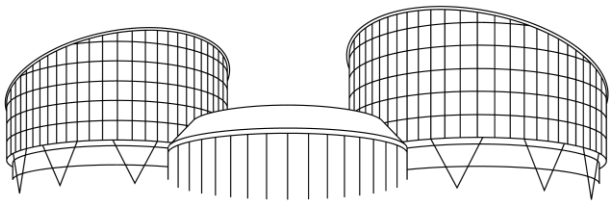

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF FERARU v. MOLDOVA

(Application no. 55792/08)

JUDGMENT

STRASBOURG

24 January 2012

FINAL

24/04/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Feraru v. Moldova,

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

Josep Casadevall, *President,*
Corneliu Bîrsan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Mihai Poalelungi, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 4 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 55792/08) 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 Mihai Feraru ("the applicant"), on 31 October 2008.

2. The applicant, who had been granted legal aid, was represented by Mr R. Zadoinov, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that he had been unlawfully arrested, that the courts had not given relevant and sufficient reasons for his detention, and that he had been held in inhuman conditions of detention.

4. On 30 June 2009 the Court decided to communicate the application to the Government. Under the provisions of former Article 29 § 3 of the Convention, it was 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 1974 and lives in Migieşti.

A. The applicant's arrest and detention pending trial

6. The applicant is a tradesman specialised in installing roof drainage systems. In May – June 2008 he accepted money from four different people in exchange for installing drainage systems in their houses. However, he failed to carry out the required work and declared that he no longer had the money, promising to return it later.

7. In the early morning of 29 September 2008 he was arrested by the police and brought to Râşcani Police Station in Chişinău, on the grounds of having committed the administrative offence of insulting a police officer. He was allegedly forced to return the money which he had taken from B. I. for installing a roof drainage system on his house. According to the applicant, he had not managed to finish the work on that installation when B. I. asked for the money to be returned and also involved his relatives who worked at Râşcani Police Station in order to intimidate the applicant and obtain full repayment.

8. On 1 October 2008 B. I. made a complaint to the police, according to which the applicant had defrauded him by accepting money and refusing to return it, while having failed to carry out any work. On 4 October 2008 a criminal investigation against the applicant was initiated.

9. On an unspecified date one of the applicant's relatives paid 500 euros (EUR) to B. I., who signed a statement to the effect that he no longer had any claims against the applicant.

10. On 6 October 2008 the prosecutor asked the Râşcani District Court to order the applicant's detention for ten days. The applicant was accused of defrauding B. I. by accepting 8,000 Moldovan lei (approximately EUR 560 at the time) in May 2008 as payment for installing a roof drainage system, but failing to carry out any work. He was also accused of two similar offences, but no details other than the case numbers were given. Details were given at subsequent court hearings. A hearing was scheduled for the same day at the Râşcani District Court.

11. The applicant's lawyer was not able to read the prosecutor's request until immediately before the hearing and was not given a copy at that time. He did not see any other documents being submitted to the investigating judge to substantiate the prosecutor's request and no documents were shown to the defence or discussed by the investigating judge at the hearing.

12. During the hearing of 6 October 2008 the lawyer informed the court of the payment of EUR 500 to B. I. The prosecutor present at the hearing declared that there was no evidence of any repayment of the monies to B. I. The lawyer then asked that B. I. be heard in order to confirm that payment. The court did not take any formal decision in respect of B. I. and the latter was not heard before the court adopted its decision. During the same hearing, the applicant submitted that he had been arrested on 29 September 2008. The prosecutor confirmed that, stating that the applicant had been arrested on an administrative charge and then arrested again as a suspect in the criminal proceedings. The applicant's lawyer argued that since his client was suspected of having committed a crime, he should have been arrested in accordance with the criminal procedure. The court did not react in any way to this argument, confining its reasoning to the applicant's detention after 4 October 2008.

13. In his decision of 6 October 2008 the investigating judge of the Râşcani District Court granted the prosecutor's request and ordered the applicant's detention pending trial for ten days. The reasons given were that:

> "the act of which [the applicant] is accused is considered a minor crime, which is a legitimate ground for detention pending trial; the character, degree of harm and circumstances of the crime constitute sufficient grounds for supposing that [the applicant] will interfere with the normal course of the investigation; the materials submitted to the court clearly confirm that there is a reasonable suspicion that [the applicant] committed a minor crime, and there are sufficient grounds to prevent [the applicant] from hindering the establishment of the truth and from absconding from the investigating authority; the materials in the file confirm the reasonable suspicion that [the applicant] might reoffend, as it follows from the information obtained by the investigating authority during the operational phase of the investigation that [the applicant] may have committed other similar offences; ... [the applicant] has no stable income and works periodically, there is no information about his financial status and his state of health is not incompatible with detention; [the applicant] and his lawyer did not submit any evidence in support of their statements; ..."

14. The applicant's lawyer appealed, complaining of the applicant's *de facto* arrest on 29 September 2008 and his detention thereafter, and of the lack of legal assistance available to the applicant until 6 October 2008. He submitted that the lower court had not dealt with that complaint. He also informed the court of the fact that he had only read the prosecutor's request at the hearing of 6 October 2008 and had not had time to properly prepare for that hearing. Besides the prosecutor's request, no other document had been submitted to the court or shown to the defence to substantiate the need for the applicant's detention. Nor had the prosecutor referred to any additional documents or other evidence during the hearing. The applicant had asked the first-instance court to hear a witness, who could have confirmed that the applicant had had a contract with B. I. and that B. I.'s relatives in the police had threatened the applicant if he refused to return the money for the ongoing work, but the court had refused to hear the witness

without giving any reasons. Moreover, the judge had relied on grounds which had not been mentioned by the prosecutor, thus showing bias towards the prosecution. The lawyer relied on Article 5 of the Convention and referred to the absence of any evidence to support the prosecutor's request for the applicant's detention pending trial, including the absence of any judgment or other evidence concerning the other similar offences allegedly committed by his client. In the lawyer's opinion, there had been no reason to believe that the applicant would abscond or interfere with the investigation. Relying on Article 3 of the Convention, the lawyer also complained of the inhuman conditions of his client's detention.

15. On 10 October 2008 the Chişinău Court of Appeal rejected the appeal as unfounded, referring to similar grounds as those referred to by the lower court, including that the applicant had allegedly committed other similar offences "as [could] be seen from the criminal file".

16. On 13 October 2008 the prosecutor asked for an extension of the applicant's detention pending trial for thirty days. He referred to three separate occasions on which the applicant had been accused of having accepted money for installing roof drainage systems but had failed to do so, including in respect of B. I.

17. On the same day the investigating judge of the Râşcani District Court granted the request and ordered the applicant's detention pending trial for thirty days. The court noted that

> "... a serious crime has been committed for which the law provides a penalty of more than two years' imprisonment; there has been no compensation for the pecuniary damage caused; there are reasons to believe that [the applicant] could abscond or interfere with the normal and objective course of the investigation; the grounds on which the initial detention was ordered remain valid."

18. The applicant's lawyer appealed, relying on the same grounds as in his previous appeal. He added that his client had told the lower court that he owed no debt to B. I., whom he had reimbursed fully. Moreover, the lawyer had read the prosecutor's request only immediately before the hearing of 13 October 2008. No documents other than the prosecutor's request had been examined by the court during the hearing or shown to the defence. The lawyer added that the applicant had a stable home life, had two children to support and had not been previously convicted of any offence. He again complained of his client's inhuman conditions of detention, both at the Râşcani Police Station and at the General Police Department ("the GPD", see paragraph 22 below), and relied on Article 3 of the Convention in that regard.

19. On 21 October 2008 the Chişinău Court of Appeal rejected the appeal, relying on the same grounds as those referred to by the lower court.

20. On 11 November 2008 the Râşcani District Court ordered the applicant's release. The court found that

> "... [the applicant] is accused of having committed a crime for which the law provides punishment [through] alternatives [to imprisonment]; he did not abscond from the investigating authority; he has a permanent residence and two children."

21. On 8 May 2009 the Râşcani District Court found the applicant guilty of fraud and sentenced him to three years' imprisonment, suspended for one year. In his submissions to the court the applicant acknowledged having taken money from B. I. in May 2008. After a while, he had manufactured the relevant items but had not been able to install them because of personal family circumstances obliging him to remain home with his children. The court found that he had taken money from three other people in May – July 2008 and had also failed to carry out the work which he had undertaken to do for them.

B. Conditions of the applicant's detention

22. According to the Government, the applicant had been detained for one night at the Râşcani Police Station on 29 September 2008 and had then been transferred to the General Police Department *(Comisariatul General de Poliţie* or "the GPD"), where he had been detained until 11 November 2008.

23. The applicant described his conditions of detention at the Râşcani Police Station as follows: he had been held in a cell without a bed or any other furniture; there had been no ventilation, toilet or running water in the cell; he had not been given any food and had had to beg for it from other detainees; the cell had been overcrowded and many detainees had smoked, exposing the applicant to passive smoking; and the cell had been damp.

24. According to the applicant, at the GPD he had been placed together with seven other people in a cell measuring 12 square metres. The cell had been dirty and infested with parasitic insects and rats. There had been no furniture in the cell, and the detainees had slept directly on the floor, in their own clothes. The cell had been damp and very cold. A low-intensity lamp, covered by a metal sheet, had been switched on twenty-four hours a day and there had not been a window in the cell. The toilet had not been separated from the rest of the cell, offering no privacy. Due to the large number of people using it, the toilet had been occupied most of the time and had smelt bad. The applicant had not been given any personal hygiene items, clean clothes or bed linen. He had had to continually wear the clothes in which he had been arrested. The applicant had received little food, which had been of a very bad quality (a cup of warm water in the morning and evening and boiled vegetables with warm water for lunch). Even though he had had a stomach ulcer and high intracranial blood pressure, he had not received any medical assistance. He had been detained in such conditions for twenty-four hours a day, without any right to take exercise or to take part in recreational activities.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic law and practice

25. The relevant provisions of domestic law have been set out in *Ostrovar v. Moldova* (no. 35207/03, 13 September 2005), *Sarban v. Moldova* (no. 3456/05, 4 October 2005), *Becciev v. Moldova* (no. 9190/03, 4 October 2005), and other similar cases in respect of Moldova.

26. The Government submitted a list of laws, regulations, Ministry orders and other acts or bills yet to be enacted which are aimed at improving various aspects of prison conditions and the medical treatment of detainees.

27. The Government annexed to their observations copies of judgments in the cases of *Drugaliov v. the Ministry of Internal Affairs and the Ministry of Finance*; *Gristiuc v. the Ministry of Finance and the Penitentiaries' Department*; *Ipate v. the Penitentiaries' Department;* and *Ciorap v. the Ministry of Finance, the Ministry of Internal Affairs and the Prosecutor General's Office*, all cases in which the applicants had been awarded compensation for ill-treatment and/or inhuman conditions of detention.

B. Independent reports

28. The relevant findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") read as follows:

a. Visit to Moldova of 14-24 September 2007

"A. Institutions of the Ministry of Internal Affairs

In so far as the conditions of detention in the police establishments are concerned, it appears that this is the field in which the least progress has been achieved. It is not necessary to enumerate here in detail all the shortcomings observed by the delegation, which are more or less the same as those observed during past visits (and of which the Ministry of Internal Affairs is perfectly aware). ... Numerous persons are still detained overnight in police establishments, in cells which should not be used to detain persons for more than a few hours. It is high time to remedy these problems, in particular by placing accused persons under the supervision of institutions of the Ministry of Justice and building new prisons corresponding to CPT standards and to the norms laid down by the Moldovan legislation.

[...]

9. Persons placed on remand should as a rule be detained in prisons under the authority of the Ministry of Justice. However, such persons may continue to be held in police temporary detention facilities (*izolatoare de detenţie preventivă*, abbreviated

"IDP") under the authority of the Ministry of Internal Affairs, if this is required for the purposes of the criminal investigation or if the transfer to a pre-trial establishment cannot be effected promptly. It is also possible for remand prisoners to be transferred back from prison to an IDP when necessary for the purposes of the investigation or the court proceedings, for periods of up to 10 days at a time.

At the time of the 2007 visit, the delegation noted that the average length of stay in IDPs of persons remanded in custody had decreased. For example, at the IDP of the General Police Directorate in Chişinău, the majority of persons who had been remanded in custody were being transferred to Prison No. 13 within a week. This is a welcome development. Nevertheless, the delegation also gathered evidence of persons remanded in custody spending extended periods of time in IDPs (e.g. uninterrupted stays of up to 70 days at Anenii Noi; up to 40 days at the Operational Services Department in Chişinău). As regards the practice of repeated transfers of remand prisoners between prisons and IDPs, it continued unabated.

As stressed by the CPT in the past, IDPs will never be capable of providing conditions of detention suited for holding persons remanded in custody. The Moldovan authorities are well aware of the limitations of the existing IDPs and, following a decision to transfer the responsibility for these facilities to the Ministry of Justice by the beginning of 2008, have been exploring the possibility of constructing eight new remand prisons in different regions of the country. During the 2007 visit, the delegation was informed that this project was still at the conception phase, due to the lack of budgetary resources. The Ministry of Justice was approaching various donors, banks and the public sector in the hope of raising the necessary funding (estimated at approximately 3 mln USD per remand prison).

The CPT calls upon the Moldovan authorities to give the highest priority to the implementation of the decision to transfer the responsibility for persons remanded in custody to the Ministry of Justice. The objective should be to end completely the practice of holding remand prisoners in police establishments. The return of remand prisoners to police facilities, for whatever purpose, should be sought and authorised only when there is absolutely no other alternative, and for the shortest time possible.

[...]

11. In previous visit reports, the CPT recommended that administrative arrest be no longer exploited by operational police officers to detain and question persons suspected of criminal offences, without their being offered the safeguards inherent in the criminal procedure. Nevertheless, during the 2007 visit, the delegation came across a number of persons who were officially being held in IDPs for having committed administrative offences (e.g. at the Operational Services Department and the General Police Directorate in Chişinău), but were in fact being questioned as criminal suspects, apparently without being allowed to contact a lawyer. Resolute steps should be taken to stamp out this abusive practice, which amounts to circumventing the legal provisions concerning the length of police custody in respect of criminal suspects. The CPT reiterates its previous recommendation that firm instructions be issued to law enforcement officials that persons suspected of criminal offences are to be held and questioned strictly in accordance with the provisions of the Code of Criminal Procedure. The Committee also calls upon the Moldovan authorities to ensure that compliance with this requirement is closely supervised.

[...]

4. Conditions of detention

a. temporary detention facilities (IDPs)

34. Following the CPT's visit in 2004, the Moldovan authorities launched a programme for improving material conditions in IDPs, with a view to implementing the Committee's recommendations. However, it became clear from the discussions held with Ministry of Internal Affairs officials at the outset of the 2007 visit that the programme had not progressed as rapidly as envisaged, due to the lack of funding. At one of the establishments visited, the IDP in Străşeni, the refurbishment had been suspended, and it was unclear when the works would be finished. That said, the delegation was pleased to note that the cells' envisaged occupancy levels once the refurbishment had been completed would be in accordance with the CPT's standards (i.e. cells measuring some 12 m² would hold two persons each), and that the in-cell toilets would be partitioned off.

35. Despite the above-mentioned programme, conditions of detention in the IDPs visited remained, in general, very poor. The cells had either no windows (e.g. at the IDP of the Operational Services Department in Chişinău, some of the cells at Călăraşi IDP, one cell at Anenii Noi IDP) or their windows were covered by shutters which substantially limited access to natural light. As for artificial lighting, it was, as a rule, dim. Particular mention should be made of one cell at Anenii Noi, in which there was no electric bulb; staff had reportedly told the detainee that he should provide a new bulb himself. Further, the cells were often stuffy, despite the presence of a ventilation system (which was rarely turned on because of the noise it made). Detainees slept on wooden platforms, which took up most of the floor space; no steps had been taken in respect of providing mattresses and blankets (the presence of an occasional blanket was attributable to detainees' families). The only exception was the IDP in Călăraşi, where most of the cells were fitted with bunk beds with mattresses.

At the time of the visit, the number of persons held at the IDPs was well below their official capacity. Nevertheless, overcrowding was observed in some of the cells (e.g. three persons in a cell measuring 7 m² at Leova). Further, the delegation came across several cells which were very small (4 m² at Leova; 5.5 m² at Anenii Noi). Cells of such a size are only suitable for short periods of detention.

36. The arrangements in respect of food varied from one establishment to another: at the two IDPs in Chişinău, three meals a day were being provided, whereas in Leova, the number of daily meals was two, and at Călăraşi and Anenii Noi, only one. The delegation received numerous complaints about the insufficient quantity and poor quality of the food. It was clear that most detainees relied primarily on food parcels delivered by their families.

37. On a more positive note, all the IDPs visited possessed exercise yards. Detainees were in principle entitled to one hour of outdoor exercise a day. However, at the IDPs in Călăraşi and the General Police Directorate in Chişinău, the delegation heard widespread allegations that the outdoor exercise periods were limited to 5 to 15 minutes, and did not take place every day. Apart from outdoor exercise, there were no activities (e.g. access to books, newspapers, radio, board games).

38. To sum up, the conditions prevailing at the IDPs visited continue to render them unsuitable for accommodating persons deprived of their liberty for prolonged periods of time (which continues to be case of both persons remanded in custody and

administrative detainees). Reference has already been made in paragraph 9 to the envisaged transfer of responsibility for IDPs to the Ministry of Justice and the setting up new remand prisons, which should correspond to the requirements of Moldovan legislation and the CPT's standards. In the meantime, the Moldovan authorities should redouble their efforts to find the financial means necessary for providing for the fundamental needs and preserving the dignity of detained persons. In particular, urgent steps should be taken to ensure that:

- all detained persons are provided with a clean mattress and blankets;

- detained persons receive food of sufficient quantity and improved quality;

- in-cell lighting (including access to natural light) and ventilation are adequate;

- there is a minimum of 4 m² per person in multi-occupancy cells;

- detained persons have ready access to communal toilet facilities, and in-cell toilets are equipped with a partition;

- detained persons are ensured access to washing facilities and are supplied with essential personal hygiene products;

- all detained persons have access to outdoor exercise of at least one hour per day.

The CPT also recommends that steps be taken to provide some form of activity in addition to outdoor exercise to persons held in excess of a few days at IDPs."

b. Visit to Moldova of 27 to 31 July 2009

"10. During the 2009 visit, the delegation observed that the practice of holding remand prisoners in police temporary detention facilities (*izolatoare de detenţie preventivă*, abbreviated "IDP") continued unabated. In the report on the 2007 visit, the CPT called upon the Moldovan authorities to give the highest priority to the implementation of the decision to transfer the responsibility for persons remanded in custody to the Ministry of Justice. In response, the Ministry of Internal Affairs indicated that it was in favour of a temporary transfer of responsibility for IDPs to the Ministry of Justice, pending the building of pre-trial establishments under the latter Ministry's authority. However, at the end of the 2009 visit, the Minister of Justice indicated that the responsibility for the IDPs could not be taken over by his Ministry because conditions of detention in these facilities were substandard.

The CPT shares the view that IDPs do not offer suitable conditions for holding persons remanded in custody. The Committee would nevertheless like to stress that, in the interests of the prevention of ill-treatment, the sooner a criminal suspect passes into the hands of a custodial authority which is functionally and institutionally separate from the police, the better. The delegation's findings from the 2009 visit support that; most cases of alleged police ill-treatment in the context of the April events had emerged only after the persons concerned had been transferred to an establishment under the Ministry of Justice or released. The CPT recommends that, pending the building of new pre-trial establishments, the Moldovan authorities take steps to transfer the responsibility for IDPs to the Ministry of Justice. Further, the Committee would like to receive up-to-date

information on progress made to build new pre-trial establishments under the Ministry of Justice.

11. The legal framework for deprivation of liberty of administrative detainees is provided by a new Contravention Code, which entered into force after the April events, on 31 May 2009, and replaced the 1985 Code of Administrative Offences. According to the new legal provisions, the persons concerned may be sentenced to up to 15 days of deprivation of liberty, a period which may be extended to 30 days if they have committed more than one offence.

In the past, the CPT repeatedly recommended that detention for administrative offences no longer be exploited by operational police officers in order to detain and question persons suspected of criminal offences, without their being offered the safeguards inherent in the criminal procedure. The delegation's findings from the 2009 visit suggest that such abusive practices were widespread in the context of the April events. The CPT is therefore pleased to note that the new Contravention Code restricts the powers of the police to hold persons, on their own authority, for more than three hours. However, the delegation heard some recent allegations from detained persons that proceedings under the Contravention Code (for insulting law enforcement officials, for instance) had been initiated against them after they had refused to confess to a criminal offence, despite their correct behaviour vis-à-vis the police, and that their objections had little weight before prosecutors and judges. The lack of access to a lawyer in practice, at this stage of the procedure, had exacerbated this situation. The CPT recommends that prosecutors and judges be encouraged to be particularly vigilant as to the possible exploitation by the police of the provisions of the Contravention Code to circumvent the length of police custody in respect of criminal suspects. Reference is also made to paragraph 34 as regards access to a lawyer.

According to the Enforcement Code, persons under administrative arrest by virtue of the Contravention Code should be detained, as a minimum, in conditions provided for sentenced prisoners placed under an "initial" regime in penitentiary establishments. That said, it appeared during the 2009 visit that a number of persons under arrest continued to serve their administrative sentences in police establishments, which certainly do not offer such conditions. The CPT recommends that the Moldovan authorities take all the necessary measures to ensure that persons under administrative arrest serve their sentences in penitentiary establishments.

[...]

36. The CPT notes with satisfaction that the cells of the IDP of the General Police Directorate in Chişinău had been fitted with beds and that some repair works had been carried out a few months before the visit. However, the conditions prevailing in this facility were still not suitable for the prolonged periods for which remand prisoners and administrative detainees were being held in it: high official occupancy levels in the cells (e.g. 4 places in a 10 m² cell), poor in-cell lighting, access to outdoor exercise limited to some 15 minutes. The CPT recommends that these shortcomings be remedied (see also the recommendations made in paragraphs 10 and 11)."

29. The relevant findings of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Human Rights Council, 10th session, Report on the special rapporteur's

mission to Moldova, document A/HRC/10/44/Add.3, 12 February 2009) read as follows:

"Police custody

38. Despite international and national minimum standards, conditions in some police custody facilities are a source of major concern. Whereas some police stations were suitable at maximum for short-term police custody, in some cases, notably in Bălţi, Comrat, and at Chişinău police headquarters, the conditions amounted to inhuman treatment. In those police stations, persons were held in small, badly ventilated cells with little or no daylight sometimes for several weeks or even months. However, according to official sources, some of the police custody facilities had been closed in order to improve conditions (Criuleni, Ialoveni, Straseni, Cantemir, Glodeni, Stefan-Vodă, Edinet, Donduseni, Ciadâr-Lunga).

39. Notwithstanding some measures taken by the Government, many persons in police custody complained about the quality and quantity of the food, although some said that it had slightly improved. Detainees in some police stations (e.g. Comrat) indicated that they received food only once per day. Lack of access to medical care was another major concern. Some of the cells were not equipped with mattresses and persons in police custody were not given blankets to sleep on.

40. The Special Rapporteur received consistent allegations that the minimum time required by national law for exercise (one hour per day) is not respected in many cases. At several police stations, detainees indicated that they are allowed to walk only for about 15 minutes per day. This is exacerbated by the fact that some spend long periods of up to several months in police custody. The one shower per week requirement is not always respected. Moreover, the toilet in the cells consists normally of a bucket or an open toilet without flush, at best separated by one meter high walls. Since often more than one person is detained in a cell, these sanitary facilities deprive the detainees of their privacy. Furthermore, this situation generates not only an unpleasant smell, but also a critical hygienic situation."

In their reply to the above-quoted report, the Moldovan authorities acknowledged the seriousness of the problem of ensuring appropriate conditions of detention in Moldova and stated that most of the necessary legislative measures had already been taken. The lack of financing for implementing the measures decided upon was the single most serious impediment to solving the problem.

30. The relevant findings of the United Nations Committee Against Torture, adopted at its 43rd session on 2-20 November 2009 (document CAT/C/MDA/CO/2) read as follows:

"Conditions of detention

18. The Committee welcomes the amendment in December 2008 of the Criminal Code, which reduced minimum and maximum penalties, prompted a general review of penalties and reoffending, and provided for alternatives to detention, thus contributing to the reduction in the total number of prison population in the State party. The Committee also welcomes reconstruction, repairs and maintenance work carried out in a number of penitentiary institutions starting from 2007. Despite the State party's efforts to improve the conditions of detention, the Committee remains

concerned at overcrowding in certain facilities and that conditions remain harsh, with insufficient ventilation and lighting, poor sanitation and hygiene facilities and inadequate access to healthcare. The Committee is concerned about reports about inter-prisoner violence, including sexual violence and intimidation, in places of detention. (art. 10)

The State party should:

(a) Take the necessary measures to alleviate the overcrowding of penitentiary institutions, inter alia, through the application of alternative measures to imprisonment and through initiating at its own initiative a review of sentences with a view of bringing them in compliance with the December 2008 amendments of the Criminal Code. The State party should continue making available the necessary material, human and budgetary resources to ensure that the conditions of detention in the country are in conformity with minimum international standards; ... "

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant complained that he had been detained in inhuman and degrading conditions, in breach of Article 3 of the Convention which reads as follows:

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

A. Admissibility

32. The Government submitted that the applicant had failed to exhaust available domestic remedies in respect of this complaint. In particular, he could have lodged a civil court action seeking compensation for the alleged violation, similar to those brought successfully by the applicants in the above-cited cases of *Drugaliov*, *Gristiuc*, *Ipate* and *Ciorap* (see paragraph 27 above). Moreover, he had not complained about the conditions of his detention to any domestic authority.

33. The applicant disagreed.

34. The Court reiterates 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*, 9 October 1979, § 23, Series A no. 32). It is clear from the documents submitted to the Court by the parties that, when the applicant was still in detention, his lawyer complained of the inhuman conditions of his client's detention and relied expressly on Article 3 of the

Convention (see paragraphs 14 and 18 above). The Government have admitted in the past that such a procedure constitutes an effective remedy against alleged breaches of Article 3 (see *Holomiov v. Moldova*, no. 30649/05, §§ 102 and 105, 7 November 2006).

35. Moreover, the civil action remedy referred to by the Government could not result in an immediate improvement of the applicant's conditions of detention and did not as such constitute an "effective remedy" in respect of ongoing violations of Article 3 of the Convention, as already established by the Court (see *Holomiov*, cited above, § 107).

36. The Court finds, therefore, that this complaint cannot be declared inadmissible for non-exhaustion of domestic remedies and accordingly the Government's objection must be dismissed. It considers that this complaint raises 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 it inadmissible have been established. The Court therefore declares this complaint admissible.

B. Merits

1. Arguments of the parties

37. The applicant complained of the inhuman and degrading conditions of his detention and gave a detailed description of those conditions (see paragraph 24 above).

38. The Government argued that the applicant had been detained in conditions compliant with Article 3 requirements. The Government averred that the applicant had not submitted any evidence to support his allegations and that the absence of any complaints to the prison authorities had confirmed the applicant's acceptance of his conditions of detention as appropriate. Moreover, they considered that CPT reports could not lead to automatic findings of a violation of Article 3 in the absence of evidence of the applicant's individual suffering (*Gorea v. Moldova*, no. 21984/05, §§ 40-51, 17 July 2007). As in *Gorea*, the applicant in the present case had been detained at the GPD for a short period of time (six days at the Râşcani Police Station and twenty-one days at the GPD).

2. The Court's assessment

39. The Court recalls that to fall within the scope of Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, for example, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

40. The State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see, *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions and the duration of the detention (see *Ostrovar v. Moldova*, no. 35207/03, § 80, 13 September 2005).

41. In the present case the Court firstly notes that in accordance with the Government's submissions the applicant had been detained for one night at the Râşcani Police Station, in addition to five days' administrative arrest there. The parties did not submit that the applicant had been detained in any detention facility other than the two mentioned above. The Government acknowledged that the applicant had been arrested on 29 September 2008 and released on 11 November 2008. It follows that he spent forty-three days in detention, of which six days at the Râşcani Police Station.

42. The Court is aware of the fact that it is very difficult, if not impossible, for a detainee to submit evidence of his or her conditions of detention, given the prohibition on using photo/video equipment in prison and on securing evidence in other ways. One manner in which detainees may proceed is by describing the conditions of their detention in detail and by complaining to the authorities about those conditions. Another very important means is to refer to the findings of independent observers such as the CPT or other national and international human rights monitoring organisations (see, amongst many other authorities, *Salman v. Turkey* [GC], no. 21986/93, §§ 69-73, ECHR 2000-VII; *Becciev v. Moldova*, no. 9190/03, §§ 31-32, 4 October 2005; and *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, §§ 70-71, 27 January 2009). In the present case the applicant's lawyer complained twice of inhuman conditions of detention and relied expressly on Article 3 of the Convention in that regard (see paragraphs 14 and 18 above). The Court did not see any response to those complaints in the domestic courts' decisions or in any other documents.

43. The Court also notes the findings of the CPT concerning Moldovan temporary detention facilities ("IDPs") in general and the GPD's IDP in particular (see paragraph 28 above). It is clear from the reports following the CPT visits that the conditions of detention in the IDPs under the authority of the Ministry of Internal Affairs were substandard, even in the eyes of the domestic authorities (see the opinion of the Minister of Justice quoted in the CPT report for 2009). The CPT added that "IDPs [would] never be capable of providing conditions of detention suited for holding persons remanded in custody". The specific findings made almost a year

after the applicant's detention in GPD's IDP (which belongs to the Ministry of Internal Affairs) coincide at least in part with the applicant's description, in particular severe overcrowding and insufficient time for exercise, as well as the lack of furniture before 2009.

44. The Government relied on *Gorea v. Moldova*, cited above. The Court considers that that case differs in several important ways from the present one. The duration of detention was fourteen days for Mr Gorea and forty-three days for the applicant in the present case (thirty-seven at the GPD, see paragraph 41 above). To the Court, Mr Gorea's failure to complain about his conditions of detention was an important element in dismissing his complaint. The applicant in the present case, on the other hand, complained through his lawyer twice but failed to obtain any response to his complaints, let alone any improvement in his conditions of detention.

45. Moreover, the Court takes note of the strong opinion of the CPT that persons should not be held in detention on remand at the facilities of the Ministry of Internal Affairs. The applicant was detained for one night at the Râşcani Police Station, in addition to the five-day administrative detention at the same facility. Given the conditions in Moldovan local police stations as noted by the CPT, detention for several days in such conditions is clearly in breach of the Convention standards.

46. In the light of the above, the Court finds that the applicant was held both at the Râşcani Police Station and the GPD in conditions contrary to the requirements of Article 3 of the Convention. There has, accordingly, been a violation of that provision in the present case.

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

47. The applicant submitted that he had been arrested in the absence of a reasonable suspicion that he had committed a crime. He relied on Article 5 § 1 of the Convention, the relevant part of which reads as follows:

> "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; ..."

A. Admissibility

48. The Court considers that this complaint raises 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 it inadmissible have been established. The Court therefore declares this complaint admissible.

B. Merits

49. The Government considered that the applicant had been lawfully arrested on suspicion of having committed fraud. He was subsequently convicted of that offence (see paragraph 21 above), which confirmed in their view the legitimacy of the initial suspicion.

50. The Court reiterates that "the 'reasonableness' of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1 (c) of the Convention. Having a 'reasonable suspicion' presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as 'reasonable' will however depend upon all the circumstances". While special circumstances may affect the extent to which the authorities can disclose information, they cannot "... stretch [...] the notion of 'reasonableness' to the point where the essence of the safeguard secured by Article 5 § 1 is impaired" (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 32, Series A no. 182, and *Stepuleac v. Moldova*, no. 8207/06, § 68, 6 November 2007).

51. The Court notes that the applicant was initially arrested for having committed the administrative offence of insulting a police officer. Even though the applicant referred to his entire period of detention as being unlawful, he did not give any details in respect of the administrative arrest and detention. The Court considers that using administrative arrest as a means of detaining and questioning a suspect in a criminal case is contrary to Article 5 of the Convention. It is also contrary to Moldovan law (see, for instance, *Grădinar v. Moldova*, no. 7170/02, § 20, 8 April 2008, where a Moldovan court found that administrative detention effected for the real purpose of questioning a suspect in a criminal case was unlawful).

52. However, it cannot be excluded that a person who is arrested for an administrative offence is identified, during such administrative detention, as the suspect of a crime, and that both the administrative detention and the subsequent detention within the framework of the criminal investigation be bona fidae. The Court would then have to decide whether the administrative detention had been genuinely caused by an administrative offence which the applicant had committed or whether such detention was only a pretext in

order for the police to have more time to detain him before bringing him before the investigating judge.

53. In the present case, the applicant did not expressly argue that he had been subjected to an administrative arrest with the real purpose of investigating the criminal case against him. Even assuming an implicit complaint to that effect, he did not submit a copy of the relevant administrative court decision, the decision of the higher administrative court in response to his eventual appeal or other related documents in order to show that his arrest had been made for another aim than that officially declared.

In such circumstances, the Court does not have any reason to find that his administrative detention was in any manner related to the criminal proceedings against him or that it was "unlawful" within the meaning of Article 5 of the Convention. It will further examine the period of detention starting from 4 October 2008, when he was officially arrested within the framework of the criminal investigation.

54. The Court notes that on 1 October 2008 B. I. made a complaint in which he identified the applicant as the person who had allegedly defrauded him by taking money and failing to carry out the work to be undertaken in exchange for his payment (see paragraph 8 above). The prosecution was in possession of materials concerning three other instances of similar alleged offences. The Court considers that, in the circumstances of the present case, the authorities had a "reasonable suspicion" that the applicant had committed one or several offences, all the more so given that he did not deny taking money and failing to carry out work which had been paid for.

55. Moreover, it is apparent from the documents in the file that this was not a case of a business person simply being unable to fulfil his contractual obligations. It was established by the courts that he had continued to take money from other people even after telling his first clients that he could no longer carry out the work for personal reasons (see paragraph 21 above).

56. In the light of the above, the Court finds that there has been no violation of Article 5 § 1 of the Convention in the present case.

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

57. The applicant complained of the domestic courts' failure to give relevant and sufficient reasons for ordering and extending his detention pending trial. He relied on Article 5 § 3 of the Convention, which reads as follows:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within

a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

..."

A. Admissibility

58. The Court considers that this complaint raises 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 it inadmissible have been established. The Court therefore declares this complaint admissible.

B. Merits

59. The Government submitted that the courts had properly reasoned their decisions to detain the applicant pending trial, in view of the circumstances of the case and the risks posed by the applicant's release. When the need to detain him had ceased to exist, a court had ordered his immediate release on 14 November 2008.

60. The Court refers to the general principles concerning the domestic courts' obligation, under Article 5 § 3 of the Convention, to give relevant and sufficient reasons for ordering a person's detention pending trial, as established in its case law (see, amongst many other authorities, *Sarban v. Moldova*, cited above, §§ 95-99).

61. It notes that in the present case the applicant advanced substantial arguments against his detention before the national courts, such as having a permanent residence in Chişinău and having to support children, as well as the absence of any reason to believe that the applicant would abscond or interfere with the investigation.

62. The Court further notes that the domestic courts devoted no consideration to any of these arguments in their relevant decisions, apparently treating them as irrelevant to the question of the lawfulness of the applicant's detention pending trial. This is striking, given the fact that on 14 November 2008 the trial court had found that a number of those factors, which had existed when the previous decisions had been taken, militated against the applicant's detention. The other courts either did not make any record of the arguments submitted by the applicant or made a short note of them and did not deal with them. In their decisions, they limited themselves to repeating the formal grounds for detention provided by law in an abstract and stereotyped way. These grounds were cited without any attempt to show how they applied to the applicant's case (see paragraphs 13 and 17 above).

63. The Court also notes that the court which ordered the applicant's initial detention characterised the offence allegedly committed by the

applicant as a minor one (see paragraph 13 above). Moreover, by the time of the hearing the applicant had already paid the entire sum allegedly taken from the victim, which the lawyer informed the court of. No consideration was given to these facts in the court's decision.

64. In addition, in his appeal the applicant's lawyer noted that he had not seen any materials at the hearing other than the prosecutor's request for his client's arrest, nor had he seen any materials being submitted to the court (see paragraph 14 above). The minutes of the hearing do not disclose any discussion of additional documents. The Court considers that had the case file in fact contained materials relevant to the question of the applicant's detention, the failure to disclose them to the defence would have raised a problem of equality of arms. However, since the higher court did not mention the existence of any such materials in the case file before the lower court and did not contradict the applicant's lawyer's submissions as to the absence of such materials during the hearing of 6 October 2008, it must be assumed that the lower court had based its decision only on the prosecutor's request, without seeing any additional materials.

65. The Court considers that ordering a person's detention based only on the prosecution's submissions and in the absence of any materials to substantiate those submissions is incompatible with the requirements of Article 5 § 3 of the Convention. Accordingly, it considers that the reasons relied upon by the domestic courts in their decisions concerning the applicant's detention pending trial were not "relevant and sufficient".

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

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

67. The applicant complained that he and his lawyer had not had access to any materials on which the domestic courts had based their decisions, and that a witness had not been heard in deciding on the need to detain the applicant pending trial.

He relied on Article 5 § 4 of the Convention, which reads as follows:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

68. The Court considers that these complaints 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.

B. Merits

69. The Government submitted that the applicant and his lawyer had had sufficient time and facilities to prepare for the relevant hearings. Moreover, their failure to ask for additional time to prepare for the hearing had confirmed their familiarity with the materials of the case.

70. The Court refers to its finding (see paragraph 64 above) that the court which ordered the applicant's initial detention had not examined any material apart from the prosecutor's request. It follows that the part of the complaint concerning the failure to give the defence access to the relevant materials concerning the reasons for the applicant's detention is superfluous for the reason that there were no other materials in the case file submitted to the domestic court.

71. The Court also notes that while the prosecution referred to several investigations against the applicant, his arrest was expressly based on the alleged defrauding of B. I. The applicant's lawyer submitted to the domestic court that the damage allegedly caused by his client to B. I. had been remedied by the repayment of EUR 500. The Court considers that the issue whether the applicant had indeed repaid the damage was relevant to an assessment of the risks of releasing the applicant or applying other non-custodial preventive measures, and therefore ultimately to the issue of the lawfulness of his continued detention pending trial. Moreover, there was a factual disagreement between the prosecution and the defence, the prosecution denying having seen any relevant information concerning any such payment by the applicant. In these circumstances, the applicant's lawyer asked for B. I. himself to be heard in order to clarify the issue. It appears that the court did not decide anything in respect of that request or at best implicitly rejected it without having established whether the alleged damage had been remedied.

72. The Court recalls that where there is evidence which prima facie appears to have a material bearing on the issue of the continuing lawfulness of detention, it is essential, for compliance with Article 5 § 4, that the domestic courts examine and assess it (see *mutatis mutandis*, *Chahal v. the United Kingdom*, 15 November 1996, §§ 130-131, *Reports of Judgments and Decisions* 1996-V; *Hussain v. the United Kingdom*, 21 February 1996, § 60, *Reports* 1996-I; *Becciev v. Moldova*, cited above, § 72; and *Ţurcan and Ţurcan v. Moldova*, no. 39835/05, § 67, 23 October 2007).

73. In the present case, it was primarily for the domestic courts to decide what weight to give to the evidence referred to by the applicant at the relevant stage of the proceedings. However, the failure to properly deal with the applicant's lawyer's request to hear B. I. and to clarify the issue of

repayment of the debt deprived the defence of its chance to convince the investigating judge of the absence of a particular risk in ordering the applicant's release rather than maintaining his detention.

74. In the light of the above, the Court considers that by refusing, without giving any explanation, to have B. I. questioned on the issue of repayment of the debt, the Râşcani District Court breached the applicant's rights guaranteed by Article 5 § 4 of the Convention (see *Becciev*, cited above, §§ 73-76; and *Ţurcan and Ţurcan*, cited above, §§ 68-70).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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. Non-pecuniary damage

76. The applicant claimed EUR 7,000 for non-pecuniary damage caused to him as a result of the violation of his rights.

77. The Government considered that the amount claimed was excessive in the light of the Court's similar case law in respect of Moldova.

78. Having regard to the violations found above, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. It accepts in full the applicant's claim.

B. Costs and expenses

79. The applicant's lawyer claimed EUR 1,500 for costs and expenses incurred before the Court. He submitted a contract and a detailed time sheet.

80. The Government considered the amount claimed excessive and disputed the number of hours worked by the applicant's lawyer.

81. In view of the legal aid given to the applicant by the Council of Europe and of the quality of his lawyer's submissions, the Court considers that no further award is necessary in respect of costs and expenses.

C. Default interest

82. The Court considers it appropriate that 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* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been no violation of Article 5 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of the failure to hear a witness;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage, to be converted into Moldovan lei at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant thereon;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 24 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada	Josep Casadevall
Section Registrar	President