



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

THIRD SECTION

CASE OF ARSENIIEV v. MOLDOVA

(Applications nos. 10614/06 and 10620/06)

JUDGMENT

STRASBOURG

20 March 2012

FINAL

20/06/2012

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

In the case of Arseniev v. Moldova,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemele,

Mihai Poalelungi,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 21 February 2012,

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

PROCEDURE

1. The case originated in two applications (nos. 10614/06 and 10620/06) 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 Igor Arseniev (“the applicant”), on 12 January 2006 and 1 December 2005 respectively.

2. The applicant was represented by Mr Ș. Urîtu and Mr Ș. Burlaca from the Helsinki Committee for Human Rights in Moldova, a non-governmental organisation based in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent at the time, Mr V. Grosu.

3. The applicant alleged, in particular, that he had been detained in inhuman conditions of detention, as a result of which his health had been affected. He made a number of additional complaints under Articles 5, 6, 8, 9, 13, 14 and 17 of the Convention.

4. On 9 December 2008 and 28 January 2010 the applications were communicated to the Government. The parties were asked to comment on the alleged violation of Article 3 (conditions of detention) as part of application no. 10614/06 and of Article 6 (the right of access to a court) as part of application no. 10620/06. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in Chişinău. He is a member of the Russian-speaking minority in Moldova.

A. The applicant's conditions of detention

6. On 9 December 2002 the applicant was arrested on suspicion of murder. Since the beginning of 2003 he has been detained in Prison no. 13 in Chişinău, Prison no. 3 in Leova and in Pruncul Hospital for Detainees.

7. The applicant submitted that he had been detained at the same time and in the same prison, and even in the same cell, as Mr T. Ciorap, in respect of whose prison conditions the Court had found a violation of Article 3 of the Convention in *Ciorap v. Moldova* (no. 12066/02, 19 June 2007). He considered that the conditions of detention were no different from those in which Mr Ciorap had been detained.

8. He described as follows the conditions of detention in Prison no. 13. In one cell (no. 117), where he had been detained during his hunger strike, there had been no light bulb on the first day and no bed linen throughout his detention there. A malfunctioning tap and a blocked sink let water gather on the floor; it was always very humid in the cell. The cell was situated in the basement and was not heated; it was very cold owing to the absence of glass in the window. No attention to personal hygiene was possible in the cell.

9. The applicant submitted that, when escorted to court hearings, all detainees had been transported in a single vehicle, regardless of whether they were ill with infectious diseases such as tuberculosis, which they could transmit to others. They then had to stay for hours in cramped conditions in court-houses waiting for their turn to go into court.

10. The applicant pointed to the low quality of the food which he had received and the fact that when he had been escorted to a court hearing, he had been away from his prison from 7-7.30 a.m. until 7-7.30 p.m. He thus had left the prison and had returned there outside the hours when food had been provided. No food had been given throughout the day to those escorted to court hearings. No medication had been distributed during such days either, even if it had been prescribed by doctors. The applicant claimed that he had become ill with prostatitis and rheumatism while in prison.

11. He also submitted that he had been detained for several years in Prison no. 13, which was used as a pre-trial detention facility with worse conditions than the prisons in which convicted persons normally served their sentences. In particular, he had been detained in overcrowded cells with no possibility of leaving them for more than an hour per day. He

mentioned, for instance, being detained with five other persons in a cell (no. 55) measuring 9.5 square metres suitable for two detainees. He also mentioned having felt ill from the smoke in the cell. In reply to his complaint about the lack of proper ventilation, he had allegedly been informed that the prison administration was considering a ban on smoking. The applicant added that he had been unable to see a priest of the Russian Orthodox Church while in detention.

12. The applicant's representative complained to the Chişinău Prosecutor's Office about the inhuman conditions of detention in Prisons no. 13 in Chişinău and no. 16 in Pruncul. In reply, on 24 March 2008 he was informed that during 2007 and 2008 the Prosecutor's Office had on seven occasions drawn the attention of the above-mentioned institutions to the shortcomings found in their activity. These notifications concerned, in particular, the failure to secure the statutory minimum of four square metres of living space per detainee. According to the prosecutor, there were still more detainees than beds in those institutions.

13. On 1 December 2008 the applicant asked the governor of Prison no. 13 to confirm or deny that he and five other persons were being detained in cell no. 55 of that institution, measuring 9.5 square metres. He attached a list of names of all those detained in his cell. In reply, the head of prison no. 13 informed the applicant that before the entry into force of the new Enforcement Code¹ cell no. 55 could host up to six persons. In reply to another request from the applicant of 20 March 2008, on 4 April 2008 the head of the Prisons Department informed him that in order to satisfy the legal requirement of four square metres of living space per detainee, cell no. 55 in Prison no. 13 could accommodate two persons.

14. The Government submitted that since 2003 the applicant had been detained, with certain interruptions, in Prison no. 13. He was detained there in various cells, which measured between 7.9 square metres and 30.68 square metres, including in cell no. 55, measuring 7.9 square metres, currently used for the medical supervision of detainees. They also submitted a long list of medical interventions of various types ranging from check-ups to inpatient treatment from which the applicant benefited throughout his detention. In particular, after his psychiatric problems were discovered, the applicant was regularly examined and treated for his illness. Moreover, the applicant had made 160 requests and complaints to the Prisons Department, nine of which were complaints about the conditions of detention, in addition to eight complaints about the quality and/or quantity of food served. He made another 132 complaints and requests to the administration of Prison no. 13, eleven of which concerned conditions of detention, as well as one complaint about the quantity and quality of food served. By contrast, he

1. On 1 July 2005, except for the part concerning conditions of detention, which enter into force gradually as conditions are created, but not later than 1 January 2013.

made only one request to the authorities of Prison no. 9 in Pruncul and three requests to those of Prison no. 15 in Cricova. In addition, the applicant initiated seven different court actions against the Prisons Department, the administration of Prison no. 13, the Government, and its various Ministries concerning the conditions of detention. Three of these actions were struck out and one was rejected as unfounded. Three more are pending.

B. Criminal proceedings against the applicant.

15. On 24 May 2004 the applicant was convicted of murder by the Botanica District Court and sentenced to twenty years' imprisonment. That judgment was upheld by the Chişinău Court of Appeal on 27 September 2005.

16. On 20 October 2005 the applicant lodged an appeal in cassation with the Supreme Court of Justice. On 21 October 2005 the Supreme Court of Justice informed him that his appeal did not conform to legal requirements. It had to include information such as dates and references to the lower courts' judgments, the appellant's identity and a summary of the reasons given by the appellate court. Moreover, the appeal had to be typewritten and to be submitted in as many copies as there were parties to the proceedings.

17. The applicant claims that he had a short time for appealing and that he could not typewrite his appeal since a typewriter was not available in prison. He therefore submitted five copies of his handwritten appeal to the Supreme Court of Justice.

18. On 14 December 2005 the Supreme Court of Justice declared inadmissible the applicant's appeal in cassation because it did not conform to the requirements as to form and content. The court noted that the applicant had failed to provide reasons for his appeal or to identify the general legal issue which required it to intervene, that he had failed to rely on any of the grounds exhaustively listed in the law for lodging an appeal and that his appeal had not been typed. That decision was final.

19. On 24 February 2006 the parliament amended the law by excluding the requirement that appeals in cassation should be typewritten. On an unknown date the applicant asked the Supreme Court of Justice to reopen the proceedings in his case since in his opinion his appeal had been declared inadmissible only because of the failure to submit it in typed form. On 14 May 2008 the Supreme Court of Justice rejected his request as unsubstantiated.

C. Civil proceedings initiated by the applicant.

20. The applicant initiated a number of civil proceedings against the prison authorities, a newspaper, and other persons and institutions. He submitted copies of court decisions refusing to accept for examination his

court actions because, *inter alia*, he had failed to pay the court fees (decisions of 12 September and 4 October 2005, 23 January, 28 February, 3, 7 and 17 March and 7 April 2006, 28 September, 15 October and 11 December 2007). In each of these decisions, the courts also found that the applicant had failed to observe other legal requirements such as submitting original documents or certified copies, submitting arguments and evidence in support of the claim, identifying specifically the defendant or submitting copies of documents for all the defendants and the court.

21. The applicant initiated court proceedings against the Government, the Ministry of Justice and the Ministry of Finance, claiming compensation for a violation of his right of access to court and for discrimination against him. On 1 March 2007 the Buiucani District Court left his action without examination because he had failed to pay the court fees. The applicant appealed. On 25 July 2007 the Chişinău Court of Appeal quashed that decision and ordered that the case be heard by the lower court in order to determine whether the court fees should be waived in the applicant's case.

22. On 29 October 2007 the Buiucani District Court found that the type of court action which the applicant had initiated (seeking a finding that a violation of his right of access to a tribunal had taken place in other contentious procedures) was not to be examined as a separate procedure. He had the right to appeal against any refusal to examine his court actions in those civil proceedings in which his actions had been left without examination and thus exercise his right of access to a court in each particular case. It added that the complaint concerning discrimination was ill-founded since the applicant had conceded in court that he had obtained translations of all judgments into Russian whenever he had asked for them.

23. The applicant submitted copies of the decisions of the Chişinău Court of Appeal of 7 March 2006 and 11 December 2007. In the decision of 7 March 2006 he was informed that he had missed the time-limit for paying the court fees. Even though he had subsequently paid those fees, this was not a legal ground for annulling the decision taken before such payment. He could, however, re-submit his action before the lower court on the same issue as a new case. The applicant did not inform the Court whether he had followed the court's advice. The Court of Appeal noted in its decision of 11 December 2007 that the applicant had failed to properly identify his claims, thus failing to observe legal requirements.

24. According to the applicant, on 15 February 2008 he appealed to the Chişinău Court of Appeal. He submitted no evidence in support of that claim. According to the Government, no such appeal had been lodged, as confirmed by that court in a letter of 13 February 2009.

II. RELEVANT NATIONAL AND INTERNATIONAL REPORTS AND DOMESTIC PRACTICE

25. In its report for 2010 (page 142 et seq. – “Conditions of detention” chapter), the Centre for Human Rights in Moldova (“the Centre”, which is the Moldovan Ombudsman institution) found, *inter alia*, that:

“Non-observance of the statutory living space (4 square metres) in the living blocks of the institution¹ has become an unpleasant problem; it has transformed into a systemic deficiency of the prisons in the entire country. ...

The same situation was observed during a visit to Prison no. 13 in Chişinău on 9 September 2010. In some cells the living space was not proportionate to the number of detainees. ...”

26. The relevant parts of the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Moldova between 20 and 30 September 2004 (CPT/Inf (2006) 7) read as follows (unofficial translation):

“55. The situation in the majority of prisons visited, faced with the economic situation in the country, remained difficult and the delegation encountered a number of problems already identified during the visits in 1998 and 2001 in terms of material conditions and detention regimes.

Added to this is the problem of overcrowding, which remains serious. In fact, even if the prisons visited were not at their full capacity – as is the case of Prison no. 3 in which the number of detainees was appreciably smaller than during the last visit of the Committee – they continued to be extremely congested. In fact, the receiving capacity was still based on a very unsatisfactory 2 m² per detainee; in practice often even less.

79. The follow-up visit to Prison no. 3 in Chişinău revealed an unsatisfactory situation. The progress noted was in fact minimal, limited to some running repairs. The ventilation system had been repaired primarily thanks to the financial support of civil society (especially NGOs), and the creation of space for daily recreation had been made possible only as a result of contributions by the detainees and their families.

The repair, renovation and maintenance of cells are entirely the responsibility of the detainees themselves and of their families, who also pay for the necessary materials. They must also obtain their own sheets and blankets, the institution being able to give them only used mattresses.

In sum, the living conditions in the large majority of cells in Blocks I and II and the transit cells continue to be very poor indeed. ...

Finally, despite the drastic reduction of the overcrowding, there is still a very high, even intolerable, level of occupancy in the cells.

1. The institution referred to in that part of the report was prison no. 3 in Leova.

83. With the exception of the Lipcani prison ... the quantity and quality of detainees' food is a source of grave concern everywhere. The delegation was inundated with complaints regarding the absence of meat and dairy products. The findings of the delegation, regarding both the quantity of food and the menus, confirm the credibility of these complaints. Its findings also confirm that in certain places (in Prison no. 3, [...]), the food served was repulsive and virtually inedible (for instance, insects and vermin were present). This is not surprising, given the general state of the kitchens and their modest equipment.

The Moldovan authorities have always claimed financial difficulties in ensuring that detainees receive adequate food. However, the Committee reiterates that this is a fundamental requirement of life which must be ensured by the State to persons in its charge and that nothing can exonerate it from such responsibility. ..."

27. The relevant parts of the report of the CPT on its visit to Moldova between 14 and 24 September 2007 (CPT/Inf (2008) 39) read as follows (unofficial translation):

"46. In September 2007, the Director of the Prison Department of the Ministry of Justice provided the delegation with detailed information on measures already taken or planned with a view to reforming the Moldovan prison system and implementing the CPT's recommendations. One particularly welcome outcome of these measures is the reduction of the country's prisoner population. At the time of the 2007 visit, the total number of prisoners stood at 8,033 (including 1,290 on remand), compared with 10,591 in 2004. This positive trend can be attributed to legislative changes in recent years, including the entry into force of a new Code of Execution of Sentences in July 2005 and the adoption of amendments to the Criminal Code and the Code of Criminal Procedure. As a result, there has been an increase in the number of conditional early releases, as well as a wider use of alternatives to imprisonment and a more selective application of remand custody by the courts.

Further, the implementation of the "Concept for reforming the penitentiary system in the period 2004-2013" has been supported by an increase in the budgetary allocation (from 75.8 million lei in 2004, to 166.1 million lei in 2007), as well as by a growing input of foreign aid. This has enabled, inter alia, the amelioration of the food provided to prisoners, an improvement of health care, and the carrying out of refurbishment work at several penitentiary establishments (e.g. No. 1 in Taraclia, No. 7 in Rusca and No. 17 in Rezina).

Last but not least, there has been an important shift in mentality through improved staff recruitment and training procedures. The delegation was informed that the directors of many penitentiary establishments had been changed in the last year, following a competition and a probation period. Further, new training programmes for staff had been developed, placing particular emphasis on human rights issues (see also paragraph 100).

47. The CPT can only welcome the above-mentioned measures taken by the Moldovan authorities. Nevertheless, the information gathered by the Committee's delegation during the 2007 visit shows that much remains to be done. In particular, overcrowding continues to be a problem; despite the fact that all establishments visited were operating well under their official capacities, there was on average only 2 m² of living space per prisoner, rather than the standard of 4 m² provided for in Moldovan legislation.

The CPT is convinced that the only viable way to control overcrowding and achieve the standard of at least 4 m² of living space per prisoner is to adopt policies designed to limit or modulate the number of persons sent to prison. In this connection, the Committee must stress the need for a strategy covering both admission to and release from prison to ensure that imprisonment really is the ultimate remedy. This implies, in the first place, an emphasis on non-custodial measures in the period before the imposition of a sentence and, in the second place, the adoption of measures which facilitate the reintegration into society of persons who have been deprived of their liberty.

The CPT trusts that the Moldovan authorities will continue their efforts to combat prison overcrowding and in so doing, will be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, as well as Recommendation Rec(2003)22 on conditional release (parole)."

28. The Government attached to their observations copies of domestic judgments in the cases of *Drugaliu v. the Ministry of the Interior and the Ministry of Finance*; *Gristiuc v. the Ministry of Finance and the Prisons Department*; and *Ciorap v. the Ministry of Finance, the Ministry of the Interior and the Prosecutor General's Office*, all cases in which the applicants were awarded compensation for ill-treatment and/or inhuman conditions of detention.

THE LAW

I. JOINDER OF THE APPLICATIONS

29. The Court considers at the outset that, in the interests of the proper administration of justice, the applications registered under the numbers 10614/06 and 10620/06 should be joined in accordance with Rule 42 § 1 of the Rules of Court, as there is common ground between the facts giving rise to the two cases.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

30. The applicant complained that he had been detained in inhuman conditions, contrary to the requirements of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

31. The Government argued that the applicant had failed to exhaust available domestic remedies at least in respect of part of his complaint, since he had lodged his application with the Court without awaiting the outcome of the court actions which he had initiated against the various authorities at the domestic level.

32. The applicant considered that he had done as much as he could under the circumstances.

33. The Court observes that it has examined and dismissed similar objections in previous cases (see, for instance, *Holomiov v. Moldova*, no. 30649/05, § 107, 7 November 2006; *I.D. v. Moldova*, no. 47203/06, §§ 34-35, 30 November 2010; and *Haritonov v. Moldova*, no. 15868/07, § 20, 5 July 2011) because the Government had not shown that an effective remedy had been available in theory and in practice. In *Oprea v. Moldova* (no. 38055/06, § 33, 21 December 2010) it was emphasised that the case-law referred to by the Government “concern[ed] compensation awards for past violations of Article 3 similar to those relied on in *Holomiov*”. It is therefore clear that the remedy relied on by the Government is only of a compensatory nature and could not improve the applicants’ conditions of detention.

34. In such circumstances and in view of the similarity between the Government’s position in this case and that in previous cases mentioned above, the Court does not consider it possible to depart from its reasoning and its findings in those cases and therefore dismisses the Government’s objection.

35. 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

1. *The parties’ submissions*

36. The applicant complained that he had been detained in overcrowded cells, that he had not been given sufficient medical assistance, and that he had not received food of sufficient quantity or quality, which had undermined his immune system (see paragraphs 7 to 13 above).

37. The Government contested his arguments, submitting evidence that he had been provided with food three times a day corresponding to the legal requirements and with adequate hygiene facilities, as well as medical treatment whenever necessary (see paragraph 14 above). Moreover, the cells had been regularly cleaned of parasites and he had had access to a shower,

while his bed linen had been changed once a week. The applicant had had access to tap water at any moment in his cell and a number of repairs of various cells and other areas in Prison no. 13 had been carried out over recent years.

2. The Court's assessment

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

39. In the present case the Court notes that the parties disagreed on most issues concerning the applicant's conditions of detention. It agrees with the Government that at least in certain aspects the applicant did not substantiate his claims, notably concerning the inadequacy of medical treatment for his various illnesses, including his mental condition (see paragraph 14 above).

40. However, it considers that the prevailing conditions of detention in which detainees of the same prison were held could not differ significantly during the same period of time. The Court notes that the applicant has been detained in Prison no. 13 (formerly Prison no. 3) in Chişinău since the year 2003. It also notes that it has found the conditions of detention in that particular facility to fall short of Article 3 standards in a number of cases examined so far (see, for instance, *Ostrovar*, cited above, §§ 80-90; *Istratii and Others v. Moldova*, nos. 8721/05, 8705/05 and 8742/05, §§ 68-72, 27 March 2007; *Modarca v. Moldova*, no. 14437/05, §§ 63-69, 10 May 2007; *Ciorap v. Moldova*, no. 12066/02, §§ 65-71, 19 June 2007; and *Rotaru v. Moldova*, no. 51216/06, §§ 33-42, 15 February 2011). In all these cases the Court referred to the findings of the CPT, which largely corresponded to the applicants' complaints, notably concerning overcrowding, the quantity and quality of food, and hygiene.

41. The applicant was detained in the same prison and at the same time as the applicants' in all the cases mentioned above. His description of the conditions of detention corresponds to that established in the above cases and in the CPT reports (see paragraphs 26 and 27 above). He submitted additional evidence, notably with respect to overcrowding, and made a number of complaints to the authorities about the conditions of detention (see paragraphs 11 to 13 above). Some of the replies from the authorities partly confirmed his submissions (see paragraph 12 above). The

Government did not submit any evidence capable of distinguishing the applicant's case from the above cases or to show that his conditions were somehow different from the general conditions in prison no. 13 during his detention.

42. In such circumstances, the Court finds that the applicant was detained in inhuman conditions of detention, notably severe overcrowding (six persons in a cell measuring 7.9 square metres, which is 1.3 square metres per person, far below the statutory minimum of 4 square metres per person), which he had to endure for many years, spending up to 23 hours a day in such conditions.

43. There has accordingly been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

44. The applicant complained of a violation of his right of access to a tribunal in the civil cases which he had initiated because of his inability to pay court fees. He also complained, under the same provision, that he had been unable to submit a typed appeal in cassation in the criminal proceedings against him and that the lawyer hired by him had not defended him well. The relevant part of Article 6 reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

45. The Government submitted that the applicant had not exhausted available domestic remedies. In particular, he could have appealed against the various decisions to leave his court actions without examination, but he had failed to do so. When he did challenge such a decision (adopted by the Buiucani District Court on 1 March 2007, see paragraph 21 above), the higher court accepted the complaint and directed the first-instance court to take a new decision while replying to his claims. However, he again failed to appeal against the new decision adopted by the court on 27 October 2007 (see paragraph 24 above). Moreover, the applicant failed to observe legal requirements for lodging his appeal in cassation in the criminal proceedings. Furthermore, documents from prison no. 13 proved that, for 2009 alone, the applicant had received over 7,000 Moldovan lei (MDL) – largely exceeding the amounts of court fees, which in the cases referred to by the applicant amounted to MDL 90-100. Moreover, he receives a monthly State pension of approximately MDL 400.

46. The applicant submitted that in respect of one of his court actions he had made an appeal on 16 February 2008. However, he was not informed of any decision taken. Moreover, as a detainee he could not pay court fees, which were sometimes paid by his mother. Finally, the lawyer whom his mother had hired had not represented him properly since he had visited the

applicant only once and had not assisted him in writing his appeal. A complaint to the Moldovan Bar Association did not help in that respect.

47. The Court notes that the applicant did not submit copies of decisions taken by higher courts in respect of most of the lower courts' refusals to examine his civil court actions. In particular, it does not see in the file proof of lodging the appeal on 16 February 2008 (as also confirmed by the Court of Appeal in its letter concerning the absence of such an appeal, referred to in paragraph 24 above). He submitted copies of decisions of the Court of Appeal of 7 March 2006, 1 March 2007 and 11 December 2007, but as is clear from those decisions (see paragraphs 21 to 23 above) the applicant had failed to follow the proper procedure. It is also apparent from the decision of 7 March 2006 that the applicant had paid the court fees, which contradicts his claim that he had not had such a possibility and that his cases had been left unexamined precisely for his failure to pay such fees.

48. It follows that the complaint concerning access to court in various civil proceedings must be rejected under Article 35 §§ 1 and 4 of the Convention as manifestly ill founded.

49. In respect of the criminal case, the Court considers that in principle a system requiring that appeals in cassation in criminal cases be typed, while at the same time depriving detainees of access to equipment allowing to produce such typed appeals (see the unchallenged statement by the applicant cited in paragraph 17 above) would be excessively formalistic and could raise an "access to court" issue under Article 6 of the Convention. It notes with satisfaction that the legislation has changed in that respect (see paragraph 19 above). In the present case, the Court notes that the applicant failed to observe several different procedural requirements (see paragraph 18 above), not only the typed form of the appeal, and did not submit that he could not have satisfied any of those other conditions, which appear reasonable. Moreover, the applicant asked for the reopening of the proceedings after the law was changed to exclude the typing requirement, claiming that his appeal in cassation had been rejected only because it had not been typed. However, the Supreme Court of Justice rejected that argument (see paragraph 19 above), thus confirming that other formal requirements had not been observed.

50. As for the alleged deficiencies in the manner in which the lawyer hired by the applicant carried out his duties, the Court reiterates that, given the independence of the legal profession from the State, the conduct of the case is essentially a matter between the defendant and his or her counsel and, as such, cannot, other than in special circumstances, incur the State's liability under the Convention (see, for comparison and *mutatis mutandis*, *Artico v. Italy*, judgment of 13 May 1980, § 36, Series A no. 37; *Rutkowski v. Poland* (dec.), no. 45995/99, ECHR 2000-XI, and *Alvarez Sanchez v. Spain* (dec.), no. 50720/99). In the present case the Court is unable to find

that there was any defect in the proceedings that would engage the responsibility of the respondent State.

51. Therefore, the complaints under Article 6 concerning the criminal proceedings are also inadmissible and must be rejected under Article 35 §§ 1 and 4 of the Convention as manifestly ill founded.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. The applicant complained under Articles 5, 6, 8, 9, 13, 14 and 17 of the Convention, notably that he had encountered difficulties in lodging his appeal in cassation because of the formal requirements such as typewritten form or the requirement to pay court fees.

53. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that the remainder of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed a total of 50,000 euros (EUR) in respect of non-pecuniary damage.

56. The Government considered that no compensation should be paid, in the absence of a violation of any Convention rights. In any event, the sum claimed was excessive and unsubstantiated.

57. 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, and considering in particular the long period of time during which the applicant was detained in inhuman conditions, the Court awards the applicant EUR 15,000.

B. Costs and expenses

58. The applicant did not make any claims in respect of his first application and claimed EUR 1,000 for legal costs in respect of his second application. He submitted a detailed description of his representatives' work for 25 hours on that case.

59. The Government considered the hourly rate claimed reasonable, but submitted that the number of hours worked on the case was excessive, considering the lack of complexity.

60. 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, the Court notes that it has found a violation of Article 3 of the Convention only in respect of the conditions of the applicant's detention and declared inadmissible all the other complaints. It also notes that the applicant made no claim for costs and expenses as part of his first application, which was the only one where the parties had been asked to comment on the complaint under Article 3 (see paragraph 4 above). Accordingly, the Court makes no award for legal costs. At the same time, regard being had to the information in its possession, the Court considers it reasonable to award the applicant the sum of EUR 100 for incidental costs and expenses.

C. Default interest

61. 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. *Decides* to join the applications;
2. *Declares* the complaint under Article 3 of the Convention admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months of 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 on the date of settlement:

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 100 (one hundred 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 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President