



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

FOURTH SECTION

CASE OF IGNATENCO v. MOLDOVA

(Application no. 36988/07)

JUDGMENT

STRASBOURG

8 February 2011

FINAL

08/05/2011

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

In the case of Ignatenco v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 36988/07) 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 Oleg Ignatenco (“the applicant”), on 17 August 2007.

2. The applicant was represented by Mr V. Nicoară and Mr I. Tofan, lawyers practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant complained about his detention on remand and of various alleged violations in that connection: a violation of Article 5 § 1 (unlawful arrest and detention); a violation of Article 5 § 3 (insufficient reasons given by the courts for his detention on remand); and a violation of Article 5 § 4 of the Convention (lack of access to part of the criminal file).

4. On 13 May 2008, the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was a security guard who was born in 1969 and lived in Bălţi.

A. Background to the case

6. The applicant, together with Messrs Nicolae Ninescu and Anatolie Tripăduş who have also lodged applications with the Court, was involved in a series of complex commercial arrangements concerning the building of eighteen blocks of flats in Chişinău by a construction company (“the company”).

7. On 29 March 2004 S.F. and L.B. created the above-mentioned company with a capital of 5,400 Moldovan lei (MDL). Each of the parties was the holder of 50% of the company's shares. On 17 December 2004 L.B. sold 10% of her shares to S.F. and on 11 February 2005 the remaining 40% of her shares were sold to F.M., a German national. The relevant documents were registered by the State Registration Chamber.

8. On 14 February 2006 Mr Nicolae Ninescu, on behalf of F.M., brought an action against S.F., seeking the exclusion of the latter from the company on the ground that S.F. had not paid his part of the shares since 29 March 2004.

9. On 15 March 2006 the Bălţi District Court upheld F.M.'s action and ordered the exclusion of S.F. from the company. F.M. thus became the sole shareholder. On 31 March 2006 the judgment became final and enforceable. The court issued an enforcement warrant and on the same date the State Registration Chamber registered the changes in the company's statutory documents.

10. On 2 April 2006 F.M. sold 10% of his shares to the applicant and 70% of his shares to V.S., who in turn sold them to three other persons, who were represented by the applicant in these transactions.

11. On 3 April 2006 the Bălţi Territorial Office of the State Registration Chamber added 3,024,000 euros (EUR) to the company's capital. This corresponded to the value of the project documentation for the construction site which had been estimated at EUR 3,024,358.80 in an audit report dated 9 December 2005.

12. Later in 2006, on an unspecified date, S.F. appealed against the judgment of 15 March 2006. He asked the Bălţi Court of Appeal to strike the case out of its list on the grounds that Mr Nicolae Ninescu did not have the powers to bring an action on behalf of F.M. The Court of Appeal examined the appeal despite the fact that the appealed decision was final, since it found that the merits of the case had been examined by the Bălţi District Court in F.S.' absence, who had not been legally summoned to that hearing. On 30 May 2006 the Bălţi Court of Appeal dismissed the appeal and rejected the request to strike the case out of its list of cases. S.F. lodged an appeal on points of law.

13. On 11 July 2006 the Supreme Court of Justice upheld the appeal on points of law. It quashed the judgment of the Bălţi District Court of

15 March 2006 and the Bălți Court of Appeal's decision of 30 May 2006 and ordered that the case be remitted to the first-instance court.

14. On 2 August 2006 the Chișinău Court of Appeal joined F.M.'s action to a counter action filed by S.F. against F.M. and the State Registration Chamber, seeking the annulment of all documents which had led to his exclusion from the founding members of the company and for an acknowledgement of his sole ownership of the company's shares.

15. By a final judgment of 19 October 2006 the Supreme Court dismissed F.M.'s action and upheld in full the action lodged by S.F.

B. Opening of the criminal investigation

16. Meanwhile, on 16 May 2006, the Prosecutor General's Office ordered the opening of a criminal investigation into the alleged forgery of the power of attorney whereby the applicant had represented the above-mentioned three individuals (see paragraph 10 above). A criminal investigation was also opened in relation to the alleged smuggling of the project documentation for the construction site, since it had not been drafted in Moldova and had to be registered with the customs when introduced into Moldova. The investigation revealed that the project documentation had been brought into Moldova by the applicant on 27 February 2006. It further appeared that the applicant had declared the value of the project documentation as being MDL 19,665 whereas it had been estimated at EUR 3,024,358.80 (see paragraph 11 above).

17. On 26 May 2006 S.F. filed a criminal complaint with the Prosecutor General's Office about having been excluded from the founders of the company and about being illegally dispossessed of his shares.

18. On the same date, the Buiucani police office opened a criminal investigation against Mr Nicolae Ninescu into the alleged misappropriation of S.F.'s assets.

19. On 9 June 2006 an officer of the Centre for Fighting Economic Crimes and Corruption ("CFECC") ordered the opening of a criminal investigation into the allegations made by S.F. The CFECC only relied on S.F.'s allegations that following the judgment of the Bălți District Court of 15 March 2006 S.F. had been excluded from the founders of the company and that F.M. had subsequently sold the company's shares to third parties, including the applicant.

20. On 26 June 2006 both criminal investigations instituted against Mr Nicolae Ninescu were joined.

21. On 17 July 2006 the criminal investigation started by the Prosecutor General's office on 16 May 2006 into the acts of smuggling and forgery was joined to the criminal investigation started by the CFECC on 9 June 2006.

22. On 8 August 2006 all the above-mentioned criminal investigations were joined in a single criminal investigation.

23. On 18 December 2006 an expert report commissioned by the CFECC concluded that it could not firmly establish whether the power of attorney whereby the applicant had represented the above-mentioned three individuals (see paragraph 10 above) had properly been signed by the director of the company or whether the signature had been forged.

24. On 3 May 2007 an investigating judge of the Buiucani District Court granted the CFECC's application for a search warrant to search the applicant's domicile in Bălți. The search was conducted on 4 May 2007.

C. The applicant's arrest and initial detention

25. On 19 June 2007, at 12.15 p.m., the applicant was arrested and placed in the remand centre of the CFECC.

26. On 22 June 2007, at 8.55 a.m., the prosecutor applied to the Buiucani District Court for an arrest warrant for the applicant. The application recorded that the applicant lived in Bălți. It further noted that on 31 March 2006 F.M. had asked the State Registration Chamber urgently to enforce the judgment of 15 March 2006, i.e. as soon as it had become final and enforceable. This request had been made without notice to S.F. and, in the prosecutor's view, in order to erase all evidence of an offence. Relying on "investigative information" (*măsurî operative-investigative*) that the applicant, together with F.M. and Mr Nicolae Ninescu, had executed the orders of Mr Anatolie Tripăduş against S.F., the prosecutor alleged that the applicant had committed the offence of misappropriation of another's property. The prosecutor's application did not refer to any other evidence in support of a reasonable suspicion that the applicant had committed the offence. Nor did it refer to any reasons for his detention or that he might abscond or put pressure on witnesses.

27. Later on the same day, at 2.40 p.m., the applicant's lawyer lodged an application for the applicant's release on the ground that the period of his detention had ended at 12.15 p.m. earlier that day.

28. At 4 p.m., however, an investigating judge of the Buiucani District Court ordered the applicant's remand for a period of 10 days. The judge gave the following reasons for the applicant's detention:

"[the court] takes into consideration the character and the degree of the alleged offence ... its seriousness, the necessity to protect public order, the sense of shock which may be caused to society by the applicant's release, ... the existence of a danger of absconding from law enforcement authorities, the risk of influencing the outcome of the investigation and collusion between the accused and the creation of exculpatory evidence, which result from the nature of the offence ... and the personality of the accused and his conduct during the criminal proceedings.

... the court dismisses the argument that the applicant had to be released after 72 hours ... because the delay in the opening of the hearing was due to the examination of other remand warrants and the delay in examining the prosecutor's

request was due to the courts' efforts to observe the procedural rights of the defence party.

... at this stage, the court considers that the relevance of the prosecution's reasoning has priority and will contribute to the normal conduct of the criminal proceedings.

...

The court orders the prosecutor to ensure ... the applicant's proper medical care.”

29. The applicant appealed on 25 June 2007. The applicant did not, however, complain in his written submissions about the delay in releasing him on 22 June 2007.

30. On 26 June 2007 the police informed the CFECC that the applicant had not been living at his given address in Bălți for four years.

31. On 28 June 2007, at 9.30 a.m., the applicant was officially indicted on charges of misappropriation of another's property and forgery. The indictment stated that S.F.'s 60% shares in the company were worth MDL 20,165,034 (EUR 1,327,083) on 1 January 2006.

32. On the same day, at 10 a.m., the Chișinău Court of Appeal examined the appeal against the decision of 22 June 2007 and dismissed the applicant's appeal. It did not consider the applicant's arguments about the lack of a reasonable suspicion against him or deal with other submissions in favour of release. However, the court endorsed the reasons given by the investigating judge of the Buiucani District Court for remanding the applicant in custody and stated that he could abscond through the uncontrolled territory of Transdnistria.

D. The remand proceedings

33. Still on 28 June 2007, at 10.40 a.m., the prosecutor applied to the Buiucani District Court for an extension of the applicant's detention for another 30 days. The grounds for the extension were similar to those relied upon in the initial application for a remand warrant. It further stated that the identity of all the persons who could have been aware of the offence were unknown. An investigating judge of the Buiucani District Court ordered the extension of the applicant's detention for another 20 days for the reasons given by the prosecution later on that day. Relying on Article 186 § 3 of the Code of Criminal Procedure (“the CCP”) the judge further stated that in exceptional circumstances, depending on the complexity of the case, the severity of the offence and the risk of the applicant's absconding, the detention could be prolonged. He further noted that the criminal investigation was still ongoing and that several other measures had to be taken in order to complete it. The judge however did not consider any of the arguments put forward by one of the applicant's lawyers that the applicant's wife was eight months' pregnant, that he would not abscond and that he did not intend to influence witnesses. The applicant appealed.

34. On 10 July 2007 the Chişinău Court of Appeal rejected the appeal lodged against the decision of 28 June 2007 and found that the investigating judge of the Buiucani District Court had observed the correct procedure. It did not adduce any new reasons for the applicant's detention.

35. On 12 July 2007 the applicant's lawyer made a fresh *habeas corpus* application, submitting that there was no reason for the applicant's further detention on remand. He stated that there was no risk of collusion between the accused or of influencing witnesses, since the criminal proceedings had been instituted on 9 June 2006 and during that period the prosecution had done enough to obtain evidence.

36. On 16 July 2007 the prosecutor filed a new application with the Buiucani District Court for the prolongation of the applicant's detention for an additional 30 days. The prosecutor also relied on the risk that the applicant would forge identity papers and documents in order to hinder the investigation and that the identity of all the persons who could have been aware of the offence was unknown.

37. On 18 July 2007 an investigating judge of the Buiucani District Court upheld the prosecutor's request and relying on Article 186 § 3 of the CCP prolonged the applicant's detention for 20 days. The investigating judge endorsed the reasons given by the prosecutor in favour of the applicant's further detention. As to the *habeas corpus* application, the investigating judge found that the reasons put forward by the prosecution for extending the applicant's detention outweighed the reasons put forward by the defence. Again, the applicant's lawyer's argument that his wife was pregnant and that therefore he was unlikely to abscond was ignored. Similarly, the investigating judge did not heed the argument that the applicant was willing to give up his passport as an assurance that he would not leave the country. The applicant appealed.

38. On 25 July 2007 the Chişinău Court of Appeal dismissed the appeal without adducing any new reasons. It noted however that the identity of the persons who could have been aware of the offence were unknown.

39. On 7 August 2007 an investigating judge of the Buiucani District Court upheld a new request of the prosecution for a prolongation of the applicant's detention and ordered a further 20 days' detention. In particular, the investigating judge dismissed the argument that the applicant's wife was pregnant on the ground that she was on maternity leave and that there was no evidence that she required any assistance or medical treatment. The applicant appealed, invoking again his wife's poor health. On 9 August 2007 the Chişinău Court of Appeal dismissed the appeal. Neither the prosecution nor the courts adduced new reasons for the applicant's further detention.

40. On 17 August 2007 the investigation ended and the criminal file was referred to the Buiucani District Court.

41. On 22 August 2007 the prosecutor applied for a further extension of the applicant's detention for 90 days on the ground that the applicant would hinder the proceedings before the court and would commit other offences.

42. On 28 August 2007, at 4 p.m., the Buiucani District Court upheld the prosecutor's request in full without relying on any new reasons for the applicant's further detention. It did not examine the applicant's contention that the prosecutor had failed to submit any evidence to substantiate his request.

43. The applicant appealed and argued that the decision had been issued at 4 p.m., after the expiry of the previous remand warrant at 12.15 p.m. Relying on *Boicenco v. Moldova* (no. 41088/05), *Șarban v. Moldova* (no. 3456/05) and *Becciev v. Moldova* (no. 9190/03) he argued that the domestic courts had failed to provide relevant and sufficient reasons for his detention.

44. On 30 August 2007 the applicant's lawyer was given the annex with the prosecution's list of evidence. It included, *inter alia*, addresses of witnesses, copies of documents related to the company and the construction site, verbatim records of the examination of compact discs with recordings of telephone conversations of A.T. with other co-accused and minutes of searches.

45. On 10 September 2007 the Chișinău Court of Appeal dismissed the appeal. Besides the reasons outlined in the prosecutor's request, the court stated that although a search had been conducted of the applicant's domicile, there was no proof that he had been permanently residing there. The applicant's application for release was considered as an attempt to influence the investigation. As to the applicant's detention after 12.15 p.m. on 28 August 2007, the court found that he had been lawfully detained, since the hearing had been opened at 10 a.m. that day. Finally, the court stated:

“Moreover, [the applicant's] intention to undermine the normal conduct of the proceedings ... is highlighted by the fact that constant reference is made to cases examined by the European Court of Human Rights, and which are not related to the present case. Those cases are totally different from the present case and therefore the declarations are designed to indirectly influence the courts to release the applicant.”

46. On 17 September 2007 the applicant's lawyer made a fresh *habeas corpus* request, submitting that there was no reason for his further detention on remand. On the same date the Buiucani District Court dismissed it without providing any relevant reasons.

47. On the same day, the Buiucani District Court ordered an official medical examination of the state of health of Mr Anatolie Tripăduș, who was one of the applicant's co-accused in the criminal proceedings. The court also suspended the criminal proceedings pending the medical examination and the delivery of a report.

48. On 23 November 2007, without resuming the suspended proceedings, the Buiucani District Court upheld a fresh request of the

prosecution for a prolongation of the applicant's detention and ordered a further 30 days' detention. It also dismissed a new *habeas corpus* request made by the applicant. On 4 December 2007 the Chişinău Court of Appeal dismissed the appeal. Neither the prosecutor nor the courts adduced new reasons for the applicant's further detention.

E. Subsequent proceedings

49. On 14 December 2007 the Buiucani District Court resumed the criminal proceedings which had been suspended on 17 September 2007 and the prosecutor requested a further prolongation of detention for 90 days.

50. On 20 December 2007, the Buiucani District Court ordered the extension of the applicant's detention for 60 days. The applicant appealed.

51. On 29 December 2007, the Chişinău Court of Appeal quashed the extension order. In particular, the Court of Appeal stated that the applicant had his permanent residence in Chişinău, that there was no risk that he would abscond or that he would undermine the conduct of the criminal proceedings by influencing witnesses. However, the Court of Appeal prohibited the applicant from leaving the city for 60 days.

52. On 6 March 2008 the Buiucani District Court granted the prosecutor's request that one of applicant's co-accused be examined by a doctor. Accordingly, the criminal proceedings were suspended.

II. RELEVANT DOMESTIC LAW

53. The relevant domestic law has been set out in *Şarban v. Moldova* (no. 3456/05, §§ 51-56, 4 October 2005) and *Muşuc v. Moldova* (no. 42440/06, § 22, 6 November 2007).

54. In addition, the relevant provisions of the Code of Criminal Procedure ('the CPP') read as follows:

Article 165: Arrest and police custody

“(1) A person may be arrested and taken into police custody for a short period of time not exceeding 72 hours and under the conditions established by law.

(2) The following persons may be arrested and taken into police custody:

a) persons suspected of having committed a criminal offence punishable by a sentence of imprisonment of over 1 year...”

Article 166: Grounds for arresting and taking into police custody a person suspected of having committed a criminal offence

“(1) The criminal investigation body shall be entitled to arrest and take into custody a person suspected of having committed a crime for which the law prescribes a punishment of deprivation of liberty of over a year, only in the following cases:

1) when he or she has been caught in the act;

2) if the eye witness, including the injured party, indicates that the person has committed the crime;

3) if obvious traces of the crime are discovered on his body or clothes, or in his home or vehicle;

(2) If a person is suspected of having committed a crime in other circumstances, the person can be arrested and taken into custody only if he or she tried to abscond; or if he or she does not have a permanent residence; or if his or her identity could not be established.

...

(5) The arrest and detention in police custody of a person in accordance with the present article shall not exceed 72 hours from the moment of his deprivation of liberty.

...

(7) A person who has been detained under this article shall be brought promptly, and before the expiry of the 72-hour period, before the investigating judge, who will decide whether he or she should be remanded in custody or, if appropriate, whether he or she should be released. The application for pre-trial detention of such a person must be lodged by the prosecution at least three hours before the expiry of the 72-hour detention period.”

Article 174: Release of persons arrested and detained in police custody

“(1) A person who has been arrested and detained in police custody shall be released in the following circumstances:

- 1) the suspicion that the person has committed a crime is not confirmed;
- 2) there are no grounds for his or her continued deprivation of liberty;
- 3) the criminal investigation body establishes that the person was arrested and detained in police custody in flagrant breach of the law;
- 4) the 72-hour detention period has expired;
- 5) the 72-hour detention period has expired and the court has not authorised the person's arrest...”

Article 287/2: Actions of the criminal investigating body following the suspension of criminal investigation

“...

(3) Any criminal investigation action shall not be allowed after the suspension of the criminal investigation.”

Article 307: Examination of applications for the pre-trial detention or house arrest of suspects

“...

(2) The application for pre-trial detention or house arrest shall be examined without delay by the investigating judge in a closed hearing with the participation of the representative of the criminal prosecution, counsel for the defence and the suspect. In presenting his application in court, the representative of the criminal prosecution shall

ensure the participation of the suspect at the court hearing; he shall notify counsel for the defence and the suspect's legal representative of the hearing. If defence counsel so notified does not appear at the hearing, the investigating judge shall ensure that an *ex officio* counsel is appointed to defend the interests of the suspect..."

Article 330: Suspension and re-opening of the court hearing

"(1) The court shall suspend the proceedings if an accused suffers a serious illness which prevents his participation at the hearing. The court shall issue a decision to suspend or to resume the proceedings.

(2) If there are several co-accused and one of them is seriously ill, the court shall suspend the proceedings only in respect of the latter, but will continue the proceedings in respect of the others. The lawyer of the accused, in respect of whom the proceedings have been suspended, shall attend with his clients the proceedings in respect of the other co-accused, if the offence had been committed by participation."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 § 1 OF THE CONVENTION

55. The applicant complained under Article 5 § 1 that his arrest and detention had not been based on a reasonable suspicion that he had committed an offence. He further complained that his detention on 22 June 2007 between 12.15 p.m. and 4 p.m. after the expiry of the 72 hours' period of detention without a warrant as required by the Constitution should also be considered unlawful. He further alleged that he had been unlawfully detained since 22 June 2007 as his status as a suspect had ceased on that date, whereas the indictment had been filed on 28 June 2008. He further maintained that his detention had been unlawfully prolonged since between 17 September and 14 December 2007 the proceedings had been suspended and during that period the courts could not adopt any decision in his respect. The relevant part of Article 5 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. The complaint about the lack of reasonable suspicion

56. The Government noted that the applicant had not complained about his arrest and initial 72 hours' detention before the domestic courts but only about pre-trial detention after the permitted 72 hours had expired.

57. The applicant disagreed and argued that he had complained about the lack of reasonable suspicion for his arrest and detention in relation to the whole remand proceedings. He argued that the period between 19 and 28 June 2007 should be considered as a whole, in light of the fact that this period was covered by the investigating judge's detention order of 22 June 2007.

58. In so far as the Government appear to raise a preliminary objection that the applicant failed to exhaust domestic remedies, the Court notes that it is not required to rule on this point as this part of the applicant's application is in any event manifestly ill-founded for the following reasons.

59. The Court recalls that a "reasonable suspicion" that a criminal offence has been committed presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed an offence (*Erdagöz v. Turkey*, 22 October 1997, § 51, *Reports of Judgments and Decisions* 1997-VI; *Fox, Campbell and Hartley v. the United Kingdom* judgment of 30 August 1990, Series A no. 182, pp. 16-17, § 32). However, what may be regarded as "reasonable" will depend upon all the circumstances of the particular case (see *Fox, Campbell and Hartley*, cited above, § 32). The Court further reiterates that facts which raise a suspicion need not be of the same level as those necessary to justify a conviction, or even the bringing of a charge which comes at the next stage of the process of criminal investigation (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, p. 29, § 53, and *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27, § 55).

60. Turning to the facts of the present case, the Court notes that the applicant was arrested on the basis of "investigative information" that the applicant, F.M. and Messrs Nicolae Ninescu and Anatolie Tripăduş had executed the orders of the latter against S.F. The Court further notes that this "investigative information" was corroborated by S.F.'s criminal complaint, which would have been sufficient of itself to justify the applicant's arrest under national law. In this connection, the Court recalls that in *Labita v. Italy* [GC], no. 26772/95, § 59, ECHR 2000-IV, it recognised that a suspect may validly be detained at the beginning of proceedings on the basis of statements made by an informer (*pentiti*). Similarly, the Court found in *O'Hara v. the United Kingdom*, no. 37555/97, ECHR 2001-X that information passed on at a police briefing by informers who identified the applicant as one of a number of persons suspected of involvement in a specific terrorist event was sufficient to raise a reasonable

suspicion that the applicant had committed a criminal offence. The Court therefore considers that there was sufficiently specific information in the present case to raise a reasonable suspicion that the applicant had committed an offence. Accordingly, this part of the applicant's application must be declared inadmissible as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

B. The complaint about unlawful detention between 12.15 p.m. and 4 p.m. on 22 June 2007

1. Admissibility

61. The Government submitted that the applicant had failed to exhaust the available domestic remedies in respect of the complaint that the applicant had been unlawfully detained between 12.15 p.m. and 4 p.m. on 22 June 2007.

62. The applicant disagreed and argued that he had raised this complaint in writing before the investigating judge and then in his oral submissions before the Court of Appeal. He further pointed to an application made by his lawyers before the investigating judge in relation to his detention after the expiry of the permitted 72 hours and which had been included in the case file before the Court of Appeal.

63. The Court has taken cognisance of the application contained in the case file before the Court of Appeal and is therefore prepared to accept the applicant's submission that his complaint was raised before the domestic courts. He has therefore exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention.

64. The Court further considers that the applicants' complaint under Article 5 § 1 of the Convention raises complex issues of law and fact, the determination of which should depend on an examination of the merits. This part of the application is therefore not manifestly ill-founded or inadmissible on any other ground. It must therefore be declared admissible.

2. Merits

(a) Arguments of the parties

65. The applicant argued that Article 5 of the Convention protected individuals against arbitrary detention by the State. In the present case, the applicant had been detained without a warrant past the 72-hour period of detention on remand permitted under national law. A warrant had only been issued at 4 p.m. Therefore, the applicant's detention between 12.15 p.m. and 4 p.m. had been unlawful and arbitrary. Indeed, according to Moldovan Criminal Procedure Code, the applicant should have been released immediately upon the expiry of the 72-hour period. Moreover, the heavy

caseload of the investigating judge on the day was not a relevant and sufficient excuse for the applicant's arbitrary detention between 12.15 p.m. and 4 p.m.

66. The Government contested that argument. They pointed out that the transcript of the hearing of 22 June 2007 made it clear that the hearing to examine the prosecution's request to remand the applicant in custody had started at 12.45 p.m. in the applicant's presence. According to the same record, the hearing had been interrupted between 12.45 p.m. and 2.30 p.m. to enable the applicant's lawyer to examine the criminal case file. The hearing had ended at 4.05 p.m. As for the 30 minutes between 12.15 p.m. and 12.45 p.m., the Government submitted that the prosecution had filed their request for the applicant's pre-trial detention at 8.55 a.m., i.e. in good time. However, it had been impossible to hold the hearing earlier than 12.45 p.m. as the investigating judge in charge of hearing the case was hearing the pre-trial detention requests of the applicant's co-accused in the morning. In this respect, the Government pointed out that the applicant's co-defendants were also represented by the applicant's lawyer, so he would not in any event have been available to represent the applicant earlier.

(b) The Court's assessment

67. The Court recalls that it has accepted on a number of occasions that some delay in implementing a decision to release a detainee is understandable and often inevitable in view of practical considerations relating to the running of the courts and the observance of particular formalities (*Quinn v. France*, judgment of 22 March 1995, Series A no. 311, p. 17, § 42; *Giulia Manzoni v. Italy*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1191, § 25 *in fine*; and *Mancini v. Italy*, no. 44955/98, § 24, ECHR 2001-IX). However, this was in cases where the period of detention was not laid down by statute but ended as a result of a court order. The Court has been stricter in cases where the authorities were under a statutory requirement to release the applicant after a fixed period of time as in the present case. The Court thus found in *K.-F. v. Germany* (judgment of 27 November 1997, *Reports* 1997-VII, p. 2675, § 71) that a delay of 45 minutes in releasing an applicant, when the statutory maximum period of detention was twelve hours, was in breach of Article 5 of the Convention. The Court held that since the maximum period of detention was known in advance, the authorities responsible for the detention were under a duty to take all necessary precautions to ensure that the permitted duration was not exceeded.

68. In the present case, the Court notes that the statutory maximum period of detention was 72 hours. As the applicant had been arrested at 12.15 p.m. on 19 June 2007, he should have been released before 12.15 p.m. three days later, i.e. on 22 June 2007. As the investigating judge did not order the applicant's detention before 4 p.m., the applicant's detention had

no legal basis between 12.15 p.m. and 4 p.m. The Court notes however that the prosecution lodged their request to remand the applicant in custody within the required time-limit. The Court further observes that the applicant was required to attend, and attended, the remand hearing from 12.45 p.m. until 4 p.m. before the investigating judge. The applicant was therefore only materially affected by the delay in release between 12.15 p.m. and 12.45 p.m., i.e. 30 minutes. In these circumstances, where the application for an extension had been lodged within the relevant time-limit, the hearing was imminent and there was only a short delay during which the detention had no legal basis, the Court considers that the present case can be distinguished from *K.-F. v. Germany*, cited above. In light of the above considerations, the Court considers there has been no violation of Article 5 § 1 of the Convention.

C. The complaint concerning the lawfulness of detention between 22 and 28 June 2007

69. The applicant alleged that he had been unlawfully detained since 22 June 2007 as his status as a suspect had ceased on that date, whereas the indictment had been filed on 28 June 2007.

70. The Court reiterates that a period of detention is, in principle, lawful within the meaning of Article 5 § 1(c) if it is based on a court order (*Mooren v. Germany* [GC], no. 11364/03, § 74, ECHR 2009-). The Court notes that in the present case, the applicant's detention was ordered on 22 June on reasonable suspicion that he had committed an offence. The order was therefore valid and formed the basis of the applicant's detention for the period between 22 and 28 June 2007. The fact that the bill of indictment was lodged only on 28 June 2007 is irrelevant to the question of the lawfulness of detention for the above-mentioned period of detention. Accordingly, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

D. The complaint about unlawful detention whilst the proceedings were suspended

71. The Court notes that the applicant relied on Article 287/2 read together with Article 330 of the Moldovan CCP in support of his complaint that his detention had been unlawfully prolonged between 17 September and 14 December 2007 whilst the proceedings were suspended. However, the Court observes that Article 287/2 does not deal with the suspension of criminal proceedings as in the applicant's case, but rather with the suspension of the criminal investigation. Similarly, Article 330 does not address the issue of the lawfulness of detention. The applicant's complaint is

therefore manifestly ill-founded and must accordingly be declared inadmissible under Article 35 §§ 3 and 4 of the Convention.

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

72. The applicant further complained about the lack of relevant and sufficient reasons given by the domestic courts ordering his detention and subsequent extensions under Article 5 §§ 1 and 3 of the Convention. The relevant part of Article 5 § 3 provides as follows:

“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

73. The Court considers that the applicant's complaint under Article 5 §§ 1 and 3 of the Convention is better examined solely under Article 5 § 3 of the Convention. The Court further considers that this complaint raises complex issues of law and fact, the determination of which should depend on an examination of the merits. It concludes, therefore, that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground of inadmissibility has been raised and it must be declared admissible.

B. Merits

1. Arguments of the parties

74. The applicant complained that the decisions ordering his pre-trial detention and extending it as well as the decisions on his *habeas corpus* requests, were not based on relevant and sufficient reasons. In this respect, he argued that the circumstances of the present case were identical to those of *Sarban v. Moldova*, no. 3456/05, 4 October 2005; *Becciev v. Moldova*, no. 9190/03, 4 October 2005; *Boicenco v. Moldova*, no. 41088/05, 11 July 2006; and *Musuc v. Moldova*, no. 42440/06, 6 November 2007, where the Court had found a violation of Article 5 § 3. In particular, the applicant averred that the domestic courts had merely reproduced the relevant provisions of the Criminal Code. The applicant further complained that the courts had ignored his argument that his wife was pregnant, which according to him argued in favour of his release. The applicant further 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.

75. The Government argued that the domestic courts gave sufficiently detailed reasons for their decisions. In particular, the Government claimed that the courts based their decisions on the evidence in the criminal file, including the CFECC's resolution to initiate a criminal investigation into S.F.'s allegations and the record of the applicant's arrest and detention in the CFECC's detention facility. The Government maintained that the domestic courts had also found it relevant that the applicant had been charged with extremely serious offences carrying up to 25 years' imprisonment; that the alleged offences involved a number of co-accused; that there were reasons to believe that the applicant had forged documents in relation to the said offence; there was a risk that he would pervert the course of justice and commit a new offence by forging new documents; and that the applicant had allegedly lied about his place of residence. In this regard, there was a risk of his absconding to Transdnestria which was not under the effective control of the Moldovan authorities.

2. The Court's assessment

(a) General principles

76. The Court recalls that under the second limb of Article 5 § 3, a person charged with an offence must always be released pending trial unless the State is able to show that there are “relevant and sufficient” reasons justifying his continuing detention (*Yağcı and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 52). 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 of time. 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; *Castravet v. Moldova*, no. 23393/05, § 33, 13 March 2007).

77. A further function of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision gives 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).

78. While Article 5 of the Convention does not impose an obligation on a judge examining an appeal against detention to address every argument contained in the appellant's submissions, its guarantees would be deprived of their substance if the judge, relying on domestic law and practice, could treat as irrelevant, or disregard, concrete facts invoked by the detainee which would be capable of casting doubt on the “lawfulness” of the deprivation of liberty (*Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II). In this respect, arguments for and against release must not be general and abstract (*Smirnova v. Russia*, nos. 46133/99 and 48183/99,

§ 63, ECHR 2003-IX (extracts); *Boicenco v. Moldova*, no. 41088/05, § 142, 11 July 2006) but contain references to the specific facts and the applicant's personal circumstances justifying his detention (*Aleksanyan v. Russia*, no. 46468/06, § 179, 22 December 2008).

79. The Court has identified four basic grounds upon which pre-trial detention may be justified: the danger of absconding (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).

80. As regards the danger of absconding, the Court has held that it cannot be assessed solely on the basis of the severity of the sentence that the accused may expect if convicted. In particular, 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 (*Becciev v. Moldova*, no. 9190/03, § 58, 4 October 2005).

81. As for the danger that the accused may hinder the proper conduct of the proceedings, it is not a ground of detention which can be relied upon *in abstracto*, it has to be supported by factual evidence (*Trzaska v. Poland*, no. 25792/94, § 65, 11 July 2000).

(b) Application of the abovementioned principles in the present case

82. The Court notes at the outset that the reasons relied upon by the domestic courts in their decisions to remand the applicant in custody and to prolong his detention were, for the most part, limited to paraphrasing the reasons for detention provided for by the Code of Criminal Procedure without explaining how they applied in the applicant's case (see paragraphs 29, 33-35, 38-40, 43, 47 and 49 above). The Court therefore does not consider that the present case can be distinguished from the above-cited cases of *Sarban* and *Becciev v. Moldova* in which the Court found a violation of Article 5 § 3 of the Convention on account of the lack of relevant and sufficient reasons in the domestic courts' decisions.

83. The Court further observes that the domestic courts failed adequately to deal with the applicant's submissions in support of his release. In particular, the domestic courts did not give sufficient consideration to the applicant's argument that he was unlikely to abscond as his wife was pregnant, apparently treating this argument as irrelevant to the lawfulness of his detention (see paragraphs 38 and 40 above). In this respect, the Court recalls that 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

(*Becciev* cited above, § 58, 4 October 2005). In the present case, however, the domestic courts failed adequately to assess the applicant's ties with Moldova. It is true that the domestic courts considered whether the applicant had a permanent address in Moldova and that there was conflicting evidence on this issue. The Court recalls however that the mere absence of a fixed residence does not automatically give rise to a danger of flight (*Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005). Moreover, the Court notes that the domestic courts failed to deal with the applicant's argument that he was willing to give up his passport as an assurance that he would not leave the country (see paragraph 38 above). Similarly, no reference was made in the domestic courts' reasoning to any evidence in support of the finding that the applicant was likely to abscond to Transnistria.

84. Finally, the Court would remark with grave concern that reliance on its case-law before the domestic courts was thought to amount to an attempt to undermine the normal conduct of domestic proceedings (see paragraph 46 above).

85. In light of the above, the Court considers that the reasons relied upon by the Buiucani District Court and the Chişinău Court of Appeal 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.

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

86. Lastly, the applicant complained about the fairness of the remand proceedings under Article 5 § 4 of the Convention. In particular, he submitted that he had had no access to the part of the criminal file containing evidence relied on by the prosecution in support of the decision to detain him in custody. He also alleged that the domestic courts had refused to hear the evidence of S.F. as a witness as well as the records of the search conducted at his domicile on 4 May 2007, in breach of the equality of arms principle. Article 5 § 4 of the Convention reads:

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

87. The Government submitted that the court had rightly rejected the applicant's request to examine the evidence of S.F. as a witness, as well as the search records, as irrelevant.

88. The Government further argued that the applicant had failed to raise the complaint about the lack of access to the case file before the domestic courts and that therefore this part of his application should be dismissed for non-exhaustion of domestic remedies.

89. The applicant contested the Government's arguments. In particular, he maintained that he had not been given access to all the relevant documents in connection with his detention.

90. The Court notes that this complaint is linked to the one examined above and therefore must be likewise declared admissible.

91. The Court notes that it has already concluded that the *habeas corpus* procedure in the present case was at all times manifestly deficient, having regard to the requirements of Article 5 § 3 of the Convention and the failure of the *habeas corpus* proceedings to provide any independent review of the justification advanced by the prosecution for the applicant's continued detention. Accordingly, the Court considers that no separate examination of the applicant's complaint under Article 5 § 4 of the Convention is required.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. Article 41 of the Convention provides:

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

A. Damage

93. The applicant claimed EUR 30,000 in respect of non-pecuniary damage.

94. The Government considered that the award claimed by the applicant in respect of non-pecuniary damages was grossly exaggerated. They cited the *Sarban* case on which the applicant had relied earlier and in which the Court had awarded EUR 4,000 in respect of non-pecuniary damages. In this respect, they pointed out that, unlike the *Sarban* case in which the Court had found a violation of Article 3 of the Convention, the present case only concerned Article 5 of the Convention. The award for non-pecuniary damages should accordingly be reduced.

95. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

96. The applicant also claimed EUR 4,000 for the costs and expenses incurred before the domestic courts and before the Court. The applicant's lawyer referred to a contract of legal assistance and a Recommendation of the Moldovan Bar, approved by the Moldovan Bar Council on 29 December

2005, establishing the hourly rate for the work done. However, those documents were not submitted to the Court. The applicant's lawyer further listed the number of hours spent preparing the case before the Court (amounting to 54 hours).

97. The Government considered these claims to be unjustified. They pointed out that the applicant had failed to substantiate his claims. In particular he had failed to produce the contract of legal assistance or the Recommendation of the Moldovan Bar. They further questioned the need for drafting the application and observations before the Court during 24 and 21 hours respectively. According to the Government, the generally accepted practice was to spend no more than 3-4 hours studying the case and drafting the application before the Court and 6-10 hours drafting the observations. The Government further pointed out that the average salary being in the amount of 2630 lei in Moldova in 2008, the amount claimed by the applicant in costs and expenses was unrealistic and excessive.

98. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 2,000 for the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 5 § 1 about unlawful detention between 12.15 p.m. and 4 p.m. on 22 June 2007 and the complaints concerning Article 5 §§ 3 and 4 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* that there is no need to examine separately the complaint under Article 5 § 4 of the Convention;

5. *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, the following amounts to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 2,000 (two thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros) plus any tax that may be chargeable in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 8 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President