



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

FOURTH SECTION

CASE OF PALADI v. MOLDOVA

(Application no. 39806/05)

JUDGMENT

STRASBOURG

10 July 2007

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER
WHICH DELIVERED JUDGMENT IN THE CASE ON
10/03/2009**

This judgment may be subject to editorial revision.

In the case of Paladi v. Moldova,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 19 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 39806/05) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Ion Paladi (“the applicant”), on 9 November 2005.

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

3. The applicant alleged, in particular, that he had not been given proper medical assistance, and that he had been detained without a lawful basis and in the absence of a reasonable suspicion that he had committed a crime. He complained of the absence of relevant reasons for prolonging his detention pending trial and the length of time taken to decide on his *habeas corpus* requests, as well as the refusal to examine an appeal and a new *habeas corpus* request. He also complained of the failure of the authorities to comply swiftly with the Court’s interim measures ordered under Rule 39 of the Rules of Court on 10 November 2005.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 11 November 2005 the President of a Chamber of that Section decided to indicate to the Government interim measures under Rule 39 of the Rules of Court, namely to ensure the applicant’s continued treatment in the Republican Neurological Centre (“the RNC”). On 22 November 2005 the Chamber decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Chişinău.

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

7. The applicant worked as Deputy Mayor of Chişinău. He was also a lecturer at the Academy of Economic Studies in Moldova. Between 24 September 2004 and 25 February 2005 he was held in the remand centre of the Centre for Fighting Economic Crime and Corruption (“the CFECC”). On 25 February 2005 he was transferred to Remand Centre no. 3 of the Ministry of Justice in Chişinău (also known as “Prison no. 3”, which was subsequently re-named “Prison no. 13”). The applicant suffers from a number of illnesses (see paragraphs 17 and 20 below).

1. The proceedings against the applicant

8. The applicant is accused in three separate sets of criminal proceedings under Articles 185 (3) and 327 (2) of the Code of Criminal Procedure (“the CCP”) of abuse of his position and excess of power.

9. On 17 September 2004 the CFECC opened a criminal investigation concerning the applicant and on 24 September 2004 he was taken into custody.

10. On 27 September 2004 the Buiucani District Court issued a warrant for his arrest and detention for 30 days. The reasons given by the court for issuing the warrant were that:

“[The applicant] is dangerous to society. If released he may reoffend, destroy evidence or abscond from the law-enforcement authorities, may obstruct the normal course of the investigation or the taking of evidence and may influence evidence and witnesses.”

On 4 October 2004 the Chişinău Court of Appeal upheld that decision. Judge M.B. dissented, finding no reason to detain the applicant, as the prosecution had not submitted any evidence of the alleged danger of his absconding or interfering with the investigation. The applicant had a family and a permanent residence in Chişinău, was ill and had no criminal record.

11. The applicant made *habeas corpus* requests on 5, 13 and 19 October, 2 November and 29 December 2004, and on 22 February, 23 June and 20 September 2005. He relied on the following facts: his poor state of health; the absence of a criminal record; his impeccable reputation as a Doctor of Economics and a university lecturer; the fact that his identification documents had been seized by the prosecuting authorities so that he could not leave the country; the fact that his family and permanent

residence were in Chişinău; the fact that he supported his 75-year-old mother who was an invalid; he had the personal guarantee of three well-known persons (who had already deposited 3,000 Moldovan lei (MDL) and each of whom was prepared to pay the further MDL 8,000 initially requested by the court); and the lack of reasons for his arrest. All these requests were rejected for reasons similar to those given in the decision of 27 September 2004.

12. On 22 October 2004 the case file was submitted to the trial court.

13. On an unspecified date in October 2004 the prosecution submitted to the trial court a second case file in which the applicant was also identified as one of the accused. The investigation into that case had begun on 28 March 2003. The investigators twice closed it for lack of evidence (on 15 July and 26 September 2003) but on both occasions a prosecutor ordered its reopening. On 27 October 2004 both cases were joined.

14. On 2 November 2004 Judge L.V., President of the Centru District Court, rejected the applicant's request for release against the personal guarantee of three well-known persons, without giving any reasons.

15. The applicant appealed but Judge L.V. refused to forward his appeal to the Court of Appeal because the law did not provide for an appeal against such decisions. The applicant submitted the appeal to the Chişinău Court of Appeal directly, which also refused to examine it for the same reason. A similar response was given to appeals made on 25 February and 27 September 2005.

16. On 30 December 2004 a third criminal case file was submitted to the trial court accusing the applicant of abuse of power in his own personal interest. This case was also joined to the two cases against the applicant mentioned above.

2. The applicant's medical condition and treatment received

17. From 24 September 2004 the applicant was detained in the CFECC remand centre. On 29 September 2004 a medical consultative board examined the applicant's medical file at his wife's request and made the following diagnosis: type II diabetes (insulin-dependent), polyneuropathy, diabetic angiospasm, autoimmune thyroiditis stage 2, consequences of trauma to the head with intracranial hypertension, vagovagal paroxysm, chronic obstructive bronchitis, recurrent chronic pancreatitis with endocrine failure, chronic active hepatitis and asthenic syndrome. On 14 November 2004 the applicant's wife informed the trial court of the findings of the medical board.

18. According to the applicant, the CFECC remand centre had no medical personnel until late February 2005, when a general practitioner was hired to work there. He claims that he requested medical assistance on a number of occasions but received treatment only from doctors from other institutions who visited him when there was an emergency. On

28 September 2004 an ambulance was called to treat the applicant for an acute hypertension. The doctor prescribed a consultation with an endocrinology specialist, who saw the applicant on 21 December 2004. The applicant also informed the prosecutor and the court of his special dietary and medical needs but received no reply. He submitted copies of complaints from his wife, his mother and a parliamentary group to the CFECC authorities, the Prisons Department, the trial court, the President of Moldova, the Minister of Justice and other authorities. The applicant's wife received several formal replies, essentially informing her that her husband had been seen on a number of occasions by various doctors and that he would be given medical assistance should the need arise.

19. On 15 February 2005 the applicant was seen by Doctor B.E., a psychoneurologist, who concluded that his state of health was "unstable with a slight improvement" and that he needed to continue treatment under supervision. On 25 February 2005 the applicant was transferred to the remand centre of Prison no. 3 in Chişinău.

20. On 2 March 2005, in accordance with a court order, the applicant was examined by a medical board of the Ministry of Health. B.I., a neurologist and member of the board, diagnosed him with encephalopathy, polyneuropathy of endocrinal origin, hypertension, peripheral vascular disease and inferior paraplegia. He recommended that the applicant be treated on an in-patient basis. Z.A., an endocrinologist and member of the board, diagnosed the applicant with diabetes, macro and micro-angiopathy, cardiomyopathy, arterial hypertension, diabetic steatorrhoeic hepatothosis, thyroiditis, hypothyroiditis and encephalopathy. He recommended a special diet and treatment on an in-patient basis in specialised clinics (endocrinology-cardiology-neurology). E.V., Head of the Cardiology Department of the Ministry of Health and a member of the board, diagnosed the applicant with ischaemic cardiomyopathy and mixed cardiopathy, unstable pectoral angina, prolonged attacks during the previous two weeks, arterial hypertension (3rd degree), congestive heart failure (2nd degree), hypertension and endocrinal renal failure, diabetic vascular disease and thoracic dilatation. E.V. recommended that the applicant be treated on an in-patient basis in a cardiology unit in order to investigate and prevent the risk of myocardic infarctus. She considered it necessary to undertake anti-coagulant treatment but noted that, given the risk of gastric haemorrhage, such treatment could take place only under conditions of strict supervision and with surgeons at hand to intervene if necessary.

21. On the basis of these recommendations, the trial court ordered the applicant's transfer to a prison hospital.

22. On the basis of an order by the Ministry of Health, Doctor V.P., a neurologist from the Republican Neurology Centre of the Ministry of Health ("the RNC"), examined the applicant on 20 May 2005. He confirmed the earlier diagnoses and recommended complex treatment in a specialised

neurological unit of the Ministry of Health, including treatment with hyperbaric oxygen (HBO) therapy.

23. On 30 May 2005 the director of the prison hospital where the applicant was held informed the court of V.P.'s recommendations and said that the applicant was being given the medication prescribed but not HBO therapy, which it was impossible to administer at the prison hospital for lack of the necessary equipment. He also informed the court that the applicant's condition prevented him from attending court hearings.

24. On 1 June 2005 the Centru District Court found that the condition of the applicant and of another co-accused had worsened and suspended the examination of their cases "until recovery". The court did not respond to the applicant's wife's request for his release to allow treatment or to the above-mentioned letter from the director of the prison hospital.

25. By letters of 9, 17 and 22 June, 5 July and 1 August 2005 the director of the prison hospital again informed the court of the lack of the necessary equipment at the hospital for the treatment prescribed by V.P.

26. On 7 and 15 September 2005 a medical board of the Ministry of Health, which included doctors from the RNC, examined the applicant, and on 16 September 2005 it recommended, *inter alia*, HBO treatment in a specialised neurological unit.

27. On 16 September 2005 the director of the prison hospital confirmed, on the applicant's behalf, that the hospital did not have the necessary equipment for the required neurological treatment. That information was submitted to the Centru District Court.

28. On 19 September 2005 the Helsinki Committee for Human Rights filed an *amicus curiae* brief with the court after visiting the applicant in hospital. It considered that the applicant's state of health was irreconcilable with his conditions of detention and treatment and protested against the decision to suspend the examination of the case pending his recovery.

29. In view of the findings of the Ministry of Health medical board of 16 September 2005 recommending that the applicant be treated in a specialised neurological unit, the Centru District Court on 20 September 2005 ordered his transfer to the RNC for 30 days.

30. On 27 September 2005 the applicant requested the Centru District Court to order an expert report regarding his state of health before and after his arrest, as well as his condition on the date of lodging the request. In its decision of the same day the Centru District Court rejected the applicant's request, since no doubts regarding his state of health had been raised.

31. On an unspecified date the applicant requested the RNC management to describe his state of health and the treatment received. He received no answer. On 17 October 2005 the court ordered the RNC to answer immediately and the court received its answer on 20 October 2005. In it, the RNC set out its diagnosis of the applicant's condition and found that his health was unstable and that he needed further treatment. On

20 October 2005 the Centru District Court extended the applicant's treatment until 10 November 2005, on the basis of the letter from the RNC.

32. According to a certificate issued by the HBO Therapy Unit of the Republican Clinical Hospital ("the RCH"), the applicant received five HBO therapy sessions there starting on 2 November 2005, which produced positive results. The applicant was prescribed a twelve-session course, scheduled to continue until 28 November 2005. According to the applicant, he was escorted from the RNC to the RCH every second day for the procedure and also began an acupuncture course there. The applicant submitted a copy of the certificate to the Centru District Court, which on 10 November 2005 decided that he should be transferred to the prison hospital. The court based its decision on the RNC's letter of 9 November 2005 which stated that the applicant's condition had stabilised and that he would be released on 10 November 2005. Since the RNC letter did not include HBO therapy among its recommendations for treatment, the court found the schedule of HBO treatment for November to be irrelevant.

33. On 16 November 2005 the Ministry of Health and Social Welfare replied to the Government Agent's questions regarding the need to treat the applicant. The letter stated that on 17 November 2005 the applicant's medical records had been examined by a group of doctors, who found that he did not need in-patient treatment "in any medical establishment, including the [RNC]" and that he could be treated as an out-patient.

34. In his letter of 12 February 2007 the applicant submitted to the Court a certificate stating that on 20 June 2006 he had been recognised as having a second-degree disability.

3. *The applicant's habeas corpus requests*

35. On 23 June 2005 the trial court rejected the applicant's *habeas corpus* request on the following grounds:

"the reasons for prolonging the accused's detention pending trial remain valid because the charges against him are based on circumstances not yet examined by the court and altering the preventive measure may hinder the establishment of the truth in the criminal trial."

36. On 8 July 2005 the applicant made another *habeas corpus* request, relying on Articles 2 and 3 of the Convention and emphasising that while examination of his case had been suspended pending his recovery, he had been refused the medical treatment necessary to ensure such a recovery. The court postponed examination of the request. Examination of the request was again postponed on 11 July 2005 for an indefinite period.

37. On 18 July Judge L.V. was absent and examination of the case was postponed. On 22 July 2005 other members of the court were absent and examination of the case was once more postponed.

38. On 25 July 2005 the applicant requested a copy of the court transcript of 8 and 11 July 2005 and informed the court of the worsening of

his condition. The request was refused. On 3 August 2005 the Centru District Court informed the applicant that examination of his *habeas corpus* request had been postponed pending an answer from the Ministry of Health to its inquiry of 7 July 2005 regarding his condition.

39. On 20 September 2005 the Centru District Court rejected the applicant's *habeas corpus* request "because the reasons for prolonging the detention remain valid". The court also rejected the applicant's complaint that the insufficient medical treatment he had received amounted to inhuman and degrading treatment:

"... because the representative of the [prison hospital] declared that [the applicant] had been given the necessary medical treatment on an in-patient basis; there is no evidence of inhuman or degrading treatment."

At the same time, however, the court ordered the applicant's transfer to the RNC (see paragraph 29 above).

40. On 27 September 2005 the applicant's appeal was not examined, the court finding that no further appeal was possible. The court also rejected his request for a medical examination in order to establish his current state of health and the manner in which he had been treated during his detention.

41. On 11 October 2005 the applicant made another *habeas corpus* request, challenging, *inter alia*, the persistence of any reasonable suspicion justifying his continued detention. He referred to the finding of a violation of Article 5 of the Convention in the case of *Sarban v. Moldova* (no. 3456/05, 4 October 2005) as a new circumstance warranting re-examination of the need to detain him. The court rejected the request, finding that it could be submitted only one month at least after the last such request had been examined. It also found that the judgment referred to was not a new circumstance as it related only to Mr Sarban and not to the applicant.

42. On 10 November 2005 the applicant asked the Centru District Court to order his continued treatment at the RNC or his release based on his *habeas corpus* request. The court rejected the request (see paragraph 32 above) and did not examine the *habeas corpus* request.

43. On 15 November 2005 the Centru District Court rejected the applicant's *habeas corpus* request of 10 November 2005, finding that:

"... not all the evidence has been examined; [the applicant] has worked as a deputy Mayor of Chişinău and continues to have influence over witnesses yet to be questioned; he may obstruct the presentation to the court of authentic evidence still being kept by Chişinău Municipality."

44. On 15 December 2005 the applicant's detention pending trial was replaced with an obligation not to leave the country.

4. Interim measures indicated by the Court

45. On the evening of 10 November 2005 the Court indicated by facsimile to the Moldovan Government an interim measure under Rule 39 of the Rules of Court, stating that “the applicant should not be transferred from the RNC until the Court has had the opportunity to examine the case, i.e. until 29 November 2005 at the latest”. On 11 November 2005 the Deputy Registrar of the Fourth Section made several calls to the telephone numbers indicated by the Government Agent, but received no response.

46. On the morning of 11 November 2005 the applicant requested the trial court to stay the execution of its decision of 10 November 2005 and to prevent his transfer from the RNC. He submitted a copy of the facsimile from the European Court of Human Rights regarding the interim measures. The Centru District Court did not hold a hearing and did not reply to his request. He was transferred to the prison hospital on the same day.

47. On 14 November 2005 the applicant’s lawyer informed the President of the Supreme Council of Magistrates of the failure by Judge L.V., President of the Centru District Court, to examine his request of 11 November 2005 and asked for urgent action in order to ensure compliance with the Court’s order for interim measures. On the same day the lawyer submitted a similar request to the Agent for the Moldovan Government before the Court and to the Prosecutor General’s Office, noting that the prosecutor in charge of the case had supported the applicant’s request to continue being treated at the RNC.

48. On the same date and following the Government Agent’s request, the Centru District Court ordered the applicant’s transfer to the RNC until 29 November 2005. The subsequent events are disputed by the parties. According to the applicant, he was brought to the RNC at 6.30 p.m., but for six hours the management refused to admit him. When the applicant began to feel ill, the management admitted him after midnight. According to the Government, the applicant was admitted on the day the Centru District Court ordered his admission and the delay resulted from the doctors’ view that the applicant did not require further treatment at the RNC. The Government Agent had personally overseen execution of the order.

49. The applicant submitted a copy of a news report broadcast on the PRO-TV television channel, which showed the events at the RNC. The reporter stated that the applicant had been kept waiting for six hours for a decision and that he was finally admitted after midnight. The doctors informed the reporter that they had refused initially to admit the applicant because of the absence of his personal medical file and had admitted him only when the medical file was brought to them. In an interview given to the same reporter, the Government Agent stated that the reason for the delay in admitting the applicant was “certain technical, organisational issues”. This was confirmed by a statement by the head of the Prisons Department.

50. On 12 December 2005 the Supreme Council of Magistrates informed the applicant's lawyer, in response to his letter of 14 November 2005, that the Centru District Court had officially received information about the European Court's order for interim measures on Monday 14 November 2005 at 2.19 p.m. Following an urgent court hearing, the trial court had ordered the applicant's transfer to the RNC.

5. *Friendly settlement agreement*

51. In May 2006 the applicant allegedly made proposals in writing to the Government regarding the friendly settlement of his case. The document which he submitted to the Court referred to his poor state of health making it impossible for him to participate in the criminal proceedings and included the condition of his "final acquittal guaranteed by the State" before he would agree to withdraw his application before the Court.

52. On 27 July 2006 the Government submitted to the Court a friendly settlement agreement signed by them and the applicant on the same day. They asked the Court to strike the application out of its list of cases pursuant to Article 37 of the Convention.

53. The applicant did not inform the Court of the agreement and did not ask for the striking out of his application. When asked to comment, his lawyer submitted that he had not been aware of the agreement as he had not been involved in the negotiations. In response to the Court's letter of 22 January 2007 asking the applicant to confirm the conclusion of his free will of the friendly settlement agreement, the applicant asked the Court, on 12 February 2007, to continue the examination of his case since his main condition, allegedly unofficially agreed upon with the Government, of being acquitted of all charges, had not been fulfilled and he considered the agreement null.

II. RELEVANT DOMESTIC LAW

54. The relevant domestic law has been set out in this Court's judgment in *Sarban* (cited above, §§ 51-56).

In addition, Article 329 of the Code of Criminal Procedure provides:

"(1) In trying a case the court may order, replace or revoke a preventive measure against an accused, either at the parties' request or of its own motion. A new request for the ordering, replacing or revoking of a preventive measure can be submitted if there appear to be reasons for doing so, but not earlier than one month from the date when the previous court decision on the same matter entered into force, unless there are new circumstances which prompt the new request.

(2) Where detention pending trial is imposed, the court decision may be appealed against, within three days, to higher court, which will decide on the appeal in accordance with Article 312 applied *mutatis mutandis*."

THE LAW

55. The applicant complained of a violation of his rights guaranteed by Article 3 of the Convention. Article 3 reads as follows:

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

56. The applicant also considered that his detention had been contrary to Article 5 § 1 of the Convention, the relevant part of which provides:

“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;”

57. The applicant complained under Article 5 § 3 of the Convention that his detention pending trial had not been based on “relevant and sufficient” reasons. He also complained about the decision to suspend examination of his case until his return to health. The relevant part of Article 5 § 3 reads:

“3. 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.”

58. The applicant also asserted that the length of time taken to examine his *habeas corpus* request, the refusal to examine his appeal against the rejection of that request and the rejection of that request based on new circumstances each amounted to a breach of Article 5 § 4 of the Convention, which reads:

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

59. Finally, the applicant complained of the delay in complying with the interim measures indicated by the Court. He considered this to constitute a violation of Article 34 of the Convention, which reads:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Loss of victim status

60. The Government submitted that, following the conclusion of the friendly settlement agreement with the applicant (see paragraph 52 above) and the payment of the sum agreed therein (MDL 10,000, the equivalent of 596 euros (EUR)), the applicant had lost his status as a victim of a violation of his rights. They denied the existence of any "unofficial" part of the agreement, which in any event would be legally void as promising something which only an independent court could decide, i.e. to acquit the applicant. They asked the Court to strike the application out of its list of cases, pursuant to Article 37 of the Convention.

61. The applicant disagreed, claiming that the agreement provided for a token compensation bearing no relationship with the quantity and severity of the violations complained of. He claimed that he had been persuaded to sign the agreement because he was ill and the Government had insisted that negotiations take place without the participation of his lawyer. Moreover, he was promised, in an unwritten agreement, that all charges against him would be dropped. Since that did not happen, he considered that the agreement had not been fulfilled by the Government and asked the Court to continue the examination of his application.

62. The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 reads as follows:

"1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; or

(b) the matter has been resolved; or

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

63. It is clear from the applicant's letters that he intends to pursue his application. Therefore, there is no question of applicability of Article 37 § 1 (a) to the present case.

64. The Court needs to verify whether it should strike the present application out of its list of cases on the basis of the other provisions of

Article 37 § 1 of the Convention. The Court recalls that “in order to conclude in the instant case that the matter has been resolved within the meaning of Article 37 § 1 (b) and that there is therefore no longer any objective justification for the applicant to pursue his application, it is necessary to examine, firstly, whether the circumstances complained of directly by the applicants still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed” (see *Association SOS Attentats and de Boery v. France* [GC], (dec.), no. 76642/01, § 32, ECHR 2006-...).

65. In the present case, the Court accepts the applicant’s view that the amount of compensation offered bears no reasonable relationship with the alleged violations of the Convention, if these were to be proved. It also notes that the applicant was undoubtedly in a poor state of health, making him unable to attend court hearings. He was, moreover, not assisted by his lawyer, which deprived him of important advice on complex legal matters. In this latter respect the Government’s argument that no promise to have the applicant acquitted could have been made since that would have been a legally void act only lends support to the argument that the applicant was in need of legal advice on an issue which he clearly saw as crucial to an agreement with the Government, namely the dropping of the charges against him (see paragraph 51 above).

66. In view of the above, the Court cannot conclude that “the matter has been resolved”, within the meaning of Article 37 § 1 (b) of the Convention, nor that “it is no longer justified to continue the examination of the application” within the meaning of Article 37 § 1 (c). Indeed it considers, given the seriousness of the alleged violations, that “respect for human rights as defined in the Convention and the Protocols thereto” requires it to continue the examination of the application (see Article 37 § 1 *in fine*).

Accordingly, the Government’s request to strike the application out of the Court’s list of cases is to be rejected.

B. Exhaustion of domestic remedies

67. The applicant complained that the lack of medical assistance and the conditions of his detention at the CFECC remand centre amounted to inhuman and degrading treatment contrary to Article 3 of the Convention.

68. The Government argued that the applicant had not exhausted available domestic remedies in respect of the complaints under Article 3 of the Convention. They relied on the case of *Drugalev* (cited in *Holomiov v. Moldova*, no. 30649/05, § 88, 7 November 2006).

69. In so far as the remedy of a civil action to request an immediate end to the alleged violation is concerned, the Court has already found that the *Drugalev* case relied on by the Government did not constitute sufficient evidence that such a remedy was effective (see *Holomiov*, cited above,

§ 106). Not having been informed of any developments since the *Drugalev* decision, the Court sees no reason to depart from that finding in the present case. It follows that this complaint cannot be rejected for failure to exhaust available domestic remedies.

C. Inadmissible complaints

70. The Court considers that the applicant's complaint under Article 3 of the Convention, to the extent that it concerns the conditions of his detention at the CFECC remand centre, is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention (see *Sarban*, cited above, § 78, referring to the same remand centre and the same period as in the present case).

71. The Court also considers that, in the light of the material in the file, it cannot be said that the applicant was arrested without any reasonable suspicion of having committed a crime contrary to Article 5 § 1 of the Convention (see paragraphs 8 and 9 above). Therefore, this part of the complaint is to be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

D. Conclusion

72. The Court considers that the applicant's complaints under Article 3 of the Convention (regarding the alleged insufficiency of medical treatment) and Article 5 §§ 1, 3 and 4 (with the exception of the alleged arrest without a reasonable suspicion) raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits. It therefore declares these complaints admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

73. The applicant complained of a violation of Article 3 of the Convention as a result of the failure to give him appropriate medical assistance during his detention at the CFECC, the failure to transfer him to a neurological institution on the recommendation of Doctor V.P. (see paragraph 22 above) and the interruption of his neurological treatment.

74. The Government submitted that the applicant had been given appropriate medical treatment both at the CFECC and in Prison no. 3, as well as in the prison hospital. Doctors from specialised medical institutions had seen the applicant whenever necessary (approximately once a month between September 2004 and January 2005, according to the documents submitted by the Government). He could be transported to a nearby hospital

in the event of an emergency. The applicant's transfer from the prison hospital to the RNC and back had been ordered on the basis of the medical evidence before the court. In particular, in the absence of any mention in the letter from the RNC about any ongoing HBO therapy course, the court had rejected the applicant's request for his treatment to be continued. Moreover, the court had adopted its decisions without unnecessary delay.

75. The Court refers to the principles established in its case-law regarding the medical care of detainees (see, for instance, *Sarban*, cited above, §§ 75-77).

76. The Court notes that the applicant suffered from a number of serious illnesses. Several doctors recommended his treatment as an in-patient under medical supervision, some of them considering that operations were necessary which could be carried out only in medical units specialising in cardiology, neurology or endocrinology (see paragraphs 17–20 above). It is therefore clear that the applicant was in need of constant medical supervision, in the absence of which he faced major health risks. Moreover, the applicant, his wife and his lawyer complained to a number of authorities about the insufficient medical treatment, but were able to obtain only sporadic visits by doctors and urgent medical assistance in emergencies (see paragraphs 17 and 18 above). Indeed, according to the Government's submissions, the applicant was visited by doctors approximately once a month (see paragraph 74 above). The Court also recalls its finding in *Sarban* (cited above, § 81) that there was no medical personnel in the CFECC remand centre before 11 February 2005.

77. It follows that the applicant was not given appropriate medical supervision and assistance while in detention in the CFECC remand centre.

78. The Court notes that on 20 May 2005 Doctor V.P., who saw the applicant on the order of the Ministry of Health and who worked at the RNC, recommended transferring him to an institution where he could receive HBO therapy (see paragraph 22 above). It further notes that the director of the hospital in which the applicant was detained informed the domestic court of the inability of his institution to carry out the full treatment recommended by Doctor V.P. owing to a lack of equipment (see paragraphs 23, 25 and 27 above).

79. The Court acknowledges the need for the domestic court to rely on medical opinions before deciding on a transfer to another hospital. However, the domestic court took an unreasonably long time to obtain the medical opinion and took no measures to speed up the process, resulting in a four-month delay before the applicant's transfer. It is striking that the medical board first saw the applicant only on 7 September 2005.

80. The domestic court should also have taken into account the recommendation to transfer him to a neurological clinic, which was made by a doctor whose qualification and independence were not called into question. The court itself considered the applicant to be unfit to participate

in its hearings as of 1 June 2005 (see paragraph 24 above). At the same time, however, it did not consider it necessary to allow him to start a course of treatment. Since the court did not rely on any specific evidence that the applicant could attempt an escape, there is no justification for the court's failure to order the applicant's transfer at a much earlier date.

81. The failure to transfer the applicant to a neurological clinic within a reasonable time, and the resulting delay in beginning the recommended treatment, unnecessarily exposed the applicant to a risk to his health and must have resulted in stress and anxiety (see *Sarban*, cited above, § 87).

82. The Court also notes that, while both Doctor V.P. and the medical board prescribed HBO therapy for the applicant, neither of them referred to the RNC as the appropriate institution (see paragraphs 22 and 26 above). The Centru District Court decided on the applicant's transfer to the RNC, although it appears from the file that the applicant's HBO treatment was carried out at the RCH (see paragraph 32 above). It follows that the RCH was the competent medical authority to advise the court on the necessity of continuing the applicant's course of HBO therapy. Notwithstanding that, the court based its decision only on the letter from the RNC.

83. The Court is furthermore struck by the urgency with which the domestic court decided to order the applicant's transfer from the RNC and to implicitly end his course of HBO therapy. While in the possession of two apparently divergent medical opinions (that of the RNC recommending the applicant's release from hospital, and making no reference to HBO therapy, and that of the RCH recommending that the HBO therapy should be continued), the court chose to simply ignore one of them. This is in clear contrast to the same court's position taken after 20 May 2005, when it was presented with only one – unchallenged – medical opinion, but where it was prepared to wait four months for a second opinion (see paragraphs 22–29 above). Moreover, the domestic court did not balance the potential risk to the applicant's health from the interruption of his HBO treatment against any security risk or other reason for the urgent transfer of the applicant.

84. The Court considers that by interrupting the applicant's HBO treatment, which had been recommended by the doctors and had already yielded positive results, the domestic court further undermined the effectiveness of his belated treatment. It also caused stress and anxiety to the applicant in excess of the level inherent in any deprivation of liberty.

85. The Court concludes that the lack of proper medical assistance at the CFECC remand centre, the incomplete treatment of the applicant at the prison hospital after 20 May 2005 and the abrupt termination of his HBO treatment each amounted to a violation of Article 3 of the Convention.

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

86. The applicant complained of his unlawful detention after the expiry of the last court order for his detention pending trial on 22 October 2004 (see paragraphs 10 and 12 above).

87. The Government stated that, following the submission of the applicant's case file to the trial court, it was for that court to deal with any requests regarding his detention pending trial, as clearly stipulated by the law. The Government relied on the same legal provisions as those relied on in *Boicenco v. Moldova* (no. 41088/05, §§ 64-71, 11 July 2006).

88. The Court recalls that it found a violation of Article 5 § 1 of the Convention in this respect in *Boicenco* (cited above, § 154) and *Holomiov* (cited above, § 130). Having examined the material submitted to it, the Court considers that the file does not contain any element which would allow it to reach a different conclusion in the present case.

89. The Court finds, for the reasons given in the cases cited above, that the applicant's detention pending trial after 22 October 2004, when the last court order for his detention expired, was not based on any legal provision.

90. There has, accordingly, been a violation of Article 5 § 1 of the Convention in the period after 22 October 2004.

IV. ALLEGED VIOLATIONS OF ARTICLE 5 § 3 AND § 4 OF THE CONVENTION

91. The applicant made a number of complaints under Article 5 § 3 and § 4 of the Convention (the lack of reasons for his detention pending trial; the decision to suspend the examination of his case "until recovery"; the length of time taken to examine his *habeas corpus* request of 8 July 2005; the refusal of the courts to examine his appeal against the decision of 20 September 2005 rejecting his complaint; and the rejection of his *habeas corpus* request of 12 October 2005 in which he relied on a recent judgment adopted by this Court).

92. The Court does not consider it necessary to examine separately these complaints in view of its finding (see paragraph 90 above) that the applicant's detention lacked any legal basis as of 22 October 2004 (see also *Sarban*, cited above, §§ 104 and 124).

VI. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

93. The applicant complained that his transfer from the RNC before his treatment could be completed, and notwithstanding the interim measures indicated to the Government under Rule 39 of the Rules of Court, had violated his rights guaranteed under Article 34 of the Convention.

Rule 39 of the Rules of Court provides:

“1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.

2. Notice of these measures shall be given to the Committee of Ministers.

3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated.”

94. The applicant submitted, in particular, that Judge L. V., President of the Centru District Court, had failed to examine his request of 11 November 2005 to comply with the interim measures. When she finally examined his request on 14 November 2005 and ordered his transfer to the RNC, the RNC management refused to cooperate, leaving him to wait anxiously for hours before being admitted.

95. The Government disagreed. They acknowledged having received two letters from the Court by facsimile on the evening of 10 November 2005, but stressed that the Court’s Registry had not sent the relevant letter also by electronic mail, as previously agreed in respect of general correspondence. Having received the fax on the morning of 11 November 2005 the Government Agent, Mr V. Pârlog, took immediate steps to comply with the interim measures indicated. In particular, on the same day he wrote a letter to the President of the trial court. Since it was impossible to convene all the parties for a hearing on the same day, the court summoned them for the next working day, which was 14 November 2005. On the same day the applicant was transferred back to the RNC, to the surprise of the RNC doctors, who saw no medical reason for his transfer. All reasonable steps had thus been taken to comply with the interim measure.

96. The Court reiterates that “by virtue of Article 34 of the Convention Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of an individual applicant’s right of application. A failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant’s complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34” (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 128, ECHR 2005-I).

97. The Court notes the sequence of events after it had indicated interim measures to the Government (see paragraphs 45–50 above). It is apparent that there were serious deficiencies at each stage of the process of complying with the interim measures, starting with the absence, in the Government Agent’s Office, of officials to answer urgent calls from the Registry and continuing with the lack of action taken by that office between the morning of 11 November 2005 and the afternoon of 14 November 2005

(see paragraph 47 above), coupled with the Centru District Court's failure to deal urgently with the issue when it was asked to do so on 11 November 2005 by the applicant's lawyer. Finally, the refusal for six hours to admit the applicant to the RNC despite the Court's interim measures and the domestic court's decision is also a matter of concern.

98. The Court notes that the applicant was in a serious condition which, as appeared from the documents available at the relevant time, put his health at immediate and irremediable risk. That risk was the very reason for the Court's decision to indicate the interim measure. By good fortune no adverse consequences for the applicant's life or health resulted from the delay in implementing that measure. However, the Court cannot accept that a State's responsibility for failing to comply with their obligations undertaken under the Convention should depend on unpredictable circumstances such as the (non-)occurrence of a medical emergency during the period of non-compliance with interim measures. It would be contrary to the object and purpose of the Convention for the Court to require evidence not only of a risk of irremediable damage to one of the core Convention rights (such as those protected by Article 3, see for instance *Aoulmi v. France*, no. 50278/99, § 103, ECHR 2006-... (extracts)), but also of actual damage before it was empowered to find a State in breach of its obligation to comply with interim measures.

99. The Court considers that the failure of the domestic authorities to comply as a matter of urgency with the interim measure indicated by the Court in itself jeopardised the applicant's ability to pursue his application before the Court and was thus contrary to the requirements of Article 34 of the Convention. This was compounded, firstly, by the apparent lack in the domestic law and practice of clear provisions requiring a domestic court to deal urgently with an interim measure; and, secondly, the deficiencies in organising the activity of the Government Agent's Office, resulting in its failure to react promptly to the interim measure and to ensure that the hospital authorities had at their disposal all the necessary medical documents (see paragraph 49 above).

100. In the light of the very serious risk to which the applicant was exposed as a result of the delay in complying with the interim measure and notwithstanding the relatively short period of such delay, the Court finds that there has been a violation of Article 34 of the Convention in the present case.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. Article 41 of the Convention provides:

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

A. Pecuniary damage

102. The applicant claimed EUR 2,241 for pecuniary damage sustained as a result of his illegal detention. He claimed that this amount had constituted the net salary which he had been unable to earn owing to his illegal detention between 24 September 2004 and 15 December 2005 and submitted a certificate from his employer confirming his submissions.

103. The Government argued that the applicant was not entitled to any compensation for pecuniary damage in view of the fact that his criminal case was still pending before the domestic courts. If the applicant were to be acquitted he would be able to claim compensation at national level.

104. The Court recalls that the rule of exhaustion of domestic remedies provided for by Article 35 § 1 of the Convention is not applicable in respect of just satisfaction claims made under Article 41 of the Convention (see *De Wilde, Ooms and Versyp v. Belgium* (Article 50), judgment of 10 March 1972, Series A no. 14, §§ 15 and 16, and *Becciev*, cited above, § 80). Therefore, the applicant cannot be expected to initiate new proceedings claiming compensation for the violations found in the present judgment.

105. The Court considers that there is a clear causal link between the violation of Article 5 § 1 of the Convention found and the sum claimed by the applicant to compensate for his loss of earnings. Since the applicant's detention had no legal basis as of 22 October 2004, he is entitled to recover his salary for the entire period of that unlawful detention (see *Ceský v. the Czech Republic*, no. 33644/96, § 91, 6 June 2000; *Nikolova v. Bulgaria* (no. 2), no. 40896/98, § 94, 30 September 2004; *Becciev v. Moldova*, no. 9190/03, § 81, 4 October 2005). The Court awards him EUR 2,080.

B. Non-pecuniary damage

106. The applicant claimed EUR 35,000 for the non-pecuniary damage sustained as a result of the violation of his rights under the Convention. He relied on the Court's case-law in previous similar cases. He submitted that the violations of his Convention rights had caused him feelings of frustration, uncertainty and anxiety which could not be compensated solely by a finding of a violation.

107. The Government disagreed and submitted that no evidence had been adduced to prove the alleged non-pecuniary damage to the applicant. They considered the cases referred to by the applicant to be irrelevant since they concerned different types of situations. Should the Court find a violation of any of the Articles of the Convention, this in itself would constitute sufficient just satisfaction.

108. The Court considers that the applicant must have been caused considerable pain, stress and anxiety as a result of the lack of proper medical treatment and his unlawful detention for over a year, the more so since the case was of a high-profile nature and was the focus of public and media attention.

109. Deciding on an equitable basis, and taking into account its finding of a violation of Article 34 of the Convention in the present case, the Court awards the applicant the total sum of EUR 15,000 for non-pecuniary damage.

C. Costs and expenses

110. The applicant also claimed EUR 5,564 for the costs and expenses incurred before the Court, including EUR 5,000 for his legal representation. In support of his claims the applicant sent the Court a copy of his contract with his lawyer, a copy of the time-sheet showing the number of hours spent by his lawyer on the case at a rate of EUR 100 per hour and documents attesting to the lawyer's academic credentials and experience. The hourly fee corresponded to a decision of the Moldovan Bar Association adopted on 29 December 2005, which set out the recommended level of remuneration for lawyers representing applicants before international courts. The lawyer included the time spent trying to have the interim measures implemented.

111. The Government did not agree with the amount claimed, stating that it was excessive in the light of the average monthly wage in Moldova. The Government also contested the number of hours spent by the applicant's representative and emphasised the non-mandatory nature of the Bar Association's decision.

112. The Court recalls that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-III).

113. In the present case, regard being had to the itemised list submitted by the applicant, the above criteria and the complexity of the case, the Court awards the applicant EUR 4,000.

D. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously inadmissible the complaints under Article 3 of the Convention in respect of the applicant's conditions of detention at the CFECC remand centre and under Article 5 insofar as it relates to the applicant's alleged arrest without a reasonable suspicion, and the remainder of the application admissible;
2. *Holds* unanimously that there has been a violation of Article 3 of the Convention in respect of the insufficient medical treatment provided to the applicant at each stage of his detention;
3. *Holds* unanimously that there has been a violation of Article 5 § 1 of the Convention in respect of the lack of a proper legal basis for the applicant's detention following the submission of his case file to the trial court on 22 October 2004;
4. *Holds* unanimously that it is not necessary to examine separately the applicant's complaint under Article 5 § 3 of the Convention;
5. *Holds* unanimously that it is not necessary to examine separately the applicant's complaint under Article 5 § 4 of the Convention;
6. *Holds* by six votes to one that there has been a violation of Article 34 of the Convention;
7. *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 the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,080 (two thousand and eighty euros) in respect of pecuniary damage;
 - (ii) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage;

(iii) EUR 4,000 (four thousand euros) in respect of costs and expenses;

(iv) any tax that may be chargeable on the above amounts;

(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;

8. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Sir Nicolas Bratza is annexed to this judgment.

N.B.
T.L.E.

PARTLY DISSENTING OPINION OF SIR NICOLAS BRATZA

1. I have voted with the majority of the Chamber on all aspects of the case save in respect of their conclusion that there has been a violation of Article 34 of the Convention. I am unable to find that the provision was violated in the particular circumstances of the present case.

2. The conclusion of the majority is based on the delay of the Moldovan authorities in complying with the interim measures indicated to the Government under Rule 39 of its Rules of Court in the evening of Thursday 10 November 2005 and requiring that the applicant should not be transferred from the Republican Neurology Centre of the Ministry of Health (“the RNC”) until the Court had had the opportunity to examine the case, that is until 29 November 2005 at the latest.

3. The events surrounding the grant of the interim measures appear from the Chamber’s judgment.

The applicant had from 2 November 2005 been undergoing hyperbaric oxygen (“HBO”) treatment at the Republican Clinical Hospital (“the RCH”) to which he was escorted every second day from the RNC. The treatment was scheduled to continue until 28 November 2005. The interim measures were applied by the Court in consequence of a decision of the Centru District Court of 10 November that the applicant should be transferred from the RNC to the prison hospital, the court basing its decision on the RNC’s letter of 9 November which stated that the applicant’s condition had stabilised and that he would be released from the Centre on 10 November. Since HBO therapy was not included among the RNC’s recommendations for treatment, the Court did not find the future schedule of HBO treatment to be relevant.

The interim measures were indicated to the Government by facsimile letter. On the following day, Friday 11 November 2005,

(i) the Deputy Registrar of the Fourth Section of the Court made several telephone calls to the numbers indicated to the Court’s Registry by the Government Agent but received no response;

(ii) it appears that the applicant requested the trial court to stay the execution of its decision and to prevent his transfer from the RNC, submitting a copy of the Court’s fax applying the interim measures. The Centru District Court did not hold a hearing or otherwise respond to the applicant’s request and, on the same day, the applicant was transferred to the prison hospital;

(iii) according to the Government, on receiving the Court’s fax in the morning, the Government Agent, Mr. Parlog, took immediate steps to

comply with the measures indicated by writing to the President of the trial court.

The precise sequence of events thereafter is unclear. According to the Observations of the Government, since a hearing of the court could not be fixed for the same day, the court summoned the parties to a hearing on the next working day, namely Monday, 14 November (see § 95). However, according to a letter of 12 December 2005 addressed by the Supreme Council of Magistrates to the applicant's lawyer in response to his letter of complaint about the failure of the trial court to examine his request of 11 November, the Centru District Court had only officially received information about the Court's interim measures at 2.19 pm on 14 November and, following an urgent hearing, had ordered the applicant's transfer to the RNC (see § 50).

It is undisputed that, on 14 November, the applicant was re-transferred to the RNC on the order of the trial court but, since the Centre saw no medical reason for the transfer and since the applicant's medical file was not immediately available, the management of the Centre refused to admit him for a period of about 6 hours.

4. In its *Mamatkulov* judgment (*Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 128, ECHR 2005-I), the Court held that "a failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right, and, accordingly, as a violation of Article 34".

A violation of that Article was found in the *Mamatkulov* case itself, as it was in subsequent cases which similarly involved the expulsion or extradition of an applicant in disregard of the terms of interim measures applied by the Court under Rule 39 to protect the applicant against the risk of being subjected to treatment contrary to Article 2 or 3 in the receiving country (see, for example, *Shamayev and Others v. Georgia and Russia*, judgment of 12 April 2005, no. 36378/02, ECHR 2005- ; *Olaechea Cahuas v. Spain*, judgment of 10 August 2006 no. 24668/03, ECHR, 2006-).

5. There are, however, in my view two important points of distinction between the circumstances of the earlier cases and those of the present case which would justify the Court in reaching a different conclusion. In the first place, there was no intentional disregard of the interim measures on the part of the national authorities, who, once they became aware that Rule 39 had been applied sought to comply with the Court's directions by returning the applicant to the RNC. Admittedly, there was a regrettable delay before the applicant was reinstated in the Centre and the judgment rightly draws attention to the deficiencies in the system which are exemplified by this case, in particular, the absence of any official, on 10 November, capable of

reacting to the Court's fax or, on 11 November, to answer telephone calls from the Court and the apparent lack of effective communication between the judicial or other authorities to ensure that a hearing was convened as a matter of urgency on 11 November, to prevent the applicant's removal from the RNC, or to ensure his prompt return. In addition, the interval of six hours before the applicant was eventually re-admitted to the RNC suggests poor co-ordination between the relevant authorities, including the judicial and medical authorities. However, I have no reason to doubt that, once he became aware of the interim measures, the Government Agent took immediate steps to try to remedy the situation and, so far as possible, to avert any harm being caused by the removal of the applicant from the RNC, although in the result the steps did not prove to be as effective as they should.

6. Secondly, and more importantly, I am unable to find that, on the particular facts of the present case, the delay in implementation of the interim measures can be said to have hindered the effective exercise of the right of individual petition within the meaning of Article 34 of the Convention. In this respect the case is very different from those where the removal of an applicant from a country in disregard of the terms of a Rule 39 indication has the inevitable consequence of rendering nugatory the exercise of the right by preventing the Court from conducting an effective examination of the Convention complaint and, ultimately, of protecting the applicant against potential violations of the Convention rights invoked.

It is true that, as pointed out in the Court's *Olaechea Cahuas* judgment, the effective exercise of the right may be "hindered" within the meaning of Article 34 even in circumstances where it remains possible for the Court to examine the complaint. The very purpose of applying interim measures is the avoidance of a risk of irreparable damage being caused to the physical or mental integrity or health of an applicant as the result of a proposed course of action, while complaints of a violation of core Convention rights are being examined by the Court. Even a delay in compliance with the interim measures which exposes the applicant to such a risk, may in certain circumstances amount to a hindrance to the effective exercise of the right. However, in the circumstances of the present case and having regard in particular to the fact that the applicant's condition was found to have stabilised before he was discharged from the RNC on 10 November, I am unable to share the view of the majority that the relatively short delay which elapsed before the applicant was returned to the RNC and enabled to complete his course of HBO therapy exposed him to a very severe risk to his life or health or amounted to a hindrance to the effective exercise of his right of individual petition so as to give rise to a violation of the State's obligations under Article 34.