



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

SECOND SECTION

CASE OF COSOVAN v. THE REPUBLIC OF MOLDOVA

(Application no. 13472/18)

JUDGMENT

Art 3 (substantive) • Positive obligations • Degrading treatment • Inadequate medical treatment to applicant with a serious illness in its terminal stage • Detention extended despite terminal condition • No justification for distinction between the detention of a person following conviction and one detained pending trial when suffering caused by detention was incompatible with that person's medical condition
Art 5 § 3 • Reasonableness of pre-trial detention • Domestic courts' failure to provide sufficient reasons justifying applicant's extended detention pending trial • Artificial division of criminal investigation into separate ones to obtain unfair procedural advantages or circumvent mandatory legal provisions incompatible with Art 5

STRASBOURG

22 March 2022

FINAL

22/06/2022

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

In the case of Cosovan v. the Republic of Moldova,

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

Jon Fridrik Kjølbro, *President*,

Carlo Ranzoni,

Branko Lubarda,

Pauliine Koskelo,

Jovan Ilievski,

Gilberto Felici,

Diana Sârcu, *judges*,

and Stanley Naismith, *Section Registrar*,

Having regard to:

the application (no. 13472/18) 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 Serghei Cosovan (“the applicant”), on 20 March 2018;

the decision to give notice of the application to the Moldovan Government (“the Government”);

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by Prison Litigation Network, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 2 March 2022,

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

INTRODUCTION

1. The present case concerns the positive obligations of the authorities under Article 3 regarding the medical treatment of a person with a serious illness in its terminal phase, as well as the compatibility of such a condition with continued detention. It also concerns under Article 5 § 3 the allegedly insufficient reasons given for the applicant’s detention pending trial.

THE FACTS

2. The applicant was born in 1971 and lived in Chişinău until his death on 25 March 2021. His wife, Mrs Elena Cosovan, expressed the wish to continue the proceedings before the Court. The applicant was represented by Ms N. Hriplivîi, Mr V. Vieru and Mr A. Postica, lawyers practising in Chişinău.

3. The Government were represented by their Agent, Mr O. Rotari.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE APPLICANT'S ARREST, DETENTION AND CONVICTION

5. The applicant owned two businesses in Moldova and was a member of the local council in the town of Codru, representing P.N., an opposition political party.

6. On 26 September 2017 the applicant went to the office of a public prosecutor on being summoned. He was then arrested on suspicion of abuse of his position and fraud, by accepting money from a number of persons and falsely promising them that they would become owners of metal kiosks for selling merchandise.

7. On 29 September 2017 the Chişinău Court (Centru office) ordered the applicant's detention pending trial for 30 days. It found that the criminal investigation had been lawfully started (by decisions of 25 April, 26 May and 23 December 2014, as well as 10 July and 23 November 2016, and 14 April 2017); that there was a reasonable suspicion that the applicant had committed a crime; that he was accused of a particularly serious offence for which the law provided for imprisonment of up to 15 years; and that he could abscond, reoffend or create obstacles to the smooth running of the criminal investigation. It further held that his detention pending trial was lawful and necessary in order to allow the prosecution properly to administer evidence. If the applicant were not detained, his propensity to commit criminal acts against the proper administration of justice would pose a specific danger to the public order.

8. The applicant's lawyers appealed, referring to the absence of any evidence to support the finding that the applicant's release would pose any risk. They added that the applicant's passport could be seized and that he undertook to appear before the investigating authority whenever summoned.

9. On 16 October 2017 the Chişinău Court of Appeal upheld the decision of 29 September 2017. The court found that there was a reasonable suspicion that the applicant had committed a crime, which was a particularly serious one for which the law provided for imprisonment of up to 15 years; that the preventive measure was aimed at preventing the applicant from creating obstacles to the criminal investigation or destroying evidence or absconding; that the case was complex and the investigating authority needed sufficient time to establish all the relevant circumstances; that another preventive measure could not be applied since only detention would ensure the proper conduct of the investigation; that preventive measures were applicable not in order to test an accused's ability to abide by them, but to ensure the proper conduct of the investigation. Moreover, it held that the applicant and his lawyers had not submitted convincing evidence to prove the absence of his intention to abscond or interfere with the course of the investigation. The court also found that the applicant could be given appropriate medical treatment in detention and that, should the prison administration confirm the

impossibility of treating him in prison, he could be transferred to a public hospital.

10. The applicant's detention pending trial was extended on a number of occasions. Each time, the courts relied on essentially the same reasons as before. In their submissions to the court before it adopted one such decision (the Chişinău Court (Centru District), decision of 24 October 2017) the applicant's lawyers argued, *inter alia*, that on 7 May 2014 their client had already been indicted for the same offence and arrested for 72 hours. They added that the applicant had known of the investigation since 2014 but had neither absconded nor interfered with it. During all this time he had appeared before the investigating authority whenever summoned. He had been arrested in 2017 in the prosecutor's office, where he had gone after having been summoned once more.

11. On 24 April 2018 the investigating judge of the Chişinău Court (Centru District) replaced the preventive measure taken in respect of the applicant with house arrest for a period of 30 days and ordered his immediate release from detention. The judge found no evidence confirming the existence of a risk of absconding or pressuring witnesses and the injured parties. He noted that the possibility of applying a long prison sentence could not, in itself, justify detention pending trial. Moreover, according to the medical documents in the file, the applicant's illness was in its terminal stage, which presented a danger to his life. The applicant's illness was a ground for releasing him from the execution of any sentence, as confirmed in a letter from the National Prisons Administration (NPA). Although the relevant regulation (see paragraph 46 below) provided for exemption from execution of sentence for convicted persons only, the judge found it absurd that a person held in pre-trial detention should not benefit from the same right. Continuing to detain a person with such a condition would expose him to suffering which could amount to torture. The court found only one ground for detention relied upon by the prosecution as being confirmed, that of maintaining public order: it noted that the alleged victims protested against the applicant's possible release. However, given the seriousness of the applicant's condition, the public order rationale was insufficient to justify his continued detention and the same aim could be reached by ordering his house arrest.

12. The applicant was released from detention on 24 April 2018. As he was leaving prison no. 16, he was re-arrested by officers of the Chişinău Police Directorate. According to the minutes of arrest, the reason for detention was the risk of absconding from criminal prosecution. This new prosecution, started on 1 March 2018, concerned other persons in the same group of those who had paid money to the applicant and allegedly been defrauded.

13. On 27 April 2018 another investigating judge accepted a prosecutor's request and ordered the applicant's detention pending trial for 30 days. The judge did not mention the preventive measure already applied on 24 April

2018 (house arrest, see paragraph 11 above). That arrest warrant was subsequently extended once a month.

14. On 17 May 2018 the judge who had ordered the applicant's house arrest annulled that decision at the prosecutor's request, based on the other prosecution and arrest warrant issued in the meantime.

15. On 11 July 2018 the Chişinău Court (Buiucani District) found the applicant guilty of fraud against two persons, the overall damage caused being EUR 8,000. The court sentenced him to seven years' imprisonment. That judgment was upheld by the Chişinău Court of Appeal on 28 November 2018.

16. On 10 October 2018 the Council for the Prevention and Elimination of Discrimination and for Ensuring Equality (the CPEDAE) found, in response to the applicant's complaint and after having examined the arguments of the Ministry of Justice and the NPA, that the impossibility for persons detained pending trial to be released owing to serious illnesses constituted discrimination in relation to persons detained after a final conviction and suffering from similar diseases. It recommended that the applicant's case be urgently examined without discrimination based on his procedural status and that a mechanism be created to ensure the application of the relevant guarantees to all detainees.

17. On 9 July 2019 the Supreme Court of Justice quashed the lower court's judgment and sent the case for a retrial by the Chişinău Court of Appeal.

18. On 1 October 2019 the Chişinău Court of Appeal partly upheld the first-instance court's judgment of 11 July 2018 and found the applicant guilty of fraud. It sentenced him to seven years' imprisonment and ordered him to pay the two victims a total of EUR 8,000. The court noted, *inter alia*, that in prison no. 16 the applicant was given the medical assistance required for his condition and that there was a positive dynamic in his treatment.

19. On 24 March 2020 the Supreme Court of Justice again quashed the lower court's judgment and sent the case for a retrial by the Chişinău Court of Appeal.

20. In the meantime, on 18 November 2019 the Chişinău Court (Ciocana District) examined the requests lodged by the applicant's lawyer on 10 June 2019 and by the administration of prison hospital no. 16 on 3 July 2019 to release the applicant on health grounds. The NPA also supported this request. The court noted that on 12 July 2019 an expert report had been ordered by the court, which had been completed on 7 October 2019. The expert had found that the applicant's illness was among those allowing the person to be exempted from the execution of his sentence. He added that his illness was evolving in a negative way, his condition was continuously worsening, and that he had a limited life expectancy. The court pointed out that the institution in charge of the execution of a sentence had to submit a request for release on health grounds, together with the convict's medical file, to the court within

five days of establishing the existence of the illness (Article 271 of the Code of Execution [of Sentences], see paragraph 47 below). Referring to the expert's opinion and finding that the applicant's condition was worsening, the court accepted the requests and ordered his release.

21. The applicant died in *Sfânta Treime* public hospital in Chişinău on 25 March 2021.

II. THE APPLICANT'S MEDICAL CONDITION AND TREATMENT ADMINISTERED TO HIM

22. The applicant was suffering from a number of diseases before his arrest. On 28 May 2016 he underwent an ultrasound examination, which found the complete disappearance of ascites and a positive dynamic in his disease. Upon his arrest and placement in prison no. 13 he was seen by a doctor, who diagnosed him with hepatitis C decompensated cirrhosis B-stage (Child-Plugh B). This diagnosis, together with a number of complications such as severe hypersplenism, was later confirmed by doctors at prison hospital no. 16, where he was treated between 5 and 10 October 2017.

23. On 2 March 2018 the Head of the Intensive Therapy and Resuscitation Department of the Clinical Hospital of Infectious Diseases *Toma Ciorba* largely confirmed the applicant's earlier diagnosis. She prescribed, *inter alia*, the applicant's inpatient treatment by a hepatologist. According to a letter of the NPA dated 4 January 2019, he was seen by a pathologist on 23 April, 29 May, 26 July, 27 September and 28 December 2018.

24. On 27 March 2018 a Medical Council was convened, with the participation of doctors from various public medical institutions. That council also confirmed the applicant's diagnosis. It amended the applicant's previous treatment and prescribed several types of medical procedure, including Albumin solution, minimum 2-3 transfusions at an interval of 5 days and freshly frozen plasma B (III) - 3 transfusions at an interval of 3-4 days. The applicant was recommended to be seen by a hepatologist in order to determine the need for a liver transplant. He was also to be presented to the National Council for the Determination of Disability and Labour Capacity (CNDP).

During the subsequent period the applicant was once given the Albumin solution and two freshly frozen plasma B at an interval of 3.5 weeks. He was presented to the CNDP on 14 August 2018.

25. On 4 April 2018 the applicant's lawyers asked to convene a new Medical Council in order to include him on the waiting list for a liver transplant.

26. On 23 April 2018 the applicant was seen by a hepatology specialist and a liver transplant team, as a potential candidate for the waiting list for a liver transplant. He underwent medical examinations in accordance with the national Liver Transplant Protocol, the results of which were presented to a Medical Council (including the liver transplant coordinator, the director of

the Transplantation Agency and the gastroenterologist of the transplant team) on 29 May 2018. As a result, the Medical Council decided that a further test (QuantiFERON) was required before the applicant could be included on the waiting list for a liver transplant, in order to rule out possible specific or lymphoproliferative processes.

27. On 2 May 2018 Moldova's Ombudsman informed the applicant's lawyers that he had submitted an emergency appeal to several authorities, urging them to identify solutions to protect the applicant's right to life, physical integrity and health. He referred to his findings after visiting prison hospital no. 16 on 12 April 2018, notably that while that institution ensured the minimum of medical assistance, the applicant's condition continuously worsened. The applicant needed, in particular, to be seen urgently by a hepatologist in order to start the procedure for a liver transplant. The Ombudsman also noted that, although on 27 March 2018 a Medical Council had prescribed an examination of the applicant by a hepatologist and a request to that effect had been made by prison hospital no. 16 on 28 March 2018, two weeks later such an examination had yet to take place. Moreover, that institution had confirmed that it did not have a contract with any medical institution specialised in liver transplants.

28. On 8 May 2018 the applicant asked the Ministry of Justice to ensure that all his samples required for medical investigations be taken by institutions properly accredited under the domestic law as medical institutions, prison hospital no. 16 not being so accredited. He also asked for strict compliance with the national clinical protocol for treating chronic hepatitis and hepatic cirrhosis C, adopted in 2013.

29. On 4 June 2018 an advisory medical commission examined the applicant in prison hospital no. 16 and recommended compliance with hepatologist prescriptions, the patient's dynamic supervision, treatment in accordance with medical instructions and transfer to a specialised public hospital. On 5 June 2018 he was transferred to the Municipal Clinical Hospital. On admission, new complications in the applicant's health were found. Upon his return to prison hospital no. 16 on 12 June 2018, the applicant was to continue the treatment prescribed; in case of complications he was to be transferred to an institution of the Ministry of Health; he was to be dynamically supervised (laboratory analyses) and to be seen by a hepatologist with a view to a potential liver transplant.

30. In reply to the applicant's lawyers' request, on 12 and 14 April 2018 the Ministry of Justice had informed them, *inter alia*, that prison hospital no. 16 did not have a hepatologist or a resuscitation and intensive care room, but had the necessary human and other resources to comply with national clinical protocol PCN-24. On 20 June 2018 the same Ministry informed the applicant that prison institutions did not have accreditation as medical institutions in Moldova and that changing this was part of the Action Plan for

the Implementation of the Development Strategy of the Penitentiary System for 2016-2020.

31. On 13 June 2018 the Head of the Medical Directorate of the NPA, together with the prison chief specialist in infectious diseases and two other specialists, noted the applicant's transfer from a public hospital on 12 June 2018. Given the risk of haemorrhage from the applicant's oesophagus varices and of hepatic failure he was prescribed, *inter alia*, treatment on an inpatient basis in a specialised unit under the Ministry of Health.

32. On 27 June 2018 the applicant was examined by a medical commission in prison hospital no. 16. The commission found a positive dynamic in his state of health and that he would be able to participate in court hearings in the criminal proceedings against him. On 5 July 2018 he participated in a court hearing.

33. During the appeal procedure against his conviction of 11 July 2018, the applicant asked to be released on the basis of Article 95(2) of the Criminal Code (see paragraph 45 below).

34. On 31 July 2018 the applicant was taken to the Oncology Institute of the Ministry of Health for a sternum puncture, which he refused to undergo.

35. On 22 August 2018 the applicant complained to the Ministry of Justice and the NPA of the refusal of the administration of prison hospital no. 16 to follow through the recommendation of 13 June 2018 and transfer him to a specialised public hospital. He noted, *inter alia*, that he was not allowed to read any of the reports concerning his refusal to submit to tests, or to submit objections to those reports or to indicate his reasons for the refusals. No examination of the reasons for his refusals had been carried out by a medical commission, which should have been convened in view of his serious condition and the risks to his life and health from not being properly tested. One example which he remembered was his refusal to take a diuretic treatment on 19 June 2018. He had informed the medical assistant of pain in the kidneys and that he needed to be seen by a hepatic specialist to verify whether the treatment needed to be adjusted in view of that pain, but no action had followed, except for a report on the refusal to take the treatment. Three other such reports referred to refusal to accept medication where it was unclear when and by whom it had been prescribed, such information not being provided to the applicant even after his express request. He finally noted that, having examined his medical file, he did not see a proper indication of the prescriptions by various doctors and the types of treatment actually administered (with dates and dosage). A similar complaint made on 19 December 2018 noted, in addition, that the applicant had still not been informed whether the doctor supervising his treatment in prison no. 16 was a hepatic specialist and that his medical file did not contain any information about the prison doctors' decisions to adjust his treatment in accordance with any changes in his medical condition. In a reply dated 14 January 2019 the NPA informed the applicant, *inter alia*, that the doctor supervising his

treatment in prison no. 16 had the speciality of “family doctor”. It was that doctor, in view of the recommendations by doctors from prison no. 16 and from public hospitals, who had prescribed the applicant’s treatment. In reply to a further complaint, on 3 July 2019 the NPA informed the applicant, *inter alia*, that he had been seen by a hepatologist three times since the beginning of the year and that the NPA had paid for his treatment at a public hospital in June 2018.

36. At the request of the applicant’s lawyer, and following an order of the Chişinău Court of Appeal, on 20 November 2018 the applicant was examined by an expert, who noted that the applicant had suffered from viral hepatitis for 20 years, the last 7 years of which included the diagnosis of hepatic cirrhosis. The illness from which he suffered was among those included on the list of somatic diseases serving as a ground for releasing seriously ill prisoners from the execution of criminal sentences. The expert also noted that, according to the medical documents in the file, every time the applicant had been treated on an inpatient basis, his state of health had improved. In its judgment of 28 November 2018 (see paragraph 15 above) the Chişinău Court of Appeal rejected the applicant’s request for release based on Article 95(2) of the Criminal Code and order no. 331 (see paragraph 45 below), finding that those provisions applied only to persons convicted by a final decision. Therefore, the applicant’s request was premature, and the issue was to be examined after the sentence became final and irrevocable.

37. On 4 December 2018 the applicant’s lawyer again asked the NPA to start the court procedure for releasing his client from detention based on Article 95 (2) of the Criminal Code and the relevant Regulation (see paragraph 45 below). He repeated his request on 16 January 2019, noting that he had not received a reply. The NPA submitted to the court such a request on 2 July 2019.

38. On 12 July 2019 the NPA submitted to the court examining the criminal case against the applicant a report of the Special Medical Commission. According to that report, the applicant’s state of health during his treatment on an inpatient basis had a negative dynamic. His diagnosis fell under the provisions of order No. 331 of 06.09.2006 MJ the Republic of Moldova (see paragraph 46 below), p.7.2 of the List of somatic diseases, which constitutes the basis for considering the release of seriously ill convicted persons from the execution of a sentence. It concluded that the applicant could be considered for release from the execution of the sentence due to his illness.

39. On 11 June 2019 the applicant was admitted to *Sfanta treime* public hospital following complications. He stayed there until an unspecified date in 2019.

40. According to the documents in the file, the applicant was detained in the following establishments:

- between 29 September and 4 October 2017 in prison no. 13;

- between 5 and 10 October 2017 in prison hospital no. 16;
- between 13 October 2017 and 19 January 2018 in prison no. 13;
- between 19 and 22 January 2018 he had emergency surgery at the Emergency Clinical Hospital following a haemorrhage of the oesophageal veins;
- between 23 January and 24 April 2018 in prison hospital no. 16;
- between 24 and 27 April 2018 at the General Police Directorate. On the first day of detention there he was taken by ambulance to the Institute of Emergency Medicine, but he was returned to detention on the same day. On 25 April 2018 he was taken to *Toma Ciorba* Hospital for Infectious Diseases, but was not admitted. He was then moved to several medical institutions, which all refused him admission. According to the applicant, on that day he received neither the medication which his condition required, nor dietary food. On the third day of this new detention the applicant's wife was able to supply the applicant with the necessary medication;
- between 27 April and 5 June 2018 in *Sfânta Treime* civilian hospital in Chişinău;
- between 6 and 12 June 2018 in the Municipal Clinical Hospital;
- starting on 12 June 2018 and until a date not specified by the parties in prison hospital no. 16, with a stay in the meantime at the Oncology Institute of the Ministry of Health (from 31 July 2018 until an unspecified date);
- between 11 June 2019 and an unspecified date in 2019 in the *Sfânta Treime* public hospital.

41. The parties did not submit any information about the dates and places of the applicant's detention and treatment in addition to those mentioned in the two preceding paragraphs.

42. During his detention the applicant was seen by various doctors on numerous occasions (for instance, on 23 April, 29 May, 4, 5, 13 and 27 June, 5, 19, 26, 27 and 31 July, 27 September and 28 December 2018, 22 February, 23 March, 15 April, 21 June 2019).

RELEVANT LEGAL FRAMEWORK

43. The relevant part of Recommendation No. R (98) 7 of the Committee of Ministers of the Council of Europe to member States concerning the ethical and organisational aspects of healthcare in prison (adopted on 8 April 1988) reads as follows:

“...

3. A prison's health care service should at least be able to provide out-patient consultations and emergency treatment. When the state of health of the inmates requires treatment which cannot be guaranteed in prison, everything possible should be done to ensure that treatment is given, in all security, in health establishments outside the prison.

...

B. Equivalence of care

10. Health policy in custody should be integrated into, and compatible with, national health policy. A prison health care service should be able to provide medical, psychiatric and dental treatment and to implement programmes of hygiene and preventive medicine in conditions comparable to those enjoyed by the general public. Prison doctors should be able to call upon specialists. If a second opinion is required, it is the duty of the service to arrange it.

11. The prison health care service should have a sufficient number of qualified medical, nursing and technical staff, as well as appropriate premises, installations and equipment of a quality comparable, if not identical, to those which exist in the outside environment.

12. The role of the ministry responsible for health should be strengthened in the domain of quality assessment of hygiene, health care and organisation of health services in custody, in accordance with national legislation. A clear division of responsibilities and authority should be established between the ministry responsible for health or other competent ministries, which should co-operate in implementing an integrated health policy in prison.

...

D. Professional independence

19. Doctors who work in prison should provide the individual inmate with the same standards of health care as are being delivered to patients in the community. The health needs of the inmate should always be the primary concern of the doctor.

20. Clinical decisions and any other assessments regarding the health of detained persons should be governed only by medical criteria. Health care personnel should operate with complete independence within the bounds of their qualifications and competence

...

51. The decision as to when patients subject to short term fatal prognosis should be transferred to outside hospital units should be taken on medical grounds. While awaiting such transfer, these patients should receive optimum nursing care during the terminal phase of their illness within the prison health care centre. In such cases provision should be made for periodic respite care in an outside hospice. The possibility of a pardon for medical reasons or early release should be examined.

..."

44. The relevant part of the Concluding observations on the third periodic report of the Republic of Moldova of the United Nations Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT", CAT/C/MDA/CO/3, adopted on 21 December 2017) reads as follows:

"Provision of health care in the penitentiary system

19. The Committee is concerned about reports that health care in penitentiary facilities is insufficient, that unqualified staff provide medical services to inmates, that inmates are not permitted to obtain private medical assistance or referred to outside specialists when necessary, that the needs of inmates with disabilities and those who require mental health and psychosocial services cannot be adequately accommodated,

and that the health care and hygiene needs of women in the penitentiary system are not adequately addressed. The Committee is also concerned at reports concerning particularly poor material conditions, the inadequate quality of medical services, and disciplinary sanctions against patients at the penitentiary hospital (Penitentiary No. 16), and at the fact that medical staff in the penitentiary system are not independent of the prison management (arts. 2, 10 and 11).

20. The State party should:

(a) Intensify its efforts to improve health care in penitentiary facilities, including by hiring adequate numbers of qualified medical staff and providing them with training on the Istanbul Protocol;

(b) Establish and ensure the implementation of rules to facilitate requests from inmates for private medical assistance and referrals to outside specialist services and to accommodate the needs of inmates with disabilities in the penitentiary environment;

(c) Transfer responsibility for penitentiary medical units from the Department of Penitentiary Institutions to the Ministry of Health, Labour and Social Protection; ensure that the penitentiary hospital is affiliated with the Ministry of Health; take measures to reduce overcrowding; improve material conditions, including by renovating and equipping patients' rooms; provide adequate food and medicines; and ensure individualized treatment plans and medicines for psychoneurological patients, including anti-psychotic drugs;

..."

45. Under Article 95 (2) of the Criminal Code, a person who either before a sentence is passed or during its execution becomes ill with a serious disease which prevents the execution of the sentence may be exempted by the court from its execution.

46. By its Order No. 331 of 6 September 2006, the Ministry of Justice adopted the Regulation on the manner of submitting the files of seriously ill convicts for exemption from executing their sentence. Annex 2 to that regulation contains the list of somatic diseases which are considered serious enough to warrant such exemption. Point 7.2 of that list includes hepatic cirrhosis in the decompensated stage with, *inter alia*, hypersplenism. For the purposes of that Regulation (points 7 and 8), a serious disease entails an organic, irreversible modification of one or several organs, causing considerable loss from the total functional potential of the organism, characterised by a vital incapacity that prevents the execution of the sentence in conditions of deprivation of liberty. A vital incapacity that prevents the execution of the sentence in conditions of deprivation of liberty is an effect on the state of health when continued detention of a convict endangers his/her life or, owing to the progressive character of the illness, the person is unable to carry out daily activity in the conditions of deprivation of liberty.

47. Under Article 271 of the Code of Execution [of Sentences], the institution in charge of the execution of a criminal sentence shall submit to the competent court a request for release from the execution of a sentence owing to a serious illness within five days from establishing the existence of such an illness.

48. In its 2017 Activity Report the Council for the Prevention of Torture (CfPT, created under the auspices of the Moldovan Ombudsman institution) found, *inter alia*, that there was understaffing of medical personnel in prisons; that medical staff were not independent of penitentiary authorities; that detainees were not included in the mandatory healthcare system and were not insured within compulsory medical insurance funds; the quality of healthcare provided was not verified systematically by the Ministry of Health, Labour and Social Protection or by other authorities in the field because the national quality audit mechanisms, necessary standards/procedures, as well as monitoring and evaluation indicators of healthcare in places of detention were missing; and that prison healthcare was not included in State healthcare policies.

49. According to a report of the national Council for the Prevention of Torture made after a visit to Prison no. 16 on 22-23 July 2019, the internal illnesses ward provided for the following staff: a head of medical section, a general practitioner (the position was vacant at the time of the visit), a pediatrician and several medical assistants. The infectious diseases ward provided for the following staff: a head of medical section, an infectious diseases specialist (the position was vacant at the time of the visit), a dermatologist (the position was vacant at the time of the visit) and several medical assistants. It appears from the report that, at the time of the visit, the infectious diseases ward was used to lodge women, while the internal illnesses ward was used to lodge men.

THE LAW

I. PRELIMINARY ISSUE

50. The Court notes that the applicant died on 25 March 2021 and that the deceased's wife, Mrs Elena Cosovan, expressed the wish to continue the proceedings before it (see paragraph 2 above).

51. The Court normally permits next-of-kin to pursue an application, provided he or she has sufficient interest, if the original applicant has died after the introduction of the application before the Court (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII; *Larionovs and Tess v. Latvia* (dec.), nos. 45520/04 and 19363/05, § 172, 25 November 2014; and *Paposhvili v. Belgium* [GC], no. 41738/10, § 126, ECHR 2016). Having regard to the subject matter of the application and all the elements in its possession, the Court considers that the applicant's wife has a legitimate interest in pursuing the application and that she thus has the requisite *locus standi* under Article 34 of the Convention (see, for example, *Carrella v. Italy*, no. 33955/07, §§ 48-51, 9 September 2014, and *Murray v. the Netherlands* [GC], no. 10511/10, § 79, ECHR 2016).

52. For practical reasons, the present judgment will continue to refer to the late Mr Serghei Cosovan as “the applicant”.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

53. The applicant complained that the authorities had failed to provide him with the medical care necessitated by his state of health, thus endangering his life. He relied on Article 2 of the Convention, the relevant parts of which provide:

“Everyone’s right to life shall be protected by law.”

A. The parties’ submissions

54. The applicant argued that by failing to transfer him to a public hospital where medical treatment required by his serious condition and unavailable in prison could be given to him, the authorities exposed him to a real risk to his life.

55. The Government considered that the applicant had been given all the medical treatment required by his condition.

B. The Court’s assessment

56. The Court reiterates that the first sentence of Article 2, which ranks as one of the most fundamental provisions in the Convention and also enshrines one of the basic values of the democratic societies making up the Council of Europe, requires the State not only to refrain from the “intentional” taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, amongst many other authorities, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 48, ECHR 2002-I, *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 104, 31 January 2019, and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 134, 25 June 2019).

57. The Court notes that Article 2 of the Convention may come into play even though the person whose right to life was allegedly breached did not die (*Nicolae Virgiliu Tănase*, cited above, §§ 134-145, and *Aftanache v. Romania*, no. 999/19, § 48, 26 May 2020).

58. The Court reiterates that the obligation to protect the lives of prisoners entails providing them with proper medical care such as to prevent any fatal outcome (see *Taïs v. France*, no. 39922/03, § 98, 1 June 2006, and *Angelova v. Bulgaria*, no. 38361/97, §§ 125-130, ECHR 2002-IV). The obligation to provide appropriate medical care is not confined to prescribing adequate treatment: the prison authorities must also ensure that such treatment is properly administered and followed up (see *Jasińska v. Poland*, no. 28326/05, § 78, 1 June 2010).

59. In the present case, it is noted first that the applicant died approximately a year and a half after being released from prison. Therefore, it is not his death as such that is under examination here, but rather whether his detention and treatment administered in prison could be considered to have seriously endangered his life before 18 November 2019, the date of his release (see paragraph 20 above). In this respect it is noted that the applicant was detained in prison no. 13 but had several, sometimes relatively long periods of treatment in prison hospital no. 16 and some short stays in public hospitals (see paragraph 40 above). Moreover, he was seen on numerous occasions by various doctors, according to the documents in the file (see paragraph 42 above).

60. The Court observes that there have been certain shortcomings in the manner of treating the applicant (see paragraph 82 below). However, it notes that none of the medical documents available to it establishes that those shortcomings, however regrettable they may have been, were such as to jeopardise the effectiveness of the treatment and/or the implementation of the protocol for its administration to such a degree as to put the applicant's life at risk.

61. The Court also attaches importance to the fact that the applicant was affected not by the sequelae of any disease contracted during his time in prison, but by the development of his illness which had predated his imprisonment (see, *mutatis mutandis*, *Gengoux v. Belgium*, no. 76512/11, § 56, 13 December 2016 and *Dorneanu v. Romania*, no. 55089/13, § 52, 28 November 2017). While receiving a liver transplant might have extended his life expectancy, there was a waiting list in Moldova for such an operation. It has not been shown that, had the applicant been included on that waiting list in March 2018, when a Medical Council recommended that the applicant be seen by a hepatologist in order to determine whether there was a need for a liver transplant (see paragraph 24 above), he would actually have benefited from such an operation before his release in November 2019. It is also relevant that the applicant himself refused to submit to a further test prescribed by the liver transplant team in order to be included on the waiting list (see paragraph 26 above).

62. Having regard to the number of hospital stays and the complexity of the treatment administered to the applicant, the Court does not consider that it has been established that the domestic authorities' actions put the applicant's life at risk during his detention (see *Dorneanu*, cited above, § 53).

63. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

64. The applicant complained that he was not given medical treatment required by his condition and that his state of health was incompatible with detention. He relied on 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

65. The Government initially submitted that the applicant had not relied on the relevant legislation (see paragraph 45 above) to ask for release on the grounds of his serious illness. They therefore essentially argued that the applicant had not exhausted available domestic remedies. They subsequently no longer made that argument.

66. The Court observes that the applicant asked the domestic courts to be released, relying expressly on the relevant legal provisions. Moreover, two courts accepted such grounds and annulled his detention pending trial (see paragraphs 11 and 20 above). The Government’s objection must therefore be dismissed.

67. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

68. The applicant argued that his condition required treatment not available in prison. In particular, he was to be constantly supervised by hepatology specialists, of which there was none either in prison no. 13 or in prison hospital no. 16. The national clinical protocol was not fully followed in his case, notably there was a very long delay before he was considered for a liver transplant. The protocols for his main illness and the various complications (especially hepatic encephalopathy) which he developed over time required frequent assessment (sometimes once every 3 to 4 days) by clinical methods not available in prison. There was nothing in the applicant’s medical file about the special diet which he had to follow to decrease the progression of his disease. Moreover, the Ministry of Health or other competent authorities did not systematically verify the quality of healthcare provided in prison. Even though the applicant could be transferred to a civilian hospital in the case of an emergency, the decision was to be taken by the head of the relevant prison or the duty officer. Doctors in prisons were not independent of the prison administration, while detainees were not covered by health insurance and did not benefit from national health programmes.

69. The Government submitted that the right to healthcare in prisons was guaranteed in law and ensured in practice. In particular, prison no. 16 was a hospital designed to treat prisoners with a range of illnesses. Whenever specialist medical treatment could not be dispensed in that hospital, a detainee could be transferred to a public hospital, the NPA having concluded contracts with a number of such institutions. Such a transfer could take as little as 30 minutes in urgent cases and the hepatologist from *Sfânta Treime* public hospital could also be summoned to the prison with the same urgency, which was almost the same time it would take the applicant to reach that hospital from home. Specialist doctors from a number of public hospitals had been invited to see the applicant in prison. During his detention the applicant asked to be transferred to a public hospital only once (this was accepted), which implied that he himself did not see a need to be treated elsewhere. Moreover, on a number of occasions he refused to undergo testing or other treatment prescribed, as shown by notes made in the medical record on each occasion of such a refusal.

70. The applicant was given the treatment prescribed by the doctors. The one example when such treatment had not been administered exactly as prescribed (see paragraph 24 above) reflected the fact that doctors had to react to changes in the applicant's state of health, increasing or decreasing the dosage and number of treatments with various drugs. By September 2018 the applicant was being considered for inclusion on the waiting list for persons needing a liver transplant.

2. Relevant submissions by the third party

71. The Prison Litigation Network submitted that there was a broad consensus at the international level (as seen, for instance, at the level of the Committee of Ministers of the Council of Europe – see Recommendation R 98(7), cited in paragraph 43 above, and the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its latest reports following visits to Ukraine, Latvia and Slovenia) in favour of the independence of medical personnel from the prison administration and the integration of prison sanitary policies into general public health policies. A number of countries had already transferred, or were in the process of transferring, their prison-based health systems under the responsibility of the authorities administering the general health system (such as France, Belgium, Italy, the United Kingdom, Slovenia, the Russian Federation; the process was underway in Ukraine).

72. As had been established in a number of countries which had implemented the transfer noted in the preceding paragraph, there had been a major dysfunction of the prison health system, clearly resulting from ethical and organisational failure, having a massive effect on the quality of treatment and endangering the lives of prisoners. In the case of Moldova, the United Nations Committee Against Torture recommended the transfer of

responsibility for health treatment from the prison administration to the Ministry of Health. The need to transfer the prison health system to an authority independent of the prison administration stemmed from the lack of trust between detainees and doctors seen as prison staff. This undermined the relationship between doctors and their patients, thus lessening the efficacy of treatment administered.

3. *The Court's assessment*

(a) **General principles**

73. The Court reiterates that 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 of severity is 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 applicant's sex, age and state of health (see, among other authorities, *Dorneanu*, cited above, § 75, with further references).

74. As regards, in particular, persons deprived of their liberty, Article 3 of the Convention imposes on the State the positive obligation to 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 or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. The suffering which flows from natural illness, whether physical or mental, may fall foul of Article 3 where it is, or risks being, exacerbated by conditions of detention for which the authorities can be held responsible (see *Dorneanu*, cited above, § 76). The prisoner's health and well-being must be adequately secured by, among other things, providing him with the requisite medical assistance. Thus, the detention of a person who is ill in inappropriate material and medical conditions may, in principle, amount to treatment contrary to Article 3 (see *Gülay Çetin v. Turkey*, no. 44084/10, § 101, 5 March 2013, with the references therein).

75. In order to determine whether the detention of a person who is ill complies with Article 3 of the Convention, the Court considers three different factors (see, for example, *Dorneanu*, cited above, §§ 77-80, with the references therein).

76. The first factor is the applicant's state of health and the effect on the latter of the manner of his imprisonment. Conditions of detention may under no circumstances subject a person deprived of his liberty to feelings of fear, anxiety or inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance.

77. The second factor to be considered is the adequacy or inadequacy of the medical care and treatment provided in detention. It is not sufficient for the prisoner to be examined and a diagnosis to be made; it is vital that

treatment suited to the diagnosis be provided, together with appropriate medical aftercare.

78. The third and last factor is the decision on whether or not to continue the person's detention in view of his state of health. Clearly, the Convention does not lay down any "general obligation" to release a prisoner for health reasons, even if he is suffering from a disease which is particularly difficult to treat. Nevertheless, the Court cannot rule out the possibility that in particularly serious cases, situations may arise where the proper administration of criminal justice requires remedies in the form of humanitarian measures.

(b) Application of those principles in the present case

79. The Court will examine the three types of factors referred to (see paragraphs 75-78 above) as they appear in the present case.

80. As for the applicant's state of health and the effect of the manner of his imprisonment on it, it is noted that the applicant had a serious condition, accompanied by a number of complications, for which he received treatment. During the period of less than two years covered by the complaint and reflected in the statements of facts made by the parties, the applicant was detained in prison no. 13, but also spent significant periods of time in prison hospital no. 16, as well as shorter periods of treatment in public hospitals (see paragraphs 40 above). All the institutions in which he was detained were located in the city of Chişinău, except for prison no. 16, which is some 12 km from that city. It has not been argued, nor does the Court find, that such transfers or their frequency caused the applicant any serious discomfort or that they were inherently unsuitable for his treatment.

81. As regards the quality of the medical care and assistance provided, the Court notes first that prison hospital no. 16, in which the applicant received a significant part of his treatment, was not officially accredited by the Moldovan authorities as a medical institution (see paragraph 30 above). The Court considers, however, that beyond the formal accreditation, what is important is whether in practice the institution was capable of offering medical care required by its patients' condition.

82. Therefore, the Court needs to examine whether, specifically in the applicant's case, treatment was dispensed which corresponded to what was required by his condition. In this regard, it is noted that certain medical procedures were prescribed and not fully followed through (notably, the number and periodicity of treatments prescribed in the medical commission's decision of 27 March 2018 (see paragraph 24 above), as well as the visit of a hepatologist, delayed by almost four weeks, see paragraph 27 above). The Government submitted that the doctors had to react to any changes in the applicant's state of health, increasing or decreasing the dosage and number of treatments with various drugs. Such variations would explain the changes in the treatment administered to the applicant as compared to the prescription

of 27 March 2018. The Court has no reason to doubt the reality of such a need to react to changes in the applicant's health. However, it is unclear how doctors at prison hospital no. 16 could make such an evaluation and change the manner of dispensing treatment to the applicant, given the absence of a hepatologist at that institution (see paragraph 30 above).

83. With reference to the principle of equivalence of treatment in and outside prisons (see paragraph 43 above; see also *Wenner v. Germany*, no. 62303/13, § 66, 1 September 2016), the Court considers that, where a certain treatment is generally available outside the prison and except for extraordinary circumstances, medical treatment required by a prisoner's condition should not be denied or only partially carried out simply because no such treatment (or specialist doctor) is available in prison or with reference to the scarcity of resources.

84. Moreover, from 2 March 2018 (see paragraph 23 above) the doctors prescribed the applicant's supervision by a hepatologist. The NPA informed the applicant's lawyers that he had been seen by a hepatologist five times during the entire year 2018 (see paragraph 23 above).

85. The recommendation made on 13 June 2018 (see paragraph 31 above) to transfer the applicant to a unit subordinated to the Ministry of Health (that is, a public hospital) was implemented only in June 2019 (see paragraph 39 above). Since that recommendation was made by the highest medical authority within the NPA, which was obviously aware of the types of treatment available in prison, this could be understood to mean that, at least at that date and in the opinion of that prison medical authority, the applicant was not being given medical treatment required by his condition.

86. It is apparent that the applicant distrusted the prison doctors, refusing to undergo some of the tests and asking for them to be carried out by institutions accredited as medical institutions, prison hospital no. 16 not being so accredited (see paragraphs 28 and 30 above). Moreover, the prison administration had to organise the transportation and guarding of each detainee treated in public hospitals, which created its own logistical and perhaps financial complications. In addition, as submitted by the Government, medical services to detainees were provided on a contractual basis (which results from the fact that detainees are not covered by the general medical insurance scheme, see paragraph 48 above). However, this again implies additional costs for the prison (see paragraph 35 above, notably the NPA's confirmation that it had paid for the applicant's treatment at a public hospital in June 2018). The prison administration thus had incentives to limit detainees' treatment outside the prison, and this situation potentially created a conflict of interests for the prison doctors, which should not be the case (see paragraph 43 above). In this respect, it is noted that the CPT urged the Moldovan government to transfer responsibility for doctors working with detainees from the Department of Penitentiary Institutions to the Ministry of Health (see paragraph 44 above). In addition, the national Committee Against

Torture (the CfPT) expressly noted the absence of independence of prison doctors from the prison administration as a problem (see paragraph 48 above).

87. The third relevant type of factor to be examined (see paragraphs 75-78 above) is whether the applicant's continued detention was compatible with his condition. In this respect, the Court notes first that it is not subject to debate that the applicant's illness and complications were amongst those which the Moldovan law considered serious enough to allow a court to relieve a convicted person from serving his or her sentence (see paragraphs 20 and 45 above). It is noted here that, while Article 3 does not establish a general obligation to release a seriously ill person, it is not ruled out that in particularly serious cases the proper administration of criminal justice requires remedies in the form of humanitarian measures (see paragraph 78 above).

88. The Court notes that, as the relevant Regulation makes clear (see paragraph 46 above), the reason for the incompatibility of a person's medical condition with detention is the danger to his/her life or his/her incapacity, owing to the illness, to carry out daily activity while being deprived of liberty. Despite a court acknowledging that the applicant's illness was in its terminal stage, presenting a danger for his life (see paragraph 11 above), he was kept in detention for another 17 months.

89. Like the domestic investigating judge (see paragraph 11 above), the Court, for the purpose of Article 3 and in the circumstances of a case like the present one, does not see any justification to distinguish between a person convicted by a final judgment and one detained pending trial, when it comes to the suffering caused by detention incompatible with that person's medical condition. Neither the domestic courts nor the Government in their observations gave any satisfactory explanation for such a difference in treatment. In fact, such a difference may well be discriminatory (see *Gülay Çetin*, cited above, §§ 126-133 with further references, as well as the findings of the domestic authority tasked with preventing discrimination, see paragraph 16 above).

90. In the light of the above and taking into account all circumstances of the specific case, the Court concludes that the domestic authorities have not satisfied their positive obligation to prevent the applicant's distress of an intensity exceeding the unavoidable level of suffering inherent in detention. There has thus been a violation of Article 3 of the Convention in the present case.

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

91. The applicant complained under Article 5 § 3 of the Convention of the allegedly insufficient reasons given for his detention pending trial. The provision 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

92. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

93. The applicant argued that in Moldova the rates of pre-trial detention were excessively high, with many cases which could be examined with the suspect at large resulting in the suspect's detention pending trial. All the prosecutors' requests to extend the applicant's detention were identical and did not refer to any evidence confirming a risk from releasing him pending trial. Moreover, a “dubious scheme” was put into place in the applicant's case in order to obtain his re-arrest, similar to the one found to be contrary to Article 5 in *Straisteanu and Others v. Moldova* (no. 4834/06, § 88, 7 April 2009).

94. The Government submitted that the courts had relied on relevant and sufficient reasons. Those courts had referred to the seriousness of the offence, the danger of influencing witnesses or victims, destroying evidence or interfering with the investigation. Moreover, there was evidence that he often went abroad, which could reasonably be viewed as adding to the danger of absconding.

95. Referring to the court decision of 24 April 2018, the Government argued that the risks from releasing the applicant had diminished in that specific case. Since he was re-arrested in the context of another criminal case, the risks had to be examined anew and the court found that the investigating authority had to carry out a proper criminal investigation.

2. The Court's assessment

96. The Court refers to the applicable principles as confirmed and further developed in *Buzadji v. the Republic of Moldova* [GC] (no. 23755/07, §§ 84-114, 5 July 2016).

97. In the present case, it notes that in ordering and extending the applicant's detention pending trial the courts referred to a range of criteria, such as the seriousness of the crime, the risk of absconding or reoffending, as well as interfering with the investigation by destroying evidence or influencing witnesses and victims. The Court considers that these factors were in principle relevant. However, the domestic courts did not indicate on

what evidence they had relied in reaching their conclusions concerning the seriousness of the risks involved. It is also relevant that, as argued by the applicant before the domestic courts (see paragraph 10 above), he had already been arrested in 2014 on suspicion of having committed the same offence. Had he wanted to abscond or interfere with the investigation, he had had ample time and opportunities to do so. Moreover, he was arrested after he went to the prosecutor's office, not while trying to abscond or leave the country.

98. Furthermore, the courts refused to examine the applicant's argument that the risk of absconding could be significantly diminished by seizing his passport to prevent him from leaving the country.

99. The Court finally notes that after a court ordered the applicant's release on 24 April 2018, he was re-arrested on the same day in the context of another criminal investigation. However, several investigations were apparently begun, over the years, into essentially the same alleged unlawful activity (see paragraph 7 above). There is nothing new in the court decisions dealing with the latest criminal investigation, the facts referring to the same alleged fraud during the same period of time in 2012-2013. By starting separate criminal investigations into various episodes of the same alleged criminal activity, the prosecution was able to circumvent the court order replacing the applicant's detention with house arrest. The Court has found breaches of Article 5 in two somewhat similar Moldovan cases (*Straisteanu and Others*, cited above, § 88, and *I. E. v. the Republic of Moldova*, no. 45422/13, §§ 62-68, 26 May 2020). It considers that the artificial division of a criminal investigation into several separate criminal investigations in order to obtain unfair procedural advantages or circumvent mandatory legal provisions is incompatible with Article 5 of the Convention.

100. The Court also considers it relevant that the applicant's state of health was clearly very bad, as established in numerous medical conclusions. The courts did not determine whether this circumstance affected the likelihood of the applicant's absconding or interfering with the investigation.

101. In the light of the above, the Court finds that while the domestic courts' reasons for ordering the applicant's detention were relevant as such, they were not sufficiently grounded on evidence in the file, and the justification for the applicant's extended detention has not been convincingly demonstrated.

102. There has thus been a violation of Article 5 § 3 of the Convention in the present case.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. 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

104. The applicant claimed 80,329 euros (EUR) in respect of pecuniary and non-pecuniary damage in view of the suffering caused to him as a result of putting his health and life at risk and for costs and expenses for food, medicines and postal services.

105. The Government submitted that no compensation was due in the absence of a breach of the applicant’s Convention rights. In any event, the sum claimed was exaggerated in view of the Court’s case-law.

106. In the light of the seriousness of the violations of Articles 3 and 5 § 3 established, the Court awards the applicant’s widow EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

107. The applicant also claimed EUR 6,960 for the costs and expenses incurred before the Court. He relied on a contract with his lawyers and an itemised list of hours spent working on the case (59 hours at an hourly rate of EUR 120).

108. The Government considered that both the time spent on the case and the rate charged were excessive.

109. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 covering costs under all heads, plus any tax that may be chargeable to the applicant’s widow.

C. Default interest

110. 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* that the applicant’s widow has standing to pursue the complaints lodged with the Court by her late husband;
2. *Declares* the complaint under Article 2 of the Convention inadmissible and the remainder of the application admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay Mrs Elena Cosovan, 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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 5,000 (five thousand 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;
6. *Dismisses*, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Jon Fridrik Kjølbro
President