CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

CASE OF BECCIEV v. MOLDOVA

(Application no. 9190/03)

JUDGMENT

STRASBOURG

4 October 2005

FINAL

04/01/2006

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 Becciev 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 R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 13 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 9190/03) 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 Constantin Becciev ("the applicant"), on 7 March 2003.

2. The applicant was represented by Mr Vitalie Nagacevschi and Mr Victor Constantinov, lawyers practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr Vitalie Pârlog.

3. The applicant complained about his detention on remand and about various alleged violations in that connection: violations of Article 3 (conditions of detention); Article 5 § 3 (insufficient reasons given by the courts for the detention on remand); and Article 5 § 4 (refusal to hear a witness).

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 5 April 2005, the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1), the Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, Mr Constantin Becciev, is a Moldovan national who was born in 1955 and lives in Chişinău. He is the head of the Chişinău Public Water Company.

1. Background

9. On 21 February 2003 he was arrested by the Department of Criminal Investigation of the Ministry of Internal Affairs on charges of embezzlement.

10. On 23 February 2003 a criminal investigator in charge of the case applied to the Centru District Court for an order to remand the applicant in custody for thirty days. The reasons invoked by the investigator were the following:

> "Becciev committed a serious offence, he might abscond from the investigation authorities and from the court, he might influence the participants in the investigation and the discovery of the truth and the sanction provided by law for the offence is imprisonment for more than one year".

2. Hearings regarding the detention on remand before the Centru District Court and before the Chişinău Regional Court

11. On 24 February 2003, following a hearing where the applicant and his lawyers were present, the Centru District Court issued an order for his remand in custody for twenty-five days. The court's reasoning was the following:

> "the suspect has reached the age at which he may be criminally prosecuted, he is suspected of having committed a serious offence, he might abscond from the investigation authorities and from the court and he might influence the witnesses and the discovery of the truth".

12. The applicant's lawyers lodged an appeal against the order, arguing *inter alia*, that the decision to remand the applicant was groundless. They stated that the proceedings had been pending since 2001 and that during that time the applicant had never obstructed in any way the investigation. He had travelled abroad on many occasions and returned every time and he had always behaved irreproachably as regards the investigation. He was a well-known and respectable man and he had a family and a house and many reputable people were prepared to act as surety if he were to be released in accordance with the provisions of the Code of Criminal Procedure. The Chişinău Municipal Council and the leader of a parliamentary opposition party also declared their intention to act as surety for him in order to secure

his release. The lawyers also stated that the applicant was ready to give up his passport. They finally alleged that the applicant's detention was politically motivated and had been implemented to coincide with the approaching local elections.

13. They requested that the applicant be present in person at the hearing, but the request was dismissed, together with the applicant's appeal following a hearing on 4 March 2003 by the Chişinău Regional Court. In dismissing the appeal, the court did not rely on any other arguments than those relied upon by the first instance court.

3. The applicant's conditions of detention between 23 February 2003 and 1 April 2003

14. Meanwhile the applicant was detained in the remand centre of the Ministry of Internal Affairs in Chişinău.

(a) The applicant's submissions

15. According to the applicant, the conditions of detention were inhuman and degrading. The cell was damp, the window was closed by metal plates and the electric light was always on. The cells were not provided with ventilation. As a result of the damp, the inmates' clothes were wet and rotted on their bodies. Instead of a toilet, there was a bucket which was not separated from the rest of the cell. Instead of beds, there were wooden shelves with no mattresses, pillows, blankets or bed linen. The inmates were denied the opportunity of a daily walk. There was no means of maintaining hygiene in the cell. There was no shower and the applicant was constantly running the risk of getting infected with tuberculosis, skin infections and other infectious diseases.

16. The applicant submits that the food was inedible. The daily amount spent by the State for a detainee's food was 3.5 Moldovan Lei (MDL) (0.23 euros (EUR)). Because of the State's incapacity to provide adequate food, the prisoners were exceptionally allowed to receive food from their families. However, in the applicant's case the legal provisions were applied very strictly and he was not allowed to receive parcels from his family more than once a month.

(b) The Government's submissions

17. The applicant was detained in cell no. 6 of the remand centre of the Ministry of Internal Affairs. The surface of the cell was 12 square metres and usually four to five persons were detained in the cell.

18. There was a window in the cell and daylight was available. The ventilation of the cells was effected by the common ventilation system. The cells were provided with water closets. In 2002 the premises of the remand centre were refurbished and the toilets were separated from the rest of the cell by a wall in order to ensure the privacy of the detainees. The cells were

permanently provided with tap water, and accordingly the inmates enjoyed an adequate level of hygiene. The cells were frequently disinfected and the detainees had access to a shower once a week.

19. During his detention the applicant had the possibility to play chess, draughts and dominos and to read books and magazines. He also had the possibility to pray and to use religious literature.

20. In their initial observations on the admissibility and merits of September 2004, the Government did not deny the applicant's allegation that there was no exercise yard in the prison and that accordingly the detainees did not enjoy outdoor exercise. However, in their supplementary observations of June 2005 the Government argued that the applicant enjoyed walks for one hour per day, at any time of the day convenient to him.

21. The detainees were provided with free food in accordance with the norms provided by the Government and the quality of food was satisfactory. The prison was provided on a daily basis with bread, vegetable oil, vegetables, tea and sugar. Because of insufficient funding, the detainees were not served meat and fish; however they were given an increased quantity of cereals and lipids. Moreover, the detainees, including the applicant, had the right to receive food from their families.

22. The applicant had access to medical assistance.

4. Hearings regarding the first extension of remand before the Centru District Court and before the Chişinău Regional Court

23. On 18 March 2003 the Centru District Court granted the investigator's request to prolong the applicant's detention on remand for another thirty days. The court's reasoning was exactly the same as that relied upon when the detention on remand was first ordered. The applicant appealed against that decision but the appeal was dismissed by the Chişinău Regional Court on 21 March 2003 at a hearing where the applicant was not allowed to be present, although his lawyers were present. No new arguments were given by the Chişinău Regional Court.

5. The applicant's transfer to another detention facility

24. On 1 April 2003 the applicant was transferred from the remand centre of the Ministry of Internal Affairs to the remand centre of the Ministry of Justice.

6. Hearings regarding the second extension of remand before the Centru District Court and before the Chişinău Regional Court and the interview of C.B.

25. On 17 April 2003 the Centru District Court again prolonged the applicant's detention on remand for thirty days. No new reasons were given. The applicant appealed against this decision.

26. On 18 April 2003 the independent weekly newspaper "Timpul" published an interview with the police colonel "C.B." who had worked as a Superior Inspector of the Cross-Border Financial Crimes Directorate within the Inspectorate General of the Ministry of Internal Affairs and who had been in charge of the applicant's case for a long time and had arrested the applicant on 21 February 2003. He stated *inter alia* that:

> "I declare with full responsibility that the Becciev file has been fabricated, on the orders of the heads of the Ministry of Internal Affairs, for political reasons. The real target of this fabrication is the Mayor Serafim Urecheanu and his team...
>
> Mr Becciev has provided the investigation organs with all the requested information, he appeared personally before the investigators every time he was asked to, and he never gave any reason to believe that he intended to abscond. As a matter of fact, he travelled abroad on many occasions after the investigation started and returned every time. No other suspects, even those who are clearly involved, have ever been arrested...
>
> The file does not contain and has never contained any evidence that would prove Becciev's guilt... Many, if not all the witness statements from the file have been falsified or obtained through pressure and blackmail. Even the graphological examination did not prove that it was Becciev's signature on the documents, on the basis of which the criminal investigation commenced.... The heads of the Ministry of Internal Affairs have put great pressure on me to obtain favourable conclusions from the graphological experts...
>
> I can say that the Vice-Ministers U. and B. have put pressure on the President of the Centru District Court. Judge D.V. told me personally that he has been called by the Vice-Minister B. – his former University friend. In my turn, I told him that the file was being supervised by the President of the country, and that a decision other than one of detention could cost any judge his or her job...
>
> In May 2002 I was invited to see the Vice-Minister A.U., who asked me if I could find some evidence to compromise the Mayor.... In September he called on me again, this time to tell me that I had been included in the investigating group for the Becciev case. He also told me that my target should be the Municipality of Chişinău and the arrest of Becciev and of the Vice-Mayor Anatol Ţurcan... And that I would be promoted if I succeeded....
>
> I have been asked explicitly to obtain a confession by any means, because 'there was no time to waste, since the elections were approaching'. Then I understood the gravity of the situation....
>
> The decision that I could no longer work with them came to me when they started to pressurise me and to blame me when I could not obtain the necessary confession....
>
> Nobody can or will demonstrate that Becciev was a part of that deal... The investigators know very well who was involved.... It was V.P., one of the owners of Bank "M.", former member of the Chişinău Municipal Council on behalf of the Communist Party and a sponsor of this party in the last elections...
>
> They thought that I came too close to the truth and got rid of me."

27. On 25 April 2003 the Chişinău Regional Court held a hearing and dismissed the applicant's appeal, relying on exactly the same reasons as before. The applicant's request to be present was denied; however his lawyers were present. The court also denied the applicant's request to see all investigation documents and to have "C.B." examined as a witness. It did not give any reasons for this refusal.

7. Subsequent developments

28. On 12 June 2003 the investigators concluded their work on the case and the file was sent to the competent court.

29. On 27 July 2003 the first hearing in the criminal proceedings took place before the Râşcani District Court.

30. The applicant was released from detention on 12 August 2003. The criminal proceedings against him are still pending.

II. RELEVANT NON-CONVENTION MATERIAL

1. Acts of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT)

31. The relevant parts of the CPT's report concerning the visit to Moldova between 11 and 21 October 1998 read as follows:

> "55. In Chişinău, the remand centre had 23 cells; with an official capacity of 79 places, it was accommodating 40 remand prisoners and 20 administrative detainees at the time of the visit. As in Bălţi, the delegation met in that establishment minors who had been sharing cells with adults during prolonged periods.
>
> The size of the cells varied approximately from 7 m² to 15 m². At the time of the visit, the small cells held up to two detainees, and the larger cells up to four or five. Such a rate of occupancy may be considered as approaching tolerable norms. The cells were equipped with a wooden platform approximately two metres long, generally covering the whole width of the cell, and an Asian toilet. Like the other establishments visited, the detainees were given neither mattresses nor blankets. In addition, ventilation in the cells was mediocre, access to natural light virtually non-existent and artificial lighting, above the door, was permanently on; this disturbed the detainees at night.
>
> The delegation noted that the cell block had a shower area; however, the detainees claimed they did not know that it existed. There were no facilities for outdoor exercise.
>
> 56. Depriving persons of their liberty brings with it the responsibility to detain them under conditions which are consistent with the inherent dignity of the human person. The facts found in the course of the CPT's visit show that the Moldovan authorities have failed to fulfil that responsibility with regard to persons detained in the district police stations and remand centres visited. Moreover, information available to the CPT suggests that the situation is not any different in other police establishments in

Moldova. In many ways, the conditions prevailing in the district police stations and the remand centre visited amounted to inhuman and degrading treatment and, in addition, constituted a significant risk to the health of persons detained."

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

"56. Regarding the remand centres visited throughout Moldova, the delegation made approximately similar findings, with minor exceptions, on the disastrous and unwholesome material conditions. In order to avoid a detailed description, please see for further information paragraphs 53-55 of the report on the visit of 1998.

At the remand centre of Chisinau these conditions were aggravated by severe overcrowding. At the time of the visit, 248 of detainees were kept in a facility with a maximum capacity of 80 detainees, and thus 9 persons had to live in a 7m² cell, while 11 to 14 persons had to stay in cells of 10 to 15m².

57. In the visited remand centre, the delegation collected numerous complaints on the quantity of food. It basically included: a cup of tea without sugar and a slice of bread in the morning, cereal porridge in the afternoon and a cup of warm water in the evening. In some places the food was distributed only once a day and included a soup and a slice of bread."

2. Relevant domestic law

33. The relevant provisions of the Code of Criminal Procedure read as follows:

Article 73 § 1

"If there are serious grounds for believing that an accused will abscond, obstruct the establishment of the truth during the criminal proceedings or re-offend ..., one of the following preventive measures may be imposed: a written undertaking not to leave the district, bail, a guarantee by a public organisation or detention on remand.

...

When deciding on the necessity to impose a preventive measure, as well as on the choice of the preventive measure, ... the court shall pay attention, besides the circumstances indicated in the first paragraph of this article, to such circumstances as the seriousness of the imputed offence, the personality of the accused, his or her occupation, age, state of health, family status and other circumstances.

Article 76. Personal Guarantee

The personal guarantee consists of a written commitment made by trustworthy persons in order to guarantee the appropriate behaviour of the accused and his appearance before the investigating organ, prosecutor or court, when need be. The number of guarantors cannot be less than two.

At the moment of making the written commitment, the guarantor shall be acquainted with the merits of the case in relation to which the detention was ordered and shall be warned about his liability in case the accused should breach the rules. In

this case, the court may fine each guarantor one hundred times the minimum wage, in accordance with the provisions of Article 294 of the present Code.

Article 78 § 1

Detention on remand may be imposed ... in cases concerning offences in respect of which the law provides for custodial sentences for a period exceeding one year. In exceptional cases, where the court has gathered evidence that an accused committed the acts mentioned in Article 73 § 1, detention on remand may be imposed ... in cases concerning offences in respect of which the law provides for custodial sentences for a period of less than one year."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained under Article 3 of the Convention about the conditions of detention in the Remand Centre of the Ministry of Internal Affairs between 23 February 2003 and 1 April 2003. Article 3 reads as follows:

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

A. Submissions of the parties

35. The applicant argued that in view of the inadequacy of the sanitary conditions, ventilation, access to daylight, heating, opportunities for recreation and food, the conditions of detention in the remand centre amounted to inhuman and degrading treatment. He submitted that his allegations were confirmed by the CPT in its reports of 1998 and 2001 (see paragraphs 31 and 32 above).

36. Referring to their submissions on the facts, the Government considered that the conditions of detention did not amount to inhuman and degrading treatment. They submitted that the findings of the CPT in their 1998 and 2001 reports were not relevant because the situation had since improved. In particular, in the summer of 2002 the prison had been refurbished.

B. The Court's assessment

1. General Principles

37. 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).

38. 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, among other authorities, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

39. The Court has considered treatment to be "inhuman" when, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" when it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, for example, *Kudla v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). In considering whether a particular form of treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see, for example, *Raninen v. Finland*, judgment of 16 December 1997, *Reports of Judgments and Decisions*, 1997-VIII, pp. 2821-22, § 55, and *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

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, *Kudla v. Poland* cited above, § 94). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions and the duration of the detention (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II and *Kalashnikov v. Russia*, no. 47095/99, § 102, ECHR 2002-VI).

2. Application of the above principles in the present case

41. The applicant complains about the conditions in which he was detained between 23 February 2003 and 1 April 2003 in the Chişinău remand centre of the Ministry of Internal Affairs. The findings of the CPT, in particular in their 1998 and 2001 reports (see paragraphs 31 and 32 above), provide at least to some degree a reliable basis for the assessment of the conditions in which he was imprisoned (see, for another example of the Court's taking into account the reports of the CPT, *Kehayov v. Bulgaria*, no. 41035/98, § 66, 18 January 2005). While the Court does not discount that some improvements may have occurred, it notes that the Government have not shown that significant improvements have taken place. Moreover, they have not pointed to any increase in public funding of the prison system or changes in prison policy.

42. It appears from both the applicant's and the Government's submissions that the detainees were not provided with sufficient food. This is also consistent with the findings of the CPT (see paragraph 32 above).

43. The Court finds that the Government's submissions in respect of the issue of outdoor exercise are somewhat inconsistent. In their observations of September 2002 in another case concerning the conditions of detention at the same prison (*Duca v. Moldova*, 1579/02) but at a different time, the Government admitted that because of lack of space, the prisoners were not provided with the possibility of outdoor exercise. In their observations of September 2004 in the present case, the Government did not deny the applicant's allegations about the lack of outdoor exercise. However, in their final observations of June 2005 they submitted that the applicant enjoyed outdoor exercise for one hour per day, at any time of the day convenient to him (see paragraph 20 above). This was denied by the applicant.

44. Having regard to the above inconsistency and to the findings of the CPT (see paragraph 31 above) the Court concludes that the applicant was not provided with any outdoor exercise since there were no facilities to do so.

45. It is also to be noted that the Government did not contest the presence of metal shutters on the cell's window, which kept out natural light. This is also consistent with the findings of the CPT (see paragraph 31 above).

46. Nor did the Government deny the fact that the electric light was always kept on in the cell and that detainees were forced to sleep on wooden platforms without any bedclothes or mattress being provided.

47. Having regard to the harsh conditions in the cell, the lack of outdoor exercise, the inadequate provision of food and the fact that the applicant was detained in these conditions for thirty-seven days, the Court considers that the hardship he endured went beyond the unavoidable level inherent in detention and reached the threshold of severity contrary to Article 3 of the Convention.

48. The Court therefore finds that the conditions of detention of the applicant amounted to a violation of Article 3 of the Convention.

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

49. The applicant further complained that his detention on remand was not based on "relevant and sufficient" reasons. In particular he referred to the decisions of the domestic courts of 24 February 2003, 4 March 2003, 18 March 2003 and 21 March 2003.

50. The relevant part of Article 5 § 3 reads:

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

A. Submissions of the parties

51. The applicant submitted that the reasons invoked by the Government were different from those given by the domestic courts in their judgments and should therefore be disregarded. The courts did not give any reasons in support of their belief that he might flee or abscond or that he might influence the other participants in the proceedings. The only reasoned argument invoked by the courts was that he was suspected of having committed a serious offence. However, this reason was not enough to justify his detention.

52. The Government maintained that, contrary to the applicant's claim, the proceedings against him had been pending since 6 January 2003, not 2001. They submitted that the applicant's detention was necessary because he was suspected of having committed a serious offence; the facts surrounding the offence were not entirely clear and proved to be very complex; the applicant was suspected of having played a very important role and accordingly his possible flight was of serious concern; there was a possibility that the applicant possessed large sums of money abroad which would have facilitated his flight; the risk of flight was not minimised by his family ties in Chişinău. It was possible that there were reasons in favour of his detention which were not expressly invoked by the courts in their judgments in order not to prejudice the investigation.

B. The Court's assessment

1. General Principles

53. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient"

reasons to justify the continued detention (*Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 52).

54. Article 5 § 3 of the Convention cannot be seen as authorising pre-trial detention unconditionally provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (*Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004).

55. A further function of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision affords a party the possibility to appeal against it, as well as the possibility of having the decision reviewed by an appellate body. It is only by giving a reasoned decision that there can be public scrutiny of the administration of justice (*Suominen v. Finland*, no. 37801/97, § 37, 1 July 2003).

56. Arguments for and against release must not be "general and abstract" (see *Clooth v. Belgium*, judgment of 12 December 1991, Series A no. 225, § 44).

57. The Convention case-law has developed four basic acceptable reasons for detaining a person before judgment when that person is suspected of having committed an offence: the risk that the accused would fail to appear for trial (see *Stögmüller v. Austria*, judgment of 10 November 1969, Series A no. 9, § 15); the risk that the accused, if released, would take action to prejudice the administration of justice (see *Wemhoff*, cited above, § 14) or commit further offences (see *Matznetter v. Austria*, judgment of 10 November 1969, Series A no. 10, § 9) or cause public disorder (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 51).

58. The danger of an accused's absconding cannot be gauged solely on the basis of the severity of the sentence risked. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (*Yağcı and Sargın v. Turkey*, cited above, § 52). The risk of absconding has to be assessed in light of the factors relating to the person's character, his morals, home, occupation, assets, family ties and all kinds of links with the country in which he is prosecuted. The expectation of heavy sentence and the weight of evidence may be relevant but is not as such decisive and the possibility of obtaining guarantees may have to be used to offset any risk (*Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, § 10).

59. The danger of the accused's hindering the proper conduct of the proceedings cannot be relied upon *in abstracto*, it has to be supported by factual evidence (*Trzaska v. Poland*, no. 25792/94, § 65, 11 July 2000).

2. Application of the above principles in the present case

60. The Court notes that in the present case the judicial authorities relied on the serious nature of the offence with which the applicant had been

charged, the risk of his absconding and the need to ensure the proper conduct of the proceedings. They repeated those grounds in all their decisions about which the applicant complained.

61. It is noted that the applicant contested the grounds for his detention before the Moldovan courts. He referred to the fact that the proceedings had been pending since 2001 and that he had not obstructed in any way the investigation. He had travelled abroad on many occasions since the opening of the proceedings against him and had always come back and his conduct regarding the investigation had always been considered to be irreproachable. He had a family and many reputable persons, including the leader of a parliamentary opposition party and the Chişinău Municipal Council, were prepared to offer guarantees to secure his release in accordance with the provisions of the Code of Criminal Procedure. The applicant was also willing to give up his passport as an assurance that he would not leave the country.

62. The domestic courts gave no consideration to any of these arguments, apparently treating them as irrelevant to the question of the lawfulness of the applicant's remand. Nor did the courts make any record of the arguments presented by the applicant and limited themselves to repeating in their decisions, in an abstract and stereotyped way, the formal grounds for detention provided by law without any attempt to show how they applied to the applicant's case. Further, they did not give any assessment to such factors as the applicant's good character, his lack of criminal record, family ties and links (home, occupation, assets) with his country. Finally, they gave no consideration to the guarantees offered by third parties in the applicant's favour.

63. In their observations of September 2004 the Government made an attempt to justify the need for the applicant's detention by invoking new reasons which were not relied upon by the domestic courts (see paragraph 52 above). The Court reiterates that it is not its task to take the place of the national authorities who ruled on the applicant's detention. It falls to them to examine all the facts arguing for or against detention and to set them out in their decisions. Accordingly, the Government's new reasons, which were raised for the first time in the proceedings before the Court, cannot be taken into account by the Court (*Nikolov v. Bulgaria*, no. 38884/97, § 74 et seq., 30 January 2003).

64. In the light of the above, the Court considers that the reasons relied upon by the Centru District Court and by the Chişinău Regional Court, in their decisions concerning the applicant's detention on remand and its prolongation, were not "relevant and sufficient" and that, accordingly, there has been a violation of Article 5 § 3 of the Convention.

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

65. The applicant originally complained under Article 6 § 3 that the Chişinău Regional Court refused to hear his former investigator as a witness. The Court considered that it was more appropriate to examine this complaint under Article 5 § 4 which provides as follows:

> "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. Submissions of the parties

66. The applicant submitted that C.B.'s testimony was required in order to combat the prosecutor's arguments in favour of his detention. The testimony was not intended in any way to influence the examination of the merits of the case and it was relevant exclusively for the proceedings concerning the applicant's remand. Besides, had the Chişinău Regional Court considered that C.B.'s testimony was only relevant for the merits of the case, it should have stated so in its judgment. However, the refusal was not accompanied by any reasoning.

67. The Government submitted that the examination of the necessity to apply measures of detention on remand does not include an examination of the merits of the criminal case and of the evidence that relates to the merits of the case. The applicant had the possibility to request the hearing of any witness during the proceedings concerning the merits of the case and not during those regarding his detention on remand. Accordingly, the refusal to hear C.B. as a witness was perfectly legal. Moreover, in accordance with Article 73 of the Code of Criminal Procedure, the courts have to examine the gravity, *in abstracto,* of the incriminated facts, the personality of the accused, his or her occupation, age, state of health, family status and other circumstances but never declarations made by witnesses and other evidence.

B. The Court's assessment

1. General Principles

68. Article 5 § 4 guarantees no right, as such, to appeal against decisions ordering or extending detention as the above provision speaks of "proceedings" and not of "appeal". The intervention of one organ satisfies Article 5 § 4, on condition that the procedure followed has a judicial character and gives to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question (*Jecius v. Lithuania*, no. 34578/97, § 100, ECHR 2000-IX). Nevertheless, a State which sets up a second level of jurisdiction for the examination of applications for release from detention must in principle accord to the detainee the same guarantees on appeal as at first instance (*Toth v. Austria* judgment of 12 December 1991, Series A no. 224, p. 23, § 84).

69. Article 5 § 4 does not guarantee a right to judicial review of such breadth as to empower the court, on all aspects of the case including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which are essential for the "lawful" detention of a person according to Article 5 § 1 (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, § 127).

70. In a case of detention on remand, Article 5 § 1 (c) states that pre-trial detention can be justified only where there is a reasonable suspicion that the accused person has committed an offence. The persistence of the reasonable suspicion is a condition *sine qua non* for the lawfulness of the continued detention (*Labita v. Italy* [GC], no. 26772/95, §§ 152-53, ECHR 2000-IV). The competent court thus has to examine not only compliance with the procedural requirements set out in domestic law but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Schöps v. Germany*, no. 25116/94, § 44, ECHR 2001-I).

71. According to the Court's case-law, it follows from the wording of Article 6 – and particularly from the autonomous meaning to be given to the notion of "criminal charge" – that this provision has some application to pre-trial proceedings (see *Imbrioscia v. Switzerland*, judgment of 24 November 1993, Series A no. 275, § 36). It thus follows that, in view of the dramatic impact of deprivation of liberty on the fundamental rights of the person concerned, proceedings conducted under Article 5 § 4 of the Convention should in principle also meet, to the largest extent possible under the circumstances of an ongoing investigation, the basic requirements of a fair trial (see *Schöps v. Germany, cited above, idem).* A court examining an appeal against detention must thus provide guarantees of a judicial procedure. The proceedings must be adversarial and must always

ensure "equality of arms" between the parties, the prosecutor and the detained person (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II.

72. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, § 162). Moreover, where there is evidence which *prima facie* appears to have a material bearing on the issue of the continuing lawfulness of the 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*, cited above, §§ 130-131 and *Hussain v. the United Kingdom*, judgment of 21 February 1996, *Reports* 1996-I, § 60).

2. Application of the above principles in the present case

73. The Court considers that the procedural safeguards provided for in Article 5 § 4 apply to the proceedings which are the object of this complaint (see paragraph 68 above).

74. The Court further notes, and the Government does not dispute, that Colonel C.B. had worked as a member of the police group investigating the applicant's case, and had made very serious allegations to a newspaper to the effect that the charges against the applicant were groundless and sprang from political corruption. It is also undisputed that the Chişinău Regional Court refused to hear C.B. in its remand proceedings against the applicant without giving any reasons.

75. Although it is primarily for the national courts to assess the admissibility, relevance and weight of evidence in a case, the Court considers that Colonel C.B.'s statement raises issues, not only relating to the genuineness of the charges against the applicant, but also concerning his conduct during the investigation, which were *prima facie* relevant to the question whether a reasonable suspicion existed and that the applicant had committed a criminal offence and required to be detained on remand. In this respect it is emphasised that Colonel C.B. was not just an ordinary witness in the case, but a witness whose testimony had the potential to undermine the entire legal basis of the arrest and detention of the applicant. As a former member of the investigating team, the Colonel's allegations could not simply be dismissed as untrue and immaterial.

76. In the light of the above, and bearing in mind the length of the detention faced by the applicant (he was released from detention on remand more than three and a half months later), the Court considers that by refusing, without giving any explanation, to hear C.B. as a witness at the hearing of 25 April 2003, the Chişinău Regional Court breached the applicant's rights guaranteed by Article 5 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

78. The applicant claimed EUR 2,510 for pecuniary damage suffered as a result of his illegal detention. He claimed that this amount constituted the net salary which he was unable to earn due to his illegal detention between 24 February and 7 August 2003 and submitted a certificate from his employer, confirming his submissions.

79. The Government argued that the applicant was not entitled to any compensation for pecuniary damage in view of the fact that his criminal case was still pending before the domestic courts. They submitted that if the applicant were to be finally acquitted, then he would be able to claim compensation at national level.

80. The Court recalls that the rule of exhaustion of domestic remedies provided for by Article 35 § 1 of the Convention is not applicable in respect of just satisfaction claims made under Article 41 of the Convention (*De Wilde, Ooms and Versyp v. Belgium* (Article 50), judgment of 10 March 1972, Series A no. 14, §§ 15 and 16).

81. The Court considers that there is a certain causal link between the violation of Articles 5 § 3 and 5 § 4 of the Convention found and the sum claimed by the applicant to compensate for his loss of earnings (see *Český v. the Czech Republic*, no. 33644/96, § 91, 6 June 2000; *Nikolova v. Bulgaria (no. 2)*, no. 40896/98, § 94, 30 September 2004). Deciding on an equitable basis it awards the applicant EUR 1,000.

B. Non-Pecuniary Damage

82. The applicant claimed EUR 17,000 for non-pecuniary damage, of which EUR 5,000 for the breach of his right not to be detained in inhuman and degrading conditions, EUR 10,000 for unreasoned detention and EUR 2,000 for the refusal to hear C.B. as a witness during his remand proceedings.

83. The applicant submitted that the violations of his Convention rights caused him feelings of frustration, uncertainty and anxiety which could not be compensated solely by a finding of a violation.

84. The Government disagreed with the amount claimed by the applicant and argued that it was excessive. Referring to the applicant's claims in

respect of the violation of Article 3 of the Convention, the Government reiterated their position on the merits and claimed that the applicant's conditions of detention did not amount to inhuman and degrading treatment. As regards the applicant's claims in respect of the violation of Articles 5 §§ 3 and 4, the Government argued that a simple finding of a violation would constitute sufficient just satisfaction.

85. The Court considers that the applicant must have been caused a certain amount of stress and anxiety as a result of the violations of his right to liberty and security under Articles 5 § 3 and 5 § 4 of the Convention, the more so that the case was of a high-profile nature and was in the focus of the public and the media. His sufferings must have been considerably intensified by the harsh conditions of detention from the remand centre where he was detained.

Deciding on an equitable basis, it awards the applicant the total sum of EUR 4,000 for non-pecuniary damage.

C. Costs and expenses

86. The applicant also claimed EUR 2,165 for the costs and expenses incurred before the Court. In support of his claims the applicant sent the Court a copy of his contract with his lawyers and a copy of the timesheet showing the number of hours spent by each of his lawyers on the case and an hourly rate of EUR 60-65.

87. The Government did not agree with the amount claimed, stating that it was excessive. According to them, the amount claimed by the applicant was too high in the light of the average monthly wage in Moldova. The Government also contested the number of hours spent by the applicant's representatives on the case and stated that since they were members of the "Lawyers for Human Rights" organisation, they should have worked for free.

88. The Court recalls that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-...).

89. In the present case, regard being had to the itemised list submitted by the applicant, the above criteria and the complexity of the case, the Court awards the applicant EUR 1,200.

D. Default interest

90. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

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

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

3. *Holds* by six votes to 1 that there has been a violation of Article 5 § 4 of the Convention;

4. *Holds* unanimously
   (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 1,000 (one thousand euros) in respect of pecuniary damage; EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, and EUR 1,200 (one thousand two hundred euros) in respect of 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;

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

Done in English, and notified in writing on 4 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President

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

N.B.
M.O'B.

PARTLY DISSENTING OPINION OF JUDGE PAVLOVSCHI IN THE CASE OF BECCIEV AGAINST MOLDOVA

On 13 September 2005 the Fourth Section, having examined the case of Becciev against Moldova, found a violation of Article 3, Article 5 § 3 and Article 5 § 4 of the Convention.

I fully agree with my fellow judges as far as the violation of Article 3 and Article 5 § 3 is concerned.

At the same time, with all due respect to my learned colleagues, it is difficult for me to subscribe to their finding of a violation of Article 5 § 4 in the present case.

Let me express some reasons clarifying my position concerning the issue at stake.

First of all, and this is of critical importance so I therefore find it necessary to mention it, neither the applicant nor his representatives have ever alleged any violation under Article 5 § 4 of the Convention.

Let me reproduce directly the relevant part of their complaint.

On 15 May 2003 the applicant's representatives sent the Court a letter stating their intention to supplement their initial complaint introduced on 6 March 2003 with, *inter alia,* the following allegation, and I quote:

> "There was a violation of Mr. Becciev's rights provided for by Art. 6 paragraph 3 litera (d) of the Convention - the court refused to summon and hear the witness for the defence who could adduce the arguments in favour of the applicant's guiltlessness"

In the admissibility decision delivered on 5 April 2005 this part of the complaint was transformed into the following formula:

> "The applicant complains under Article 5 § 4 that the Chisinau Regional Court refused to hear his former investigator as a witness after the former gave an interview to a newspaper in which serious doubt was cast on the applicant's guilt."

The judgment contains a new formula, namely:

> "The applicant originally complained under Article 6 § 3 that the Chişinău Regional Court refused to hear his former investigator as a witness. The Court considered that it was more appropriate to examine this complaint under Article 5 § 4."

I am really grateful to my colleagues who have found it proper, at least in the judgment – unlike the admissibility decision – to make reference to the original complaint made by the applicant's lawyers. Nevertheless, it does not help me solve all my questions.

It is a well- known fact that the Court is the master of the characterisation to be given to the law and the facts adduced before it, but in each and every case – at least to the best of my knowledge – the Court, in deciding to depart from the characterisation attributed to the facts by an applicant, has given very convincing legal reasons.

I regret to say that this was not the case here. That being so, in the absence of any reasoning to the contrary, I consider that in this particular

case the point of departure should have been the complaint made by the applicant's lawyers. And this complaint should not have been changed without providing any plausible legal explanation.

The applicant has never complained about the impossibility of bringing proceedings concerning the verification of the lawfulness of his detention. But this issue is the crux of the matter covered by Article 5 § 4 of the Convention.

Article 5 § 4 provides:

> Everybody 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.

There is no doubt that the Moldavian legislation on criminal procedure creates all the conditions necessary for the practical and effective enforcement of this right. Moreover, as is clear from the description of the facts, the applicant has on different occasions made use of all the legal provisions stipulated in the Code of Criminal Procedure, entitling him to have the lawfulness of his detention scrutinised by the competent judicial authorities.

Coming back to the substance of the applicant's allegations, I must confess that I am beset by doubts when I try to analyse the applicant's arguments concerning the refusal of the court to question Colonel C.B. during a routine examination of the applicant's request for release. Colonel C.B., a former inspector, alleged in one of his interviews that the case against Becciev "was fabricated" and that "the file does not contain and has never contained any evidence that would prove Becciev's guilt".

As I have just mentioned, in his additional complaint lodged with this Court on 15 May 2003 the applicant argued that there had been a violation of Mr. Becciev's rights provided for in Article 6 § 3 (d) of the Convention, namely, that the court had refused to summon and hear the witness for the defence who could adduce arguments allegedly confirming the lack of the applicant's guilt.

The original complaint poses the question for me as to whether during a routine procedure verifying the "lawfulness and necessity" of the prolongation of detention, a court should also examine the question of "guilt" and call and examine witnesses for the defence, as the applicant claims. My answer to this question is no for the following reasons.

The problem of the existence or absence of guilt cannot be solved *in abstracto.* To answer the question of an accused's guilt, a court should hold a hearing in accordance with the standards of Article 6 of the Convention – and in conformity with the principles of an adversarial procedure – in order to hear all the witnesses, examine all material evidence submitted by all the parties, and take all other procedural measures provided for and guaranteed by law. To determine the issue of guilt at the stage of a routine control of

lawfulness of detention by questioning one sole witness is simply impossible.

In other words, solving the problem of "innocence" is impossible without answering the main, more global question as to whether an accused is guilty or not of having committed the offences with which he has been charged.

Examination of the question of "guilt" forms part of the examination of the merits of the case, and not of the judicial control of the lawfulness of detention.

If one takes the opposite approach, one should be conscious of the consequences and provide an answer to the following question: how many witnesses should it be permissible to examine on the issue of "guilt" during the stage of a routine judicial control of the lawfulness of detention? One? Two? Ten? A hundred? And if, as a result of all these examinations, a judge rules on the issue of "guilt", what will be the difference between a "judicial control of the lawfulness of detention" and an "examination of the merits of the case"?

The answer to this question is, in my view, self-evident – to allow the hearing of witnesses on the issue of "guilt" in the course of a judicial control of lawfulness of detention would run contrary to the proper administration of justice, influence the further examination of the merits of the case, and, moreover, render the examination of the merits absolutely meaningless.

On the other hand, the applicant, as is clear from his additional complaint, has not alleged the impossibility "of taking proceedings by which the lawfulness of his detention shall be decided", but invoked the impossibility of having evidence heard from a witness who could have cast doubt on the applicant's guilt.

I hardly think that the impossibility of having the existence of "guilt" determined can be regarded or treated as the impossibility "of taking proceedings concerning the lawfulness of detention"

On the other hand, I agree that the statements made by Colonel C.B. are extremely serious and deserved special attention on the part of the applicant's lawyers. And here again a question arises. Colonel C.B. cast doubts on the procedure initiating criminal proceedings against Becciev, declaring that the evidence had been fabricated.

I apologise for saying so, but for this type of situation there are other proceedings, provided by the Criminal Procedure Code, namely, reviewing the legality of initiating criminal proceedings. I am not going to describe here the whole criminal procedure that used to exist before a new code of criminal procedure entered into force, and which contained a sufficient range of safeguards and guarantees against the arbitrary initiation of criminal proceedings. I will concentrate on just some of those legal provisions, which were open both to the applicant and his lawyers in the present situation and could have helped the applicant to have his problem solved if properly applied.

Under Article 98 (1) of the Code of Criminal Procedure of Moldova the lawfulness of initiating criminal proceedings is supervised by the prosecutor. If criminal proceedings are initiated by a criminal investigator or by an investigative body without legal reasons or grounds, the prosecutor sets aside the decision made by the criminal investigator or investigative body and refuses to initiate criminal proceedings or orders the cessation of investigations if some investigative measures have already been taken.

If an accused does not agree with the decision made by the prosecutor he is entitled, in accordance with Articles 42, 193, 194 and 195 of the Code of Criminal Procedure, to complain about this decision to the hierarchically superior prosecutor. All complaints have to be examined within three days and a reasoned decision must be sent to the complainant.

Under Article 195-1 and Article 195-2 of the same Code, if a complaint lodged by an accused with a public prosecutor has been rejected by the latter, the accused is entitled to challenge prosecutor's decision before a court, which in turn is under an obligation to have this complaint examined within ten days.

If an accused or his representative has information about criminal acts committed by law-enforcement officers, they must denounce such acts to the competent authorities, which in turn must investigate all the allegations.

Let me make the following clear. The Criminal Code of Moldova provides for criminal responsibility for various unlawful acts that jeopardise the proper administration of justice, for instance Article 332 – Forgery of public deeds, Article 327 – Abuse of power or abuse of office, Article 306 – Malicious prosecution, Article 303 – Interference with the administration of justice and criminal prosecution, Article 308 – Illegal arrest or detention, etc.

So, in my view, the Moldavian legislator has created all the necessary possibilities for citizens to have their rights protected against criminal forms of conducting investigations. Both Mr. Becciev and his lawyers were free to use the above-mentioned legal provisions to stop the alleged violation of his rights during initiation of the proceedings or the continuation of them.

It remains unclear from the case whether the applicant used the above-described procedure, which was in place at the material time, and if not, why.

To sum up, I find Article 5 § 4 of the Convention inapplicable to the present situation for two main reasons:

1. The applicant has never complained about the impossibility "of taking proceedings by which the lawfulness of his detention shall be decided"; instead, he complained of the lack of possibility of having his guiltlessness proved.

2. Determination of "guilt" forms part of the examination of the merits of the case and not of "the proceedings by which the lawfulness of his detention shall be decided".

Therefore, my conclusion is that there has been no violation of Article 5 § 4 of the Convention in the present case and this is where I respectfully disagree with the majority.