



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

FOURTH SECTION

CASE OF COLIBABA v. MOLDOVA

(Application no. 29089/06)

JUDGMENT

STRASBOURG

23 October 2007

FINAL

23/01/2008

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 Colibaba 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 2 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 29089/06) 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 Vitalie Colibaba (“the applicant”) on 22 June 2006.

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

3. The applicant alleged, in particular, that he had been subjected to severe police brutality while in detention and that the authorities had failed to carry out an adequate investigation into the incident, in breach of Article 3. He also complained under Article 13 of the lack of effective remedies in respect of ill-treatment and under Article 34 of the Convention that he had been hindered by the domestic authorities in bringing his case before the Court.

4. On 3 October 2006 the Fourth Section of the Court communicated 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, Mr Vitalie Colibaba, is a Moldovan national who was born in 1978 and lives in Chişinău.

6. On 21 April 2006 the applicant was arrested on charges of assaulting a police officer.

7. On 25 and 27 April 2006 the applicant was allegedly tortured by police officer I.M. and two other police officers in order to extract a confession from him. According to the applicant, his hands and feet were tied together behind his back and a metal bar from a coat hanger was passed under his arms. The metal bar was placed on two chairs and his body was suspended for more than forty minutes. His hands had been covered with cloth so that no traces of rope would remain on them. Loud music was played so that his cries would not be heard. While being suspended in this manner, his head was covered with a coat and he was beaten with a chair on the back of his head. These acts of brutality were accompanied by verbal and psychological aggression. The Government contested the allegations of ill-treatment.

8. The same day, after being taken to his cell, the applicant attempted to commit suicide by cutting his veins. However, his attempt was not successful and he was taken to hospital.

9. On 27 April 2006 the applicant was allowed for the first time to have contact with his lawyer, but only in the presence of police officers. The applicant complained to the lawyer that he had been tortured.

10. According to the applicant, as a retaliatory measure for his complaint to the lawyer, the same evening he was again tortured. He was hit on the head with a two-litre plastic bottle full of water and also punched and kicked. The Government disputed these allegations.

11. On 28 April 2006 the applicant's lawyer lodged with the Buiucani prosecutor's office a criminal complaint concerning the alleged ill-treatment of the applicant.

12. On 29 April 2006 the applicant was taken by the police officers who had allegedly ill-treated him to the Centre of Forensic Medicine, where he underwent a medical check-up in their presence. His lawyer was not present and, according to the applicant, the medical examination only lasted several minutes and was superficial.

13. The medical report issued by the Centre of Forensic Medicine was dated 28 April 2006 and concluded that besides the injury caused by his attempted suicide, the applicant did not have any other signs of violence on his body.

14. On 30 April 2006 the Buiucani prosecutor's office ordered that police officer I.M. be removed from the applicant's case on account of the latter's complaint alleging ill-treatment. The police officer was prohibited even from accompanying the applicant to and from the detention centre. The removal was justified by the need to ensure the objectivity of the investigation into the applicant's complaints.

15. On 2 May 2006 the applicant's lawyer requested the prosecutor of the Buiucani District to authorise the applicant to undergo, *inter alia*, neurological, ophthalmological, psychiatric and other medical examinations. He requested that the medical examinations be carried out by independent doctors in the presence of the applicant's relatives. This request was refused.

16. On 3 May 2006, following complaints by the applicant's lawyer, Amnesty International organised action in support of the applicant by publishing on their Russian internet site a description of the applicant's case and an appeal to people from all over the world to write to the Prosecutor General of Moldova, the Moldovan Ministry of Internal Affairs and the Moldovan Embassy in their country asking them to take action, such as conducting a medical examination of the applicant and carrying out an effective investigation into his complaints of torture, and allowing the applicant to meet his lawyer in conditions of confidentiality.

17. Following Amnesty International's action, the Moldovan authorities received twenty-seven letters from different countries and the applicant's case was widely reported in the mass media.

18. On 16 May 2006 the applicant was released from detention. On the same day he sought medical assistance at the "Memoria" Rehabilitation Centre for Torture Victims, a non-governmental organisation financed by the European Union and a member of the General Assembly of the International Rehabilitation Council for Torture Victims (IRCT). He appears to have been subjected there to detailed medical tests and examinations by various medical specialists. In a document entitled "Extract from the medical file" ("Extras din Fişa Medicală"), dated 16 June 2006, issued by the Centre, it was stated, *inter alia*, that the applicant had suffered the consequences of cranial trauma, post-traumatic otitis and mixed deafness on the right side and hypoacusis (slightly diminished auditory sensitivity, with hearing threshold levels above normal) on the left side.

19. On 18 May 2006 the applicant underwent a medical check-up at the Institute of Neurology and Neurosurgery of the Ministry of Health. It appears that he was directed there by doctors from the "Memoria" Rehabilitation Centre for Torture Victims who had diagnosed cranial trauma. He was seen by a neurosurgeon, who confirmed that the applicant had suffered cranial trauma and concussion with permanent vegetative disorder and intracranial hypertension. Moreover, the doctor found that the applicant was experiencing loss of consciousness, post-traumatic otitis and

sleep disorder. The medical report of the Institute of Neurology and Neurosurgery was not issued to the applicant until 12 June 2006.

20. On 24 May 2006 the prosecutor G.B. from the Buiucani prosecutor's office dismissed the applicant's torture complaint. In his decision he stated, *inter alia*, that the three policemen allegedly involved in acts of torture had been questioned and had denied all the accusations; that according to the medical report dated 28 April 2006, the applicant did not have any signs of torture on his body; and that in the office where he had allegedly been tortured no coat hanger had been found. As to his attempted suicide, the prosecutor considered that it had been simulated so as to avoid criminal responsibility.

21. On 30 May 2006 the applicant appealed to the Buiucani District Court against the decision of 24 May 2006. He argued, *inter alia*, that the prosecutor had refused to allow him to undergo a complete medical examination, as requested by him on 2 May 2006, and that this was contrary to the authorities' positive obligations under Article 3 of the Convention. He also informed the court that immediately after his release from detention he had undergone a medical examination which established that he had been tortured during his detention.

22. On 15 June 2006 the Buiucani District Court held a hearing in the case concerning the applicant's complaint of torture. The applicant's lawyer requested that the medical report of the Institute of Neurology and Neurosurgery dated 18 May 2006 be included in the case file. Judge M.D. admitted the report in evidence. However, in a decision of the same date he dismissed the appeal as unfounded without giving an assessment of any of the above evidence. He simply repeated the reasons given by the prosecutor G.B. in his decision of 24 May 2006 dismissing the complaint of torture.

23. On 24 June 2006, after the medical report from the "Memoria" Rehabilitation Centre for Torture Victims had become available to him, the applicant wrote to the Buiucani prosecutor's office asking it to re-examine his ill-treatment complaint in the light of the medical report. However, on 5 July 2006 he was informed that there were no grounds for reopening the investigation.

24. In the meantime, on 22 June 2006, the applicant had lodged an application with the Court in which he complained under Article 3 of the Convention that he had been tortured and that there had been no effective investigation into his allegations of torture.

25. On 26 June 2006 the Prosecutor General of the Republic of Moldova, Valeriu Balaban, wrote a letter to the Moldovan Bar Association, in which he stated, *inter alia*, the following:

"Lately, the Prosecutor General's Office has been confronted with the phenomenon whereby some Moldovan lawyers involve international organisations specialising in the protection of human rights in the examination by the national authorities of

criminal cases. These organisations are used as an instrument for serving personal interests and for avoiding the criminal responsibility of suspected persons.

Examples of such incidents are the case of G., triggered by the lawyer A.U., and the case of Vitalie Colibaba, triggered by the lawyer R. Zadoinov. The international mediation of these cases prompted active action by the representatives of Amnesty International with a view to safeguarding the rights of the above lawyers' clients.

After having examined sufficiently thoroughly the complaints alleging torture and abuse on the part of the police ... the Prosecutor's Office dismissed the complaints on the ground of lack of proof that offences had been committed. ...

... In such circumstances the irresponsible attitude and behaviour of the lawyers A.U. and R. Zadoinov give rise to concern. They knew that no acts of torture had been committed against their clients. However, they complained to international organisations without first attempting to use the national mechanism for solving such problems. They presented the facts erroneously in order to win their cases...

Such practices by lawyers will be investigated by the Prosecutor General's Office in order to determine whether they have committed the offence provided for in Article 335 § 2 of the Criminal Code, by making public on an international scale false information about alleged breaches of human rights which gravely prejudice the image of our country.

Accordingly, the Bar Association is called upon to take account of the facts described above, to bring to the attention of lawyers the situation so created and to prevent as far as possible any prejudice to the authority of the Republic of Moldova."

26. The above letter generated a heated debate in the media. On 30 June 2006 the Moldovan Bar Association issued an official statement in which it qualified the Prosecutor General's letter as an attempt to intimidate lawyers. In an interview to the newspaper *Ziarul de Garda* the President of the Bar Association declared, *inter alia*, that this was an attempt to intimidate lawyers so that they would not complain to the Court any more. At the same time Amnesty International organised action in support of the lawyers mentioned in the Prosecutor General's letter and issued a statement in which it declared, *inter alia*, the following:

"[Amnesty International] is concerned that the letter to the Bar Association of Moldova is a deliberate attempt to intimidate A.U. and Roman Zadoinov, and to prevent lawyers in Moldova from making public information about human rights violations. It is a violation of the right to freedom of expression, and if the lawyers were to be imprisoned for this offence Amnesty International would consider them prisoners of conscience."

II. RELEVANT DOMESTIC LAW

27. The relevant provisions of the Criminal Code read as follows:

"Article 335. Abuse of official duties

1. Intentional use by a person... of his or her official duties for personal gain or for other personal interests... shall be punishable by a fine of ... or by imprisonment for up to three years.

2. The same offence committed by a notary, auditor or lawyer shall be punishable by a fine of MDL 10,000 to 16,000, or by imprisonment for 2 to 5 years...”

THE LAW

28. The applicant complained under Article 3 of the Convention that he had been ill-treated by the police during his detention and that he had not been provided with food and water between 25 and 27 April 2006. He also complained of the failure of the domestic authorities to investigate properly his allegations of ill-treatment. Article 3 of the Convention reads as follows:

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

29. The applicant argued that he did not have an effective remedy before a national authority in respect of the breaches of Article 3 and alleged in this connection a violation of Article 13, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority”

30. Lastly, the applicant complained under Article 34 of the Convention that the Prosecutor General's letter of 26 June 2006 was intended to intimidate his lawyer and therefore constituted a breach of his right of petition. The relevant part of Article 34 reads:

“...The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

I. ADMISSIBILITY OF THE COMPLAINTS

A. The complaint under Article 3 concerning the conditions of the applicant's detention

31. The applicant complained that between 25 and 27 August 2006 he had not been provided with food and water. The Government disputed this allegation.

32. The Court notes that the applicant failed to adduce any evidence in support of this allegation. Accordingly, it concludes that this complaint is manifestly ill-founded and therefore inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

B. The rest of the complaints

33. The Court considers that the rest of the applicant's complaints raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring them inadmissible have been established. The Court therefore declares this part of the application 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 the relevant complaints.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. The submissions of the parties

1. Concerning the alleged ill-treatment

34. The applicant argued that the medical report dated 28 April 2006 (see paragraph 13 above) was not credible as it was based on a very superficial examination conducted by a generalist and not by a specialist in neurology, ophthalmology and psychiatry. The doctor had not used any special medical tests or medical equipment and had only examined him visually. Moreover, the applicant expressed doubts about the doctor's independence and pointed to the fact that the police officers who had ill-treated him had been present during the examination, whereas his lawyer had not been allowed to be present.

35. The applicant pointed to the medical reports of 16 and 18 May 2006 (see paragraphs 18 and 19 above) and argued that they clearly showed that upon his release from detention, he had had injuries which supported his allegations that he had been tortured on 25 and 27 April 2006. He argued that these medical examinations had been conducted by several independent doctors and were therefore credible.

36. The applicant contested the Government's allegations that he was a drug addict and argued that the Government had not submitted any medical evidence to that effect.

37. The Government argued that the applicant had not been subjected to any form of ill-treatment because no traces of violence had been found on his body during the medical examination of 29 April 2006 (see paragraphs 12 and 13 above). His attempted suicide had not been due to torture but to a state caused by the lack of narcotics to which he was addicted.

38. Referring to the medical examinations conducted by the doctors from the "Memoria" Rehabilitation Centre for Torture Victims, the Government argued that it was not conclusive as it had been carried out one

month after the applicant's release from detention. In their view, the date of 16 June 2007 indicated on the document issued by the Centre was the date on which the medical examination had been conducted (see paragraph 19 above).

39. As to the medical report dated 18 May 2006 (see paragraph 18 above), the Government advanced two different positions. In their observations of 2 January 2007 they did not dispute its authenticity or credibility; however, they argued that it was irrelevant since the examination had been carried out two days after the applicant's release and that in the meantime he could have injured himself. In their observations of 17 April 2006 the Government expressed doubts about the credibility of the report because when referring to the dates of the alleged ill-treatment reference was made to "25, 27.05.2006" instead of "25, 27.04.2006".

2. Concerning the alleged inadequacy of the investigation

40. The applicant argued that the same prosecutors who had conducted the criminal investigation against him had investigated his complaint of ill-treatment and that no independent bodies had been involved in the investigation.

41. The Government argued that as soon as the applicant had complained of ill-treatment he had been subjected to a medical examination. Shortly afterwards, the police officer accused of ill-treatment had been removed from the case so that the objectivity of the investigation would not be endangered (see paragraph 14 above). After the accused police officers had been questioned and an objective examination of all the evidence had been carried out, it was concluded that the applicant had not been ill-treated. That conclusion had been confirmed by the court that had examined the case objectively in adversarial proceedings. Accordingly, the investigation had been effective and the State had satisfactorily discharged its procedural obligations.

B. The Court's assessment

1. Concerning the alleged ill-treatment

42. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of

the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93).

43. Where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment (see *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004). It is incumbent on the State to provide a plausible explanation of how the injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni*, cited above, § 87).

44. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

45. It is undisputed that between 21 April 2006 and 16 May 2006 the applicant was under the control of the police. It is disputed, however, whether during that period of time the applicant sustained injuries, other than those resulting from his attempted suicide.

46. The Government relied on the medical report dated 28 April 2006 and argued that the applicant had not been injured on the dates alleged. At the same time they argued that the medical reports dated 16 June and 18 May 2006 did not prove that the applicant had been suffering from cranial trauma when he was released from detention.

47. The Court is not convinced by the latter arguments and notes that while the medical document issued by the “Memoria” Rehabilitation Centre for Torture Victims was dated 16 June 2006, it clearly states at the very beginning that the applicant came to the Centre on 16 May 2006. Moreover, even its title indicated that it was a summary of the applicant's medical file (see paragraph 18 above).

48. As to the medical report dated 18 May 2006, the Court notes that it confirmed the findings made by the Rehabilitation Centre concerning the applicant's cranial trauma. Therefore the Government's assertion that the applicant could have been injured after his release, between 16 and 18 May 2006 (see paragraph 39 above), appears implausible. As to the Government's assertion concerning the problem with the dates of the alleged

injuries indicated in the report (see paragraph 39 above), the Court considers that an obvious drafting mistake had been made by the doctor, as it was clearly alleged by the applicant at all stages of the proceedings that his ill-treatment had occurred in April and not in May 2006. Indeed, the Court notes a similar problem with the dates in the medical report relied on by the Government in support of their position. While that report is dated 28 April 2006, it clearly appears from its content and from the parties' submissions that the actual medical examination took place on 29 April 2006 (see paragraphs 12 and 13 above).

49. At the same time the Court has doubts about the credibility of the report dated 28 April 2006. It notes with concern that the applicant was taken to the Centre of Forensic Medicine by the police officers who had allegedly ill-treated him and that the applicant's medical examination took place in their presence (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 100, ECHR 2004-IV (extracts)). In such circumstances, the Court cannot rule out the possibility that the applicant felt intimidated by the persons whom he had accused of having tortured him. The Court refers to the applicant's allegation that on 27 April 2006 he was repeatedly subjected to torture in retaliation for his complaint to the lawyer (see paragraph 10 above). Moreover, the Court notes that even the prosecutor's office considered it necessary to remove police officer I.M. from the applicant's case and to exclude any contact between the two in order to ensure the objectivity of the investigation into the allegations of ill-treatment (see paragraph 14 above). In such circumstances, the Court finds it difficult to give weight to a medical report based on a medical examination conducted in the presence and under the supervision of the applicant's alleged torturers.

50. In the light of the above considerations, the Court comes to the conclusion that the applicant's cranial trauma was caused during his detention.

51. Since the Government did not give any explanations concerning the origin of the above injury, and having regard to the strong presumption which arises in such matters (see paragraph 43 above), the Court concludes that the Government have not satisfied the burden on them to persuade it that the applicant's cranial trauma was caused by anything other than ill-treatment while in police custody. Accordingly, there has been a violation of Article 3 of the Convention in that he was subjected to ill-treatment.

2. Concerning the alleged inadequacy of the investigation

52. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the]

Convention”, requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

53. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others v. Bulgaria*, judgment cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrikulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV, and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

54. The Court notes a series of serious shortcomings in the investigation conducted by the national authorities. In the first place, it notes that the applicant's request of 2 May 2006, addressed to the prosecutor's office, to undergo an independent medical examination in the presence of his relatives was rejected without any plausible reasons being given (see paragraph 15 above). Secondly, the court which examined the applicant's appeal against the prosecutor's office's decision of 24 May 2006 disregarded the applicant's submission that he had not been allowed to undergo an independent medical examination and did not even consider it necessary to give reasons (see paragraph 21 above). Moreover, the court did not pay any attention to the applicant's submission in his appeal that on 16 May 2006 he had been examined by independent doctors who had found signs of ill-treatment on his body. The court manifested no interest in seeing the medical report of 18 May 2006 submitted by the applicant on 15 June 2006 (see paragraph 22 above). Later, the prosecutor's office refused to examine the applicant's request for a re-examination of his case in the light of the document issued by the “Memoria” Rehabilitation Centre for Torture Victims (see paragraph 23 above).

55. In the light of the serious deficiencies referred to above, the Court considers that the domestic authorities did not make a serious attempt to investigate the applicant's complaints of ill-treatment. Accordingly, there has been a violation of Article 3 of the Convention in this respect also.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

56. The applicant also complained that there had been no effective remedies in respect of his complaint of ill-treatment, contrary to Article 13 of the Convention.

57. The Government disagreed and asked the Court to reject the complaint.

58. The Court considers that the complaint under Article 13 of the Convention essentially repeats the complaint about the lack of an effective investigation made under Article 3 and examined above. Accordingly, it does not consider it necessary to examine this complaint separately.

IV. ALLEGED FAILURE TO OBSERVE ARTICLE 34 OF THE CONVENTION

A. The submissions of the parties

59. The applicant argued that the Prosecutor General's letter of 26 June 2006 was intended to intimidate his lawyer by threatening him with criminal proceedings so that he would not apply to international organisations specialising in human rights protection such as Amnesty International, the European Court of Human Rights and others.

60. The letter represented a serious threat and proof of that was the fact that the other lawyer mentioned in it, A.U., had given up representing her client shortly afterwards. The applicant's lawyer had also felt discouraged and intimidated.

61. The Government argued that the Prosecutor General's letter was not intended to discourage lawyers from applying to the Court and such could not even be inferred from its content. Moreover, none of the lawyers who had represented clients before the Court had ever been criminally prosecuted for doing so.

62. In the Government's opinion the Prosecutor General's letter was nothing more than a call to lawyers to comply with the professional code of ethics and to submit only true information to international organisations and not suppositions.

63. The Prosecutor General's statement that lawyers' practices would be the subject of criminal investigations, and his reference to Article 335 § 2 of the Criminal Code, did not mean that following such investigations particular lawyers would be criminally prosecuted on the ground that they represented clients before the Court. His message had been wrongly interpreted by certain lawyers.

64. The Government described the applicant's complaint under Article 34 as slanderous towards the Moldovan State authorities and denied

the existence of any causal link between the Prosecutor General's letter and the subsequent decision of the lawyer A.U. to give up representing her client.

B. The Court's assessment

65. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see, among other authorities, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports 1996-IV*, § 105; and *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports 1996-VI*, § 105). In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy (see *Kurt v. Turkey*, judgment of 25 May 1998, *Reports 1998-III*, § 159).

Whether or not contacts between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case (see *Akdivar and Others* and *Kurt*, both cited above, § 105 and § 160 respectively).

66. The applicant argued that he considered the Prosecutor General's letter to be a form of intimidation, while the Government submitted that it was not intended to intimidate anyone but simply to call on lawyers to comply with their professional ethics.

67. Having examined the Prosecutor General's letter, the Court tends to agree with the applicant that it does not seem to have been merely a call to lawyers to observe professional ethics as suggested by the Government. The language employed by the Prosecutor General, the fact that he expressly named the applicant's lawyer in the context of this case and the warning that a criminal investigation would be initiated as a result of the latter's allegedly improper complaint to international organisations could, in the Court's view, easily be construed as amounting to pressure on the applicant's lawyer and on all lawyers in general. Indeed, that also appears to have been the perception of Moldovan lawyers and of Amnesty International (see paragraph 26 above).

68. The Court further notes that the Prosecutor General's letter did not refer expressly to lawyers' complaints lodged with the Court but rather to complaints to “international organisations specialising in the protection of human rights”, and that it is not clear whether the Prosecutor General knew about the present application when he wrote his letter. However, in the Court's opinion, none of the above is decisive for the purpose of

determining the present complaint as the wording of the impugned letter could in any event have had a chilling effect on the applicant's lawyer's intention to bring or pursue his client's application before the Court.

69. In view of the foregoing, the Court considers that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 65,000 euros (EUR) in respect of the non-pecuniary damage suffered as a result of the ill-treatment to which he had been subjected and of the breach of his right of petition. He argued that he had experienced mental and physical suffering, anguish, distress, fear for his life and humiliation.

72. The Government contested the amount claimed by the applicant and argued that there was no proof that he had suffered any damage. They asked the Court to dismiss the applicant's claim.

73. Having regard to the violations found above and their gravity, the Court considers that an award for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 14,000.

B. Costs and expenses

74. The applicant also claimed EUR 12,067 for the costs and expenses incurred before the Court. He submitted a detailed time-sheet indicating the time spent by his lawyer on the case and an itemised list of other expenses linked to the examination of the case. He also submitted a copy of a contract between him and his lawyer.

75. The Government disagreed with the amount claimed for representation and disputed, *inter alia*, the number of hours spent by the applicant's lawyer and the hourly rate charged by him. They also argued that the claims were excessive in view of the economic realities in Moldova.

76. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 2,500 for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 3 of the Convention concerning the conditions of the applicant's detention inadmissible and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's ill-treatment while in detention;
3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the applicant's complaints of ill-treatment while in detention;
4. *Holds* that it is not necessary to examine separately the complaint under Article 13 of the Convention;
5. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;
6. *Holds*
 - (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, EUR 14,000 (fourteen thousand euros) in respect of non-pecuniary damage and EUR 2,500 (two thousand five hundred euros) in respect of 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;

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

Done in English, and notified in writing on 23 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President