



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

FOURTH SECTION

CASE OF ȚURCAN AND ȚURCAN v. MOLDOVA

(Application no. 39835/05)

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 Țurcan and Țurcan v. Moldova,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 2 October 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 39835/05) 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 nationals of Moldova and Romania, Mr Victor Țurcan (“V.T.”) and Mr Dorel Țurcan (“D.T.”), on 4 November 2005. They were represented by Mr A. Tănase, a lawyer practising in Chișinău.

2. The Moldovan Government (“the Government”) were represented by their Agent at the time, Mr V. Pârlog.

3. The applicants alleged, in particular, that the courts had not given relevant and sufficient reasons for their detention; that D.T. had had no access to the relevant parts of his criminal file in order to challenge effectively his detention pending trial and that the courts had refused to hear evidence from a witness regarding the reasons for the repeated arrest of V.T.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 14 March 2006 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. Having been invited to inform the Court whether they wished to exercise their right to intervene in the case, the Romanian Government did not submit any comments.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. V.T. was born in 1948; D.T. was born in 1952. Both live in Chișinău.

6. The facts of the case, as submitted by the parties, may be summarised as follows. V.T. is the director of a commercial bank (“the Bank”); D.T. is a lawyer working for the Bank; they are not related. According to the Bank's Statute, the President is situated below the Directing Committee in the Bank's organisational structure and that Committee takes the final decision on whether or not to make an important loan.

7. In spring 2005 a private firm owned by N.A. and his brother applied for a loan from the Bank. The loan application was accepted by the Bank's Directing Committee on 27 September 2005.

1. Initial proceedings against the two applicants

8. On 12 October 2005 officers of the Centre for Fighting Economic Crime and Corruption (“the CFECC”) arrested D.T., who was receiving money from N.A., on suspicion of conspiring with V.T. to attempt to take a bribe.

9. In the arrest report filed an hour later, the officer described the finding of “clear evidence of the crime” on D.T., which was later explained to be 15,000 United States Dollars marked by CFECC for the purposes of proving the bribe-taking from N.A.

10. At the moment of his arrest, D.T. declared that N.A. had been repaying a debt, as confirmed by a receipt.

When signing the arrest report, D.T. wrote:

“[D]uring my arrest, between 18 and 22 hours on 12 October 2005, my briefcase ... was in the possession of the CFECC officers and the following disappeared from it: USD 4,000 and a receipt signed by N.A. confirming that he had borrowed money from me in the amount of USD 15,800.”

11. On the same day and less than an hour after D.T.'s arrest, V.T. was also arrested in another part of the city. The reason given in the arrest report was: “a witness can testify that this person has committed a crime”. It appears that no member of the Bank's Directing Committee has been arrested or questioned in relation with the present case. The prosecution later gave details, according to which the money handed by N.A. to D.T. had been specially marked to provide evidence of bribe taking. The money was to be split between D.T. and V.T., but the latter did not obtain his share because of D.T.'s arrest immediately after having received the bribe.

12. On 14 October 2005 the Buiucani District Court issued a warrant for the pre-trial detention of V.T. The reasons given were:

“V.T. is suspected of having committed a serious crime which is punishable by more than two years' imprisonment; the evidence submitted was obtained lawfully. In view of the gravity of the deed of which the suspect, who presents a high social risk, is accused, the need to protect public order, the risk of his putting pressure on witnesses who will give evidence in the case and who are employees of the bank and subordinates of the accused, the need to prevent the two accused from agreeing on a common position, to exclude the possibility of fabricating evidence, which obviously exists at the beginning of the criminal investigation, as well as the risk of the accused's absconding, which would prevent the normal flow of the investigation, the suspect's isolation is necessary”.

13. In the case of D.T. on the same date, the court gave almost identical reasons for detention, the differences amounting to a finding of a general risk of influencing witnesses and to a risk of absconding to territories outside the control of the State.

14. Both applicants appealed, invoking the insufficient reasons given by the Buiucani District Court for their detention. They offered to hand in their passports to assure the court of their intention not to leave the country and submitted that they had no criminal records, had permanent addresses and places of work and had good reputations, V.T. having received several State decorations. In his appeal, D.T. wrote that, from the moment of his arrest, he had not been interviewed, even though he had offered to give explanations; that he had declared since his arrest that N.A. had been repaying his debt when the arrest took place, as confirmed by the receipt signed by N.A.; and that the receipt had disappeared from his brief-case thereafter.

15. On 21 October 2005 the Chișinău Court of Appeal rejected their appeals, confirming the Buiucani District Court's finding of a risk of their influencing witnesses working at the Bank, of agreeing on a common position and of destroying or fabricating evidence.

16. On 22 October 2005 a prosecutor drew up the charges against both applicants. In the absence of a request for prolonging his pre-trial detention, V.T. was released on the same day with the obligation not to leave the country.

2. Further proceedings against V.T.

17. On 18 November 2005 the newspaper *Timpul* published an interview with V.T. in which he stated, *inter alia*, that he had found out that one of his discussions with D.T., N.A. and C.N., an employee at the Bank, regarding the loan had been secretly filmed by N.A. and that C.N. had been shown the film and had been questioned about the loan. He also stated that a powerful private interest was trying to take over the Bank and had organised the set-up for that purpose.

Based on that interview, the prosecutor questioned C.N. about whether she had talked to V.T. or anybody else about her previous witness statements. She declared that she did not remember whether she had done

so, but stated that she had not discussed this with V.T. and had not spoken to him, except for having once greeted him in the hall of the bank. The prosecutor then requested V.T.'s house arrest.

18. On 22 November 2005 the Buiucani District Court ordered V.T.'s house arrest for 10 days. The court gave the following reasons:

“[T]he court finds that the criminal investigation in the present case is close to an end, but there are still a number of investigative measures which need to be completed, including the questioning of a number of persons. Having analysed the minutes of C.N.'s interview and [V.T.]'s interview in the *Timpul* newspaper, the court shall not enter into questions of guilt but, having verified all the evidence, finds the presence of certain indicators that the accused may in the future again attempt to prevent the establishment of the truth and the smooth running of the criminal proceedings. This ground for pre-trial detention is expressly mentioned in Article 176 (1) [of the Code of Criminal Procedure]. At the moment, V.T. is the president of [the Bank] and recently a need arose to question some of his subordinates, there being a real probability of pressure on them.”

19. V.T. claimed, before the Buiucani District Court, that his information had come from other sources and requested that C.N. give evidence in order to prove that she had not talked to him about the investigation and had not been influenced by him. He argued that hearing evidence from that witness was crucial, since the only ground invoked for his latest detention was his alleged pressure on C.N. following his release on 22 October 2005. The court did not react in any way.

20. On 25 November 2005 the Chișinău Court of Appeal quashed the decision of the lower court on procedural grounds and ordered V.T. not to leave the city for thirty days.

3. Further proceedings in respect of D.T.

21. On 22 October 2005 the prosecutor asked for the prolongation of D.T.'s detention. He relied, *inter alia*, on the fact that witnesses had still to be heard. On the same day the Buiucani District Court ordered the prolongation of D.T.'s detention for twenty days, giving the following reasons:

“[D.T.] is accused of a serious crime, the evidence submitted was obtained lawfully, there is a risk of his influencing witnesses, who have not yet given evidence because the accused has not provided information about them; there is an ongoing need to verify all aspects of the accused's statements; there is a risk of his fabricating evidence and of agreeing on a common position with the co-accused. The danger of his absconding from the law enforcement authorities persists for the reasons invoked when first ordering the pre-trial detention.”

22. On 28 October 2005 the Chișinău Court of Appeal rejected D.T.'s appeal, giving reasons similar to those in its decision of 21 October 2005.

23. On 8 November 2005 the court extended D.T.'s pre-trial detention by another twenty days, giving essentially the same reasons as before. The court found, *inter alia*, that

“there exists a risk that the accused will influence witnesses who have not yet been interviewed because, even though he referred to them during his interview of 22 October 2005, the accused refuses to identify them; there is a need to verify the accused's statements, including the possible existence of a receipt to which he refers, without identifying the place where it could be found, and thus there is a risk of his fabricating evidence. The danger of his absconding from the law enforcement authorities persists for the reasons invoked when ordering the detention. A sufficient ground for prolonging the detention consists of his insistence that there is evidence to exonerate him without offering the possibility for the prosecution or the defence to establish whether that is true.”

24. D.T. appealed, invoking, *inter alia*, his right to remain silent and to refuse to divulge information about defence witnesses or other evidence until the trial, as well as the fact that the other co-accused (V.T.) had been released under an obligation not to leave the country. He also complained about a lack of access to most of the materials in the criminal file against him and about a lack of reaction by the prosecution to press coverage of alleged threats made to V.T. by a private person, according to which the latter had promised to organise a set-up and was actually a friend of N.A., the alleged bribe-giver. He finally requested, instead of detention, any other preventive measure which would satisfy the lawful aims of the prosecution but would protect him from illegal pressure while in detention.

25. On 14 November 2005 the Chișinău Court of Appeal rejected D.T.'s appeal, finding that

“at the moment there is a risk of his destroying evidence, because of the nature of the crime (the seriousness of the crime of bribe-taking) and because of the extremely difficult character of the proceedings”.

26. On 28 November 2005 the Buiucani District Court prolonged D.T.'s detention for another twenty days. The court gave the following reasons:

“Having analysed the factual situation at the prosecution's request, the court finds that the criminal investigation in the present case is close to an end, but there are still a number of investigative measures which need to be finished before the case is submitted to the trial court. The court emphasises that, according to Article 20 (3) of the Code of Criminal Procedure, 'the criminal prosecution and the trial of criminal cases in which a suspect or accused is detained on remand shall be performed urgently and with priority'. At the same time, weighing all the circumstances in favour of and against prolonging detention, noting the prosecutor's opinion that detention is absolutely necessary and the position of the defence lawyer, the court considers that the grounds which were invoked when pre-trial detention was ordered persist. D.T. is accused of a serious crime which is punishable by over two years' imprisonment, the case is an exceptional one due to the seriousness of the alleged deed. At the moment there persists the danger of his influencing witnesses, destroying evidence and even absconding.”

27. D.T. appealed, submitting, *inter alia*, that the criminal investigation was being unnecessarily protracted despite the prosecutor's declaration that it was close to an end and would be finished by 1 December 2005. He

further claimed that he did not have access to most materials in the criminal file in order to challenge his continued detention.

28. On 6 December 2005 the Chișinău Court of Appeal adopted two decisions. In the first it found that, contrary to Article 308 of the Code of Criminal Procedure, the prosecutor had not submitted to the Buiucani District Court the required materials from the criminal file to substantiate the request for prolonging D.T.'s detention on 28 November 2005. In the second decision, the court rejected D.T.'s appeal, finding that

“the [Buiucani District] Court correctly concluded that the circumstances which initially served as grounds for detaining [D.T.] persist. Notwithstanding that the criminal investigation started on 12 October 2005, there persists a danger of his destroying evidence due to the nature of the crime and the extremely complex nature of the proceedings.”

29. On 21 December 2005 the Buiucani District Court prolonged D.T.'s detention for another twenty-five days, giving reasons similar to those in its decision of 28 November 2005.

30. On appeal, D.T. complained about the length of the investigation during which almost no investigation measure had been taken with his participation, as well as his detention in a solitary cell for the entire period. He also complained about psychological harassment by CFECC officers in order to obtain his confession, as well as their harassment of his daughter on 16 December 2005, following her visit to him.

31. On 28 December 2005 the Chișinău Court of Appeal rejected his appeal, finding that the grounds for keeping him in detention persisted.

32. On 13 January 2006 the Buiucani District Court prolonged D.T.'s detention for twenty days, giving essentially the same reasons as before and adding that the results of a chemical analysis had not yet been received, based on which further investigative measures could become necessary.

33. On appeal, D.T. argued that the prosecution had not submitted to the court and to the defence any materials substantiating the continued need to detain him. On 18 January 2006 the Court of Appeal rejected that appeal for the same reasons as before.

34. On 3 February 2006 the Buiucani District Court prolonged D.T.'s detention for twenty days, giving similar reasons to those given before.

II. RELEVANT DOMESTIC LAW

35. The relevant domestic law and practice have been set out in *Boicenco v. Moldova* (no. 41088/05, § 64-71, 11 July 2006).

36. In addition, the relevant Articles of the Code of Criminal Procedure read as follows:

“Article 176

(1) Preventive measures may be applied by the prosecuting authority or by the court only in those cases where there are sufficient reasonable grounds for believing that an accused ... will abscond, obstruct the establishment of the truth during the criminal proceedings or re-offend, or they can be applied by the court in order to ensure the enforcement of a sentence.

...

(3) In deciding on the necessity of applying preventive measures, the prosecuting authority and the court will take into consideration the following additional criteria:

- 1) the character and degree of harm caused by the offence,
- 2) the character of the ... accused,
- 3) his/her age and state of health,
- 4) his/her occupation,
- 5) his/her family status and existence of any dependants,
- 6) his/her economic status,
- 7) the existence of a permanent place of abode,
- 8) other essential circumstances.”

“Article 186

...

(6) Should a necessity arise to extend the period of pre-trial detention of an accused, the prosecutor shall submit to the investigating judge, not later than five days before the expiry of the detention period, a request for the extension of that period.”

THE LAW

37. The applicants complained under Article 3 of the Convention about the conditions of detention at the CFECC detention centre. Article 3 reads as follows:

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

38. They also complained about their unlawful detention in the absence of a reasonable suspicion of having committed a crime, contrary to Article 5 § 1 (c) of the Convention, which reads:

“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;”.

39. The applicants complained under Article 5 § 3 of the Convention that their detention pending trial had not been based on “relevant and sufficient” reasons. 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.”

40. D.T. also complained under Article 5 § 4 of the Convention about the failure of the authorities to give him and his lawyer access to the relevant parts of the criminal file in order to challenge his remand. V.T. complained, under the same Article, about the refusal of the courts to hear a witness in respect of the grounds for his second detention.

Article 5 § 4 reads:

“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.”

I. ADMISSIBILITY

41. In their initial application, the applicants submitted complaints under Articles 3 and 5 § 1 of the Convention. However, in their observations on the admissibility and merits they asked the Court not to proceed with the examination of these complaints. The Court finds no reason to examine them.

42. The Court considers that the applicants' complaints under Article 5 § 3 and 4 of the Convention 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 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 5 § 3 OF THE CONVENTION

A. The submissions of the parties

43. The applicants complained that the courts had not given “relevant and sufficient reasons” for their orders to detain them pending trial. In particular, the courts had failed to give any details or evidence supporting their findings regarding the alleged dangers posed by the applicants' release. The applicants had submitted arguments in respect of each ground on which the domestic courts had relied in a general manner, but the courts had not responded in any way.

44. The Government disagreed, finding that the courts had given relevant and sufficient reasons based on the case file before them. They added that the reasons for detention pending trial need not be so detailed as to prove a suspect's guilt. The Government also noted that the second order for V.T.'s detention (house arrest) ordered on 22 November 2005 had been annulled on 25 November 2005 and thus had not had any effects on him.

B. The Court's assessment

45. The Court recalls the general principles established in its case-law under Article 5 § 3 of the Convention in respect of the requirement to give relevant and sufficient reasons for pre-trial detention (see, for instance, *Sarban v. Moldova*, no. 3456/05, §§ 95-99, 4 October 2005), failing which the detention may be regarded as arbitrary. It further recalls, in this connection, that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (*Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004, and *Castravet v. Moldova*, no. 23393/05, § 33, 13 March 2007). In respect of an impugned period of detention, the Court has also found a breach of Article 5 § 1 of the Convention (see *Ambruszkiewicz v. Poland*, no. 38797/03, § 33, 4 May 2006, and *Belevitskiy v. Russia*, no. 72967/01, § 91, 1 March 2007) on the ground that the authorities had failed to justify the deprivation of liberty.

46. The Court considers that the facts of the present case raise issues which are more appropriately examined under Article 5 § 1 of the Convention. However, it notes the applicants' withdrawal of their complaint under Article 5 § 1. In the particular circumstances of the present application, the Court will therefore examine the case from the perspective of Article 5 § 3 of the Convention.

47. The Court notes that the reasons relied upon by the domestic courts in their decisions to remand the applicants in custody and to prolong D.T.'s detention (see paragraphs 12, 13, 15, 20-23, 25, 26, 28, 29 and 31-34 above) were similar to the reasons used by the domestic courts to remand the

applicant in *Sarban* (cited above, at §§ 11 and 14). As in *Sarban*, the domestic courts limited themselves to paraphrasing the reasons for detention provided for by the Code of Criminal Procedure, without explaining how they applied in the applicants' case.

48. In the case of V.T., the courts relied on his position as President of the bank in which some of the witnesses worked and his resulting ability to influence them, as well as on the possibility of agreeing with D.T. about a common defence position. However, the Court notes that, on 22 October 2005 when V.T. was released, the prosecution invoked the need to hear witnesses as one of the reasons for further detaining D.T. (see paragraph 21 above), witnesses who were never identified but were presumably common for both of the accused. It is unclear why the courts ordered V.T.'s detention partly because of the possibility to influence witnesses while a few days later and before those witnesses were heard he was released, apparently in the absence of any danger of such unlawful pressure on witnesses.

49. Moreover, on 21 October 2005 the Chișinău Court of Appeal found the persistence of a danger to the investigation if V.T. were to be released, while it was aware of the fact that the prosecution had not made a request for the prolongation of his pre-trial detention, due to expire on the next day (see paragraph 16 above). It follows that the prosecution itself was not convinced that V.T. presented a danger of interference with the investigation, since already on 17 October 2005 (five days before the expiry of V.T.'s initial detention order, see paragraph 36 above) it decided not to seek an extension of his detention.

50. In addition, none of the elements in favour of V.T.'s release was examined, despite an express requirement to do so under Article 176 (3) of the Code of Criminal Procedure (see paragraph 36 above) and V.T.'s reference to several *prima facie* relevant reasons against detention (see paragraph 14 above; see also *Ambruszkiewicz v. Poland*, cited above, § 33).

51. The Court is particularly struck by the reasons for D.T.'s detention starting on 8 November 2005 (see paragraphs 23 et seq. above), namely that he refused to disclose to the prosecution the names of witnesses who could prove his innocence at trial. It considers that this not only cannot constitute a ground for detaining a person, but it is in breach of the accused's right to remain silent as guaranteed by Article 6 the Convention (see, among many other authorities, *Jalloh v. Germany* [GC], no. 54810/00, § 100, ECHR 2006-...).

52. The Court notes with serious concern that despite the insufficiency of the initial reasons for detention and the lack of any new ones, D.T.'s detention was prolonged on numerous occasions, sometimes even when the domestic court did not have the materials of the case file in front of it (see paragraph 28 above). Nor did any of the courts envisage the possibility of applying alternative measures such as house arrest, despite being asked to do so by D.T. This, in addition to the lack of reasons for his detention, could

cast doubt on the lawfulness of his detention as a whole as required by Article 5 § 1 of the Convention (see *Ambruszkiewicz*, cited above, § 33).

53. In the light of the above, the Court does not consider that the instant case can be distinguished from *Sarban* in what concerns the relevancy and sufficiency of reasons for detention.

54. There has accordingly been a violation of Article 5 § 3 of the Convention in respect of both applicants.

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

A. Access to the case file

1. *The parties' submissions*

55. The Government submitted that neither D.T. nor his lawyer had ever complained about the failure to give them access to any part of the criminal file. Moreover, the courts could not examine a request to prolong his detention or any of his habeas corpus requests without having the file. As to the finding by the Court of Appeal that no relevant materials were submitted to the lower court (see paragraph 28 above), this was only one occasion and it had thereafter been remedied by the prosecution.

56. D.T. referred to his complaints made before the domestic courts (see paragraphs 24 and 27 above) and the finding of the Court of Appeal of 6 December 2005 (see paragraph 28 above). He submitted that there was an administrative practice not to give the defence access to any part of the criminal file (except a few pages including the charges and minutes of arrest, already known to the defence) before court hearings regarding the application or prolongation of remand. D.T. finally emphasised that the domestic courts had repeatedly relied on the fact that the grounds for his initial detention remained valid, while he was never able to see any of the materials on which the courts relied in order to challenge that finding.

2. *The Court's assessment*

(a) General principles

57. The Court reiterates that a court examining an appeal against detention must provide guarantees of a judicial procedure. The proceedings must be adversarial and must always ensure “equality of arms” between the parties, the prosecutor and the detained person.

58. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required. In view of the dramatic impact of deprivation of liberty on the fundamental rights of the person concerned,

proceedings conducted under Article 5 § 4 of the Convention should in principle meet, to the largest extent possible under the circumstances of an ongoing investigation, the basic requirements of a fair trial (*Shishkov v. Bulgaria*, no. 38822/97, § 77, ECHR 2003-I (extracts)).

59. Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order to challenge effectively the lawfulness, in the sense of the Convention, of his client's detention. The concept of lawfulness of detention is not limited to compliance with the procedural requirements set out in domestic law but also concerns the reasonableness of the suspicion grounding the arrest, the legitimacy of the purpose pursued by the arrest and the justification of the ensuing detention.

60. The Court acknowledges the need for criminal investigations to be conducted efficiently, which may imply that part of the information collected during them is to be kept secret in order to prevent suspects from tampering with evidence and undermining the course of justice. However, this legitimate goal cannot be pursued at the expense of substantial restrictions on the rights of the defence. Therefore, information which is essential for the assessment of the lawfulness of a detention should be made available in an appropriate manner to the suspect's lawyer (see, among other authorities, *Lamy v. Belgium*, judgment of 30 March 1989, Series A no. 151, pp. 16-17, § 29, and *Garcia Alva v. Germany*, no. 23541/94, §§ 39-43, 13 February 2001).

(b) Application of those principles to the present case

61. In the present case, it is disputed between the parties whether D.T. or his lawyer asked for access to parts of the investigation file and were refused such access. The Court notes, however, that D.T. repeatedly complained about the failure to give him access to the file, and that the courts did not react in any manner to these complaints. The only exception was the decision of the Court of Appeal of 6 December 2005 to which the parties referred and which, in the Court's opinion, confirms once more that D.T. was indeed denied access to the parts of the file containing the grounds for his detention.

62. The Court notes that no reasons were given for such withholding of information and that D.T. was unable to properly challenge the reasons for his detention. In such circumstances, it could not be said that the principle of "equality of arms", within the meaning of Article 5 § 4 of the Convention, was observed in the present case.

63. The Court also considers that the practice of not disclosing materials of the file concerning the grounds for detention, when coupled with the failure of the courts to give sufficient reasons for detention, legitimately reinforces the accused's impression that his detention was arbitrary.

64. There has, accordingly, been a violation of Article 5 § 4 of the Convention in respect of D.T.

B. The failure to hear evidence from a witness

1. Submissions of the parties

65. The Government submitted that the failure to hear evidence from witness C.N. by the Buiucani District Court on 22 November 2005 (see paragraphs 18 and 19 above) had not affected V.T.'s rights in any manner since his house arrest ordered by that court was annulled on appeal and he had not been detained in the meantime.

66. V.T. submitted that, following the Buiucani District Court's decision of 22 November 2005, he had spent three days under house arrest. Moreover, in its decision of 25 November 2005 the Court of Appeal annulled the lower court's decision on procedural grounds without any reference to the request to hear evidence from witness C.N. It therefore did not remedy the failure to hear evidence from the witness or the three days of arbitrary detention.

2. The Court's assessment

67. The Court refers to the relevant general principles established in its jurisprudence (see, among other authorities, *Becciev v. Moldova*, no. 9190/03, §§ 68-72, 4 October 2005). It reiterates, in particular, that where there is evidence which *prima facie* appears to have a material bearing on the issue of the continuing lawfulness of the detention, it is essential, for compliance with Article 5 § 4, that the domestic courts examine and assess it (see *mutatis mutandis*, *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, pp.1866-67, §§ 130-131, and *Hussain v. the United Kingdom*, judgment of 21 February 1996, *Reports* 1996-I, p.271, § 60).

68. In the present case, it was undisputed that the only ground for V.T.'s house arrest ordered on 22 November 2005 was his alleged pressure on witness C.N. (see paragraph 18 above). The Court considers that C.N.'s statements were therefore an important element in determining whether V.T. had pressured her and thus needed to be detained again. The failure to hear evidence from her deprived the defence of its only chance of convincing the investigating judge of the absence of any reasons for his arrest.

69. The Court also notes that in C.N.'s statement made to the prosecution following the publication of the material about her in the newspaper, she made it explicit that she had not been approached in any manner by V.T. and, aside from once greeting him in the Bank's hall, she had had no

conversations with him (see paragraph 17 above). According to V.T., her statement had been grossly misconstrued by the prosecution in order to secure his detention. The Court recalls that although it is primarily for the national courts to assess the admissibility, relevance and weight of evidence in a case, it was precisely in order to avoid the danger of misinterpretation of witness statements, and in order to avoid ordering detention without a proper basis, that C.N. should have given evidence before the court.

70. In the light of the above, the Court considers that by refusing, without giving any explanation, to have C.N. questioned as a witness at the hearing of 22 November 2005, the Buiucani District Court breached V.T.'s rights guaranteed by Article 5 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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. Non-pecuniary damage

72. V.T. claimed 5,000 euros (EUR) for non-pecuniary damage and D.T. claimed EUR 7,000. They referred to the stress and anguish which they had experienced as a result of their detention without any reasons. As a result they did not know whether and when to expect an end to their detention and felt helpless for being unable to challenge it in any meaningful way.

73. The Government submitted that the applicants had not adduced any evidence of non-pecuniary damage and that in any event the claims were excessive.

74. The Court considers that the applicants must have been caused a certain amount of stress and anxiety as a result of the violations of their right to liberty and security under Articles 5 § 3 and 5 § 4 of the Convention, the more so in view of the fact that the case was of a high-profile nature and had received much media attention. D.T.'s suffering must have been intensified by the length of his unjustified detention and by the fact that he was detained because he had exercised his right to silence.

Deciding on an equitable basis, it awards the total sum of EUR 4,000 to Mr Dorel Țurcan and EUR 3,000 to Mr Victor Țurcan for non-pecuniary damage.

B. Costs and expenses

75. The applicants claimed EUR 8,520 for costs and expenses incurred before the Court. They relied on a timesheet showing the number of hours spent by their lawyer on the case (75.4 hours) at a variable hourly rate of EUR 60-100.

76. The Government did not agree with the amount claimed, stating that it was excessive. According to them, the amount claimed by the applicants was too high in the light of the average monthly wage in Moldova. The Government also contested the number of hours spent by the applicants' representative on the case.

77. 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 are reasonable as to quantum (see, for example, *Becciev*, cited above, § 88).

78. In the present case, regard being had to the itemised list submitted by the applicants, the above criteria and the complexity of the case, the Court awards the applicants jointly EUR 2,000.

C. Default interest

79. 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 application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of both applicants;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of Mr Dorel Țurcan;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of Mr Victor Țurcan;
5. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) to Mr Dorel Țurcan

and EUR 3,000 (three thousand euros) to Mr Victor Țurcan in respect of non-pecuniary damage, and EUR 2,000 (two thousand euros) jointly 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 applicants' 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