



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

THIRD SECTION

CASE OF LEVINȚA v. MOLDOVA (No. 2)

(Application no. 50717/09)

JUDGMENT

STRASBOURG

17 January 2012

FINAL

17/04/2012

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

In the case of LevinȚa v. Moldova (no. 2),

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 Santiago Quesada, *Section Registrar*,

Having deliberated in private on 13 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 50717/09) 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 two Moldovan nationals, Mr Pavel LevinȚa and Mr Vitalie LevinȚa (“the applicants”), on 8 Septembre 2009.

2. The applicants were represented by Mr V. Țurcan and Mr M. Belinschi, lawyers practising in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicants alleged, in particular, that they had been detained without legal basis and in the absence of reasons for their detention; that they had not had the opportunity to fully present their case; and that the courts had not decided on their detention pending trial within a reasonable time.

4. On 25 August 2010 the Court 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1971 and 1974 respectively and live in Cahul.

6. The applicants were arrested in Russia in October 2000 and were thereafter extradited to Moldova. They were then ill-treated in order to compel them to make self-incriminatory statements and were convicted by the Moldovan courts, relying, *inter alia*, on such confessions (for more details, see *Levința v. Moldova*, no. 17332/03, 16 December 2008).

7. On 16 December 2008 the Court adopted a judgment in the above-cited *Levința* case, finding a violation of Articles 3 and 6 of the Convention. On the basis of that judgment and the applicable domestic law (see paragraph 22 above), on 3 April 2009 the applicants lodged an extraordinary appeal (*recurs în anulare*), seeking the annulment of their convictions.

8. On 8 February 2010 the Plenary Supreme Court of Justice accepted the request and quashed all the previously adopted judgments, ordering a re-hearing of the case and verification of whether the applicants' complaint of ill-treatment was well-founded. In the operative part of its ruling the court also ordered the following: "[the applicants] shall continue to be detained; the trial court shall decide on the preventive measure".

9. On 10 February 2010 the applicants' lawyer complained to the Minister of Justice and the Prosecutor General. He asked for his clients' immediate release because of the absence of any valid decision by an investigating judge or a trial court ordering their detention pending trial, as required by law. In response, the Prosecutor General's Office referred to the judgment of 8 February 2010, while the Ministry of Justice noted that it had not been informed of any judgment in respect of the applicants after 16 April 2002.

10. On 15 March 2010 the Supreme Court of Justice sent the case for examination by the Chișinău Court of Appeal.

11. On 13 April 2010 the applicants' lawyer asked the Chișinău Court of Appeal to order his clients' immediate release, in the absence of any court order for their detention pending trial. On the same date, the prosecutor's office requested that the same court order the applicants' detention pending trial for thirty days. According to the applicants, the prosecution did not submit any evidence in support of that request.

12. On 14 April 2010 the court held a preliminary hearing during which it examined the parties' requests. However, the court did not adopt any decision and postponed the hearing until 16 April 2010. On the latter date it again postponed the hearing until 19 April 2010.

13. On 19 April 2010 the Chișinău Court of Appeal noted that the Plenary Supreme Court of Justice had not decided the issue of applying preventive measures in its judgment of 8 February 2010. It further stated that it would deal with the parties' requests in that respect and found that:

"[The applicants'] continued detention is necessary in order to ensure the proper conduct of the criminal proceedings, taking into account that there are reasonable grounds to believe that they have committed the crimes of which they are accused,

crimes which are considered to be exceptionally serious; [there are reasons to believe that] they could abscond from the court and obstruct the criminal proceedings.”

Accordingly, the court rejected the applicants’ lawyer’s request of 13 April 2010 and ordered their detention for thirty days, starting from 2 p.m. on 14 April 2010. The court also relinquished its jurisdiction in favour of the Supreme Court of Justice.

14. On 22 April 2010 the applicants’ lawyer lodged an appeal with the Supreme Court of Justice. He repeated his argument concerning the absence of any court decision and arrest warrant ordering his clients’ detention pending trial as required by law. He also submitted that the Chișinău Court of Appeal had breached the presumption of his clients’ innocence, which was clear from its finding of “reasonable grounds” to believe that they had committed the crimes of which they were accused. Moreover, the applicants’ detention pending trial had lasted for more than the maximum twelve months allowed by law. He added that the prosecution had not submitted any evidence in support of their contentions concerning the risks associated with the applicants’ release. The lawyer noted that the prosecution had not made any request for the applicants’ detention pending trial prior to the judgment of 8 February 2010. He finally complained about the Chișinău Court of Appeal’s two decisions to postpone its hearings concerning the applicants’ detention pending trial.

15. At 10.30 a.m. on 13 May 2010 the applicants’ lawyer was contacted on his mobile phone by a Supreme Court of Justice judge, who informed him that a hearing of the appeal was scheduled for 12 p.m. the same day. Apparently, the lawyer managed to reach the court in time for the hearing. The Supreme Court of Justice rejected the applicants’ appeal as unfounded. Having summed up the grounds on which the prosecution had relied, it found that:

“In verifying the lawfulness of [the applicants’] detention pending trial, the lower court fully complied with the [relevant provisions of] law, being competent to decide on the issue of applying preventive measures. In the absence of any procedural violations in deciding on [the applicants’] detention pending trial, there are no reasons to quash the lower court’s decision. The lawyer’s request is therefore to be dismissed.”

The court also found that the Chișinău Court of Appeal was the competent trial court in the present case.

16. According to the applicants, at 2 p.m. on 13 May 2010 the applicants’ lawyer was again contacted on his mobile telephone by a clerk of the Chișinău Court of Appeal and was informed that a hearing was scheduled for 4 p.m. the same day concerning a request by the prosecution to extend his clients’ detention. The lawyer was in Anenii Noi at the time, participating in a criminal investigation regarding another client. The Government submitted that they could not confirm or deny that such a call to the applicants’ lawyer had been made.

17. At 5 p.m. on the same date, the Chișinău Court of Appeal examined the above-mentioned request, which the prosecution had submitted on 7 May 2010 and which sought an order for the applicants' detention pending trial for sixty days. The applicants were absent from the hearing, one of them having refused to attend and the other having declared that he was unfit to attend. The applicant's lawyer did not appear before the court and they were represented by a State-appointed lawyer. The latter's position was summed up in the judgment as follows: "The defence lawyer objected to the prosecution's request".

18. The court accepted the prosecution's request, doing so for essentially the same reasons as those given in its judgment of 19 April 2010. Gh. I., one of the three judges, delivered a dissenting opinion. He found, *inter alia*, that the prosecution's request of 7 May 2010 had only reached the Supreme Court of Justice on 11 May 2010. He also noted that in its request the prosecution had simply repeated the relevant legal provisions concerning the grounds for ordering detention pending trial, without any attempt to show any specific danger posed by the applicants, who had been detained for many years, or to precisely identify reasonable grounds for their detention. Gh. I. also disagreed with the examination of the request in the absence of both the applicants and the lawyer chosen by them. He noted that the same prosecutor, who on 7 May 2010 had requested an urgent hearing of his request concerning the applicants' detention pending trial, had failed to inform the defence of that request, even though the parties had attended the hearing before the Supreme Court of Justice on the morning of 13 May 2010. Gh. I. concluded that the lawyer had been prevented from effectively representing his clients and that the applicants' defence rights had been breached.

19. The applicants' lawyer appealed, relying on essentially the same grounds as those stated in his appeal of 22 April 2010. He also noted that the Chișinău Court of Appeal had ordered his clients' detention two hours after the previous detention order had expired. They had therefore been detained for two hours without any legal basis. He finally referred to his inability to appear before the Chișinău Court of Appeal at such short notice as had been given to him on 13 May 2010 and noted that his clients had not been asked to comment on whether they agreed to be represented by a State-appointed lawyer.

20. On 3 June 2010 the Supreme Court of Justice rejected the appeal as unfounded. It found that the rights of the defence had not been breached since the applicants had refused to appear in court. Their lawyer had been informed of the hearing, but could not appear in court because he had another case in Anenii Noi. Therefore, the lower court had correctly appointed another lawyer to attend the hearing. Moreover, the thirty-day detention order made on 19 April 2010 (which indicated that the period started on 14 April 2010) only ended on 14 May 2010 and therefore the

applicants' lawyer's contention that they had been detained on 13 May 2010 for two hours without legal basis was unfounded. The court also found that after the quashing of the judgments convicting the applicants their detention pending trial was only possible in exceptional circumstances and based on a request by the prosecution. The prosecution had observed the deadlines set by law for submitting such a request (at least five days before the expiry of the previous detention order). The court finally found that:

“...the prosecutor's request reveals the existence of reasonable evidence that exceptionally serious crimes have been committed and that there are sufficient grounds to believe that the accused may obstruct the proceedings and abscond from the court; the applicants previously absconded from the law-enforcement authorities, they were declared internationally wanted persons and were extradited from the Russian Federation; they have no social links or home ties, no known sources of income and no employment”.

21. Subsequently, the applicants' lawyers made further requests for their clients' release on a regular basis (approximately once a month), while the prosecution asked for extensions of their detention pending trial. The courts accepted the prosecutors' requests, while rejecting those made by the applicants' lawyers. On 28 December 2010 the Supreme Court of Justice replaced the applicants' detention with house arrest. On 4 February 2011 their house arrest was replaced with an undertaking not to leave the country during the investigation.

II. RELEVANT DOMESTIC LAW

22. The relevant provisions of the Code of Criminal Procedure (“the CCP”) read as follows:

“Section 453 Grounds for a request for annulment of a judgment

Final judgments in criminal cases shall be subject to requests for annulment (...) in the following instances:

...

d. an international court [has] found that there has been a breach of human rights and fundamental freedoms which could be remedied by a rehearing.”

23. Under Section 457 of the CCP, when the Plenary Supreme Court of Justice examines requests for annulment of a final judgment it shall follow the procedure described in Sections 434-436 of the CCP.

Under Section 435 of the CCP, while examining an ordinary appeal in cassation, the court shall also decide on the additional matters described in Section 416 of the CCP. Under Section 436 of the CCP, if a judgment adopted on appeal is quashed by the court of cassation, the re-examination of the case shall follow the general procedure.

Under Section 416 of the CCP, when examining a case, an appellate court may also decide, if necessary, whether to apply preventive measures.

Under Section 329 of the CCP, a court may on its own motion or at the request of the parties apply, amend or annul preventive measures.

THE LAW

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

24. The applicants complained that they had not been released immediately after the quashing of their convictions and had been detained in the absence of a request by the prosecution to apply preventive measures to them. Their detention had therefore been illegal. They also contended that they had been detained unlawfully for two hours on 13 April 2010, as the court decision extending their detention had been adopted two hours after the expiry of the previous detention order. They relied on Article 5 § 1 of the Convention, which reads as follows:

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

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

...”

A. Admissibility

25. The Court considers that the complaint concerning the applicants’ alleged detention without legal basis for two hours is inadmissible. As established by the Supreme Court of Justice in its decision of 3 June 2010 (see paragraph 20 above), the relevant period in fact ended the day after the alleged detention for two hours without a valid detention warrant had taken place. The Court has no reason to doubt that finding (see the date and time mentioned in the Chișinău Court of Appeal’s decision, cited in paragraph 13 above). It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

26. The Court notes that the other complaint under Article 5 § 1 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the

Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

27. The Government noted, first, that the case concerned very particular circumstances. Following the Court's finding of a violation of Articles 3 and 6 of the Convention in the applicants' case, the highest court in Moldova had annulled the final judgment convicting them. In doing so, it had also acted as a first-instance court, which had had to decide on the application of preventive measures in respect of the applicants. Under various sections of the Code of Criminal Procedure (see paragraph 23 above), the Plenary Supreme Court of Justice had had the power to order the applicants' detention. However, it had not had the competence to also provide reasons for such detention, which had been for the trial court to decide. Therefore, the Supreme Court of Justice had expressly noted that the Court of Appeal would decide on the application of preventive measures.

28. The applicants considered that the law had not provided for a procedure to be followed in cases such as theirs. Pending a legislative amendment by Parliament, they could not have been lawfully detained on the basis of the decision of the Plenary Supreme Court of Justice, which had not had the power to order their detention such as had occurred. The procedure that could have been applied had required a request by the prosecution and an examination of that request by the trial court, which had not happened until much later. Consequently, the failure to release the applicants immediately after the quashing of their conviction on 8 February 2010 had been unlawful and their detention until a new court order was adopted on 19 April 2010 had been without legal basis.

2. The Court's assessment

29. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must also be satisfied that any detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent people from being deprived of their liberty in an arbitrary fashion (see *Anguelova v. Bulgaria*, no. 38361/97, § 154, ECHR 2002-IV, and *Fedotov v. Russia*, no. 5140/02, § 74, 25 October 2005).

30. The Court considers that domestic law, as summarised in paragraph 23 above, could be interpreted as giving sufficiently clear powers to the Plenary Supreme Court of Justice to examine the issue of whether to apply preventive measures when annulling a final judgment. However, that court expressly left the issue to be determined by the Court of Appeal (see paragraph 8 above; see also paragraph 13 above for the Court of Appeal's confirmation that the Supreme Court of Justice did not apply any preventive measures) and did not issue arrest warrants. The court simply stated that the applicants should "continue to be detained", without specifying that this was detention pending trial or any other type of deprivation of liberty.

31. At the same time, with the annulment on 8 February 2010 of the judgments adopted in their case, the applicants were no longer subject to "lawful detention after conviction by a competent court" (Article 5 § 1 (a) of the Convention). Accordingly, since the Supreme Court of Justice decided that the applicants were to be further detained, it had to refer to a legal basis for their detention which would conform to any of the other grounds for detention provided for in Article 5 § 1 of the Convention, so as to observe the principle that no one should be arbitrarily deprived of their liberty.

32. However, the Supreme Court of Justice did not devote any analysis to the issue of the legal grounds and justification for the applicants' detention (see, *a contrario*, *Mooren v. Germany* [GC], no. 11364/03, §§ 82-89, 9 July 2009). In fact, their continued detention was mentioned only in the operative part of the judgment and without any detail as to the reason or purpose for their detention. Moreover, the court failed to specify the period of time during which the applicants could be detained. As the materials in the case file make clear, this made it possible for the prosecution not to ask for a proper warrant of arrest for more than two months (see paragraph 11 above).

33. The Court takes note of the Government's argument that the Plenary Supreme Court of Justice had no power to give reasons for the applicants' detention. However, it considers that a court which has the power to order a person's detention must also have the power to justify such detention, no matter how extraordinary the circumstances. This follows from the principle that detention should be the exception and that no one should be detained arbitrarily.

34. Absent any kind of justification for the applicants' detention in the decision of the Supreme Court of Justice of 8 February 2010 in the present case, it is impossible to verify which of the specific grounds listed exhaustively in Article 5 § 1, if any, applied.

35. The foregoing considerations are sufficient to enable the Court to conclude that the applicants' detention between 8 February and 19 April 2010 was not compatible with the purpose of Article 5 § 1 of the Convention.

There has accordingly been a violation of that provision.

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

36. The applicants complained of a violation of their rights protected under Article 5 § 3 of the Convention, which reads as follows:

“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. Admissibility

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

B. Merits

38. The applicants submitted that the domestic courts had not given relevant and sufficient reasons for ordering and extending their detention pending trial.

39. The Government contested that argument. They referred to the reasons given by the domestic courts, namely the risk of interference with the conduct of the investigation and the risk of absconding.

40. 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 can show that there are “relevant and sufficient” reasons to justify his continuing detention (*Yağcı and Sargın v. Turkey*, 8 June 1995, § 52, Series A no. 319-A).

41. In the present case, the Court notes that the initial period of the applicants’ detention (between 8 February and 19 April 2010) was contrary to Article 5 § 1 of the Convention (see paragraph 35 above). Therefore, it is not necessary to also determine whether there was a violation of Article 5 § 3. However, after 19 April 2010 the applicants were detained on the basis of a properly issued decision and arrest warrant. The Court will therefore examine whether the domestic courts have given relevant and sufficient reasons for their orders to remand the applicants in custody.

42. It notes that in the past it has found violations of Article 5 § 3 of the Convention in respect of Moldova due to the domestic courts’ failure to rely on any specific evidence of the risks caused by releasing persons detained pending trial (see, for instance, *Sarban v. Moldova*, no. 3456/05, §§ 95-104,

4 October 2005; *Becciev v. Moldova*, no. 9190/03, §§ 53-64, 4 October 2005; and *Castravet v. Moldova*, no. 23393/05, §§ 29-36, 13 March 2007).

43. In the present case, however, in its decision of 3 June 2010 the Supreme Court of Justice referred to a specific fact which was relevant to deciding whether detention pending trial was necessary – the applicants had previously absconded from the investigation and the courts and could only be brought before the court after being declared internationally wanted persons (see paragraph 20 above).

In view of the above and of the fact that the applicants' detention in the grounds mentioned by the domestic courts lasted for a relatively short period, the Court considers that there has been no violation of Article 5 § 3 of the Convention in the present case.

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

44. The applicants complained of a violation of their rights protected under Article 5 § 4 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

46. In the applicants' view, their rights under Article 5 § 4 of the Convention had been breached as a result of their inability to be represented by the lawyer of their choice during the hearing of 13 May 2010 (see paragraphs 16 and 17 above). They added that the short notice given by the domestic court had not allowed their lawyer to properly prepare their position in order to challenge the prosecutor's request to extend their detention pending trial.

47. The Government rejected that argument and submitted that the case had been exceptional and that a number of lengthy hearings had taken place. In any event, since the applicants' lawyer had not been able to attend the hearing, the courts had ensured that the applicants had been properly represented by a State-appointed lawyer.

48. The Court notes that the hearing of 13 May 2010 was scheduled to deal with the prosecutor's request of 7 May 2010 to extend the applicants' detention pending trial (see paragraph 16 above). As emphasised by a dissenting judge (see paragraph 18 above), the prosecutor had failed to inform the defence of his request at the time of lodging it with the Chișinău Court of Appeal. It is also unclear why the defence was not notified of the request on 11 May 2010 when it was received by the Supreme Court of Justice. Indeed, as rightly pointed out by the applicants, the same prosecutor attended the hearing before the Supreme Court of Justice on the morning of 13 May 2010, but failed to inform the defence of his request.

49. The Government stated that they were unable to confirm or deny that the applicants' lawyer had been summoned over the phone by a clerk of the Court of Appeal to appear at the hearing that took place in the late afternoon on 13 May 2010 (see paragraph 16 above). However, they did not submit any evidence to challenge the applicants' submission that they and their lawyer had not been summoned in any other manner for that hearing. It follows that either the applicants' lawyer received a very late call from the clerk at the Court of Appeal or he received no summons at all. In either case, the Court considers that the lawyer did not have sufficient time to familiarise himself with the prosecutor's request and to prepare his clients' position in response to that request. It is therefore only to be expected that the lawyer subsequently appointed by the domestic court, who had no prior knowledge of the case, apparently had little relevant to say (see paragraph 17 above).

50. The Court cannot, moreover, accept the Government's argument that the case was exceptional and that various lengthy hearings were taking place, which somehow prevented the courts from ensuring that the applicants were represented by the lawyer of their choice. As is clear from the facts, the prosecution and the Court of Appeal did not inform the applicants' lawyer of the request and of the date of the hearing, despite having a number of opportunities to do so (see paragraph 48 above).

51. Having regard to the above, the Court considers that there has been a violation of Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

52. The applicants further complained that the decision of the Chișinău Court of Appeal of 13 May 2010 had breached their right to the presumption of innocence. They relied on Article 6 § 2 of the Convention, which reads as follows:

"2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

53. The applicants referred to the phrase used by the Chișinău Court of Appeal in its decision of 13 May 2010, namely that “there are reasonable grounds to believe that they have committed the crimes of which they are accused”. They considered that this was contrary to the court’s obligations under Article 6 § 2 of the Convention.

54. The Government contested that argument.

55. The Court notes that the phrase referred to by the applicants is virtually the same as that used in Article 5 § 1 (c) of the Convention. It refers to the existence of a reasonable suspicion that a person has committed a crime as one of the elements to be established by the courts before ordering a person’s detention and therefore acts as a guarantee against arbitrary detention. The Court considers that the use of this phrase in the above-mentioned decision of the Chișinău Court of Appeal was concordant with the court’s obligation under Article 5 § 1 of the Convention and without prejudice as to the issue of actual guilt or innocence on the part of the applicants.

56. Accordingly, this part of the application must be rejected as being manifestly ill founded within the meaning of Article 35 § 3 (a) of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 § 3 OF THE CONVENTION

57. The applicants complained that the failure to summon their lawyer in due time for the hearing of 13 May 2010 and their resulting inability to put forward their position at that hearing had breached their rights protected under Article 6 § 3 of the Convention.

58. In the light of its findings under Article 5 § 4 above, the Court finds that there is no need to examine the admissibility and merits of this complaint.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

59. Lastly, the applicants complained under Article 13 of the Convention that it had not been possible to appeal against the part of the decision of the Plenary Supreme Court of Justice of 8 February 2010 concerning their continued detention.

60. In the light of its findings under Article 5 § 1 above, the Court finds that there is no need to examine the admissibility and merits of this complaint.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicants claimed 66,000 euros (EUR) each in respect of non-pecuniary damage. They referred to their detention for more than two months without legal basis and their subsequent detention in the absence of relevant and sufficient reasons, as well as to the other violations of their Convention rights, which had caused them to suffer such damage.

63. The Government considered that the sum claimed was excessive in comparison with the awards which the Court had made in previous similar cases and was unsubstantiated.

64. The Court considers that the applicants must have suffered as a result of their unlawful detention for over two months and as a result of the other violations of their rights under Article 5 of the Convention. Deciding on an equitable basis, the Court awards each applicant EUR 8,000 for non-pecuniary damage.

B. Costs and expenses

65. The applicants also claimed EUR 5,520 for costs and expenses incurred before the Court, as well as EUR 302 for translation of documents. They submitted a detailed timesheet showing the time (44 hours) spent by their lawyers working on their case at a rate of EUR 120 per hour. They also submitted bills confirming the payment of EUR 1,000 to their lawyers. The lawyers asked for a direct transfer of the sums awarded under this heading to their bank accounts.

66. The Government referred to the applicants' failure to submit a copy of a contract with their lawyers. Aside from the bills confirming the payment of EUR 1,000, no other evidence had been produced to confirm any legal expenses had actually been incurred. Therefore, they should not be awarded more than EUR 1,000 for legal fees. Moreover, the bills confirming payment for translation services mentioned a third party as the beneficiary and did not prove that it referred to translations undertaken at the request of the applicants or their lawyers.

67. 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 are reasonable as

to quantum. In the present case, regard being had to the documents in its possession and to the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 jointly covering costs under all heads. This sum shall be split into two equal parts, to be transferred to each of the applicant's two lawyers' bank accounts.

C. Default interest

68. The Court considers it appropriate that the default interest rate 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* admissible the complaints under Article 5 § 1 (detention between 8 February 2010 and 19 April 2010), Article 5 §§ 3 and 4 of the Convention, and the complaint under Article 6 § 2 of the Convention inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds* that there has been no violation of Article 5 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
5. *Holds* that there is no need to examine the admissibility and merits of the complaints under Article 6 § 3 and Article 13 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 Moldovan lei at the rate applicable at the date of settlement:
 - (i) EUR 8,000 (eight thousand euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage; and
 - (ii) EUR 2,000 (two thousand euros) jointly, plus any tax that may be chargeable to the applicants, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President