



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

THIRD SECTION

CASE OF HARITONOV v. MOLDOVA

(Application no. 15868/07)

JUDGMENT

STRASBOURG

5 July 2011

FINAL

05/10/2011

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

In the case of Haritonov v. Moldova,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

Mihai Poalelungi,

Kristina Pardalos, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 7 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 15868/07) 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 Ukrainian national, Mr Ghenadie Haritonov (“the applicant”), on 20 March 2007.

2. The applicant was represented by Ms Halina Yakovyshyn, a lawyer practising in Mamaevtsy. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged that he had been detained in inhuman and degrading conditions contrary to Article 3 of the Convention. He also alleged numerous breaches of his rights guaranteed by Article 5 of the Convention.

4. On 7 December 2009 the Court decided to give notice of the application to the Government. On the same date the Ukrainian Government were informed of their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1(b), but they did not communicate any wish to avail themselves of this right. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in Comyshany, Ukraine.

6. On 24 May 2006 the applicant was arrested in Chişinău on charges of possession of false identity papers. After a search of his girlfriend's apartment, where he lived, the police discovered, *inter alia*, false identity papers with the applicant's and his girlfriend's photos and blank identity papers. Later, as the criminal investigation progressed, the applicant was also charged with the offence of being a member and head of a criminal gang specialised in the forgery of documents and trafficking in persons and the police identified approximately thirty different cases of forged documents and trafficking.

7. The applicant was placed in detention and was periodically taken to a court where his detention was extended for periods of thirty days until 7 January 2007. The reasons for keeping the applicant in custody were that he was accused of a serious offence and there was a risk of him absconding because he was a foreigner who had no permanent residence and no family in Moldova. Moreover, there was a risk that he might tamper with the investigation of the case and re-offend. All his *habeas corpus* requests based on the lack of evidence and reasons in support of detention were dismissed.

8. On 7 January 2007, upon the expiry of the period of his detention provided for in the latest detention order, the applicant requested to be released but to no avail. On 9 January 2007 the applicant was taken to a court where a judge extended his detention for ninety days. The applicant challenged the court order and on 17 January 2007 the Court of Appeal quashed the lower court's decision and ordered the applicant's release. The court found that the reasons for the applicant's continued detention were still valid; however, in view of his detention contrary to Article 5 § 1 of the Convention between 7 and 9 January 2007, he was to be released.

9. On 9 February 2007 during a hearing in the criminal proceedings, the prosecutor requested again that the applicant be remanded in custody in view, *inter alia*, of the risk of his absconding. The court upheld the prosecutor's request and ordered the applicant's detention. According to the applicant, he challenged that decision on the same day. According to the stamp applied by the court on the appeal application, the decision was challenged three days later.

10. On 16 February 2007 the applicant's appeal was scheduled to be examined by the Court of Appeal. However, the panel of judges in charge of the case decided to withdraw from the case on grounds of lack of objective impartiality in view of the fact that they had previously examined the

applicant's appeal and had ordered his release. A new panel of judges was appointed.

11. On 21 February 2007 the new panel of judges of the Court of Appeal ruled on the applicant's appeal, quashed the decision of the lower court and ordered the applicant's release. After his release the applicant fled Moldova, allegedly for Ukraine, and has not returned to date.

12. During his detention the applicant was held in three detention facilities: between 24 May and 2 August 2006 and between 23 August and 6 September 2006 in the detention facility of the General Directorate for Fighting Corruption and Organised Crime of the Ministry of Internal Affairs ("GDFOC"), between 2 and 23 August 2006 and between 6 September 2006 and 17 January 2007 in Prison no. 13 and between 9 and 21 February 2007 in the detention facility of the Chişinău General Police Department. The applicant states that the cells in all the detention facilities were overcrowded, infested with vermin, the food was of poor quality, the inmates were allowed to take showers only once a week for two minutes and had walks of 15-20 minutes two or three times per week. The Government disputed the applicant's allegations about the poor conditions of his detention.

13. On 15 June 2007 the applicant was found guilty as charged and sentenced to seventeen years' imprisonment. He did not appeal against the sentence and alleges to have learned about it from the Government's observations.

II. RELEVANT DOMESTIC LAW AND NON-CONVENTION MATERIAL

14. The relevant non-Convention material concerning the conditions of detention has been set out in the Court's judgments in *Țurcan v. Moldova* (no. 10809/06, § 19, 27 November 2007) and in *Popovici v. Moldova* (nos. 289/04 and 41194/04, § 36, 27 November 2007).

15. The relevant domestic law concerning detention on remand has been set out in the Court's judgment in *Sarban v. Moldova* (no. 3456/05, § 52, 4 October 2005).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

16. The applicant complained under Article 3 of the Convention about the conditions of his detention and argued that they amounted to inhuman and degrading treatment. Article 3 reads as follows:

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

17. The Government contested that argument.

A. Admissibility

18. The Government submitted in the first place that the applicant did not complain about the conditions of his detention in Prison no. 13 but only about those in the other two detention facilities. The Court notes that, indeed, Prison no. 13 was not mentioned in the initial application. However, the applicant complained about the conditions of his detention for its entire duration between May 2006 and February 2007, irrespective of the number of detention facilities in which he had been held. Therefore the Court will examine the applicant’s complaint in respect of all three detention facilities.

19. The Government further argued that the applicant had failed to exhaust domestic remedies in respect of his complaint under Article 3 and that the applicant’s complaint concerning his detention between 24 May and 6 September 2006 had been lodged outside the six-month time-limit.

20. In so far as the former objection is concerned, the Court recalls that a similar objection was examined and dismissed by the Court in *I.D. v. Moldova* (no. 47203/06, §§ 34-35, 30 November 2010) because the Government had not shown that an effective remedy had been available in theory and in practice. In such circumstances and in view of the similarity between the Government’s position in this case and in *I.D.*, the Court does not consider it possible to depart from its reasoning and its findings in *I.D.* and therefore dismisses the Government’s objection.

21. As to the question of the six-month time-limit rule, the Court reiterates that the object of the six month time-limit under Article 35 is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with within a reasonable time and that past decisions are not continually open to challenge. In cases where there is a continuing situation, the six-month period runs from the cessation of the situation (*B. and D. v. the United Kingdom*, no. 9303/81, Commission decision of 13 October 1986, Decisions and Reports (DR) 49, p. 44). The concept of a “continuing situation” refers to a state of affairs which operates by

continuous activities by or on the part of the State so as to render the applicant a victim (see, *Montion v. France*, no. 11192/84, Commission decision of 14 May 1987, DR 52, p. 227, and *Hilton v. the United Kingdom*, no. 12015/86, Commission decision of 6 July 1988, DR 57, p. 108). Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of (see *D.P. and J.C. v. the United Kingdom* (dec.), no. 38719/97, 26 June 2001).

22. In *I.D. v. Moldova* (cited above) where the Court was confronted with a similar situation under Article 3, namely, with the applicant's detention in several prisons without interruption, it was called to determine whether the applicant's detention amounted to a "continuing situation" for the purposes of determining compliance with the six-month time-limit. In that case the Court found that the main negative feature of each period of detention was different and therefore concluded that each period of detention referred to specific events which occurred on identifiable dates and could not therefore be construed as a "continuing situation" (see *I.D. v. Moldova*, cited above, § 30). As a result a part of the applicant's complaint under Article 3 was declared inadmissible for failure to comply with the six-month rule.

23. A different approach was taken by the Court in *Guliyev v. Russia* (no. 24650/02, 19 June 2008) where it considered two different periods of detention to amount to a "continuing situation" because the main characteristic of both periods of detention was the severe overcrowding of the cells.

24. In the present case the Court notes that in so far as the first two periods of detention are concerned, the applicant was transferred from one detention facility (GDFOC) to another (Prison no. 13) and then back and that, therefore, the detention was uninterrupted. His complaints are similar for both detention facilities and he does not put an emphasis on any particular negative feature of his detention specific to a particular detention facility. In such circumstances, the Court considers it necessary to follow the approach taken in *Guliyev* and to conclude that in the present case the first two detentions amounted to a "continuing situation" with the result that the six-month time-limit started running from the last day of the applicant's detention in Prison no. 13, that is, from 17 January 2007. Therefore, the Court concludes that the applicant's complaint about his conditions of detention between 24 May and 6 September 2006 was lodged within six months as provided by Article 35 § 1 of the Convention.

25. The Court also notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

26. As to the remainder of the applicant's detention, the Court notes that there was a gap of more than three weeks between the applicant's second and third periods of detention. It is true that the applicant was detained within the framework of the same criminal proceedings. Nonetheless, in view of the significant gap between the last two periods of detention, the Court cannot treat them as a part of a continuing situation referred to above, even if the other conditions are met.

27. Therefore, the Court notes that the applicant's detention in the impugned conditions during his third period of detention was relatively short. Even assuming that the applicant's description of the conditions of his detention was accurate and that they could potentially raise an issue under Article 3 of the Convention, it is to be observed that the applicant was only confined there for a period of twelve days. The Court therefore considers that in the particular circumstances of the case the applicant's alleged suffering did not attain the threshold of severity required by Article 3 of the Convention. In reaching this conclusion the Court pays attention, *inter alia*, to the applicant's age, sex and medical condition (see, among other authorities, *Gorea v. Moldova*, no. 21984/05, § 49, 17 July 2007). Accordingly, this part of the complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

28. The applicant submitted that the conditions of his detention for its duration amounted to inhuman and degrading treatment.

29. The Government submitted that the applicant's description of conditions of his detention was not sufficiently detailed. Alternatively, they argued that in view of the particular circumstances of the case and of the length of the applicant's detention, the treatment to which he had been subjected had not attained the threshold of severity required by Article 3 of the Convention.

30. The Court reiterates that the general principles concerning conditions of detention have been set out in *Ostrovar v. Moldova* (no. 35207/03, §§ 76-79, 13 September 2005).

31. In so far as the applicant's detention between 24 May 2006 and 17 January 2007 is concerned the Court notes that in *Țurcan* (cited above, §§ 35-39) it found a violation of Article 3 of the Convention in respect of the poor conditions of the applicant's detention in Prison no. 13 between February and September 2006. In *Popovici* (cited above, § 57) a similar violation was found in respect of the conditions of detention in the GDFOC detention centre.

32. Given that the above cases refer to the same detention facilities at approximately the same moment in time (see paragraph 12 above), the

Court considers that there are no reasons to depart from the conclusions reached in them. The Court considers that the hardship endured by the applicant during his detention between 24 May 2006 and 17 January 2007 went beyond the unavoidable level inherent in detention and reached a threshold of severity contrary to Article 3 of the Convention. Accordingly, there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

33. The applicant further submitted that his detention between 7 and 9 January 2007, when the detention warrant had expired, had not been “lawful” within the meaning of Article 5 § 1 of the Convention. The relevant part of Article 5 § 1 reads:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;”

34. The applicant also complained that his detention was not based on “relevant and sufficient” reasons. The relevant part of Article 5 § 3 reads:

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

35. The applicant finally asserted that because of the length of time it had taken to examine his last *habeas corpus* request, the respondent State had breached Article 5 § 4 of the Convention, which 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.”

A. The complaint under Article 5 § 1 of the Convention

36. The applicant submitted that he continued to be a victim of a breach of Article 5 § 1 of the Convention notwithstanding the finding in the Court of Appeal’s decision of 17 January 2007 (see paragraph 8 above) because he was not awarded compensation for non-pecuniary damage arising from the breach.

37. The Government admitted that the applicant’s detention between 7 and 9 January 2007 had been unlawful for the purposes of Article 5 § 1 of

the Convention but argued that the applicant had lost his victim status as a result of the judgment of the Court of Appeal of 17 January 2007.

38. The Court refers to its settled case-law to the effect that a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of victim status unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Ilașcu and Others v. Moldova and Russia* (dec.) [GC], no. 48787/99, 4 July 2001).

While Article 5 § 5 requires that there be an enforceable right to compensation for detention in breach of the provisions of Article 5, it does not guarantee an absolute right to compensation in all circumstances (*Kustila and Oksio v. Finland*, no. 10443/02, Dec. 13 January 2004).

39. In the present case the Court of Appeal expressly acknowledged a breach of Article 5 § 1 of the Convention in respect of the applicant's unlawful detention between 7 and 9 January 2007 and ordered his immediate release (see paragraph 8 above). The applicant's release has therefore been ordered as a form of redress, in spite of the fact that the reasons in favour of his detention were still considered by the Court of Appeal to be relevant and sufficient.

40. In the light of the above, the Court is satisfied that the prompt release of the applicant in circumstances where he should have otherwise been kept in detention together with the express acknowledgement by the Court of Appeal of the wrongfulness of his detention afforded the applicant such redress that he can no longer be regarded as a victim. It follows that this complaint must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

B. The complaint under Article 5 § 3 of the Convention

41. The applicant argued that the domestic courts repeated the same arguments again and again and that some of their decisions were identical. He argued that after his second release on 21 February 2007 he left Moldova with the purpose of avoiding arbitrariness as a result of an official offer by the Ukrainian consul in Chișinău. His intention was to be tried by a Ukrainian court in a fair trial.

42. The Government submitted that this case was distinguishable from other cases in respect of Moldova where the Court has found a breach of Article 5 § 3 of the Convention. They pointed to the fact the applicant eventually fled Moldovan justice, a fact that proves that the reasons relied upon by the Moldovan courts to order his detention were relevant and sufficient.

43. The Court refers to the general principles established in its case-law on Article 5 § 3 of the Convention regarding, in particular, the need for relevant and sufficient reasons for depriving someone of his or her liberty

(see, among others, *Castravet v. Moldova*, no. 23393/05, §§ 29-33, 13 March 2007, and *Sarban*, cited above, §§ 95-99).

44. In the present case the domestic courts, when ordering the applicant's detention, argued, *inter alia*, that the applicant might abscond. The Court agrees with the applicant that, as in the cases of *Sarban* and *Castravet*, the reasons relied upon by the domestic courts to detain him in custody appear to be very brief. Nevertheless, the Court considers that, unlike in the above cases, the reasons were strong enough to warrant the applicant's detention. Indeed, unlike the applicants in the above cases, the applicant in the present case did not have a permanent residence, a family or any other ties with Moldova. Moreover, the domestic courts' fear of the applicant's absconding appeared to have not been unreasonable, since after the applicant's release on 21 February 2007 he fled Moldova and has not returned to date. This makes the present case distinguishable from all other cases in which the Court has found a breach of Article 5 § 3 of the Convention. In these circumstances, the Court is unable to find that the reasons relied upon by the domestic courts were not relevant and sufficient. Accordingly, the complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

C. The complaint under Article 5 § 4 of the Convention

45. According to the applicant the Court of Appeal did not act with diligence in examining his appeal with a delay of twelve days, during which period he had been in unlawful detention. The applicant made reference to the case of *Sarban* (cited above), which, in his view, was similar to his case in respect of the Article 5 § 4 issue.

46. The Government argued that the delay in which the applicant's appeal was examined was of nine days and not twelve as argued by the applicant. They also submitted that the delay had occurred because of the withdrawal of the initial panel of judges and the necessity to designate another panel. In their view, the delay was not excessive and there was no breach of Article 5 § 4 in this case.

47. The Court reiterates that Article 5 § 4, in guaranteeing detained persons the right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II). The question whether a person's right under Article 5 § 4 has been respected has to be determined in the light of the circumstances of each case (see, *mutatis mutandis*, *R.M.D. v. Switzerland*, 26 September 1997, § 42, *Reports* 1997-VI).

48. Turning to the facts of the present case the Court notes that according to the stamp on the applicant's appeal application against the

decision of 9 February 2007, the date of its submission was 12 February and not 9 February 2007 as claimed by the applicant. Thus, in the absence of any other evidence to the contrary, the Court shall consider 12 February 2007 as the date the applicant's appeal was lodged. Accordingly, the appeal was examined by the Court of Appeal nine days later and two hearings were necessary. The Court also notes that the first hearing took place three working days after the appeal was lodged and the second hearing took place two working days after the withdrawal of the initial panel of judges from the case.

49. The Court notes that in *Sarban* (cited above, §§ 118-124) where a similar problem was examined by the Court, a breach of Article 5 § 4 was found in respect of a delay of twenty-one days. In that case the Court attached particular importance to the applicant's poor state of health and the absence of medical care in the remand centre. Since no similar circumstances were present in the present case and since the delay was considerably shorter, the Court considers it possible to distinguish it from *Sarban*. Although it would have been desirable for the Court of Appeal to act faster, the Court is prepared to accept that, in the particular circumstances of the case, the provisions of Article 5 § 4 were not breached. It follows that this complaint must also be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. The applicant also complained under Article 6 § 3 of the Convention that he had not been provided with a translator from Romanian into Russian during a procedural act in the criminal proceedings which took place on 10 October 2006. However, it is noted that the applicant did not use any remedies available to him under domestic law such as, for instance, lodging an appeal against the sentence of 15 June 2007. In view of the above, this complaint must be declared inadmissible under Article 35 §§ 1 and 4 for failure to exhaust domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

53. The Government contested the claim and argued that it was ill-founded and excessive.

54. Having regard to the violation of Article 3 of the Convention found above, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,000.

B. Costs and expenses

55. The applicant also claimed EUR 5,038 for the costs and expenses incurred before the Court.

56. The Government contested this amount and argued that it was excessive and unsubstantiated.

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

58. In the present case, regard being had to the itemised list submitted by the applicants, the above criteria, the complexity of the case and the fact that the majority of the complaints were declared inadmissible, the Court awards the applicants EUR 1,200 for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint under Article 3 of the Convention on account of the poor conditions of the applicant's detention between 24 May 2006 and 17 January 2007 admissible;
2. *Declares* by a majority the remainder of the application inadmissible;
3. *Holds* unanimously that there has been a violation of Article 3 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 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, plus any tax that may be chargeable, to be converted into Moldovan lei at the rate applicable at the date of settlement;
 - (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 5 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Ziemele joined by Judge Gyulumyan is annexed to this judgment.

J.C.M.
M.T.

SEPARATE OPINION OF JUDGE ZIEMELE
JOINED BY JUDGE GYULUMYAN

1. I voted with the majority in finding that there had been a violation of Article 3 as concerns the applicant's complaints about the conditions of his detention in various detention facilities. Nevertheless, I had difficulty in accepting that the third period of detention in the Chişinău General Police Department between 9 and 21 February 2007 should not be treated as part of a continuing situation according to the Court's definition (see paragraphs 26-27 of the judgment) and that because that period of detention lasted only twelve days it was too short to raise problems under Article 3.

2. This part of the judgment, dealing with admissibility issues, is based on the approach taken in the case of *Guliyev v. Russia* (no. 24650/02, 19 June 2008), and attempts to contrast it with the case of *I.D. v. Moldova* (no. 47203/06, 30 November 2010). In the present case there were three separate detention periods with longer or shorter periods of liberty in between (see paragraph 12 of the judgment). In the *Guliyev* case, the applicant was detained in two different facilities in immediate succession – that is, the Court was faced with the simple transfer of the applicant from one place to another. The question of how to apply the six-month rule did not arise in the same way as in the case before us. In the *I.D.* case, the different places of detention were characterised by different problems. Where the Court, as in the case before us, has gone so far as to say that the main criterion for a continuing situation is its character, even if the applicant's detention has not been continuous, I find it difficult to say that a three-week gap such as that between the second and the third period – as opposed to, for example, a seven-day gap – disqualifies the last period from being part of a continuing situation. Certainly, this was not the approach taken in the *Guliyev* case since the facts were different; it is thus difficult to consider that that case should provide the solution to be followed in our case. In any event, I find that the case-law on the question of what constitutes a continuing situation with respect to conditions in different detention facilities at different periods of time remains very unclear.