



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

FOURTH SECTION

CASE OF GOREA v. MOLDOVA

(Application no. 21984/05)

JUDGMENT

STRASBOURG

17 July 2007

FINAL

17/10/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gorea 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 26 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 21984/05) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moldovan national, Mr Grigore Gorea ("the applicant"), on 7 June 2005.

2. The applicant was represented by Mr A. Tănase and Mr V. Nicoară, lawyers 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 been held in inhuman and degrading conditions, that he had been unlawfully detained and that the courts had not given relevant and sufficient reasons for his detention.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 25 October 2005 a Chamber of that Section decided to communicate 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

6. The applicant was born in 1971 and lives in Chişinău.

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

1. Events prior to the applicant's arrest

8. The applicant worked as a deputy Head of the Botanica Police Section in Chişinău. On 13 November 2001 an investigation was initiated against him for unlawfully releasing two suspects from detention on remand.

9. On 12 March 2002 the Chişinău Prosecutor's Office discontinued the investigation, finding that the charges had been based solely on the statements of two witnesses who had subsequently withdrawn them, declaring that they had made the statements as a result of ill-treatment by the police. Their statements were not supported by other evidence. On the same day the prosecutor informed the applicant of the decision by sending a letter to apartment no. 140, to where the applicant had recently moved. He sent a copy of his decision to the Chişinău head prosecutor "for information and control". However, the applicant was dismissed from his position.

10. The applicant initiated court proceedings seeking his reinstatement and the payment of salary arrears for the entire period of his involuntary absence from work. On 25 April 2002 the Court of Appeal accepted his claim. The court found that the criminal investigation against the applicant had not established his guilt and had been discontinued. It also found that the applicant had not prejudiced the proceedings against the released prisoners, one of whom was later found not to have committed any crime and the other re-arrested. His case is still pending.

11. On 13 October 2003 the applicant was employed as an officer of the Centre for Fighting Economic Crime and Corruption (CFECC).

12. On 19 November 2004 he was allegedly summoned by his superiors and pressured into arresting Mr Sarban, the secretary of the Chişinău Municipality. On the same day the applicant arrested Mr Sarban.

13. On 20 December 2004 a video recording of the applicant's statement in connection with Mr Sarban's arrest was broadcast on television. The applicant stated that the criminal investigation against Mr Sarban had been invented for political purposes and that there had been no lawful reason for initiating it (see *Sarban v. Moldova*, no. 3456/05, § 18, 4 October 2005).

14. According to the applicant, on 21 December 2004 the Head of the Internal Security Department of the Prosecutor General's Office requested the Chişinău Prosecutor to forward the criminal case file against him.

15. On 29 December 2004 the Prosecutor General re-opened the criminal investigation, finding that its discontinuation in March 2002 had been unlawful because it had not been based on a proper assessment of all the circumstances, that discrepancies in the evidence had not been entirely resolved and that the alleged facts had not been shown to be true. No order was given to open an investigation against the officer who had discontinued the investigation against the applicant.

16. On 8 February 2005 the applicant was requested to appear as a suspect before a prosecutor at the Prosecutor General's Office. The relevant letter was sent to apartment no. 121, where the applicant had not lived since early 2002. On 14 February 2005 a prosecutor reported that it had been impossible to serve the summons on the applicant since nobody had been at home, so it had had to be pinned to the front door. On 13 April 2005 another summons was issued and on 14 April 2005 a similar report was drawn up, both in respect of apartment no. 121.

17. On 18 April 2005 the prosecutor ordered that the applicant be brought before him, by force if necessary. On 25 April 2005 another report confirmed the absence of the applicant from apartment no. 121.

18. On 25 April 2005 the prosecutor brought charges against the applicant. No mention was made of his failure to appear before him during the investigation.

19. On 26 April 2005 the Râșcani District Court issued a warrant for the applicant's arrest and detention for 30 days, finding that he had been absconding from the investigation, was obstructing the establishment of the facts, could re-offend and was a wanted person.

20. On 11 May 2005 the prosecutor sent the relevant documents to the Buiucani Police Section in order to have the applicant declared a wanted person.

2. Events after the applicant's arrest

21. On 18 May 2005 the applicant was arrested in the street and was told of the warrant for his arrest issued on 26 April 2005. On 19 May 2005 he was brought before a judge who informed him of the decision of 26 April 2005. The applicant appealed, complaining that he had not been notified of the investigation and that it was therefore unjust to accuse him of absconding from it. He argued that he had a permanent residence, a job and a family with two children to support. He had no criminal record, and had he intended either to abscond from the investigation or to interfere with it, he could have done so earlier. He also underlined that the criminal investigation against him had been discontinued in 2002. He invoked Article 5 of the Convention and asked for his release pending trial, promising not to leave the city.

22. On 24 May 2005 the Chişinău Court of Appeal rejected his appeal, finding that the lower court had “given proper reasons for the application of the preventive measure and [had] not commit[ed] any procedural violation”.

23. On 30 May 2005 the prosecution formulated the final charges and on 1 June 2005 the case was submitted to the trial court.

24. According to the Government, the trial court set the date for the first preliminary hearing for 24 June 2005. On that date the Prosecutor General designated another prosecutor to the case and the hearing was accordingly adjourned to 28 June 2005. Since this new prosecutor already had a case scheduled for that date there was another adjournment. On 4 July 2005 the prosecutor asked for the case to be transferred to another court, a request which was eventually rejected by the Supreme Court of Justice on an unknown date. A new date for the preliminary hearing was set for 26 August 2005 but the hearing was adjourned due to the absence of witnesses. According to the applicant, he made *habeas corpus* requests at each hearing but none was examined because of the adjournments, and no formal decision was ever adopted. The Government have not denied this.

25. On 30 August 2005 the applicant made a written request for the replacement of detention by a different preventive measure. He complained that the summons had been deliberately sent to the incorrect address and that the examination of his case was being delayed without reason.

26. On 2 September 2005 the Botanica District Court rejected that request, principally because it found that the applicant had absconded from the criminal investigation. The court noted that the applicant had twice been served summonses at “... apartment no. 121, where, according to his personal file, he [is] registered” but had not appeared before the prosecutor and could not be brought by force as he was not found at the address. The court concluded that the grounds on which the detention on remand had been ordered remained valid as the applicant could abscond or interfere with the investigation. In rejecting the *habeas corpus* request the court decided that “the measure of detention on remand should be maintained”.

27. On 3 November 2005 the applicant made another *habeas corpus* request, complaining of unnecessary delays in his case. The prosecutor partly agreed and asked the court to release the applicant and to place him under house arrest because no witnesses had been heard by that stage. On the same day, the Botanica District Court accepted the request and ordered the applicant's house arrest, prohibiting him from leaving his apartment, talking to prosecution witnesses or using the telephone. Based on the annex to his identity card stating his permanent address as apartment no. 140, the court ordered the applicant's house arrest at that address. On 15 December 2005 the applicant's house arrest was replaced by an undertaking not to leave the city.

28. In December 2006 the applicant asked the trial court to annul the Prosecutor General's decision of 29 December 2004 to re-open the criminal

investigation into his case and to discontinue the investigation. He argued that the re-opening had violated both his right not to be prosecuted twice for the same act and the principle of legal certainty, contrary to Articles 22 and 287 of the Code of Criminal Procedure and Article 5 § 1 of the Convention.

In its judgment of 13 December 2006 the Buiucani District Court cited Articles 22 and 287 of the Code of Criminal Procedure (“the CCP”) and found that:

“...

Having examined all the evidence during the hearing, the court considers it necessary to discontinue the case due to the existence of circumstances which prevent the initiation of proceedings and the pursuance of criminal charges, namely the prohibition on repeated charges being brought against the same person for the same offence.

During the court hearing, it was established that the criminal proceedings in the case of Gorea Grigore were initiated on the basis of the criminal proceedings initiation order of 13.11.2001(vol I/fd I).

According to the order of the senior investigator at the Prosecution Office of the Town of Chisinau, I. Batalai, of 12.03.2002, the criminal case against Gorea Grigore was dropped due to lack of constitutive elements for the offence (vol II/71).

By order of the Prosecutor General of the Republic of Moldova dated 29.12.2004, the order of 12.02.2002 which had discontinued the proceedings was cancelled and the criminal proceedings were resumed. The reason given was the illegality of the order which dismissed the trial, which ran counter to the evidence gathered during the investigation, the [fact that the] circumstances allowing such a dismissal did not exist and that the contradictions between the statements of Gorea G. and those of the witnesses have not been explained and that no procedures had been carried out in order to establish the identity of the persons who had inserted the information in the record registers and statistics cards (vol II/75).

The court finds that the above conclusion is contrary to the evidence in the file.

In the order of dismissal of the criminal case, dated 12 March 2002, the evidence is described in detail and analysed and a conclusion is drawn. In the order of annulment of 29 December 2004, however, there is no analysis of the circumstances and the reasons for rejecting the conclusion regarding the lack of constitutive elements of the offence. A simple statement pointing to the illegality of this procedural act cannot serve as a legal ground to resume legal proceedings.

Therefore, the court reaches the conclusion that the order of dismissal of the criminal trial of 12 March 2002 was determined on the basis of the evidence in the file and issued in accordance with current legislation.

Therefore, in accordance with Art 287 CPP, the conditions necessary for resuming the criminal proceedings are not met; [this situation also gives rise to] a case of a person being tried twice for the same offence, which excludes the resumption of the criminal investigation and the charging of Gorea Grigore.

...

In accordance with Art 391, Code of Penal Procedure, the court decides:

CESSATION OF PROCEDURE

The criminal proceedings are discontinued against [the applicant] ... owing to the existence of circumstances which exclude the initiation of criminal proceedings and the charging of a person, namely the prohibition on repeatedly charging a person with having committed the same offence.”

This judgment was upheld by the Chişinău Court of Appeal on 12 February 2007. No appeal was lodged and the judgment became final.

3. Conditions of detention between 18 May and 8 June 2005

29. According to the applicant, he was detained at the remand centre of the Police Inspectorate in inhuman and degrading conditions. In particular, there was very limited access to daylight and no exercise outside the cell; poor quality food; overcrowding (three men in a 6 m² cell, part of which was taken up by a toilet which was not separated from the rest of the cell); heat and humidity; irregular artificial ventilation for short periods despite the fact that the other detainees were smoking in the cell, which created breathing problems for the applicant; a lack of any kind of bedding; and access to a shower only once a week. He was not allowed to receive any visits from his wife and was placed in a cell with convicted criminals even though he was a former criminal investigator (see paragraph 38 below). He submitted a video recording of an interview with one of the persons with whom he had shared the cell. In that recording the person interviewed confirmed the description given above of the conditions of detention. The Government have not commented on this interview.

30. The applicant claimed that his health had seriously deteriorated, that he suffered from headaches while in detention and that the medical treatment given to him was not effective. He was refused a specialist medical examination to determine what was wrong with him and how best to treat him.

31. According to the Government, the applicant was held in three different cells in which each detainee had at least 4m² of space. One of the cells in which the applicant was detained (no. 22) measured 12.8m² and the applicant shared it with three others (including A.M. and G.A.). There was sufficient ventilation and access to daylight, unlimited access to tap water and the toilet was separated from the rest of the cell by a lateral partition. The food was of adequate quantity and quality and was cooked by staff at a university, as confirmed by the relevant receipts. Moreover, the applicant was allowed to receive bedding from his wife. The applicant's detention was short and in June 2005 he was transferred to another remand centre.

32. In order to show the changes in the conditions of detention in Moldovan prisons, the Government referred to several documents concerning programmes designed to improve the conditions of detention in Moldovan prisons (see paragraph 39 below).

33. In the Government's opinion, the applicant was given sufficient medical assistance, as demonstrated by his personal medical file submitted to the Court. All his requests were properly registered and he had been seen by a variety of specialists who recommended treatment, which he had received. In particular, the applicant was subjected to an in-depth (NMR) analysis which had not revealed any change in his earlier, satisfactory, state of health. Moreover, the applicant refused to submit the results of his pre-detention medical examinations which meant that there was no medical basis for an additional NMR scan, as confirmed by the prison doctors. The applicant had not been detained along with previously convicted persons, as proved by a letter from the Minister of Justice.

II. RELEVANT NON-CONVENTION MATERIAL

1. Reports by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

34. The relevant findings of the CPT read as follows:

Visit to Moldova of 20-30 September 2004

“11. ... It appears from the findings of the CPT delegation that in 2004 the practice of detaining suspects for prolonged periods – sometimes months – in EDPs is still largely followed. Yet the visit has confirmed that EDPs of the Ministry of Internal Affairs will never be able to offer suitable detention conditions adapted to the needs of persons remanded in custody for prolonged periods.

4. Conditions of detention.

a. Institutions of the Ministry of Internal Affairs

41. Since 1998, when it first visited Moldova, the CPT has had serious concern about the conditions of detention in the institutions of the Ministry of Internal Affairs.

42. Whether one refers to the police stations or EDPs visited, the material conditions are invariably subject to the same criticism as in the past. Detention cells had no access to daylight or a very limited such access; artificial light – with rare exceptions – was mediocre. Nowhere did persons obliged to spend the night in detention receive mattresses and blankets, even those detained for prolonged periods. Those who had such items could only have obtained them from their relatives...

47. In sum, the material conditions remain problematic in the police stations; they remain disastrous in EDPs, continuing in many respects to amount, for the detainees, to inhuman and degrading treatment.”

The relevant provisions of the CPT standards (CPT/Inf/E (2002) 1, Rev. 2004) read as follows:

“The duty of care which is owed by the police to persons in their custody includes the responsibility to ensure their *safety and physical integrity*. It follows that the proper monitoring of custody areas is an integral component of the duty of care assumed by the police. Appropriate steps must be taken to ensure that persons in police custody are always in a position to readily enter into contact with custodial staff.”

2. *Relevant domestic law and practice*

35. The relevant domestic law has been set out in this Court's judgment in the case of *Sarban v. Moldova* (cited above, § 51 et seq.). In addition, the following provisions are relevant to the present case:

36. The relevant provisions of the Constitution provide:

“Article 4.

(1) Constitutional provisions for human rights and freedoms shall be understood and implemented in accordance with the Universal Declaration of Human Rights, and with other conventions and treaties endorsed by the Republic of Moldova.

(2) Wherever disagreements appear between conventions and treaties signed by the Republic of Moldova and her own national laws, priority shall be given to international regulations.

Article 25

(4) Detention takes place on the basis of a warrant issued by a judge for a maximum period of 30 days. The lawfulness of the warrant may be appealed, in accordance with the law, to a hierarchically superior court. The period of detention may be subject to extensions only by a court, in accordance with the law, up to a total of twelve months.”

37. The relevant provisions of the Code of Criminal Procedure provide:

“Article 22

(1) No one shall be prosecuted by the investigating authorities, convicted or sentenced by a court several times for the same deed.

...(3) The decision of the investigating authority to drop the charges (*scoaterea persoanei de sub urmărire penală*) or to discontinue the criminal investigation (*încetarea urmăririi penale*)... shall prevent the re-opening of the investigation ..., except when new or recently discovered circumstances are discovered or a fundamental flaw in the previous investigation affected that decision.

Article 287

(1) The re-opening of an investigation after its discontinuation, the dismissal of the investigation (*clasarea cauzei penale*) or the dropping of charges is ordered by the hierarchically superior prosecutor by means of a decision, if it is thereafter discovered

that there was no reason for taking the measure or that the circumstance which had led to the discontinuation of the investigation, its dismissal or the dropping of the charges has disappeared.

...(4) Where a decision to discontinue the investigation, to dismiss it or to drop the charges was adopted lawfully, the investigation can only be re-opened if new or recently discovered circumstances are revealed or if the decision was affected by a fundamental flaw in the previous investigation. Where a fundamental flaw in the investigation is discovered, the criminal prosecution can be re-opened not later than one year following the entry into force of the order discontinuing the criminal investigation, dismissing the criminal case or dropping the criminal charges.”

38. The relevant provisions of the Law no.1226-XIII on Pre-trial Detention, in force at the time, provide:

“Article 14

(1) In placing the accused in cells the following requirements shall be observed:

2) The following shall be detained separately from other detainees:

... (f) persons who before their arrest worked for the public authorities, including the courts, the prosecution service, internal affairs, national security; ...”.

39. On 24 October 2003 the Parliament adopted decision no. 415-XV regarding the National Plan of Action in the Sphere of Human Rights for 2004-2008. The plan includes a number of objectives for 2004-2008 aimed at improving the conditions of detention, including the reduction of overcrowding, improvement of medical treatment, involvement in work and reintegration of detainees, as well as the training of personnel. Regular reports are to be drawn up on the implementation of the Plan.

THE LAW

I. ADMISSIBILITY OF THE COMPLAINTS

A. Complaint under Article 3 of the Convention

40. The applicant complained that the conditions of his detention in the remand centre (EDP) of Chişinău Police Inspectorate, including the lack of medical assistance and his placement along with convicted criminals, amounted to inhuman and degrading treatment contrary to Article 3 of the Convention, which provides as follows:

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

41. The applicant reiterated his earlier submissions (see paragraphs 29 and 30 above) and noted that the Government had not submitted any evidence that he had received medical assistance while in detention in the remand centre of the Chişinău Police Inspectorate. The conditions of detention and the medical assistance available to him after his transfer to the remand centre of the Ministry of Justice were, in his opinion, unsatisfactory, in particular because some of his requests for an in-depth assessment of his state of health had been refused for formal reasons despite a recommendation by doctors and despite his constant complaints about headaches and pain. He objected to the Government's claims that the prison conditions in the remand centre were good, and noted that the claims were contrary to the findings of the CPT (see paragraph 34 above).

42. Moreover, on 25 May 2005 he was transferred to a cell with persons previously convicted of various criminal offences, even though he was a former investigator. He submitted copies of confirmations by the Ministry of Internal Affairs which showed that each of the three detainees with whom he shared a cell was accused of one or more serious crimes (including murder, manufacturing and possession of firearms, trafficking in drugs, fraud) and some had already been convicted of similarly serious crimes.

43. The Government submitted that the applicant had not exhausted all the domestic remedies available to him.

44. They considered the applicant's conditions of detention to be in line with Article 3 requirements (see paragraphs 31-33 above), considering the short period of detention he had spent there. They argued that the findings of the CPT during its visit in September 2004 did not reflect the major changes which had taken place before May 2005 when the applicant was placed in the relevant remand centre. They referred to the initiatives taken by the authorities in this connection (see paragraphs 32 and 39 above).

45. According to the Government, the applicant was given full medical assistance and the in-depth (NMR) analysis he had requested was not considered necessary by the prison doctors in view of the earlier similar test carried out and his refusal to cooperate fully (see paragraph 33 above).

46. As confirmed by relevant receipts, the food served in the remand centre was prepared by a local university's kitchen and was thus of good quality. Moreover, at no time was the applicant detained with previously convicted persons, since that would have been contrary to the Law on Pre-trial Detention which prohibited such placement in absolute terms (see paragraph 38 above).

47. The Court notes that in the present case the applicant was detained in the remand centre of the Police Inspectorate for 21 days, of which 14 days were spent in a cell with three other detainees and seven days were spent in two different cells with, as alleged by the applicant, previously convicted persons. In the Court's view, the cumulative effect of overcrowding and the intentional placement of a person in a cell with persons who may present a

danger to him may in principle raise an issue under Article 3 of the Convention (see the CPT standards referred to in paragraph 34 above). However, the Court notes that during his relatively short period of detention the applicant did not complain that he was at any time threatened by his cellmates. Furthermore, at no stage did he rely on the provisions of Article 14 § 2(f) of the Law no.1226-XIII on Pre-trial Detention (see paragraph 38 above) which prohibits in absolute terms the detention of, *inter alia*, police officers in the same cell as other categories of remand or convicted persons.

48. More generally, the Court further notes that the applicant did not substantiate his claim that his health had suffered as a result of his detention in the conditions described by him. It is not convinced that the applicant was systematically denied medical assistance, since he was examined by a number of doctors and received treatment in accordance with their recommendations. Although he requested an additional scan to be carried out, it is to be noted that the doctors who examined him did not consider this necessary (see paragraph 33 above). No information has been submitted to the Court which would contradict that conclusion.

49. The Court recalls that it must be satisfied, on the basis of the materials before it, that the conditions of the applicant's detention constituted treatment which exceeded the minimum threshold for Article 3 of the Convention to apply. In that connection, it notes that the applicant's detention in the impugned conditions was relatively short. Even though the size of the cell which he shared with three other prisoners could potentially raise an issue under Article 3 of the Convention (see *Ostrovar v. Moldova*, no. 35207/03, § 60, 13 September 2005), it is to be observed that he was only confined there for a period of 14 days. The applicant has not substantiated his argument that the material conditions of his detention were such as to give rise to concern. The Court also notes that the food provided to the applicant appears to have been adequate and that there were no restrictions on his spouse's visiting rights. While it is regrettable that it was the applicant's spouse who had to provide him with bedding, he was at least able to benefit thereby from a certain level of hygiene in his cell.

50. The Court would observe that the applicant's reliance on the findings of the CPT (see paragraphs 34 and 41 above) does not of itself, and in the absence of evidence of individual suffering of the intensity required for a finding of a breach of Article 3, provide a basis for a conclusion that there has been a breach of Article 3 of the Convention in the applicant's case.

51. Accordingly, the Court concludes that the complaint under Article 3 of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. For that reason, the Court is not called upon to address the Government's argument that the applicant failed to exhaust domestic remedies in respect of his complaint about the material conditions of detention (see paragraph 43 above).

B. Complaints under Article 5 of the Convention

52. The applicant alleged that his rights as guaranteed by Article 5 §§ 1 and 3 of the Convention had been violated because the investigation against him could not have been lawfully re-opened, thus implying that his detention had been unlawful, and because the courts had given no relevant reasons for their decisions to detain him. He further contended that he had been detained without a lawful basis after 1 June 2005 and relied in this respect on *Baranowski v. Poland* (no. 28358/95, ECHR 2000-III).

The relevant parts of Article 5 provide:

“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; ...

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.”

1. Lawfulness of the re-opening of the investigation in respect of the applicant

53. The applicant complained under Article 5 § 1 about the lawfulness of his detention because it had been ordered on the basis of an improperly re-opened investigation.

(a) Arguments of the parties

54. The applicant claimed that the criminal investigation against him which had been discontinued in 2002 could not be re-opened by virtue of Article 22 of the CCP (see paragraph 37 above). In any case it could not be re-opened more than one year after its discontinuation (Article 287(4) CCP, see paragraph 37 above). Since the re-opening of the investigation was unlawful, his detention based on that investigation was also unlawful. Moreover, the finding in 2002 that he had not committed any crime excluded the existence, in 2004, of any “reasonable suspicion” that he might have committed the same crime. He submitted several press articles on the existence in Moldova of a practice of using criminal investigations as a means of blackmail or of securing obedience to the authorities, including a practice of discontinuing investigations with the power to re-open them whenever the person angered the authorities.

55. The applicant rejected the Government's interpretation of Article 287 (4) CCP. He argued that that Article did not meet the requirements of

“quality of law” under Article 5 of the Convention and that neither the prosecution nor the domestic courts had given any details capable of clarifying the application of that law. Finally, the applicant argued that decisions to re-open a criminal investigation could not be appealed.

56. The Government submitted that the applicant had not raised, even in substance, this complaint before the domestic courts until December 2006. Moreover, the re-opening of the criminal investigation against the applicant had been ordered by a hierarchically superior prosecutor in full conformity with the law (Article 287(1) CCP).

57. They argued that Article 287 (4) CCP was not applicable to the applicant's case because that Article applied only to lawfully discontinued investigations, while the Prosecutor General's order to re-open the investigation had clearly found the discontinuation of the applicant's prosecution to have been unlawful. They submitted that, in practice, Article 287 (4) CCP was never applied by the prosecution.

58. They also argued that Article 22 CCP was not applicable since it covered only the dropping of criminal charges and the discontinuation of an investigation, but not the dismissal of the investigation (*clasarea cauzei penale*), as was the case with the applicant.

(2) The Court's assessment

59. The Court takes note of the new fact submitted by the parties, namely the adoption of the judgments of 13 December 2006 and 12 February 2007 (see paragraph 28 above). These judgments annulled the Prosecutor General's decision of 29 December 2004 as being contrary to Articles 22 and 287 CCP and ordered the discontinuation of the criminal investigation into the applicant's case, finding that the unreasoned re-opening of a criminal investigation following its lawful discontinuation amounted to a repeated accusation of the same person for the same deed.

60. In the Court's view, it is necessary first of all to determine whether this new fact is such as to lead it to decide that it is no longer justified to continue the examination of this complaint in application of Article 37 § 1 (c) of the Convention, which provides:

“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

...

(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.”

61. The Court recalls that it “enjoys a wide discretion in identifying grounds capable of being relied upon in striking out an application on this

basis, it being understood, however, that such grounds must reside in the particular circumstances of each case” (see *Association SOS Attentats and de Boery v. France* [GC], (dec.), no. 76642/01, § 37, ECHR 2006-... and the principles mentioned therein regarding the application of Article 37 § 1 of the Convention).

62. In the present case the Court notes that the criminal investigation in respect of the applicant has been discontinued by a final court judgment. He thus obtained redress from the domestic courts before this Court adopted its judgment. Moreover, the Court notes that the applicant's arguments regarding the violation of Article 5 § 1 of the Convention focused on the unlawfulness of the re-opening of the investigation under domestic law, namely Articles 22 and 287 CCP. The courts confirmed that unlawfulness, relying precisely on those Articles of the CCP (see paragraph 28 above). As soon as the applicant expressly asked the courts to verify the lawfulness of the re-opening of the proceedings in his case, they accepted his claims.

63. It is true that the applicant was not compensated for the seven months of unlawful detention resulting from the re-opening of his case. However, he did not ask the domestic courts to make an award and it is still open to him to bring proceedings to obtain compensation.

64. In sum, the domestic courts' judgments in respect of this complaint and their unequivocal condemnation of the re-opening of criminal proceedings when no compelling reasons are given therefor, the applicant's failure to raise this complaint at the outset of his detention or to ask for compensation from the domestic courts when he did complain are circumstances which, taken together, lead the Court to consider that it is no longer justified to continue the examination of this complaint within the meaning of Article 37 § 1 (c) of the Convention.

65. The Court also considers that no other element regarding respect for human rights as guaranteed by the Convention and its Protocols requires that this complaint be examined further under Article 37 § 1 *in fine*. Accordingly, this part of the application should be struck out of the list.

2. The lawfulness of the applicant's detention after 1 June 2005

66. The Government submitted that in accordance with the principle of subsidiarity it was primarily for the domestic courts to determine the lawfulness of the applicant's detention. If he had been found by the domestic courts to have been unlawfully detained, he could have claimed damages in accordance with the law. Moreover, the courts had the power to apply the Convention directly. The applicant disagreed.

67. The Court has already found that there was a practice in Moldova of detaining defendants without issuing a court order to that effect following the submission of their case files to the trial court. It recalls the respondent Government's and the domestic courts' position in a number of recent cases (see *Boicenco v. Moldova*, no. 41088/05, § 146, 11 July 2006 and *Holomiov*

v. Moldova, no. 30649/05, § 123, 7 November 2006), in which the Government considered the practice to be lawful and based on a number of provisions of the Code of Criminal Procedure. They did not submit examples of any departure by the domestic courts from the practice described above. Indeed, the applicants in both the cases mentioned above had expressly raised the issue before the domestic courts, but their complaints were rejected.

68. In view of the above, the Court considers that the applicant had no real prospect of success in lodging a complaint regarding the lack of a legal basis for his detention, given the general practice permitting the authorities to detain him in the absence of an order issued by a court.

69. In view of the above, the Court concludes that the complaint under Article 5 of the Convention regarding the lack of a legal basis for the applicant's detention after 1 June 2005 cannot be declared inadmissible for failure to exhaust domestic remedies. Accordingly the Government's objection must be dismissed.

3. Conclusion regarding the Article 5 complaints

70. The Court considers that the applicant's complaints under Article 5 §§ 1 and 3 of the Convention (except the complaint about the lawfulness of the re-opening of the criminal investigation in his respect) 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 5 above), the Court will immediately consider the merits of these complaints.

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

71. In his letter of 19 October 2005 the applicant complained under Article 5 § 1 of the Convention about the lawfulness of his detention following the submission of his case file to the trial court on 1 June 2005.

72. The Government stated that, following the submission of the applicant's case file to the trial court on 1 June 2005, 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* (cited above, §§ 64-71).

73. The Court recalls that it found a violation of Article 5 § 1 of the Convention in this respect in *Baranowski v. Poland* (cited above, § 58); see also *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.

74. The Court finds, for the reasons given in the cases cited above, that

the applicant's detention pending trial after 1 June 2005, when the court order for his detention had expired, was not based on any legal provision.

75. There has, accordingly, been a violation of Article 5 § 1 of the Convention.

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

76. The applicant complained under Article 5 § 3 of the Convention of the lack of reasons for his detention pending trial.

77. The Court does not consider it necessary to examine separately this complaint in view of its finding (see paragraph 75 above) that the applicant's detention lacked any legal basis as from 1 June 2005 (see also *Sarban*, cited above, § 104).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant claimed 23,000 euros (EUR) for the non-pecuniary damage suffered as a result of the violation of his rights under the Convention: EUR 8,000 for the violation of Article 3, EUR 10,000 for the violation of Article 5 § 1 and EUR 5,000 for the violation of Article 5 § 3. He cited the Court's case-law to prove that comparable amounts had been awarded for violations of these Articles.

80. The Government disagreed with the amount claimed by the applicant, arguing that it was excessive in light of the Court's case-law. They submitted that the case-law cited by the applicant dealt with situations which had nothing in common with his case in terms of the nature and seriousness of the alleged violations, the effects on the applicant and the attitude of the State authorities. The authorities had taken all measures to accommodate the applicant's needs and his treatment did not reach the minimum threshold under Article 3 of the Convention. Any finding of a violation of Article 5 of the Convention should constitute of itself just satisfaction.

81. The Court recalls that it has found no breach of Article 3 of the Convention in this case. It considers that the applicant must have been caused a certain amount of stress and anxiety as a consequence of the

authorities' failure to respect his rights guaranteed by Article 5, namely his detention without any legal basis for over six months. It awards the applicant the total sum of EUR 9,000 for non-pecuniary damage (see *Baranowski*, cited above, § 82 and *Ječius v. Lithuania*, no. 34578/97, § 109, ECHR 2000-IX).

B. Costs and expenses

82. The applicant claimed a further EUR 10,212 for legal costs and expenses. He submitted a list of hours worked in preparing the case (amounting to 105 hours) and the hourly fee for each type of activity, including the preparation of additional observations requested by the Court regarding domestic practice. He also submitted a decision of the Moldovan Bar Association, adopted on 29 December 2005, which recommended the level of remuneration for lawyers representing applicants before international courts.

83. The Government considered these claims to be unjustified, given the economic realities of life in Moldova. They argued that the applicant had not submitted a copy of any contract for his representation. They questioned the need to spend 105 hours researching the Court's case-law and the number of hours spent on drafting the applicant's observations.

84. The Court recalls that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see *Sarban*, cited above, § 139). According to Rule 60 § 2 of the Rules of Court, itemised particulars of claims made are to be submitted, failing which the Chamber may reject the claim in whole or in part.

85. In the present case, the Court notes that, while the applicant has not submitted a copy of a contract with his lawyers, he properly authorised them to represent him in the proceedings before this Court and agreed upon the list of hours worked in preparing his case. It is also clear that a certain amount of work has been done, considering the quality of the submissions. However, the amount requested is excessive and should only partly be accepted. Regard being had to the itemised list of hours worked, the number and complexity of issues dealt with, and to the fact that it has only found a breach of Article 5 of the Convention, the Court awards the applicant EUR 2,500 for legal costs and expenses (cf. *Sarban*, cited above, § 139).

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in so far as it relates to the applicant's complaint under Article 5 § 1 of the Convention concerning his detention between 18 May 2005 and 1 June 2005 following the re-opening of the criminal investigation;
2. *Declares* admissible the complaint under Article 5 § 1 insofar as it concerns the applicant's detention without a legal basis and under Article 5 § 3 of the Convention, and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's detention without a legal basis after 1 June 2005;
4. *Holds* that there is no need to examine separately the complaint under Article 5 § 3 of the Convention;
5. *Holds*:
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros) for non-pecuniary damage and EUR 2,500 (two thousand five hundred euros) for costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President