



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

FOURTH SECTION

CASE OF MUSUC v. MOLDOVA

(Application no. 42440/06)

JUDGMENT

STRASBOURG

6 November 2007

FINAL

06/02/2008

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 Musuc v. Moldova,

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

Mr J. CASADEVALL, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 9 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 42440/06) 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 Eduard Mușuc (“the applicant”) on 3 November 2006.

2. The applicant was represented by Ms Janeta Hanganu, a lawyer practising in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr Vladimir Grosu.

3. The applicant alleged, in particular, that his pre-trial detention was arbitrary and contended that there have been several violations of Article 5 §§ 1, 3 and 4 of the Convention.

4. On 5 December 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.

5. Judge Pavlovschi, the judge elected in respect of Moldova, withdrew from sitting in the case (Rule 28 of the Rules of Court) before it had been notified to the Government. On 8 February 2007, the Government, pursuant to Rule 29 § 1 (a), informed the Court that they were content to appoint in his stead another elected judge and left the choice of appointee to the President of the Chamber. On 18 September 2007, the President appointed Judge Šikuta to sit in the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1975 and lives in Chişinău. He is the Chief Executive Officer of Megadat.com SRL, a company which is the applicant in the case *Megadat.com SRL v. Moldova*, no. 21151/04, and the leader of an extra-parliamentary opposition party.

1. The criminal proceedings against the applicant

7. On 31 May 2006 the Centre for Fighting Economic Crime and Corruption (“the CFECC”) initiated criminal proceedings based on an alleged misappropriation of an office building belonging to company X in 2002.

8. On 22 September 2006 the applicant was declared a suspect in the criminal proceedings. In a decision of the same date, it was alleged that, in his capacity as Chief Executive Officer of Megadat.com SRL, he had bought from bank M. the office building, which had earlier been transferred to the bank by company X as payment for a loan which it could not repay. According to the CFECC, the office building was bought by Megadat.com at a price which was lower than the market price of the building at the time.

The CFECC alleged that the offence was committed by the applicant in collusion with his father, who was the president of company X's board of directors at the time. The applicant's father allegedly managed to convince the board to mortgage the building to bank M. and to indicate in the mortgage agreement a value lower than the market value. Later, when company X found itself unable to repay the loan, also allegedly due to the actions of the applicant's father, the latter used his position as president of the board of directors to convince the other members of the board to transfer the building to the bank in lieu of money, thus avoiding a public auction. In such a way, bank M. took possession of the building at a reduced price.

Later, the applicant, in his capacity as Chief Executive Officer of Megadat.com SRL, bought from bank M. the office building at a price below its market value, thus creating a loss of 1,988,130 Moldovan lei (MDL) for company X.

9. The decision of 22 September 2006 set out the above accusations against the applicant and his father without, however, relying on any evidence.

2. The applicant's remand proceedings

10. On 28 September 2006 the applicant was arrested and a request for his detention for ten days was addressed to the Buiucani District Court. The

request reiterated all the allegations against the applicant and his father contained in the decision of 22 September 2006 (see paragraph 8 above) and alleged, *inter alia*, that the applicant could attempt to influence witnesses since between 1999 and 2002 he and his father had threatened E.S., currently a witness in the case against them.

11. A detention warrant for a period of ten days was issued by the investigating judge M.D. on the same day. The reasons for remanding the applicant in custody were the fact that he was accused of a serious offence, that there was a risk of the co-accused colluding, that there was a risk of the applicant destroying evidence and that there was evidence that he had attempted to influence a witness.

12. The applicant lodged an appeal against the order arguing that there was no reasonable suspicion to believe that he had committed an offence. The accusation against him was based on the fact that Megadat.com SRL had bought an office building from a bank at a price set by the bank. All the contracts concerning the matter were valid and nobody had ever challenged them. No other facts which would give rise to a reasonable suspicion had been established. Moreover, not only had the prosecutors failed to prove the existence of a reasonable suspicion that the applicant was involved in the offence, but more fundamentally, they had failed to prove the existence of an offence.

The reasons relied upon by the court for remanding him in custody were formulaic and without factual support. He also argued that he had never attempted to influence any witness and complained that judge M.D. had rejected his request to hear evidence from the witness he had allegedly attempted to influence. Judge M.D. had also refused to give him access to the materials in the file relevant to the remand proceedings. He had not even been given a copy of the transcript of witness E.S.'s statements.

The applicant finally argued that he was unable to meet his lawyers in conditions of confidentiality in the CFECCE detention centre because of a glass partition separating them. He argued that the glass partition was an impediment both to confidential communication and to the exchange of documents between him and his lawyers.

13. On 3 October 2006 the Chişinău Court of Appeal dismissed the applicant's appeal. It did not give any assessment of the applicant's arguments about the lack of reasonable suspicion and argued that according to Article 5 § 3 of the Convention it was not obliged to consider all the arguments raised by the applicant. However, it endorsed the reasons given by the Buiucani District Court in favour of remanding the applicant in custody and argued that the applicant and his defence lawyers were not entitled to see the materials of the criminal file but only the materials presented by the prosecutor in support of the request for remand. The court further submitted that a copy of the transcript of the statements made by witness E.S. was attached to the prosecutor's request for remand; however,

it did not mention whether the applicant or his defence had been served with it. The court finally dismissed the applicant's complaint that the first-instance court refused to question E.S. and argued that Moldovan domestic law did not provide for the questioning of witnesses during remand proceedings.

3. The proceedings concerning the prolongation of the applicant's detention

14. On 4 October 2006 a request for the prolongation of the applicant's detention for thirty days was addressed to the Buiucani District Court by Prosecutor L.R. The grounds for the prolongation were similar to those relied upon in the initial request for a detention warrant.

15. In his written observations, the applicant objected to the prolongation and argued again that there was no reasonable suspicion that he had committed an offence. He also submitted that he had never attempted to influence any witness and that there were no grounds to hold him in detention. He repeatedly asked the witness, whom he was accused of having attempted to influence, to be questioned.

16. On 6 October 2006 the Buiucani District Court allowed the prosecutor's request for prolongation of the detention on the same grounds as those relied upon in the initial remand proceedings. The court argued that it did not have the right to express an opinion concerning the applicant's guilt and the relevance of the evidence which served as a basis for his indictment. The court also argued that it did not consider it necessary to question E.S. because her written statements had been attached to the prosecutor's request for remand.

17. The applicant appealed and argued that the prolongation was illegal because the prosecutor's request for prolongation had been lodged out of time. He submitted that, pursuant to Article 186(6) of the Code of Criminal Procedure, the prosecutor was entitled to request the prolongation at the latest five days before the expiry of the duration of detention. Since the duration of detention would expire on 8 October 2006, the prolongation request should have been lodged at the latest on 3 October 2006. Under Article 230 of the Code of Criminal Procedure, non-compliance with the time-limit led to the loss of the prosecutor's right to request prolongation and to the nullity of the request for prolongation. The applicant submitted that he had brought this argument before the first-instance court, but that it had been ignored. Moreover, before the hearing of the first-instance court, the prosecutor and the judge had locked themselves in the judge's office without the presence of the defence and had a private discussion. For that reason the applicant had challenged the judge. His challenge, however, had been dismissed.

The applicant further complained that the first-instance court had not given him access to the materials of the case file relevant to the remand

proceedings. He argued that he had been served with the following documents:

- the decision of 22 September 2006 by which he was declared a suspect in the criminal proceedings;
- the minutes of his arrest of 28 September 2006;
- the request by the prosecutor to remand him in custody dated 28 September 2006;
- the decision of indictment of the applicant dated 4 October 2006;
- copies of requests to provide the applicant with mineral water and newspapers;
- copies of requests by the applicant to see his lawyer;
- results of the applicant's medical check up;
- four colour photographs of the building of the Court of Appeal.

According to the applicant, those documents did not contain any evidence in support of his detention. The applicant accused the first-instance judge of lying about the fact that he had been served with a copy of witness E.S.'s statements and relied on the discussions between the judge and the prosecutor during the hearing, when the judge had asked the prosecutor where the written statement of witness E.S. was, and the prosecutor had replied: "I do not know, maybe at the Court of Appeal."

The applicant asked the Court of Appeal to quash the decision of the Buiucani District Court and to order his release. He also asked that witness E.S. be questioned and that he and his defence counsel be given access to the materials of the case file which confirmed the necessity to hold him in detention. He finally requested that the Superior Council of Magistrates be informed about the fact that Judge M.D. from the Buiucani District Court had had a private discussion with the prosecutor before the hearing and had allowed a request which was time-barred.

18. On 11 October 2006 during the hearing before the Court of Appeal the applicant's lawyers reiterated the request to be given access to the case file and to be allowed to see witness E.S.'s depositions. It appears from an audio recording of the hearing that the applicant's lawyers insisted on being given a copy of E.S.'s depositions, while the prosecutor maintained that they had seen them. The applicant's lawyers requested that the prosecutor produce a receipt proving that they had been given the transcript and asked the prosecutor to give it to them at the hearing. At the lawyers' request, the court took a pause apparently so as to enable the prosecutor to provide them with a copy of E.S.'s depositions; however, after the pause it went straight to pronouncing its decision. The lawyers' request does not appear to have been allowed as the Court of Appeal did not refer to it at all in its judgment. It found that the first-instance court had not committed any breach of procedure. However, given that the applicant had a fixed address, did not have a criminal record and that there was no risk of his hindering the discovery of the truth, the Court of Appeal decided to release him on bail. In

reaching that decision the Court of Appeal referred to the principle that an accused should always be tried at liberty and fixed the bail at MDL 2,000,000. The court ordered that the applicant's detention continue until he paid the money.

19. Since the applicant was unable to pay the amount set for bail he continued to be detained. He presented to the Court a certificate from his employer, stating that between January and September 2006 he had had no income.

20. He was detained in the CFECC detention centre. According to him, the room for meetings between lawyers and detainees had a glass partition to keep them separated. They had to shout in order to hear each other and could not exchange documents.

21. On 14 November 2006 the Buiucani District Court examined a *habeas corpus* request lodged by the applicant and ordered his release without bail.

II. RELEVANT DOMESTIC LAW

22. The relevant parts of the Code of Criminal Procedure read as follows:

“Article 186 (6)

If it is necessary to prolong the period of an accused's pre-trial detention, the prosecutor must lodge a request for that purpose with the investigating judge not later than five days before the expiry of the duration of detention.

...

Article 192. The release of the detained person on bail

(4) Bail shall be set by the investigating judge or by the trial court and should be between MDL 6,000 and 2,000,000, according to the financial circumstances of the person concerned and the gravity of the offence.

...

Article 230 (2)

When the exercise of a procedural right is limited by a time-limit, the failure to observe the time-limit causes the loss of that procedural right and the nullity of the acts effected in breach of the time-limit.”

THE LAW

23. The applicant complained under Article 5 § 1 of the Convention that his detention was imposed in the absence of a reasonable suspicion that he had committed an offence. Moreover, the applicant argued that the prolongation of his detention was unlawful because the prosecutor's request for prolongation of 4 October 2006 had been time-barred. The relevant part of Article 5 reads as follows:

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

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence ...”

24. He also complained under Article 5 § 3 of the Convention that the courts did not give relevant and sufficient reasons for his detention. Furthermore, the order of the Court of Appeal of 11 October 2006 establishing bail was not compatible with Article 5 § 3 of the Convention as its amount was not fixed by reference to the purpose for which it was imposed, namely to ensure that the applicant appeared for trial. The material part of Article 5 § 3 reads:

“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.”

25. The applicant also complained under Article 5 § 4 that he did not have an effective remedy under domestic law to challenge the amount set for bail and that during the proceedings concerning his remand he and his lawyers had no access to the materials in his criminal file on the basis of which the courts ordered his pre-trial detention. He also submitted that he could not meet his lawyers in conditions of confidentiality because they were separated by a glass partition. Article 5 § 4 of the Convention reads:

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

I. ADMISSIBILITY OF THE COMPLAINTS

A. The complaint under Article 5 § 4 of the Convention concerning the lack of a remedy to challenge the amount set for bail

26. The applicant complained that he did not have an effective remedy under domestic law in accordance with Article 5 § 4 of the Convention, to challenge the amount of bail he was obliged to pay by the final decision of the Court of Appeal of 11 October 2006.

27. The Court recalls that Article 5 § 4 guarantees no right, as such, to appeal against decisions ordering or extending detention as the above provision refers to “proceedings” and not to “appeal”. The intervention of one organ satisfies Article 5 § 4, on condition that the procedure followed has a judicial character and gives to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question (see *Jecius v. Lithuania*, no. 34578/97, § 100, ECHR 2000-IX). It follows that the complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

B. The rest of the complaints

28. 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 the remainder 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 remainder of the application.

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

29. The applicant argued that there was no reasonable suspicion that he had committed the offence he was accused of. His company bought from a bank property which the latter was selling and it was the bank that set the price of the property in accordance with a valuation carried out by a specialised company approved by the bank. According to the applicant the prosecution did not present any evidence to support a reasonable suspicion that he had committed any offence.

30. The Government argued that there were credible reasons to believe that the applicant had committed the offence imputed to him and that he had attempted to threaten a witness.

31. The Court reiterates that in order for an arrest on reasonable suspicion to be justified under Article 5 § 1 (c) it is not necessary for the police to have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant is in custody (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 29-30, § 53). Nor is it necessary that the person detained should ultimately have been charged or brought before a court. The object of detention for questioning is to further a criminal investigation by confirming or discontinuing suspicions which provide the grounds for detention (see *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27, § 55). However, the requirement that the suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention. The fact that a suspicion is held in good faith is insufficient. The words “reasonable suspicion” mean the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, pp. 16-17, § 32).

32. The Court notes that in the present case the applicant was accused of having misappropriated an office building by buying it from a bank at a price lower than its market value. The accusation against him and the prosecutor's request for his remand (see paragraphs 8 and 10 above) contained a chronological description of events that took place between 1999 and 2002 and attributed to him and to his father conduct which, in the prosecutors' view, amounted to an offence. However, they do not appear to have contained any evidence to support the theory that an offence had been committed and that the applicant may have been guilty of it. Indeed there is no mention in the above documents on how the prosecution reached the conclusion that the value of the office building in question was underestimated or whether there was collusion between the applicant and the bank making the sale. It only referred to the existence of a witness within the criminal proceedings without however saying anything about her testimony, let alone whether that witness's testimony confirmed the accusation against the applicant. Moreover, while the applicant specifically argued during the *habeas corpus* proceedings that there was no reasonable suspicion that he had committed the offence imputed to him (see paragraphs 12 and 15 above), the courts appear to have ignored this submission and treated it as irrelevant (see paragraphs 13 and 16 above).

33. In the light of the above, the Court is not satisfied that the material put forward by the prosecuting authority and relied upon by the domestic courts to detain the applicant was sufficient to persuade an objective observer that the applicant may have committed the offence imputed to him. It concludes therefore that the applicant's detention between 28 September and 14 November 2006 was not based on a reasonable suspicion that he had

committed an offence and thus there has been a violation of Article 5 § 1 of the Convention.

34. In view of the above finding the Court does not consider it necessary to decide on the lawfulness of the prolongation of the applicant's detention on 6 October 2006.

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

35. The applicant complained that the decisions ordering his pre-trial detention were not based on relevant and sufficient reasons but only on declarative and formulaic grounds. Moreover, the courts had failed to assess the arguments put forward by his defence, both in the appeal applications and orally during the hearings.

The applicant further argued that the amount fixed for bail of MDL 2,000,000 was excessive and that the Court of Appeal made no enquiries about the applicant's financial circumstances before adopting its decision of 11 October 2006.

36. The Government submitted that the applicant's detention was necessary because he was suspected of having committed a serious offence. The criminal case against him was very complex and if released he could have destroyed evidence, influenced witnesses or fled. Moreover, he had previously attempted to influence a witness and his submissions that he had not been presented with a transcript of the latter's depositions were false, as he had not even requested that that witness be questioned.

The Government also submitted that the amount set for bail had not been excessive in view of the applicant's financial circumstances and that that amount was in no way linked to the amount of the loss allegedly caused by the applicant to the victim of the offence.

37. The Court recalls that Article 5 of the Convention is, together with Articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of an individual (see, for example, its link with Articles 2 and 3 in disappearance cases in *Kurt v. Turkey*, judgment of 25 May 1998, *Reports of Judgments and Decisions* 1998-III, § 123) and as such its importance is paramount. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty (see, for example, *Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports* 1997-II, § 41; *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II, § 46; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 461, ECHR 2004-VII).

38. The presumption is in favour of release. As established in *Neumeister v. Austria* (judgment of 27 June 1968, Series A no. 8, p.37, § 4), the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until conviction, he must be presumed innocent, and the purpose of the provision under consideration is

essentially to require his provisional release once his continuing detention ceases to be reasonable (see *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...).

39. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

40. A person charged with an offence must always be released pending trial unless the State can show that there are “relevant and sufficient” reasons to justify their continued detention (see *Yağcı and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 52).

41. Article 5 § 3 of the Convention cannot be seen as authorising pre-trial detention unconditionally provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004).

42. Insofar as bail is concerned, it may only be required as long as reasons justifying detention prevail. When such reasons do prevail, the amount of the bail must be “assessed principally in relation to the person concerned, his assets ... in other words to the degree of confidence that is possible that the prospect of loss of security in the event of his non-appearance at a trial will act as a sufficient deterrent to dispel any wish on his part to abscond” (see *Neumeister v. Austria*, judgment of 27 June 1968, Series A, no. 8, p. 40 § 14).

43. The Court has found above that the applicant's detention was not based on reasonable suspicion. That would be sufficient ground for it to consider it unnecessary to examine the present complaint also. However, the Court notes with concern the recurring nature of the problems concerning the relevance and sufficiency of reasons for remand in the case of Moldova. It notes that it has found a violation of this kind for the first time in the cases of *Sarban* and *Becciev v. Moldova* (no. 3456/05, § 103, 4 October 2005 and no. 9190/03, § 64, 4 October 2005) and that regrettably, the problem continues to persist.

44. The Court notes that, as in *Sarban* and *Becciev*, most of the reasons relied upon by the domestic courts in their decisions to remand the applicant in custody and to prolong his detention (see paragraphs 11 and 16 above) were limited to paraphrasing the reasons for detention provided for by the Code of Criminal Procedure, without explaining how they applied in the applicant's case.

45. Besides that, the domestic courts invoked in support of detention the fact that the applicant had attempted to influence a witness. The Court notes in the first place that this assertion constituted a misreading of the prosecution's statement to the effect that between 1999 and 2002 the applicant had allegedly threatened a person who had subsequently become a witness in his case (see paragraph 10 above). However, more fundamentally, while relying on such a statement, the domestic courts rejected the applicant's insistent requests to have that witness examined (see, for comparison, *Becciev v. Moldova*, cited above, §§ 73-76) or at least to see a transcript of her depositions (see paragraphs 12, 15 and 17 above). Indeed, while arguing that the applicant had been presented with such a transcript, the Government failed to adduce any evidence to prove that.

46. In such circumstances, the Court does not consider that the instant case can be distinguished from *Sarban* and *Becciev* in what concerns the relevance and sufficiency of reasons for detention.

47. There has accordingly been a violation of Article 5 § 3 of the Convention in this respect.

48. In the light of the above finding that there were no relevant and sufficient reasons to prolong the applicant's detention, the Court considers that the requirement that the applicant pay bail and his continued detention on the ground that he had failed to pay it constituted a separate violation of Article 5 § 3 of the Convention. In such circumstances, the Court does not consider it necessary to determine whether the amount of the bail imposed on the applicant was excessive or not.

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

49. The applicant argued that he had submitted numerous requests to the domestic courts to be allowed to see the transcript of witness E.S.'s statement relied upon by the prosecution in favour of his detention, but to no avail. He pointed to such requests made in his *habeas corpus* requests and in his appeals (see paragraphs 12, 15, 17 and 18 above). The applicant also complained that the glass partition in the CFECC detention centre prevented him from having confidential meetings with his lawyer to discuss matters related to his defence in the pre-trial detention proceedings.

50. The Government disputed the applicant's allegations and argued that he and his lawyers had had access to all the materials in the case file relied upon by the prosecution and courts to support the need for his detention. According to the Government, they had also had access to the transcript of E.S.'s depositions, which had been among the documents transmitted to them by the prosecution. However, probably due to their lack of diligence, they had failed to notice it. The Government also disputed the applicant's allegations concerning the glass partition in the CFECC detention centre.

51. 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.

52. 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 (see *Shishkov v. Bulgaria*, no. 38822/97, § 77, ECHR 2003-I (extracts)).

53. 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 on which the arrest is grounded, the legitimacy of the purpose pursued by the arrest and the justification of the ensuing detention.

54. 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).

55. In the present case, it is disputed between the parties whether the applicant or his lawyers asked for access to parts of the investigation file and were refused such access. The Court notes, however, that the applicant and his lawyers requested on numerous occasions that they be given a copy of the transcript of E.S.'s depositions (see paragraphs 12, 15, 17 and 18 above), and that the courts did not react in any manner to these requests. Moreover, the Government's submission to the effect that they had in fact had access to the document is not supported by any evidence (see paragraph 45 above).

56. The Court notes that no reasons were given for such withholding of information and that the applicant was unable to challenge properly the reasons for his detention. In such circumstances, it cannot be said that the principle of “equality of arms”, within the meaning of Article 5 of the

Convention, was observed in the present case. There has, accordingly, been a violation of Article 5 § 4 of the Convention.

57. Insofar as the applicant's complaint under Article 5 § 4 concerning the glass partition in the CFECC detention centre is concerned, the Court recalls that it has already found violations in respect of similar complaints in such cases as *Castravet v. Moldova* (no. 23393/05, § 61, 13 March 2007), *Istratii and Others v. Moldova* (nos. 8721/05, 8705/05 and 8742/05, § 101, 27 March 2007) and *Modarca v. Moldova* (no. 14437/05, § 99, 10 May 2007). In such circumstances and in view of the similarity of the complaint in the present case with those in the above cases, the Court does not consider it possible to depart from its reasoning and its findings in those cases. Accordingly, there has been a violation of Article 5 § 4 of the Convention in this respect also.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 11,000 euros (EUR) in respect of non-pecuniary damage suffered as a result of the breach of his Convention rights. He argued that he had experienced frustration, helplessness, anxiety, confusion, distress and a feeling of injustice.

60. 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.

61. Having regard to the violations found above and their gravity, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 9,000.

B. Costs and expenses

62. The applicant also claimed EUR 3,500 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 with the examination of the case. He also submitted a copy of a contract between him and his lawyer.

63. The Government disagreed with the amount claimed for representation and disputed, *inter alia*, the number of hours worked 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 situation in Moldova.

64. 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 are 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 3,000 for costs and expenses.

C. Default interest

65. 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 5 § 4 of the Convention concerning the alleged lack of a remedy to complain about the amount set for bail inadmissible and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention since the applicant's detention was not based on a reasonable suspicion that he had committed an offence;
3. *Holds* that it is not necessary to examine the complaint under Article 5 § 1 of the Convention concerning the alleged unlawfulness of the prolongation of the applicant's detention on 6 October 2006;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of the insufficiency of the reasons given for the applicant's detention;
5. *Holds* that there has been a violation of Article 5 § 3 of the Convention since the applicant was required to pay bail and continued to be detained on the ground that he had failed to pay it;
6. *Holds* that there has been a violation of Article 5 § 4 of the Convention since the applicant and his lawyers had no access to the materials in the

criminal file on the basis of which the courts ordered the applicant's detention pending trial;

7. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of the interference with the applicant's right to communicate with his lawyers under conditions of confidentiality;
8. *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 9,000 (nine thousand euros) in respect of non-pecuniary damage and EUR 3,000 (three thousand euros) in respect of costs and expenses, plus any tax that may be chargeable, which sums are to be converted into the currency of the respondent State at the rate applicable at the date of payment;
 - (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;
9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Josep CASADEVALL
President