



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

SECOND SECTION

CASE OF GILANOV v. THE REPUBLIC OF MOLDOVA

(Application n° 44719/10)

JUDGMENT

Art 5 § 1 • Several months' detention in the extraditing State lawful, despite 30-day period indicated in the detention order of the receiving State and counted from the date of extradition

Art 5 § 3 • Unreasonable pre-trial detention, based on stereotyped and abstract reasoning

Art 5 § 4 • Take proceedings • Detention order appeal heard with participation of a court-appointed lawyer whom the applicant had never met or instructed and who replaced the lawyer of his own choosing • Applicant's position considerably weakened

STRASBOURG

13 September 2022

FINAL

13/12/2022

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

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

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

Jon Fridrik Kjølbro, *President*,

Marko Bošnjak,

Paul Lemmens,

Valeriu Grițco,

Egidijus Kūris,

Branko Lubarda,

Carlo Ranzoni, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 44719/10) 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 Georgian national, Mr Michael Gilanov (“the applicant”), on 30 July 2010;

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

the parties’ observations and replies to further questions;

the fact that the Georgian Government did not express the wish to intervene in the present case (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court);

Having deliberated in private on 5 July 2022,

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

INTRODUCTION

1. The case concerns the applicant’s detention abroad on the basis of an allegedly expired detention order issued by a Moldovan court, as well as his insufficient representation in the domestic proceedings.

THE FACTS

2. The applicant was born in 1959 and, according to the latest information from the parties, is currently under the preventive measure of judicial control in Chișinău. The applicant, who had been granted legal aid, was represented by Mr I. Rotaru, a lawyer practising in Chișinău.

3. The Government were represented by their then Agent, Mr L. Apostol.

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

5. The applicant is a Georgian national who, at the time of the events, was detained in Belarus and subsequently in the Republic of Moldova.

A. The background of the case

6. In 2000 the applicant arrived in the Republic of Moldova and obtained a temporary residence permit, which was renewed every three months and subsequently once a year. When entering the Republic of Moldova he gave the address of his permanent residence in Tbilisi, Georgia, in the relevant documents.

7. While in the Republic of Moldova, the applicant opened a foundation for cultural exchanges with North Korea. According to the applicant, in 2006 he withdrew from the foundation and officially left the Republic of Moldova, travelling to North Korea and then to Georgia. During his stay abroad, the applicant continued to pay the bills for his apartment in Tbilisi and arranged for all the correspondence arriving there to be dispatched to him. The Government confirmed that in 2006 the applicant officially left the Republic of Moldova. On an unknown date he entered Belarus.

B. The criminal investigation against the applicant and his arrest

8. On 17 April 2007 a criminal investigation was opened into alleged fraud committed by the applicant and other persons within the Moldovan-North Korean foundation during 2006 and 2007.

9. On 1 October 2007 the Buiucani District Court examined a request by the prosecutor to order the applicant's detention pending trial for 30 days, notably because of his absconding from the investigation. The court appointed a lawyer paid by the State to represent the applicant. The lawyer asked the court to reject the prosecutor's request in view of the absence of any evidence that the applicant had been informed of the criminal proceedings initiated against him.

The court found as follows:

“The criminal proceedings were initiated in accordance with the law. The prosecutor submitted evidence of the existence of a reasonable suspicion that [the accused] had committed the crime, which is considered to be an especially serious one for which the law provides the sanction of more than two years' imprisonment. The accused's isolation from society is necessary since he has absconded from the law-enforcement authorities and his whereabouts are unknown despite all the measures taken by the prosecution. The court takes into account the seriousness of the crime and the need to protect public order, as well as the personality of the accused, who has absconded from the investigation and has thus obstructed the normal flow of the criminal proceedings”.

10. In its decision of 1 October 2007, the court ordered the applicant's detention for 30 days, noting that that period would start from the moment of his arrest (*reținere*). The arrest warrant issued on the same date repeated this wording.

11. On the basis of the decision of 1 October 2007, the applicant was provisionally arrested by the Belarus authorities on 9 May 2010 pursuant to a request by the Moldovan authorities. According to the decision of the head

of the District police station (*PYB/I*) of Minsk, dated the same day, the applicant was wanted by the Buiucani District Court in the Republic of Moldova, which applied in his respect the preventive measure of arrest, in accordance with the arrest warrant of 1 October 2007.

12. On 4 June 2010, the Moldovan Prosecutor General's Office sent to the Belarus authorities a formal extradition request. In reply to questions raised by the Belarus authorities, on 5 July 2010 the Moldovan Prosecutor General's Office informed its Belarus counterpart about the details of the offence of which the applicant was accused and about the change in the domestic law (the replacement of the offence provided in Article 195(2) of the Criminal Code with the same offence in Article 190(5) of the same Code, see paragraphs 27 and 28 below) and submitted the text of the provision, declaring that the applicant would not be extradited or deported to another country or tried for other offences than the one mentioned in the request, without the formal agreement of the Belarus authorities. It also noted, in reply to a question raised by the Belarus authorities regarding the extension of the applicant's period of detention, that the warrant for his arrest of 1 October 2007 had effects only on the territory of the Republic of Moldova and that the 30-day period mentioned therein would start being counted from the date of extradition to the Republic of Moldova. It further noted that pending such extradition, in accordance with Articles 58, 60 and 61 of the Commonwealth of Independent States' Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk, 22 January 1993, see paragraph 32 below), any extension of his detention in Belarus would have to be made in accordance with the law of that country. The applicant was detained in Belarus until 10 December 2010, when he was extradited to the Republic of Moldova.

C. Domestic proceedings

13. On 11 June 2010 the applicant hired Mr Zadoinov to represent him in the proceedings in the Republic of Moldova. On 14 June 2010 the lawyer asked the Prosecutor's Office to provide a copy of the material which had served as the basis for his client's arrest.

14. On 21 June 2010 the lawyer appealed to the Chişinău Court of Appeal against the decision of 1 October 2007. He submitted that the prosecutor had not proved that the applicant had been informed of the criminal investigation in respect of him. The court's decision had been insufficiently reasoned since the court had not referred to any specific evidence to support the findings in respect of the applicant's detention. Moreover, on 9 June 2010 the 30-day period of validity of the Buiucani District Court's order for the applicant's detention pending trial had expired, since when his detention had been illegal. Finally, the court decision and order for the applicant's detention had been taken in respect of a crime allegedly committed by the applicant in violation

of Article 195 of the Criminal Code. However, that provision had been repealed by Law no. 277-XVI of 18 December 2008. This again confirmed the applicant's submission that his arrest and detention had been unlawful.

15. The Chişinău Court of Appeal scheduled the hearing of the applicant's appeal for 24 June 2010 at 10 a.m. According to the applicant, his lawyer was present at the court from 9.30 a.m. and waited throughout the day for the hearing of his case because many other cases had been scheduled for the same time.

16. According to the Government, since the court could not examine the appeal on account of the absence of the applicant's lawyer, it postponed the hearing until 9 July 2010 and ordered that the applicant's interests be represented by a court-appointed lawyer. According to the applicant, neither he nor his lawyer was informed of such a decision. The parties did not submit a copy thereof to the Court.

17. On 29 June 2010 the applicant's lawyer informed the president of the Chişinău Court of Appeal that he had witnessed over fifty persons present in and around courtroom no. 2 of that court on 24 June 2010 when he had attempted to participate in the hearing. He asked to be informed about the number of cases scheduled in that courtroom on 24 June 2010 and of the reason for not displaying information about the time-table for examining the cases for the public to see.

18. On 2 July 2010 the president of the Chişinău Court of Appeal informed the applicant's lawyer that 74 cases had been examined on 24 June 2010 and that the list of cases could be seen on that court's web site, as well as on an electronic board in the hall of that court.

19. On 8 July 2010 the applicant's lawyer enquired at the Chişinău Court of Appeal about the situation regarding his client's appeal, after informing the court of the events of 24 June 2010. He also informed the Supreme Council of the Judiciary (*Consiliul Superior al Magistraturii*) of the situation on 26 July 2010.

20. On 9 July 2010 the Chişinău Court of Appeal dismissed the applicant's appeal as ill-founded. It noted that the appeal had been lodged by the applicant's lawyer, and further noted the participation at the hearing of a court-appointed lawyer. No explanation was given in the decision about the replacement of the applicant's lawyer. The court gave essentially the same reasons for the applicant's detention as those mentioned in the decision of 1 October 2007. It rejected the arguments raised by the applicant's lawyer, noting that "they [had] no factual and legal basis", without giving any further details. It maintained the lower court's decision ordering the applicant's detention for 30 days and did not order any extension of that detention.

D. Events after the applicant's extradition to the Republic of Moldova

21. After his extradition to the Republic of Moldova on 10 December 2010, on 13 December 2010 the applicant was brought before the Buiucani District Court and was formally informed of the charges against him and about the arrest warrant of 1 October 2007.

22. On 4 January 2011 the prosecutor in charge of the case asked for an extension of the applicant's detention pending trial for another 30 days. On 6 January 2011 the Buiucani District Court accepted that request. That decision was upheld by the Chişinău Court of Appeal on 17 January 2011.

23. On 28 January 2011 the case was sent to the trial court. On 8 February 2011 that court extended the applicant's pre-trial detention by 90 days.

24. On 4 August 2014 the Buiucani District Court convicted the applicant of fraud in an exceptionally large amount. On 4 March 2015 the Chişinău Court of Appeal quashed that judgment and sent the case for re-examination by the lower court. The Court has not been informed of all the further developments with respect to the applicant's detention. However, according to information submitted by his lawyer in July 2018, the applicant was kept under pre-trial detention until 2015, after which he was kept under the preventive measure of judicial control.

25. In July 2018 the applicant's lawyer informed the Court that in the meantime his client had been convicted again by the Buiucani District Court, but that the court's decision had once more been quashed, and the case had been sent for re-examination and was pending before the Buiucani District Court. The parties did not inform the Court of any further developments in the applicant's case.

RELEVANT LEGAL FRAMEWORK

26. The relevant part of Article 25 of the Moldovan Constitution, as amended by Parliament on 12 July 2001, reads as follows:

“...

(4) Detention on remand takes place on the basis of a warrant issued by a judge for a maximum period of 30 days. The lawfulness of the detention warrant may be challenged, in accordance with the law, before a hierarchically superior court. The period of detention may be extended only by a judge or a court, in accordance with the law, by up to 12 months.

...”

27. The relevant parts of the Criminal Code, as they were in force on 1 October 2007, read as follows:

“Article 190. Fraud

(1) Fraud, that is unlawfully obtaining the property of another person by misleading or by abusing his or her trust, shall be punished with a fine of 200 to 500 conventional

units or with unpaid community work of 120 to 240 hours, or with a prison term of up to 3 years.

...”

“Article 195. Taking [of someone else’s property] in high and exceptionally high amounts

...

2. The taking [of someone else’s property] in exceptionally high amounts, regardless of the manner of doing it (Articles 186-192) shall be punished with a prison term of 10 to 25 years, with a prohibition on occupying certain public functions or of carrying out certain activities for a period of 2 to 5 years.”

28. By Law no. 277, adopted on 18 December 2008 and in force since 24 May 2009, Parliament repealed Article 195 of the Criminal Code and added, *inter alia*, paragraph (5) to Article 190 as follows:

“ Article I. The Criminal Code ... shall be amended and completed as follows:

...

67. Article 190:

...

(5) The actions provided for in paragraphs (1), (2) or (3), when committed in exceptionally high amounts, shall be punished with a prison term of 8 to 15 years, with a prohibition on occupying certain public functions or on carrying out certain activities for a period of up to 5 years.”

“72. Article 195 is repealed.”

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

“Article 11. Inviolability of the person

...

(3) Deprivation of liberty, arrest, ... shall take place only on the basis of an arrest warrant or of a reasoned court decision.

...

(6) The investigating authority or the court shall immediately free any person who is unlawfully detained or if the grounds for detention or arrest have disappeared.”

“Article 70. Admission, appointment and replacement of the defence lawyer and confirmation of his or her powers

... (4) The investigating authority or the court shall request the law firm to replace the lawyer chosen [by a suspect or an accused] ... in the following difficult situations within criminal proceedings:

1) if the chosen lawyer cannot be present during the arrest, submission of official charges or interviewing the suspect or the accused;

2) if the chosen lawyer cannot take part in the criminal proceedings within five days from the time of being informed;

...

(5) In the cases listed under paragraphs ... and (4)-2 ... the investigating authority or the court may allow the suspect or the accused to hire another lawyer.”

“Article 186. The period of holding a person under arrest and its extension

(1) The period of holding a person under arrest shall run from the moment of depriving that person of his/her liberty upon his/her detention (*reținere*), and in the case when he/she was not detained (*reținut*) – from the moment of enforcing the court decision which ordered the relevant preventive measure.

(2) A person’s detention during the criminal investigation phase and until the case is sent to the trial court shall not exceed 30 days, except for the cases provided for in the present Code.

(3) In exceptional cases ... the period of preventive detention of an accused during the criminal investigation phase may be extended:

1) by up to 6 months, if the person is accused of a crime for which the law provides for a maximum sentence of 15 years’ imprisonment;

2) by up to 12 months, if the person is accused of a crime for which the law provides for a maximum sentence of 25 years’ imprisonment or life imprisonment;

...

(5) Each extension of the duration of preventive detention cannot exceed 30 days during the criminal investigation phase...

(13) The decision to extend the duration of preventive detention may be appealed to the hierarchically superior court.”

“Article 312. Judicial supervision of the lawfulness of the decision ordering preventive measures and their extension

(1) Judicial supervision of the lawfulness of the decision of the investigating judge ordering preventive measures and their extension, [...] shall be carried out by a hierarchically superior court.”

30. The relevant parts of the Law on international legal assistance in criminal matters in force since 4 March 2007 (Law no. 371) read as follows:

“Article 1. Purpose and field of regulation

(1) The purpose of the present law is to establish the mechanism of implementing the provisions of the special part of the Code of Criminal Procedure [Articles 531-559], concerning international legal assistance in the criminal field, as well as of international treaties in this field to which the Republic of Moldova is a party.

...

(3) The provisions of the present law apply to the following forms of international legal cooperation in the field of criminal law:

...

f) extradition;

...”

“Article 10. Computation of the duration of detention

The length of detention abroad further to a request for legal assistance formulated by the Republic of Moldova on the basis of the Code of Criminal Procedure and of the present law shall be taken into account within the framework of the Moldovan criminal procedure and shall be deducted from the length of any punishment imposed by the court.”

...

“Chapter IV. Extradition

Section 1. Extradition from the Republic of Moldova

...

Article 55. Provisional arrest. Request to the court

...

(3) Provisional arrest with a view to extradition shall be ordered and extended by investigating judge examining the request for extradition. It shall be adopted in a decision, which can be appealed only together with the court decision on the extradition request.

...

(5) During the examination of the case, the court shall examine on its own motion, every 30 days, the need to maintain the provisional arrest, ordering its extension or the replacement of that measure with an obligation not to leave the country or the city or with an alternative measure not involving deprivation of liberty, in the conditions set out in the Code of Criminal Procedure.

(6) Each extension allowed under paragraph (5) above shall not be for more than 30 days. The total duration of provisional arrest shall not exceed 180 days.

(7) In case of accepting the extradition request, the provisional arrest shall be extended every 30 days until the person is handed over, subject to the observance of the time-limits set out in paragraphs (5) and (6). Provisional arrest expires if the person is not taken in by the competent authorities of the soliciting State within 30 days from the date agreed on for handing over.

...”

“Section 2. Requests for extradition by the Republic of Moldova

...

“Article 73. Legal framework

(1) The provisions of Section 1 in the present Chapter shall be applied in the corresponding manner in case the Republic of Moldova is the requesting state.”

...

“Article 75. Requests for detention pending trial with a view to extradition

(1) In urgent cases, if the conditions in the present law are met for asking for extradition, the competent authorities of the Republic of Moldova may solicit, before submitting a formal extradition request, the person’s provisional arrest on the basis of an arrest warrant or a warrant for the execution of a sentence issued by the competent court.

...

(3) The authorities of the Republic of Moldova have the obligation to withdraw their request for provisional arrest with a view to extradition if the person is no longer subject to an arrest warrant or a warrant for the execution of a sentence.”

31. On 28 May 2012 the Plenary of the Supreme Court of Justice adopted its decision no. 3 “Regarding judicial practice of applying the legislation regulating extradition”. This decision, which refers among other legal acts to both the Minsk Convention and Law no. 371, both mentioned above, does not contain an explanation as to when the period of arrest ordered in a warrant of arrest is considered as having started: at the time of deprivation of liberty of the person by the authorities of another State at the Moldovan authorities’ request or at the moment when such a person is handed over to the Moldovan authorities.

32. Under the Commonwealth of Independent States’ Convention on Legal Assistance (“the Minsk Convention”), to which the Republic of Moldova acceded on 26 March 1996 and which is also binding on Belarus, the High Contracting Parties undertook to extradite persons accused of acts which constitute criminal offences under the law of both parties and which carry a penalty of more than one year’s imprisonment. A High Contracting Party may arrest a person with a view to extradition to another High Contracting Party either at the latter’s request or on the basis of a suspicion that the person has committed an extraditable offence on the territory of the other High Contracting Party. In either case, the arresting authorities will immediately inform the interested High Contracting Party of the arrest.

In particular, the following provisions of the Minsk Convention read as follows:

“Article 58. Request for extradition

- 1) A request for extradition should include:
 - a) the name of the requesting institution;
 - b) a description of the facts of the punishable deed as well as the text of the law of the Contracting Party, based on which the deed is considered a criminal offence;
 - c) the name, surname and patronym of the person concerned by the extradition request, his/her citizenship, domicile or residence and – wherever possible – his/her physical description and other information about the person;
 - d) the amount of damage caused by the criminal offence;

2) The request for extradition with the aim of criminal prosecution shall be accompanied by a certified copy of the arrest warrant.

3) The request for extradition with the aim of execution of a sentence shall be accompanied by a certified copy of the sentence, with a mention concerning the entry into force of said sentence and the text of the criminal law based on which the person was convicted. If the convicted person has already partly served his/her sentence, information about that shall also be included.

4) The extradition request and the annexed documents shall be formulated in accordance with the provisions of Article 17 [concerning the use of languages].”

...

“Article 60. Arrest with a view to extradite

Upon receipt of the request [for extradition] the solicited Contracting Party shall immediately take measures with a view to arrest the person requested for extradition, with the exception of cases when extradition is not allowed.”

“Article 61. Arrest and detention before the receipt of a request for extradition

1) Upon solicitation, the person whose extradition is requested may also be arrested before an extradition request is received. The solicitation shall include information about the arrest warrant or sentence entered into force, as well as the fact that a request for extradition will be subsequently submitted. The solicitation for the arrest before the extradition request is received can be sent by mail, telegraph, telex or telefax.

2) The person can also be detained in the absence of a solicitation mentioned in the first section of the present article, if there are sufficient reasons provided by law to suspect that (s)he committed on the territory of one of the Contracting States an extraditable criminal offence.

3) Such an arrest or detention before receiving a request for extradition shall be immediately notified to the other Contracting Party”.

33. In the Final Report of the Organisation for Security and Cooperation in Europe (“OSCE”) Trial Monitoring Programme for the Republic of Moldova (April 2006 – November 2008), made public on 28 July 2010, the following observations were made, *inter alia*:

“Inefficient Operational Culture

... Ineffective operational practices were reflected in the malfunctioning of the posting system used to inform the public scheduled court hearings. Although all courts monitored had installed information boards by the end of the monitoring programme, the information posted on those information boards about upcoming hearings was not sufficient, correct or to date. These practices impede the right to a public hearing and the right to trial within a reasonable time.

Monitors particularly noticed at the appellate level organisational shortcomings affecting the fairness, impartiality and solemnity of proceedings and the right to an effective defence. The appellate courts consistently scheduled numerous hearings for the same time, contributing to an unseemly and unsafe environment in the courthouses. Monitors noticed that trial participants, including crime victims, frequently had to wait in cramped corridors for hours to give 10-15 minutes of testimony. Defence lawyers were not provided with sufficient space at the tables designated for them in courtrooms.

Panels of judges at the Courts of Appeals and the Supreme Court of Justice typically hear a few – but in certain instances up to 30 – appeals in rapid succession before breaking for deliberation. This practice raises concerns with regard to the quality, and consequently the fairness, of case re-evaluation on appeal. Under such circumstances, it is questionable whether judges are able to concentrate sufficiently on the relevant facts in each case. The practice raises doubts about the judges’ impartiality, as they may be influenced by other cases that are examined concurrently.”

THE LAW

I. GENERAL ADMISSIBILITY ISSUES

A. Abuse of the right of petition

34. The Government argued that by submitting to the Court the absence of a reply to his request for access to the documents in the file dated 14 June 2010, the applicant had abused his right of petition since in reality he had received an answer on 16 June 2010 in which he had been informed of the right to study the materials of the case at the Buiucani prosecutor’s office. Accordingly, the Government asked the Court to reject the application as an abuse of the right of petition pursuant to Article 35 §§ 3 and 4 of the Convention.

35. The Court notes that, while having lodged a complaint under Article 5 § 4 of the Convention, the applicant did not rely in it on the refusal to allow his lawyer to have access to the case-file. Accordingly, the information concerning the alleged refusal on 14 June 2010 to allow access to the case-file, which could have had significant importance for the Court’s findings in respect of a potential complaint under Article 5 § 4 about such access, does not affect in any meaningful way the complaints that were in fact raised before the Court. Moreover, the application form stated that the applicant’s lawyer had eventually been able to lodge an appeal, a copy of which was annexed. That appeal clearly relied on the documents in the file, which indirectly confirmed that access to its content had eventually been given. In view of the above, the Court cannot conclude that the applicant has abused his right of petition. This objection must therefore be rejected.

B. Loss of interest

36. The Government noted that, by his lawyer’s own admission, he had been unable to talk to his client about this case during the last exchange of submissions by the parties. They argued that he was thus not authorised to make the latest submissions on the applicant’s behalf, including those under Article 41. Accordingly, the Government considered that the applicant had lost interest in the case or in being represented by Mr Rotaru, whose submissions should therefore not be accepted to the file.

37. The Court observes that this argument is entirely based on the presentation of the situation by the applicant's lawyer. It is also noted that the lawyer informed the Court that the next day after refusing to talk to him on the phone about his case, the applicant had told him about pressure on him by the authorities and given him instructions *via* a former cellmate, including as to the sum to claim. The Government treated that part of the statement as untrue.

38. The Court notes the lawyer's affirmation that the applicant informed him, by whatever means, of his intention to pursue the application. In the absence of any evidence to the contrary, there is no reason for the Court to conclude that the applicant is no longer represented by this lawyer or has lost interest in the case. This objection must thus be rejected.

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

39. The applicant complained under Article 5 § 1 that he had been detained on the basis of a court order that had expired. Article 5 § 1 of the Convention, in so far as relevant, reads as follows:

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

...

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

A. Admissibility

40. The respondent Government argued that the Court had no jurisdiction to examine the present application since the applicant had been detained by Belarus authorities. They considered that the present case differed from that of *Stephens v. Malta (no. 1)* (no. 11956/07, 21 April 2009), where an apparently similar situation arose in respect of a person arrested in Spain pursuant to a Maltese court order. The Government emphasised that the arrest warrant in *Stephens* had been unlawful under Maltese law, which was not the case of the applicant's arrest warrant. Moreover, in requesting the Belarus authorities to arrest the applicant pending extradition the Moldovan authorities had fully complied with the applicable provisions of the Minsk Convention (see paragraph 32 above) and informed the Belarus authorities that the applicant's warrant of arrest would take effect upon his extradition to the Republic of Moldova, pending which time any extension of his detention in Belarus would have to be made in accordance with the laws of that country (see paragraph 12 above). Therefore, the period of detention until the

applicant's extradition to the Republic of Moldova could not involve the latter's responsibility.

41. The applicant submitted that the case did not differ in any essential aspect from the above-mentioned case of *Stephens* and that the Republic of Moldova was responsible for his detention in Belarus.

42. The Court notes that the applicant was under the control and authority of the Belarus authorities in the period between his arrest in Belarus and his extradition to the Republic of Moldova. Nevertheless, in so far as the alleged unlawfulness of his arrest and detention is concerned, it cannot be overlooked that the applicant's deprivation of liberty had its origin in the measures taken by the Moldovan authorities, on the basis of the Minsk Convention and for the purpose of enforcing the arrest warrant of 1 October 2007. Here it should be noted that by ordering the applicant's detention on remand and setting in motion a request for the applicant's extradition, the responsibility lay with Moldova to ensure that the detention order issued by the Buiucani District Court complied with the requirements of Article 5 of the Convention (*Vasilciuc v. the Republic of Moldova*, no. 15944/11, § 23, 2 May 2017).

43. In the above context, the Court recalls that within the framework of an extradition procedure, a requested State should be able to presume the validity of the legal documents issued by the requesting State and on the basis of which a deprivation of liberty is requested. Furthermore, the country requesting extradition must ensure that the request for detention and extradition is lawful, not only under national law, but also under the Convention. Accordingly, the act complained of by the applicant, having been instigated by the Republic of Moldova on the basis of its own domestic law and followed-up by Belarus in response to its international obligations, must be attributed to the Republic of Moldova notwithstanding that the act was executed in Belarus (*Vasilciuc*, cited above, § 24).

44. In the light of the above, the Court considers that the applicant's complaints under Article 5 engage the responsibility of the Republic of Moldova under the Convention. The Government's objection must thus be rejected.

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

B. Merits

1. The parties' submissions

46. The applicant submitted that his detention was unlawful after the expiry of 30 days from his arrest, as provided by the warrant for his arrest.

47. The Government submitted that the usual practice of the courts was to take the date of effective detention by the Moldovan authorities as the

beginning of detention sanctioned by a detention order, regardless of the length of extradition procedures. Therefore, the warrant for the applicant's arrest remained valid throughout the period until his extradition.

2. *The Court's assessment*

(a) **General principles**

48. The Court reiterates that, where the Convention refers back to domestic law, as it does in Article 5 § 1 (c), disregard of that law entails a breach of the Convention, which means that the Court can and should review whether that law was complied with. Its power in that respect is, however, subject to inherent limits, because even where the Convention refers to domestic law, it is in the first place for the national authorities to interpret and apply that law (see, *Merabishvili v. Georgia* [GC], no. 186, 72508/13, § 191, 28 November 2017).

49. The Convention lays down the obligation to conform to the substantive and procedural rules of national law. However, this is not sufficient; Article 5 § 1 of the Convention also requires that domestic law itself be compatible with the rule of law. This in particular means that a law which permits deprivation of liberty must be sufficiently accessible, precise and foreseeable in its application (see, among other authorities, *Amuur v. France*, 25 June 1996, § 50, *Reports* 1996-III; *Baranowski v. Poland*, no. [28358/95](#), §§ 50-52, ECHR 2000-III; *Jėčius v. Lithuania*, no. 34578/97, § 50, ECHR 2000-IX, and *Boicenco v. Moldova*, no. 41088/05, § 149, 11 July 2006). It also means that an arrest or detention must be compatible with the aim of Article 5 § 1, which is to prevent arbitrary deprivation of liberty (see, among other authorities, *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II; *Buzadji v. the Republic of Moldova* [GC] (no. 23755/07, § 84, ECHR 2016 (extracts); and *Merabishvili*, cited above, § 186).

50. The Court has previously accepted that a bilateral or international treaty, being part of the domestic legal order, is capable of serving as a legal basis for extradition proceedings and for detention with a view to extradition (see *Soldatenko v. Ukraine*, no. [2440/07](#), § 112, 23 October 2008).

(b) **Application of these principles to the present case**

51. In the present case, the applicant argued that his detention in Belarus for more than 30 days had not been taken into account for the purpose of calculating the period of validity of his detention order. The Court recalls that it has already found that “neither Article 5 § 3 nor any other provision of the Convention creates a general obligation for a State party to take into account the length of a pre-trial detention suffered in a third State” for the calculation of the overall length of the pre-trial detention (see *Zandbergs v. Latvia*, no. 71092/01, § 63, 20 December 2011).

52. Moreover, the Court notes that the domestic court order for the applicant's arrest mentioned its validity for 30 days from the date of arrest (*reținere*). In the applicant's view, this implies that it expired one month after he was deprived of his liberty in Belarus. The Government submitted that the usual practice of the courts was to take the date of effective detention by the Moldovan authorities as the beginning of detention sanctioned by a detention order issued by a Moldovan court, regardless of the length of extradition procedures.

53. The Court reiterates that it is in the first place for the national authorities to interpret and apply domestic law (see paragraph 48 above). It notes that, while the Chișinău Court of Appeal did not provide elaborate reasoning when it rejected the applicant's appeal, by maintaining the District Court's decision ordering the applicant's detention for 30 days it implicitly upheld the continuing validity of the arrest warrant. It considers that the Government's interpretation of the meaning of the word arrest, as implicitly supported by the Chișinău Court of Appeal's decision in the present case, is both reasonable and practical. It takes into account the particular difficulty for the domestic courts – before being able directly to question the person – to verify such elements as “the character of the person involved, his or her morals, assets, links with the State in which he or she is being prosecuted and the person's international contacts” (*Buzadji*, cited above, § 90).

54. To accept the applicant's position would also mean that the Moldovan courts would have to extend the arrest warrant – again without ever seeing the person involved – at regular intervals. Moreover, since under Moldovan law a person can only be held in detention pending trial for a maximum of 12 months (see paragraph 26 above), in the case of any extradition process exceeding that period, the Moldovan authorities would have to ask the authorities of the State in which the person is detained pending extradition to release him, without the courts ever having the possibility of questioning him.

55. It therefore accepts that the arrest warrant constituted, from the point of view of Moldovan law, a sufficient basis for effecting the applicant's arrest and detention in Belarus for the purpose of extradition, and that it continued to provide such a basis until the applicant was handed over to the Moldovan authorities, at which point the 30-day period began to run. It was only after the Moldovan authorities had the applicant under their control that they could assume the full spectrum of obligations towards him in the context of his pre-trial detention under Article 5 § 1(c) of the Convention, including those provided for in paragraphs 3 and 4 of Article 5 (notwithstanding the fact that the applicant was in fact able to take proceedings within the meaning of paragraph 4 to contest the detention order while he was still in Belarus).

56. Accordingly, the Court considers that the practice of the domestic courts to count the period of “detention” as starting from the moment when a person is deprived of liberty by the domestic authorities – *i.e.* from the

moment of extradition in the present case – is consistent with the requirements of Article 5 § 1 of the Convention.

57. There has therefore been no violation of that provision in the present case.

III. OTHER COMPLAINTS UNDER ARTICLE 5 § 1 OF THE CONVENTION

58. The applicant complained that at the time of his arrest in Belarus Article 195 of the Criminal Code, on which the Moldovan court had relied when ordering his arrest, had already been excluded from the Code (see paragraph 27 above). Thus, his detention had had no legal basis.

59. The Government pointed out that, when repealing that aforementioned provision of the Criminal Code, Parliament had included the same offence in Article 190 of the same Code (see paragraph 28 above). Thus, his detention had been lawful. When the detention order was extended, the prosecution had made reference to the new provision.

60. The Court considers that this complaint could raise an issue only if the offence was no longer provided for in the Criminal Code while the applicant was being detained. The mere fact that certain provisions of the Criminal Code were moved from one section to another does not call into question the finding that, throughout his detention, the applicant was accused of having committed the same offence, which continued to exist in the Criminal Code.

61. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

62. The applicant further complained under Article 5 § 1 of the Convention that he had not been informed promptly of the reasons for his arrest and of the existence of a criminal investigation against him. The Court considers that this complaint is to be examined under Article 5 § 2 of the Convention. It notes that the applicant's arguments expressly focused on the period between the issuing of the warrant for his arrest on 1 October 2007 and his arrest in Belarus on 9 May 2010. However, during that time his whereabouts remained unknown to the Moldovan authorities and he could therefore not be informed of the reasons set out in the arrest warrant.

After his arrest the applicant was informed of the reasons for his arrest, his lawyer having made a detailed appeal against his detention order.

63. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

64. The applicant also complained about the failure by the Chişinău Court of Appeal to examine his appeal on 24 June 2010 as originally scheduled, thus depriving him of his right provided by national law to an appeal against

the decision to arrest him. It notes that the applicant's appeal was in fact examined on 9 July 2010.

65. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

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

66. The applicant complained that the detention order issued against him had not been based on relevant and sufficient reasons, contrary to the requirements of Article 5 § 3 of the Convention, which reads:

“3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and 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

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

B. Merits

1. The parties' submissions

68. The applicant submitted that when ordering his arrest on 1 October 2007 the Buiucani District Court did not rely on relevant and sufficient reasons. In particular, it did not refer to specific facts confirming his absconding from the law enforcement authorities.

69. The Government argued that the domestic court examined all the relevant elements of the case, notably the applicant's absence and impossibility of finding him, which was interpreted by the court as his absconding. The court also took into account the seriousness of the offence of which the applicant was accused.

2. The Court's assessment

70. The Court refers to the principles developed in its case-law concerning the reasons that the authorities must give in order to place an arrestee in pre-trial detention (see *Buzadji*, cited above, §§ 87-88 and 101-02, ECHR 2016 (extracts), with further references; *Merabishvili*, cited above, § 222; and *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 335, 22 December 2020).

71. In particular, the risk of flight cannot be gauged solely on the basis of the severity of the possible sentence; it must be assessed with reference to a number of other factors, such as the accused's character, morals, assets, links with the jurisdiction, and international contacts. Moreover, the last sentence of Article 5 § 3 of the Convention shows that when the only remaining reason for detention is the fear that the accused will flee and thus avoid appearing for trial, he or she must be released pending trial if it is possible to obtain guarantees that will ensure that appearance (see *Buzadji*, cited above, § 90; and *Merabishvili*, cited above, § 223).

72. In the present case, it is to be noted that the reasons invoked by the court when initially ordering the applicant's arrest, namely the seriousness of the crime and the need to protect public order, were general considerations, without any attempt to show how the facts of the case supported the court's conclusion of the need to detain the applicant. The risk of flight was the only element which referred to specific facts about him, namely his presumed absconding from the investigation (see paragraph 9 above).

73. As for the risk of flight, the domestic court accepted the prosecutor's submission that the applicant had absconded and could not be found. The lawyer appointed by the court argued that there was no evidence that the applicant knew that a criminal investigation in his regard had been started (see paragraph 9 above), which implied that he could not abscond from an investigation of which he was unaware. The prosecution, who had been trying to establish the applicant's whereabouts, and thus also the court, could not have been unaware that in 2000 the applicant had obtained a temporary residence permit and that in 2006 he had officially left the Republic of Moldova (see paragraph 7 above). Moreover, no evidence has been submitted by the parties that the Moldovan authorities attempted to obtain the cooperation of their Georgian counterparts in locating the applicant in his country of origin. In the light of the above, it would appear that the conclusion about the applicant's absconding from the Moldovan authorities had no factual basis.

74. This being so, the Court considers that the domestic court's decision ordering the applicant's arrest was stereotyped and abstract. It cited the grounds for detention without any attempt to show how they applied concretely to the specific circumstances of the applicant's case (see *Buzadji*, cited above, § 122).

75. Having regard to foregoing, the Court considers that there were no relevant and sufficient reasons to order the applicant's detention pending trial. It follows that in the present case there has been a violation of Article 5 § 3 of the Convention.

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

76. The applicant complained that the decision in respect of his appeal against his detention order had been taken in the absence of the lawyer chosen by him. He relied on Article 5 § 4 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

78. The applicant submitted that out of a total of seventy-four cases to be examined on 24 June 2010 some fifty cases were all scheduled to be heard by the court at 10 a.m. The applicant's lawyer appeared at the courthouse at 9.30 a.m. and waited all day for the hearing of his client's case. Hearing room no. 2, where the appeal was to be examined, consisted of the judge's desk, a table for each of the two parties to the proceedings and fifteen chairs for the audience. Since there was not enough space for the lawyer in the room, he and many others had to wait outside the courtroom to be called by the court. Owing to the noise in the hall, it was difficult to hear the names of those called by the court. No order of hearing cases had been announced, which together with the noise in the hall prevented any meaningful preparation for the hearing. The applicant's lawyer approached the clerk several times in order to ask about the time when his client's case would be heard, but nobody could give him an answer.

79. The applicant argued that the poor organisation of the Chişinău Court of Appeal on the date of the hearing scheduled for 24 June 2010 had prevented his lawyer from taking part in the hearing since he had waited for an entire day, without any indication as to when the case would be heard. Thereafter, neither the applicant nor the lawyer was informed of the court's decision to postpone the proceedings, or of the replacement of the applicant's lawyer by a court-appointed one. The latter had never contacted the applicant and had had no instructions from him. Therefore, he could not have properly represented the applicant's position at the hearing of 9 July 2010.

80. The Government submitted that since the lawyer chosen by the applicant had failed to appear at the hearing of 24 June 2010, the Chişinău

Court of Appeal had appointed a lawyer paid by the State to represent the applicant's interests at the hearing of 9 July 2010. Accordingly, his rights had been observed.

2. *The Court's assessment*

81. The Court reiterates that the opportunity for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (*Idalov v. Russia* [GC], no. 5826/03, §§ 161-64, 22 May 2012, and *Venet v. Belgium*, no. 27703/16, § 35, 22 October 2019).

82. Moreover, the requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances. Although it is not always necessary that an Article 5 § 4 procedure be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question. Thus, the proceedings must be adversarial and must always ensure "equality of arms" between the parties (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, §§ 203-204, ECHR 2009 with further references, and *Lutsenko v. Ukraine*, no. 6492/11, § 96, 3 July 2012).

83. The Court considers that, regarding representation by a lawyer of one's own choosing during the pre-trial proceedings, it can refer to the principles regarding the lawyer-to-client relationship of confidence developed under Article 6 §§ 1 and 3(c) of the Convention. In this latter respect, it has found (*Dvorski v. Croatia* [GC], no. 25703/11, §§ 77 and 79, ECHR 2015):

"Notwithstanding the importance of the relationship of confidence between a lawyer and his client, this right is not absolute. It is necessarily subject to certain limitations where free legal aid is concerned and also where it is for the courts to decide whether the interests of justice require that the accused be defended by counsel appointed by them (see *Croissant v. Germany*, 25 September 1992, § 29, Series A no. 237-B). The Court has consistently held that the national authorities must have regard to the defendant's wishes as to his or her choice of legal representation, but may override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice (*ibid.*, § 29; see also *Meftah and Others v. France* [GC], nos. [32911/96](#), [35237/97](#) and [34595/97](#), § 45, ECHR 2002-VII; *Mayzit v. Russia*, no. [63378/00](#), § 66, 20 January 2005; *Klimentyev v. Russia*, no. [46503/99](#), § 116, 16 November 2006; *Vitan v. Romania*, no. [42084/02](#), § 59, 25 March 2008; *Pavlenko v. Russia*, no. 42371/02, § 98, 1 April 2010; *Zagorodniy v. Ukraine*, no. [27004/06](#), § 52, 24 November 2011; and *Martin v. Estonia*, no. [35985/09](#), § 90, 30 May 2013). Where such grounds are lacking, a restriction on the free choice of defence counsel would entail a violation of Article 6 § 1 together with

paragraph 3 (c) if it adversely affected the applicant's defence, regard being had to the proceedings as a whole)."

84. In deciding on whether the interests of justice require that the accused be defended by counsel appointed by them, the domestic courts must rely on relevant and sufficient grounds (see, *mutatis mutandis*, *Correia de Matos v. Portugal* [GC], no. 56402/12, §§ 121 and 126, 4 April 2018).

85. The Court considers that relevant and sufficient reasons must be given for replacing a lawyer chosen by an accused with another one. Even where such grounds exist, the accused must be given the opportunity to appoint another lawyer. Of course, a court could itself appoint a lawyer if it found that an accused had abused his or her right, for instance by replacing lawyers frequently and thus causing unjustified delays in the proceedings (see *Dvorski*, cited above, § 81, and *Elif Nazan Şeker v. Turkey*, no. 41954/10, §§ 43 and 44, 8 March 2022).

86. In the present case, the Government did not submit a copy of the relevant decision to replace the lawyer chosen by the applicant with another one. It is therefore impossible to determine exactly the reason for appointing another lawyer, in particular whether this was the result of the applicant's lawyer's absence on 24 June 2010.

87. Even assuming that the replacement was due to such an absence, it is noted that independent observers have confirmed (see paragraph 33 above) the applicant's submission regarding the practice of the Chişinău Court of Appeal to schedule simultaneously large numbers of cases. While this does not confirm that the applicant's lawyer was indeed present on 24 June 2010 in the court building and missed the hearing because of having waited all day there in a noisy and chaotic atmosphere, it creates a clear potential for such situations.

88. Moreover, it is clear that having received the two letters on 29 June and 8 July 2010 (see paragraph 17 above), the Chişinău Court of Appeal was aware, or ought to have been aware before hearing the appeal on 9 July 2010, of the lawyer's claim that there had been court mismanagement resulting in his inability to be present at the hearing of 24 June 2010. While it is for the domestic courts to decide whether the reasons for the absence of a lawyer appointed by an accused are serious enough to warrant his replacement with another lawyer, in the present case the reasons for the court's decision remain unknown. It is therefore also unknown whether the court considered, under applicable domestic law, to offer the applicant the possibility to choose another lawyer (see paragraph 29 above) or to provide an explanation for the alleged absence from the hearing of 24 June 2010.

89. The Court notes that the result of replacing the applicant's lawyer was a considerable weakening of his position by having his case presented by a lawyer whom he had never met or instructed in any manner. Moreover, this resulted in a situation where both the initial order for the applicant's detention

and the only possible appeal against that order were examined in the absence of the applicant and of a lawyer chosen and instructed by him.

90. In view of the above, the Court concludes that the applicant did not sufficiently benefit from his right to “take proceedings” in order to obtain a decision concerning the lawfulness of his detention. There has, accordingly, been a violation of Article 5 § 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

92. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage for each month of his unlawful detention. In his updated submissions he claimed EUR 450,000.

93. The Government submitted that the amount claimed was excessive.

94. In view of the materials in the file and of the finding of a violation of Article 5 §§ 3 and 4 of the Convention, the Court awards the applicant EUR 3,000.

B. Costs and expenses

95. The applicant also claimed EUR 6,500 for the costs and expenses incurred before the Court.

96. The Government contested the number of hours needed to work on the case and considered that the amount claimed was exaggerated.

97. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the applicant EUR 1,500 for costs and expenses, less EUR 850 already received by way of legal aid.

C. Default interest

98. 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,

1. *Declares* unanimously the complaints under Article 5 § 1 concerning his detention based on a law which was no longer in force, the failure to inform him promptly of the reasons for his arrest and the limitation of his right to appeal against the decision to remand him inadmissible, and the remainder of the application admissible;
2. *Holds*, by four votes to three, that there has been no violation of Article 5 § 1 of the Convention;
3. *Holds* unanimously that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* unanimously that there has been a violation of Article 5 § 4 of the Convention;
5. *Holds* unanimously
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Moldovan lei at the rate applicable at the date of settlement:
 - (i) (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) (ii) EUR 650 (six hundred and fifty 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses*, by four votes to three, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Jon Fridrik Kjølbro
President

GILANOV v. THE REPUBLIC OF MOLDOVA JUDGMENT – SEPARATE OPINION

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of judge Gritco, joined by judges Lubarda and Ranzoni, is annexed to this judgment.

J.F.K.

H.B.

**PARTLY DISSENTING OPINION OF JUDGE GRÎȚCO,
JOINED BY JUDGES LUBARDA AND RANZONI**

1. In the present case I agree with the finding that there have been violations of Articles 5 § 3 and 5 § 4 of the Convention. To my regret, I cannot subscribe to the outcome with regard to Article 5 § 1 of the Convention and the reasoning set out on this point in the judgment.

A. Preliminary remarks

2. As a general rule, in the Republic of Moldova detention during the criminal investigation phase and until the case is sent to the trial court takes place on the basis of an arrest warrant and shall not exceed 30 days. In some exceptional cases, provided for by law, preventive detention may be extended by up to 12 months. Each separate extension of the duration of preventive detention cannot exceed 30 days (see paragraphs 26 and 29 of the judgment).

3. Taking into account the specific circumstances of the present case, it is to be noted that the Moldovan legislation contains a mechanism aimed at implementing the provisions of the Code of Criminal Procedure concerning international legal assistance in criminal matters and the provisions of the international treaties in this field to which the Republic of Moldova is a party (see paragraph 30 of the judgment).

4. In particular, where the Republic of Moldova is the requested State in the context of extradition proceedings, the domestic courts must order the person's provisional arrest and, of their own motion, examine the necessity of extending it every 30 days; however, the total duration of provisional arrest shall not exceed 180 days. It is expressly provided that the above-mentioned rules are to be applied in the corresponding manner in cases where the Republic of Moldova is the requesting State (see paragraph 30 of the judgment).

This was exactly the situation in the present case, where within the framework of a criminal investigation the Republic of Moldova was the requesting State and initiated extradition proceedings for the purpose of enforcing the arrest warrant of 1 October 2007 in respect of the applicant, who at the material time was outside of its territory.

5. The legality of the applicant's detention under domestic law on the basis of that arrest warrant is at the heart of both parties' submissions under Article 5 of the Convention. That is why, in my view, the case concerns primarily the issue of lawfulness, and more specifically the "quality" of the law under which the applicant was detained pending the extradition proceedings at the request of the Moldovan authorities.

B. As regards the lawfulness of the applicant's detention from 9 May 2010 until 10 December 2010 and the test of "quality of law"

6. In the present case, it is beyond doubt that the applicant's detention in Belarus was a direct consequence of the detention order of 1 October 2007 and that no deprivation of liberty in that country would have been possible in the absence of that order, issued by the Moldovan courts. Indeed, under the domestic law the Moldovan authorities were obliged to withdraw their request for provisional arrest by Belarus if the applicant was no longer subject to a valid arrest warrant (see paragraph 30 of the judgment).

7. Therefore, in terms of the compliance of domestic law with the requirements of Article 5 of the Convention, the core issue is the lawfulness of the applicant's continuing detention abroad once the first period of 30 days of deprivation of liberty had expired, in the absence of any extension or of a new order. Moreover, as is clear from the case-law cited in paragraphs 48-49 of the judgment, the law itself must be sufficiently accessible, precise and foreseeable in its application in order to satisfy the test of "quality of law" under Article 5 of the Convention.

8. As is clear from the material in the case file, the court decision and the warrant for the applicant's detention mentioned the day of arrest as the starting-point for his 30 days of detention (see paragraphs 9-10 of the judgment). No qualifying statements were made in either of the two documents concerning the nature or place of the detention triggering the running of the above-mentioned 30-day period, even though the court knew that the authorities had been unable to locate the applicant in the Republic of Moldova (see paragraph 9 of the judgment) and that he was a foreigner who could reasonably be expected to have returned to his home country, Georgia. It is to be noted that neither the authorities domestically nor the Government in their submissions challenged the applicant's claim that in 2006 he had officially left the Republic of Moldova for Georgia (see paragraph 7 of the judgment); this means that the court should have considered the possibility that he was abroad at the time the arrest warrant was issued.

9. Despite the reasonable possibility that the applicant was abroad at the time the arrest warrant was issued, the text of both the court decision and the arrest warrant simply refers to the date of the applicant's deprivation of liberty on the basis of that warrant, without any reference to where that could happen.

10. Therefore, the exact starting-point of the 30-day detention period is open to more than one interpretation, as it could be either "the arrest, wherever that might take place" (the view defended by the applicant) or "the arrest after transfer to the Moldovan authorities" (the position of the Government). If the first meaning is accepted, in the absence of an extension of the original arrest warrant or of the issuing of a new one, that warrant would have expired 30 days after the date of deprivation of liberty. The applicant's subsequent detention would thus have lacked a valid legal basis

under Moldovan law. If the second meaning is accepted, then the relevant period started only after the applicant's extradition, at the time of his transfer to the control of the Moldovan authorities, and did not include the period of approximately six months during which the applicant was detained after the first 30-day period of deprivation of liberty pending extradition proceedings.

11. In their submissions before the Court the Government reiterated that the starting-point of the 30-day period of validity of the court order was not the date of the applicant's deprivation of liberty (9 May 2010), but the date of his detention by the Moldovan authorities, that is, the date of extradition (10 December 2010).

12. The majority accepted this point of view without criticism in spite of the fact that the Government did not refer to any legal provision supporting such an interpretation. Moreover, even though the Moldovan General Prosecutor's Office informed its Belarus counterpart in reply to the latter's question concerning this precise matter that the 30-day period was to be calculated from the date of extradition to the Republic of Moldova, no reference to any specific Moldovan legislation or judicial practice was made in support of that assertion (see paragraph 12 of the judgment). Reference was made only to Articles 58, 60 and 61 of the Minsk Convention, which obviously do not provide a basis for such a conclusion (see paragraphs 12 and 32 of the judgment).

13. With reference to the Government's submissions, the majority also found to be consistent with the requirements of Article 5 § 1 of the Convention the usual practice of the domestic courts of starting the calculation of the 30-day detention based on arrest warrants from the date on which the person concerned was placed in the custody of the Moldovan authorities, that is, in the case at hand from the date of extradition to the Republic of Moldova (see paragraphs 52-53 and 55-56 of the judgment).

14. It is regrettable that the majority paid no attention to the fact that the Government did not submit any example of case-law in support of this position. In this context I would like to reiterate that even the existence of well-established case law is insufficient to compensate for a flaw in the quality of the law when a person's liberty is at stake. For instance, the Court found a breach of Article 5 § 1 in cases where, in the absence of a clear legal basis, a person continued to be deprived of his or her liberty without any extension of the detention order after the case had been sent to the trial court, despite the existence of a well-established court practice of not requiring such an extension (see, for example, *Baranowski v. Poland*, no. 28358/95, §§ 42-58, ECHR 2000-III, and *Boicenco v. Moldova*, no. 41088/05, §§ 146-54, 11 July 2006).

15. With reference to the applicant's interpretation of the validity of the detention order at issue, the majority argue in the same context that accepting his position would mean that the Moldovan courts would have to extend the arrest warrant at regular intervals without ever seeing the person concerned.

At the same time the approach in this regard mentioned by the Government and habitually applied by the domestic courts is described as “both reasonable and practical” (see paragraphs 53-55 of the judgment).

16. I do not intend to contradict this argument: it is indeed very reasonable and practical that a court should see an accused in person before deciding on whether to detain him or her pending trial. My only objection is that no matter how reasonable or practical a solution is, it cannot constitute a lawful basis for deprivation of liberty unless it is provided for by law. The courts cannot create new grounds for detention simply because they consider it reasonable or practical.

Moreover, the kind of situation described in paragraph 54 of the judgment is neither theoretical nor unexpected bearing in mind certain provisions of the Law on international legal assistance in criminal matters, which was enacted – as it transpires from Article 1 – with the aim of establishing a mechanism for implementing the provisions of the Code of Criminal Procedure and other normative acts concerning, in particular, international legal assistance in the field of extradition (see paragraph 30 of the judgment and point 4 of this opinion).

17. In this context I would like to mention, in particular, Article 10 of the Law (providing that the length of detention abroad is to be taken into account within the framework of the Moldovan criminal procedure), Article 55 (providing for automatic review every 30 days of the need to extend the person’s provisional arrest pending extradition to another country) and Article 75 (obliging the Moldovan authorities to withdraw requests for provisional arrest where the person is no longer subject to an arrest warrant). Reading the above provisions together with Article 1, referred to above, and Article 73 (imposing in the corresponding manner the same rules for both situations, that is, when the Republic of Moldova is either the requesting or the requested State in extradition proceedings), it appears that these legal provisions could support the arguments put forward by the applicant concerning the interpretation of the legal framework governing detention pending extradition proceedings.

18. To my mind the above-mentioned legal provisions may also be relevant in addressing the issue of the 12-month maximum period of detention as raised by the majority (see paragraph 54 of the judgment). I will not, however, proceed with any further analysis of these matters since it is not the Court’s role to interpret domestic law in an abstract manner and it is first of all for the national authorities to find answers to those questions.

C. As regards the reasoning of the national courts’ decisions

19. Allow me to reiterate that, as rightly pointed out in the judgment, it is in the first place for the national authorities to interpret and apply domestic law (see paragraphs 48-49 of the judgment and the case-law cited therein). In

addition, taking into account the scope of the case at hand, I find relevant to mention a principle from the Court's case-law concerning the quality of detention orders, according to which unless they constitute a gross and obvious irregularity, defects in a detention order may be remedied by the domestic appeal courts in the course of judicial review proceedings (see *Mooren v. Germany* [GC], no. 11364/03, § 75, 9 July 2009, and *Baş v. Turkey*, no. 66448/17, § 143, 3 March 2020).

20. In the present case the defects of this kind, already mentioned above (see points 9-10 of the opinion), are closely linked to the applicant's core allegation that the validity of the detention order expired 30 days after the date of his arrest in Belarus and that for that reason his detention pending extradition proceedings was unlawful.

21. In this context it is to be noted that the Chişinău Court of Appeal did not deal in any specific manner with the applicant's lawyer's arguments expressly challenging the validity of the detention order after the 30-day period had elapsed and the applicant's continued detention pending extradition proceedings in Belarus; thus, the court did not perform any judicial review of this aspect of the complaint. Nor did it remedy the fact of the applicant's detention on the basis of an allegedly expired court order by giving reasons for a possible finding that the court order of 1 October 2007 was still valid, by issuing a new order for his detention or by ordering his release. Moreover, the Chişinău Court of Appeal failed to interpret and/or refer to any relevant provisions of domestic law governing situations in which the Republic of Moldova is the State requesting extradition. As a matter of fact, it rejected the arguments raised by the applicant's lawyer by simply noting that "they [had] no factual and legal basis", without giving any further details (see paragraph 20 of the judgment).

22. In view of the above, we are talking about a complex situation in which the exact manner in which the law should be applied remained unclear and no examples of domestic case-law were submitted. In this context it should be reiterated that it is well established in this Court's case-law that where a person's liberty is under consideration it is particularly important that the general principle of legal certainty be satisfied (see *Mooren*, cited above, § 76, and *Baş*, cited above, § 143) and that no extensive interpretation should be allowed (see, for instance, *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 73, 22 October 2018).

23. From this perspective and taking into account the fact that the Chişinău Court of Appeal failed to provide detailed reasoning when it dismissed the applicant's appeal, the majority, in my opinion, did not have at their disposal all the necessary elements to support a finding that, by rejecting the applicant's arguments as a whole, the Chişinău Court of Appeal tacitly chose an interpretation of the domestic law which was different from the one advanced by the applicant and that it had thus fulfilled its task of bringing

clarity to the issue of the alleged unlawfulness of the applicant's detention pending extradition proceedings.

In fact, as already mentioned, it failed to do so, and therefore left open an issue that was decisive for the outcome of the case.

24. It is also worth mentioning that on 28 May 2012 the Plenary of the Supreme Court of Justice interpreted various aspects of the application of the legislation concerning extradition in judicial practice, but did not deal with the issue under consideration (see paragraph 31 of the judgment).

D. Conclusion

25. It is not the Court's task to express a view on the appropriateness of the methods chosen by the legislature of a State to regulate a given field; its task is confined to determining whether the methods adopted and the effects they entail are in conformity with the Convention (see *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, § 133, 1 June 2021, and the case-law cited therein).

26. With that in mind, I am not suggesting that domestic law cannot provide for the period of detention to be calculated from the time of extradition, or in any other manner. However, in order to comply with the guarantees provided for in Article 5 of the Convention, the relevant legal provisions must be sufficiently accessible, precise and foreseeable in their application, so as to avoid all risk of arbitrariness.

27. In the light of the above, in view of the fact that the meaning of the domestic courts' decisions and of the detention order in matters related to its validity are open to more than one interpretation, and in the absence of an express and authoritative interpretation of the relevant legal provisions or of examples of domestic case-law on the issue apt to clarify the manner in which the law must be applied, coupled with the lack of a proper judicial review, I consider that the "quality of law" requirement was not met in the present case and that there has accordingly been a violation of Article 5 § 1 of the Convention.