



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

THIRD SECTION

CASE OF PLOTNICOVA v. MOLDOVA

(Application no. 38623/05)

JUDGMENT

STRASBOURG

15 May 2012

FINAL

15/08/2012

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

In the case of Plotnicova v. Moldova,

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

Josep Casadevall, President,

Corneliu Bîrsan,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Mihai Poalelungi, judges,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 17 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 38623/05) 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, Ms Lidia Plotnicova (“the applicant”), on 17 October 2005.

2. The applicant was represented by Mr R. Tocan, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that she had been detained in inhuman conditions in breach of Article 3 of the Convention and that her rights under Article 6 § 3 of the Convention had been breached.

4. On 12 January 2009 the Court decided to communicate the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (former Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Chişinău. During the 1990s she became well known in business circles in Moldova and was designated “Business person of the year” in 1999.

6. During 1999-2001 the applicant borrowed money from four individuals, to a total amount of 894,955 Moldovan lei (MDL),

(approximately 79,000 euros (EUR) at the time). She told her creditors that she would use the money to import cosmetic products from a French company to sell in her cosmetics shop in Chişinău. However, she did not repay the money and interest within the time-limits agreed with her creditors. The applicant submitted that she had repaid part of her debt before the proceedings against her were initiated and that the delay in repaying the debt was due to delays in importing the cosmetic products to Moldova. It is not disputed by the parties that the applicant never denied the existence of her debts and that she confirmed them in writing and before the authorities during the criminal proceedings.

7. Following criminal complaints by the creditors, on 11 November 2002 a criminal investigation was initiated against the applicant. She was accused of obtaining the money fraudulently, without any intention of repaying it. According to the applicant, a person with influence over one of her creditors wanted to obtain a contract with the French company and threatened her with imprisonment if she refused to transfer her business with that company to him. The criminal proceedings against her were used as a means of destroying her business.

8. On 3 February 2003 the applicant was declared a wanted person and on 4 February 2003 a court remanded her in custody pending trial. Neither the applicant nor her representative was present.

9. According to the applicant, on 13 March 2003 she was arrested and taken to Chişinău police headquarters, where she was detained throughout that day, without any record of the detention being made. The Government submitted that her detention had been duly recorded. Because she had serious health problems, an ambulance was called and she was taken to hospital at the doctors' request. The applicant spent seven days in hospital under police supervision. On 20 March 2003 the applicant was released from hospital, was rearrested and placed again in the Chişinău police headquarters. She felt ill on the same day and an ambulance was called to treat her. On 11 April 2003 the applicant's daughter complained to the Chişinău Prosecutor Office about the alleged refusal to allow the applicant's transfer to a hospital on 20 March 2003. The applicant did not inform the Court of any reply received or of any complaint to the higher prosecutor or the court in relation to that complaint. She was transferred to prison no. 13 on 28 May 2003.

10. On 2 April 2003 the investigator sent a rogatory commission to the French authorities, asking them to verify whether the applicant had had contacts with the cosmetics company and whether she had been its representative in Moldova, as well as whether she had purchased cosmetic products from that company in order to import them to Moldova. On 26 July 2004 the applicant requested that "two volumes of materials from France" be added to the file. The prosecutor supported her request, on

condition that the materials be translated. The court agreed, but a translation was apparently never added to the file.

11. The applicant requested that witnesses on her behalf be heard. In particular, on 1 November 2003 she asked for O.G., the son of one of her creditors, to be heard, since he had allegedly received large sums of money from the applicant on account of the debt she owed his mother. Moreover, she was in frequent contact with him, all of which proved, in the applicant's opinion, that she was not hiding from her creditors but was trying in good faith to honour her obligations. The applicant submitted copies of receipts from her creditors confirming that she had repaid them various sums of money before the criminal proceedings were initiated (for instance, she repaid USD 5,000 on 13 April 2000, USD 300 on 15 January 2001, USD 500 on 15 December 2001 and USD 500 on 15 January 2002; in addition she repaid many smaller amounts to S., one of her creditors, on numerous occasions throughout 2001).

12. On 27 July 2005 the applicant was convicted and sentenced to ten years' imprisonment. The court relied on the statements of various witnesses attesting that the applicant had taken money from them and never returned it, absconding from them. It did not mention anything about the results of the rogatory commission results, but relied on "information from the Ministry of Internal Affairs", according to which the applicant was not a representative of the French company in Moldova. In her appeal, the applicant noted, *inter alia*, that she had not been given a translation of the materials obtained from the French authorities. She repeated her request during the hearing of the Chişinău Court of Appeal, adding that the lower court had noted the impossibility of examining those documents in the absence of a translation. She referred to the receipts from her creditor S. as evidence of the fact that they had been in frequent contact throughout 2001 when she repaid him sums of money on account of her debt (see paragraph 11 above). She also noted that on 30 November 2001 she had travelled together with S. to the customs to meet a truck full of merchandise imported from the French company, and that this had been confirmed during the first-instance court hearing. The applicant also declared that she had asked the investigator to summon O.G. as a witness in order to confirm that she had repaid large amounts of money to him as the son of one of her creditors. She further submitted that she had been detained, together with seven others, for more than two years in a small cell measuring 10 square metres, and that the cell was insufficiently lit, ventilated or equipped with elementary necessary items. She also complained that she had been subjected to ill-treatment while in detention, following which she was admitted to hospital with a broken arm. She asked for her health problems to be taken into consideration, as well as the inhuman conditions of detention in which she had been detained for a lengthy period of time.

13. The Chişinău Court of Appeal scheduled a hearing for 1 December 2005. According to the transcript of that hearing, at the applicant's lawyer's request the court agreed to add to the file a recommendation issued by the French company and addressed to the court, according to which the applicant had been the company's representative in Moldova from 1994-2002 and had been recognised as a serious and responsible business person, whose activity had allowed the French company to expand its business in Moldova. During the hearing of 1 December 2005 the applicant requested "to see the set of documents from France [given that] the first-instance court stated that the documents had not been translated, and therefore had not been examined". The applicant's lawyer supported the request, adding that accounting documents from France had been submitted to the first-instance court which confirmed the business relationship between the French cosmetics company and his client, who represented that company in Moldova. According to the transcript, the court refused the request, on the ground that the materials referred to by the applicant had been the subject of examination by the lower court.

14. Having examined the parties' submissions, the court upheld the lower court's judgment, finding that all the arguments raised by the defence had been examined by the lower court and had been properly rejected as unfounded. In respect of the applicant's argument that she had not had the opportunity to study a translated version of the documents obtained from the French authorities, the court found that this matter had already been examined during the hearing before the first-instance court.

15. In his appeal on points of law, the applicant's lawyer noted the lower courts' refusal to hear witnesses on her behalf; the fact that the courts remained silent about the evidence that she had already repaid an important part of the debt to her creditors, which excluded an intention to evade payment; that the file was not complete, certain of the documents in the file proving her innocence not having been forwarded by the first-instance court to the Court of Appeal; and that two of the four alleged victims had not appeared at the hearing before the Chişinău Court of Appeal, even though she considered their presence mandatory.

16. The applicant's lawyer considered that she was being prosecuted for her inability to repay her debts, contrary to Article 1 of Protocol No. 4 to the Convention. He also referred to the information from the Customs Department, confirming that on 29 November 2003 the company in which the applicant worked as executive director had imported cosmetic products from the French company, and therefore was pursuing precisely the type of activity for which the applicant had borrowed the money. He also referred to the contract between the French company and the applicant, according to which the latter acted as the exclusive representative of that company in Moldova. He finally referred to awards received by her in 1999-2001, including "Best business person of the year 1999".

17. On 28 March 2006 the Supreme Court of Justice upheld the lower courts' judgments. The court found that the applicant had borrowed large sums of money and then avoided contact with her creditors and refused to repay her debts. She did not deny having borrowed the money, but explained that she had invested the money in the cosmetic products and was not yet able to repay it. Moreover, the applicant presented herself to her creditors as a credible person – the official representative of the French company in Moldova - while in fact she was not such a representative. She thus misrepresented to the victims the nature of the relationship into which they had entered. Even though she had always confirmed in writing her debts owed to the victims, the applicant would avoid meeting them and had no intention of paying.

18. The judgment of the Supreme Court of Justice was final. An extraordinary appeal by the applicant to the Supreme Court of Justice was dismissed on 18 December 2006.

19. On 26 March 2009 the applicant was released from prison.

20. The applicant stated that she had returned some of the money she had borrowed, but was unable to return the remainder because her economic activity had been interrupted by her arrest.

II. RELEVANT REPORTS OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

21. 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 one recounted 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 were not at full capacity – as is the case with prison no. 3, in which the number of detainees was significantly reduced in comparison with that during the last visit of the Committee – they continued to be extremely overcrowded. In fact, the accommodation capacity was still based on an inadequate 2m² per detainee, which in practice was often even less.

77. The follow-up visit to Prison no. 3 in Chişinău did not have a satisfactory result. The progress found was in fact minimal and limited to some current repairs. The repair of the ventilation system had been possible primarily through the financial support of civil society (especially NGOs), and the space for daily exercise had been created by the efforts of detainees and their families.

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

79. ... In sum, the conditions of life in the great majority of cells in Blocks I-II and in the transit cells continue to be miserable. ...

Finally, despite the drastic reduction in overcrowding, a very high, even intolerable, level of occupancy of the cells can be observed.

83. Other than in the Lipcani Re-education Colony for Minors, where the efforts made in this respect are to be highlighted, the quantity and quality of detainees' food everywhere is a source of grave concern. The delegation was inundated with complaints regarding the absence of meat and dairy products. The findings of the delegation regarding both the stocks of food and the menus confirm the credibility of these complaints. Its findings also confirmed that in certain places (in Prison no. 3 and elsewhere), 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 the quality of their equipment.

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

22. The relevant parts of the report of the CPT on its visit to Moldova between 21 and 25 November 2005 (CPT/Inf (2008) 35) read as follows (unofficial translation):

9. ... As for financial resources, the basic subsistence needs in the prisons are only partly covered by the State budget: at the level of 33% in respect of food (meat, milk and eggs being obtained from humanitarian projects). ..."

23. 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):

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 below their official capacity, and there was on average only two square metres of living space per prisoner, rather than the standard of four square metres provided for in Moldovan legislation.

The CPT is convinced that the only viable way to control overcrowding and achieve the standard of at least four square metres of living space per prisoner is to adopt policies designed to limit or moderate the number of people 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 individuals who have been deprived of their liberty.

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

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

24. The applicant complained that she had been held in inhuman conditions and had not been given sufficient medical assistance while in detention. Moreover, when she was released from hospital on 20 March 2003 the investigator refused her to continue her in-patient treatment. She relied on Article 3 of the Convention, which reads:

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

A. Admissibility

1. As regards the conditions of detention

25. The Government submitted that the applicant had failed to exhaust available domestic remedies in respect of her complaint under Article 3 of the Convention. In particular, she could have initiated a civil court action claiming compensation for the allegedly inhuman conditions of her detention, but she did not make such a claim.

26. The Court reiterates that it has already found that the remedy referred to by the Government did not constitute an "effective remedy" in respect of ongoing violations of Article 3 of the Convention (see, for instance, *Rotaru v. Moldova*, no. 51216/06, § 25, 15 February 2011, and further references made there). In the present case, the applicant was still in detention at the time when she lodged her complaint with the Court. It follows that this objection must be dismissed.

27. 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.

2. As regards the other complaints under Article 3

28. In respect of the applicant's complaint concerning the investigator's refusal to allow her to have in-patient treatment on 20 March 2003, the Court notes that the applicant has not submitted documents confirming the outcome of the complaint made in this respect at the domestic level (see paragraph 9 above). Even assuming that she had exhausted domestic remedies by challenging in court any eventual decision taken by the prosecutor, she lodged her application on 17 October 2005, more than two years after the relevant events. It follows that this complaint was introduced out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

29. In addition, the Court considers that the applicant has not substantiated her complaint concerning the alleged insufficiency of the medical assistance offered to her during her detention. On the contrary, the file contains documents confirming that she had already had health problems before her arrest and that thereafter she was regularly seen by various doctors and followed the treatment prescribed by those doctors. Therefore, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

1. The parties' submissions

30. The applicant complained that the conditions of her detention in prison no. 13 had been inhuman (see paragraph 12 above). She added that the food had been inedible, consisting of "a turbid broth with clumps of cereal in poorly washed bowls" and unpleasant tea. Her only relief had been the parcels received from her daughter, which however had not reached her on a number of occasions.

31. The Government reiterated that the applicant had not complained at the domestic level about the conditions of her detention and had not initiated a court action claiming compensation. This confirmed that the applicant herself had not felt that her prison conditions had been substandard.

32. They added that during her detention the applicant had been held in cell no. 106, measuring 10 square metres and designed to accommodate six detainees; cell no. 107 (14.75 square metres for eight detainees); cell no. 109 (14.1 square metres for six detainees); cell no. 110 (14.64 square metres for eight detainees) and cell no. 111 (14.1 square metres for eight detainees). Therefore, the statutory minimum of two square metres of personal space for each detainee had been observed. Each of the cells had access to daylight via a window and was properly ventilated, had a water tap

and a toilet separated from the rest of the cell by a barrier. The temperature was kept above 18°C in winter and detainees could periodically take a shower. Each cell had a radio and detainees were allowed to install television sets and other audiovisual equipment allowed by the regulations. Warm food was served three times a day and was of acceptable quality and quantity.

33. The Government finally referred to the fact that, besides the daily one-hour exercise to which the applicant had a right, since 9 February 2006 she started working in the cleaning group, thus spending time outside her cell every day.

2. *The Court's assessment*

34. The Court reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Kudla v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI, and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers*, cited above, § 74).

35. In the present case, the Court notes that the applicant gave a detailed description of her conditions of detention, including overcrowded cells and poor-quality food. In their observations, the Government provided specific details concerning the size of the cells and the number of persons held in them (see paragraph 32 above). The Court observes that in all the cells in which the applicant was held, the personal space available to each detainee did not exceed 2.5 square metres, which is significantly below the minimum of 4 square metres often referred to by the CPT and the Court (see, for instance, *Rotaru v. Moldova*, cited above, § 38). While the fact that the applicant worked outside her cell would have provided her with a certain amount of relief, the fact that she would spend her nights in such a cramped space every night for years results, in itself, in suffering attaining the minimum level of severity for the purposes of Article 3 of the Convention. It is also to be noted that the applicant had spent more than eight months in such conditions before being allowed to work outside her cell.

36. As regards the Government's argument about the absence of any complaints, the Court notes that the applicant made at least one such complaint to the Court of Appeal (see paragraph 12 above) and that she apparently received no response to her complaint. It cannot therefore be

argued that the applicant had implicitly recognised that the conditions of her detention were good.

37. The Court also notes that while rejecting the applicant's submissions concerning the quality and quantity of food, the Government did not provide specific details proving the contrary, notably in respect of the food available during the initial years of her detention. The applicant's description also matches that given several months earlier by the CPT (see paragraphs 21-23 above). Accordingly, the Court accepts the applicant's submission in this respect.

38. In view of the above, the Court finds that the applicant was detained in conditions incompatible with the requirements under Article 3 of the Convention. There has accordingly been a violation of that provision.

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

39. The applicant complained of a violation of Article 6 § 3 of the Convention because of the courts' failure to hear witnesses and to order the translation of key documents.

The relevant part of Article 6 § 3 reads as follows:

"Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

A. Admissibility

40. The Government submitted that the applicant had failed to exhaust available domestic remedies in that she had not raised before the domestic courts the issues of summoning witness O.G. or examining the translation of any documents from France.

41. However, the Court notes that the applicant made such requests in her appeal and during the hearing of the Chişinău Court of Appeal (see paragraphs 12 and 13 above). Accordingly, this objection must be rejected.

42. 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

43. The applicant complained about the domestic courts' failure to summon witness O.G. or to allow her to cross-examine witnesses for the prosecution, and to examine the materials obtained as a result of the rogatory letter sent to the French authorities. She also claimed that she had not been able to properly follow the course of the proceedings and understand the judgments adopted, because they had not been translated into Russian for her as required by law and she did not understand Romanian.

44. According to the Government, the prosecuting authorities gathered sufficient evidence of the applicant's guilt for the documents obtained from the French authorities not to be necessary for the indictment. Accordingly, no reliance was made by the prosecution on the response to the rogatory letter, and none of the documents obtained in the process were included in the file or relied on by the courts in their judgments. The applicant did not make any complaint to the domestic authorities that she and her lawyer had been unable to cross-examine prosecution witnesses. On the contrary, the file contains the applicant's request for witness F. to be heard, which the court granted and heard that witness.

45. Moreover, the higher courts noted that the documents had been examined by the lower court and that there was no need to examine them on appeal. The applicant never complained during the proceedings that she had not understood anything, nor requested translation into Russian, having always signed documents and had the assistance of a Romanian-speaking lawyer.

46. The Court notes first that in a letter of 17 May 2010 it asked the Government to submit any decision taken by the first-instance court or the appellate court accepting or refusing to hear witness O.G. It received no such decision, although the applicant had expressly complained about the investigator's and first-instance court's failure to summon O.G. (see paragraphs 11 and 12 above), who in her opinion could have confirmed that she had not been hiding from her creditors and that she had been repaying one of them – O.G.'s mother – throughout the relevant period. The Court reiterates that it is first of all for the domestic courts to assess the pertinence and admissibility of witness statements. However, the absence of any decision by the domestic courts in response to the applicant's request to hear O.G. raises in itself a serious issue under Article 6 of the Convention since it deprived the applicant of possibly an important means of defence (see, for instance, *Vidal v. Belgium*, 22 April 1992, § 34, Series A no. 235-B).

47. The Court also notes the Government's argument that the documents obtained from France in response to the rogatory letter had not been

included in the file because the prosecution considered them irrelevant. However, it recalls that “... it is a requirement of fairness under paragraph 1 of Article 6 ... that the prosecution authorities disclose to the defence all material evidence for or against the accused” (see *Edwards v. the United Kingdom*, 16 December 1992, § 36, Series A no. 247-B). Indeed, it was for the applicant and her lawyer to decide whether they could use the materials in question in her defence, while the final conclusion as to the importance of that evidence for the outcome of the case rested with the courts. It follows that the prosecution’s failure to provide the defence and the courts with the translated materials obtained from France – in the absence of a reasoned court decision to withhold this information from the defence – is in itself incompatible with the requirement of fairness under Article 6 of the Convention.

48. The above findings are sufficient for the Court to conclude that there has been a violation of the applicant’s rights under Article 6 § 3 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Complaints under Article 5 of the Convention and Article 1 of Protocol No. 4 to the Convention

49. The applicant also complained of a violation of Article 5 §§ 1 and 3 of the Convention in respect of her allegedly unregistered detention on 13-20 March 2003 and her subsequent unreasoned detention. She also complained under Article 1 of Protocol No. 4 to the Convention that she had been detained for the sole reason that she had been unable to pay her debts.

50. The Court notes that the applicant did not specifically ask the domestic courts to declare her detention from 13 to 20 March 2003 unlawful. In the absence of a final domestic court decision, the running of the six-month period for lodging an application with the Court started from the date when the allegedly unlawful detention had ended, namely on 20 March 2003. Taking into consideration that the application was lodged on 17 October 2005, this complaint must accordingly be rejected pursuant to Article 35 §§ 1 and 4 of the Convention as having been lodged out of time.

51. The Court further considers that the applicant did not substantiate her complaint under Article 5 § 3 of the Convention that her subsequent detention had not been supported by sufficient reasons. It observes that she described only in a general manner the alleged lack of reasoning in the domestic courts’ decisions ordering her detention pending trial, and did not submit copies of those decisions. Similarly, the complaint under Article 1 of Protocol No. 4 to the Convention is unsubstantiated.

Accordingly, the Court concludes that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaint under Article 6 § 2 of the Convention

52. The applicant complained of a violation of Article 6 § 2 of the Convention, claiming that the courts had not weighed properly her right to presumption of innocence against the evidence of her guilt.

53. The Court finds that this complaint is unsubstantiated, since the applicant did not provide any evidence showing that the courts had violated the presumption of innocence when assessing her case. It must therefore be rejected as inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

C. Complaint under Article 8 of the Convention

54. The applicant also complained of a violation of Article 8 of the Convention as a result of the refusal of the prison authorities to allow her to see her relatives, including to attend her brother's funeral, or to send letters.

55. The Court considers that this complaint is unsubstantiated, since the applicant has not submitted evidence that the prison authorities had refused to allow her to see her relatives or that her correspondence had been monitored. Moreover, while her contacts with the outside world were limited before her transfer to prison no. 13 on 28 May 2003, because of the requirements of the investigation, any implicit complaint in respect of that period is out of time for the same reason as that mentioned in paragraph 50 above. Accordingly, this complaint must be rejected as inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

D. Complaint under Article 1 of Protocol No. 1

56. The applicant complained of a violation of Article 1 of Protocol No. 1 to the Convention, since she had been ordered to pay her creditors in full, while she had already returned a part of her debt.

57. The Court does not find that there has been any unjustified or disproportionate interference with the applicant's property rights. It notes that the domestic courts examined the applicant's arguments against the existence of an obligation to pay her creditors in full and rejected them in reasoned decisions not affected by arbitrariness. This complaint must therefore be rejected as inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. Article 41 of the Convention provides:

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

A. Pecuniary damage

59. The applicant submitted that as a result of her unlawful detention and conviction she had lost her business, which had had a turnover of 100,000 United States dollars (USD) a year, resulting in an overall loss of USD 600,000. She also claimed EUR 50,000 for the cost of medical treatment needed for her to recover from the damage caused to her health by the insufficient medical treatment and the inhuman conditions of detention. She also claimed EUR 4,500 for the cost of medicines and food sent her by relatives because the State had failed to provide her with them in sufficient quality and quantity.

60. The Government considered that the applicant's calculations were unreasonable and unsupported by any evidence.

61. The Court reiterates that it only found a violation of Articles 3 (conditions of detention) and 6 § 3 of the Convention in the present case. It does not see any reasonable connection between these violations and the claims for loss of income. It also notes that it declared inadmissible the complaint under Article 3 of the Convention concerning the medical assistance given to the applicant while in detention. It cannot therefore consider her claim for compensation for medical costs allegedly required for her recovery after her release. Finally, the Court considers that the damage caused to the applicant by serving her poor-quality food is to be examined as non-pecuniary damage.

The Court therefore rejects the applicant's claims under this head.

B. Non-pecuniary damage

62. The applicant claimed EUR 1,000,000 for damage caused to her reputation as a business person and for suffering caused by the inhuman conditions of detention.

63. The Government considered that the sum claimed was extremely exaggerated in comparison with the awards made by the Court in similar cases in respect of Moldova.

64. In view of its finding of a violation of Articles 3 and 6 of the Convention and deciding on an equitable basis, the Court awards the applicant EUR 4,500 in compensation for non-pecuniary damage.

C. Costs and expenses

65. The applicant left to the Court's discretion the amount to be awarded under this head.

66. The Government considered that the applicant made no claim under this head.

67. 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).

68. In the present case, the applicant did not claim a specific amount and did not show that she had incurred or was going to incur any expenses. At the same time, the Court considers it reasonable to award the applicant the sum of EUR 100 for incidental costs and expenses.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 (concerning the conditions of detention) and Article 6 § 3 admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention as regards the conditions of the applicant's detention;
3. *Holds* that there has been a violation of Article 6 § 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 at the date of settlement:
 - (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and
 - (ii) EUR 100 (one hundred euros), plus any tax that may be chargeable to the applicant, 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 15 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President