations, the applicant referred to this complaint under Article 5 § 4 of the Convention. The Government, having been given the possibility to comment on this change, did not submit any further comments in respect of this complaint. The Court, which is master of the characterisation to be given in law to the facts of the case (see *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, § 44), considers that it is more appropriate to examine the problem raised by the applicant under Article 5 § 4 of the Convention.

The relevant part of Article 5 § 4 reads:

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

I. ADMISSIBILITY OF THE COMPLAINTS

A. Complaints under Article 3 of the Convention

1. Conditions of detention

45. The applicant complained that the lack of medical assistance in the CFECC remand centre and the conditions of his detention in Prison no. 3 amounted to inhuman and degrading treatment contrary to Article 3 of the Convention (see paragraphs 26-28 above).

46. The Government argued that the applicant had not exhausted available domestic remedies in respect of the complaints under Article 3 of the Convention.

47. 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.

2. Alleged lack of medical assistance

48. In respect of the complaint concerning the lack of medical assistance in the CFECC remand centre, the Court notes that the applicant made general complaints about the possible worsening of his state of health (see paragraphs 11 and 26 above). However, he never asked the remand centre personnel to provide him with medical assistance in relation to any specific problem; moreover, he was visited on a number of occasions by doctors from the prison hospital. While it appears that the applicant's doctor recommended regular treatment which was not administered during the applicant's detention, it is also clear that that treatment had not been followed in the year prior to his arrest (see paragraphs 27 and 29 above).

49. The Court considers that the lack of medical assistance in circumstances where such assistance was not needed cannot, of itself, amount to a violation of Article 3 of the Convention. Accordingly, the Court concludes that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

B. Complaints under Article 5 of the Convention

50. The applicant alleged that his rights guaranteed by Article 5 §§ 1, 3 and 4 of the Convention had been violated because he had been detained without a legal basis after 24 October 2004; the courts had not given "relevant and sufficient reasons" for their decisions to remand him in custody and to prolong his detention; his lawyer had not had access to any part of the criminal file in order effectively to challenge his detention pending trial and to formulate *habeas corpus* requests; and he had been unable to meet with his lawyer in private.

51. The Government submitted that, in accordance with the principle of subsidiarity, it was primarily for the domestic courts to determine the lawfulness of the applicant's detention. Had he been found by the domestic courts to have been unlawfully detained, he could have claimed damages in accordance with the law. Moreover, the courts had the power to apply the Convention directly. The applicant disagreed.

1. Access to the relevant materials of the file

52. The Court notes that the parties dispute whether oral requests were made for access to the materials in the case file. The Court has no means of establishing whether such requests were in fact made. However, it notes that the applicant did not submit any evidence that he had complained about the prosecution's refusal to allow him or his lawyer access to the relevant materials in his case file, even though he was entitled to have such access in accordance with the law (see paragraph 32 above).

Accordingly, this complaint must be rejected for failure to exhaust domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

2. The alleged lack of a valid legal basis for the applicant's detention after 24 October 2004

53. The Court observes that the applicant did not raise his complaint under Article 5 § 1 before the domestic courts. It recalls that under Article 35 § 1 of the Convention normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, § 66).

54. It appears to the Court that there was a general practice in Moldova of detaining defendants without issuing a court order to that effect following the submission of their case files to the trial court. It notes the respondent Government's position in a number of recent cases (see *Boicenco*, cited above, § 146, *Holomiov*, cited above, § 123, and other cases pending before the Court), in which the Government considered the practice to be lawful and based on a number of provisions of the Code of Criminal Procedure. They did not submit examples of domestic courts' departure from the practice described above. Indeed, the applicants in both the cases mentioned above had expressly raised the issue before the domestic courts, but their complaints were rejected.

55. Furthermore, in the present case the Court of Appeal expressly mentioned the expiry of the 30-day period of detention pursuant to the last court order to detain the applicant (see paragraph 14 above), and relied on the submission of the case file to the trial court in deciding not to examine his appeal against the decision rejecting his *habeas corpus* request.

56. In view of the above, the Court considers that the applicant had no real prospect of success in lodging a complaint regarding the lack of a legal basis for his detention, given the general practice permitting the authorities to detain him in the absence of an order issued by a court. The practice

appears to have been consistently applied by the courts in rejecting any challenge to detention and was fully supported by the Government.

3. Alleged lack of "relevant and sufficient" reasons for detention

57. The Court also notes that the applicant raised his complaint under Article 5 § 3 before the domestic courts, which found no appearance of a violation (see paragraphs 11 and 13-16 above). In such circumstances, it would be unreasonable to expect the applicant to initiate new proceedings claiming compensation for alleged violations which the courts have already dismissed.

C. Conclusion

58. In view of the above, the Court concludes that the complaints under Article 3 regarding the conditions of detention and the complaints under Article 5 regarding the lack of a legal basis and of relevant and sufficient reasons for detention cannot be declared inadmissible for non-exhaustion of domestic remedies. Accordingly the Government's objection in respect of these complaints must be dismissed. No objection was raised as to the complaint regarding the refusal to allow confidential meetings with the applicant's lawyer (Article 5 § 4 of the Convention).

59. The Court further considers that the applicant's complaints under Articles 3 (regarding the conditions of detention) 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 5 above), the Court will immediately consider the merits of these complaints.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

60. The applicant complained about a violation of his rights guaranteed by Article 3 of the Convention in respect of the conditions of his detention in prison no. 3 in Chişinău between 23 February and 15 November 2005 (see paragraphs 26-28 above). He also relied on the findings of the CPT and of the domestic authorities (see paragraphs 37 and 38 above).

61. The Government submitted that the conditions of the applicant's detention in that remand centre were acceptable (see paragraph 29 above). In addition, the authorities had taken a number of actions aimed at improving the conditions of detention (see paragraph 36 above).

62. The Court recalls that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective

of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV). The Court refers to further principles well-established in its case-law in respect of conditions of detention in particular (see *Sarban*, cited above, §§ 75-77, 4 October 2005).

63. In the present case it is not disputed that the applicant was detained with three other persons in a cell measuring $10m^2$ ($2.5\ m^2$ per detainee). Moreover, the Government have not disputed the applicant's calculations and plan of the cell, according to which more than half of that space was occupied by the cell furniture and each detainee was left with $1.19m^2$ of free space (see paragraphs 28 and 29 above). It is noted that the CPT considers that $4\ m^2$ per prisoner is an appropriate and desirable guideline for a detention cell (see *Ostrovar v. Moldova*, no. 35207/03, § 82, 13 September 2005).

64. The Court has already held that severe overcrowding raises in itself an issue under Article 3 of the Convention (see *Kadiķis v. Latvia (no. 2)*, no. 62393/00, § 52, 4 May 2006). It also notes that the applicant had to spend 23 hours a day in cramped conditions (see paragraph 29 above) and that the only hour allowed for daily walks appears to have exposed his health to risk of infection with tuberculosis (see paragraph 28 above).

65. The Court notes that the Government have not disputed the presence of three layers of metal netting on the cell window which, according to the applicant, blocked most of the daylight. Similarly, there was no response to the applicant's claim that the provision of electricity and water had been discontinued for certain periods, notably during the night, and that the detainees in the applicant's cell had to refrain from using the toilet during such periods in order to limit the smell (see paragraphs 28 and 29 above).

66. It was not disputed that the applicant had not been provided with bed linen or prison clothes and had to invest, together with other inmates, in the repair and furnishing of the cell. Moreover, the dining table was situated close to the toilet, which smelt bad.

67. It was also undisputed that the daily expenses for food had been limited to EUR 0.28 per day for each detainee. The Court notes that the CPT has confirmed that in October 2004 the situation in this respect left a lot to be desired, the food being “repulsive and virtually inedible” (see paragraph 38 above).

68. To sum up, the applicant was detained in extremely overcrowded conditions with little access to daylight, limited availability of running water, especially during the night and in the presence of heavy smells from the toilet, while being given insufficient quantity and quality of food or bed linen. Moreover, he had to endure these conditions for almost nine months, which is much longer than the fifteen days which the applicant had to endure in *Kadiķis* (cited above, § 55).

69. In the Court's opinion, the cumulative effect of the above conditions of detention and the relatively long period of time during which the

applicant had to endure them amounted to a violation of Article 3 of the Convention.

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

70. The applicant argued that since the expiry of the last court order for his detention pending trial no other court decision had provided for his further detention. He considered that the legal provisions referred to by the Government were not foreseeable in their application, contrary to the requirements of Article 5 of the Convention. He relied on *Baranowski v. Poland* (no. 28358/95, ECHR 2000-III).

71. The Government stated that after the applicant's case file had been submitted to the trial court on 24 October 2004, it was for the trial court to deal with any requests regarding the applicant's detention pending trial, which was based on the clear provisions of the law. They relied on the same legal provisions as those relied on in *Boicenco* (cited above, §§ 64-71).

72. The Court recalls that it found a violation of Article 5 § 1 of the Convention in *Boicenco* (cited above, § 154) and *Holomiov* (cited above, § 130). Having examined the material submitted to it, the Court considers that the file does not contain any element which would allow it to reach a different conclusion in the present case.

73. The Court finds, for the reasons given in the cases cited above, that the applicant's detention pending trial after 24 October 2004, when the last court order for his detention expired, was not based on any legal provision.

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

IV. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

A. The submissions of the parties

75. The applicant complained that the courts had not given "relevant and sufficient reasons" for their order to detain him pending trial. In particular, the courts had failed to give any details or evidence supporting their findings regarding the alleged dangers posed by the applicant's release. The applicant had submitted arguments in respect of each ground on which the domestic courts had relied in a general manner, but the courts had not responded in any way.

76. The Government disagreed, finding that the courts had given relevant and sufficient reasons based on the case file before them. The Government added that the reasons for detention pending trial need not be

so detailed as to prove a suspect's guilt. They added details about the applicant's activities and the likelihood of his influencing witnesses or absconding, none of which had been mentioned by the domestic courts.

B. The Court's assessment

77. The Court recalls the general principles established in its case-law in respect of the reasons for pre-trial detention (see, for instance, *Sarban*, cited above, §§ 95-99).

78. The Court will assume the existence of a reasonable suspicion that the applicant had committed a crime, given the lack of sufficient evidence to the contrary. However, it notes that the reasons relied upon by the domestic courts in their decisions to remand the applicant in custody and to prolong his detention (see paragraphs 9 and 13 above) were virtually identical to the reasons used by the domestic courts to remand the applicant in *Sarban* (cited above, at §§ 11 and 14). As in *Sarban*, the domestic courts limited themselves to paraphrasing the reasons for detention provided for by the Code of Criminal Procedure, without explaining how they applied in the applicant's case. Accordingly, the Court does not consider that the instant case can be distinguished from *Sarban* in what concerns the relevancy and sufficiency of reasons for detention.

79. There has accordingly been a violation of Article 5 § 3 of the Convention in this respect.

V. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

80. The applicant complained that he had not been allowed to meet in private with his lawyer and had been separated from him by a glass partition, preventing normal discussion or work with documents. As a result they had had to shout to hear each other and had both refused on several occasions to meet in such conditions, informing the court that they were unable to prepare for hearings. The applicant lodged his initial complaint under Article 8 of the Convention but in his subsequent observations he referred to it under Article 5 § 4 of the Convention.

81. The Government submitted that the applicant had not been prevented from meeting in private with his lawyer and that the law expressly provided for such a right. In fact, they had met 18 times during the applicant's five-month detention in the CFECC remand centre. No CFECC officer had been present at the meetings. Moreover, the correspondence between detainees and their lawyers could not be censored and the applicant had to be handed any document from his lawyer within 24 hours.

82. According to the Government, the glass partition was necessary to protect detainees and lawyers and did not prevent normal communication. The applicant had not provided proof that his discussions with the lawyer

had been intercepted, which would be contrary to the law in any case. They further referred to the case of *Kröcher and Möller v. Switzerland* (no. 8463/78, DR 26, p.40) by way of justification for the glass partition.

83. In *Reinprecht v. Austria* (no. 67175/01, § 31, ECHR 2005-...) the Court summarised the principles arising from its case-law on Article 5 § 4 as follows:

> "(a) Article 5 § 4 of the Convention entitles an arrested or detained person to institute proceedings bearing on the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty (see, among many others, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 34-35, § 65).
>
> (b) Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see, for instance, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3302, § 162, and *Włoch v. Poland*, no. 27785/95, § 125, ECHR 2000-XI, both with reference to *Megyeri v. Germany*, judgment of 12 May 1992, Series A no. 237-A, p. 11, § 22).
>
> (c) The proceeedings must be adversarial and must always ensure "equality of arms" between the parties (see *Lamy v. Belgium*, judgment of 30 March 1989, Series A no. 151, § 29). In case of a person whose detention falls within the ambit of Article 5 § 1(c) a hearing is required (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II; *Assenov and Others*, cited above, § 162, with references to *Schiesser v. Switzerland*, judgment of 4 December 1979, Series A no. 34, p. 13, §§ 30-31; *Sanchez-Reisse v. Switzerland*, judgment of 21 October 1986, Series A no. 107, p. 19, § 51; and *Kampanis v. Greece*, judgment of 13 July 1995, Series A no. 318-B, p. 45, § 47).
>
> (d) Furthermore, Article 5 § 4 requires that a person detained on remand be able to take proceedings at reasonable intervals to challenge the lawfulness of his detention (see *Assenov and Others*, cited above, p. 3302, § 162, with a reference to *Bezicheri v. Italy*, judgment of 25 October 1989, Series A no. 164, pp. 10-11, §§ 20-21)."

84. Article 6 has been found to have some application at the pre-trial stage (see, for instance, *Imbrioscia v. Switzerland*, judgment of 24 November 1993, Series A no. 275, p. 13, § 36, and *John Murray v. the United Kingdom*, judgment of 8 February 1996, *Reports*, 1996-I, p. 54, § 62) during which the review of the lawfulness of pre-trial detention typically takes place. However, this application is limited to certain aspects.

85. The guarantees provided in Article 6 concerning access to a lawyer have been found to be applicable in *habeas corpus* proceedings (see for example *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, § 60). In *Bouamar v. Belgium*, (judgment of 29 February 1988, Series A no. 129, §60), the Court held that it was essential not only that the individual concerned should have the opportunity to be heard in person but that he should also have the effective assistance of his lawyer.

86. The Court's task in the present case is to decide whether the applicant was able to receive effective assistance from his lawyer so as to satisfy these requirements.

87. One of the key elements in a lawyer's effective representation of a client's interests is the principle that the confidentiality of information exchanged between them must be protected. This privilege encourages open and honest communication between clients and lawyers. The Court recalls that it has previously held that confidential communication with one's lawyer is protected by the Convention as an important safeguard of one's right to defence (see, for instance, *Campbell v. the United Kingdom*, judgment of 25 March 1992, Series A no. 233, § 46 and Recommendation Rec(2006)2 (see paragraph 40 above)).

88. Indeed, if a lawyer were unable to confer with his client and receive confidential instructions from him without surveillance, his assistance would lose much of its usefulness, whereas the Convention is intended to guarantee rights that are practical and effective (see, *inter alia*, the *Artico v. Italy* judgment of 13 May 1980, Series A no. 37, p. 16, § 33).

89. The Court considers that an interference with the lawyer-client privilege and, thus, with a detainee's right to defence, does not necessarily require an actual interception or eavesdropping to have taken place. A genuine belief held on reasonable grounds that their discussion was being listened to might be sufficient, in the Court's view, to limit the effectiveness of the assistance which the lawyer could provide. Such a belief would inevitably inhibit a free discussion between lawyer and client and hamper the detained person's right effectively to challenge the lawfulness of his detention.

90. The Court must therefore establish whether the applicant and his lawyer had a genuine belief held on reasonable grounds that their conversation in the CFECC lawyer-client meeting room was not confidential. It appears from the applicant's submissions that his fear of having his conversations with his lawyer intercepted was genuine (see paragraph 22 above). The Court will also consider whether an objective, fair minded and informed observer would have feared interception of lawyer-client discussions or eavesdropping in the CFECC meeting room.

91. The Court notes that the problem of alleged lack of confidentiality of lawyer-client communications in the CFECC detention centre was a matter of serious concern for the entire community of lawyers in Moldova for a long time and that it had even been the cause of strike organised by the Moldovan Bar Association (see paragraph 33 above). The Bar's requests to verify the presence of interception devices in the glass partition was rejected by the CFECC administration (see paragraph 34 above), and that appears to have contributed to the lawyers' suspicion. Such concern and protest by the Bar Association would, in the Court's view, have been sufficient to raise a doubt about confidentiality in the mind of an objective observer.

92. The applicant's reference to indirect proof of the fact that his discussions with his lawyer had been overheard (see paragraph 25 above) is far from proving that surveillance was carried out in the CFECC meeting room. However, against the background of the general concern of the Bar Association, such speculation might be enough to increase the concerns of the objective observer.

93. Accordingly, the Court's conclusion is that the applicant and his lawyer could reasonably have had grounds to believe that his conversations in the CFECC lawyer-client meeting room were not confidential.

94. Moreover, the Court notes that, contrary to the Government's contention to the effect that the applicant and his lawyer could easily exchange documents, it is apparent from the video recording provided by the Government (see paragraph 18 above) that this was not the case because of the lack of any aperture in the glass partition. This, in the Court's view, rendered the lawyers' task even more difficult.

95. The Court recalls that in the case of *Sarban v. Moldova* it dismissed a somewhat similar complaint, examined under Article 8 of the Convention, because the applicant had failed to furnish evidence in support of his complaint and because the Court considered that the obstacles to effective communication between the applicant and his lawyer did not impede the applicant from mounting an effective defence before the domestic authorities. However, having regard to the further information at its disposal concerning the real impediments created by the glass partition to confidential discussions and exchange of documents between lawyers and their clients detained in the CFECC, the Court is now persuaded that the existence of the glass partition prejudices the rights of the defence.

96. The Government referred to the case of *Kröcher and Möller v. Switzerland* in which the fact that the lawyer and his client were separated by a glass partition was found not to violate the right to confidential communications. The Court notes that the applicants in that case were accused of extremely violent acts and were considered very dangerous. However, in the present case the applicant had no criminal record (see paragraph 11 above) and was prosecuted for non-violent offences. Moreover, it appears that no consideration was given to the character of the detainees in the CFECC detention centre. The glass partition was a general measure affecting indiscriminately everyone in the remand centre, regardless of their personal circumstances.

97. The security reasons invoked by the Government are not convincing as there is nothing in the file to confirm the existence of a security risk. Furthermore, in exceptional circumstances where supervision of lawyer-client meetings would be justified, visual supervision of those meetings would be sufficient for such purposes.

98. In the light of the above, the Court considers that the impossibility for the applicant to discuss with his lawyers issues directly relevant to his

defence and to challenging his detention on remand, without being separated by a glass partition, affected his right to defence.

99. There has accordingly been a violation of Article 5 § 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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

101. The applicant claimed 13,000 euros (EUR) in compensation for the damage caused to him by the violation of his rights, including EUR 9,000 for the violation of the various provisions of Article 5 of the Convention. In support of his claims he relied on the Court's case-law in respect of similar complaints.

102. The Government disagreed with the amount claimed by the applicant, arguing that it was excessive in the light of the case-law of the Court. They submitted that the judgments 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 the necessary measures to accommodate the applicant's needs and his treatment did not reach the minimum threshold required by Article 3 of the Convention. Any finding of a violation of Article 5 of the Convention should constitute in itself just satisfaction.

103. The Court considers that the applicant must have been caused a certain amount of stress and anxiety as a consequence of the authorities' failure to respect his rights guaranteed by Articles 3 and 5 (§§ 1, 3 and 4) of the Convention, namely his detention in inhuman conditions, as well as his detention without a proper legal basis or relevant reasons for over a year, and the failure to allow him to meet his lawyer in confidence. It awards the applicant the total sum of EUR 7,000 for non-pecuniary damage (see *Ječius v. Lithuania*, no. 34578/97, § 109, ECHR 2000-IX).

B. Costs and expenses

104. The applicant claimed EUR 8,208 for legal costs and expenses. He submitted a list of hours worked by his lawyer in preparing the case

(amounting to 77 hours) and the hourly fee for each type of activity, which corresponded to a decision of the Moldovan Bar Association adopted on 29 December 2005 recommending the level of remuneration for lawyers representing applicants before international courts.

105. The Government considered these claims to be unjustified given the economic realities of life in Moldova. They argued that the applicant had not submitted a copy of any contract for his representation and questioned the number of hours spent on researching the Court's case-law and drafting the applicant's observations.

106. The Court recalls 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 *Croitoru v. Moldova*, no. 18882/02, § 35, 20 July 2004). 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.

107. In the present case the Court notes that, while the applicant has not submitted a copy of a contract with his lawyer, he properly authorised the lawyer to represent him in the proceedings before this Court. However, the amount requested is excessive and should be accepted only in part. 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 1,800 for legal costs and expenses.

C. Default interest

108. 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 complaints under Article 3 of the Convention insofar as they relate to the alleged lack of adequate medical treatment and under Article 5 insofar as they relate to the failure to give access to the case materials, and the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention as regards the conditions of the applicant's detention in prison no.3;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's detention after 24 October 2004 without a legal basis;

4. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of the insufficiency of the reasons given for the prolongation of the applicant's detention;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of the interference with the applicant's right to communicate with his lawyer under conditions of confidentiality;

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 7,000 (seven thousand euros) for non-pecuniary damage and EUR 1,800 (one thousand eight hundred 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 10 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President