



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

FOURTH SECTION

CASE OF ȚURCAN v. MOLDOVA

(Application no. 10809/06)

JUDGMENT

STRASBOURG

27 November 2007

FINAL

27/02/2008

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 Țurcan 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 J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 6 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 10809/06) 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 a national of Moldova and Romania, Mr Dorel Țurcan (“the applicant”), on 18 March 2006.

2. The applicant was represented by Mr A. Tănase, a lawyer practising in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent at the time, Mr V. Pârlog.

3. The applicant alleged, in particular, that he had been held in inhuman and degrading conditions and deprived of medical assistance, that he had been unlawfully detained and that the courts had not given relevant and sufficient reasons for his detention.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 23 May 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. The applicant was born in 1952 and lives in Chişinău.

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

A. Background of the case

7. On 12 October 2005 the applicant was arrested and charged with assisting the President of a commercial bank in extorting a bribe from a company in order to give it a loan.

8. On 16 January 2006 the applicant was transferred to the remand centre of the Ministry of Justice no.29/13 (also known as Prison no. 13, former Prison no. 3) in Chişinău.

9. On 3 February 2006 the Buiucani District Court prolonged the applicant's detention for a period of twenty days. The court found that

“... the criminal investigation is in its final phase; the final charges are to be submitted and the accused is to have access to the file. Taking into account the serious nature of the crime of which he is accused, the damaging effect of the deed and that, once aware of the contents of the file, the applicant could influence witnesses, destroy evidence and abscond from law enforcement authorities and the court, the court considers justified the prosecutor's request for prolonging the period of detention and rejects the lawyer's request for bail.”

On 9 February 2006 the Chişinău Court of Appeal upheld that decision.

10. The applicant made a separate complaint regarding the initial period of his detention, until 3 February 2006 (the case of *Țurcan and Țurcan v. Moldova*, application no. 39835/05). In the present application, he relies on the events subsequent to that date.

B. Events after 3 February 2006

11. On 20 February 2006 the case file was submitted to the trial court. On 6 March 2006 the first hearing took place, during which the applicant submitted a habeas corpus request. He relied on Article 186 § 2 of the Code of Criminal Procedure (see paragraph 15 below) and on the cases of *Baranowski v. Poland* (no. 28358/95, ECHR 2000-III) and *Ječius v. Lithuania* (no. 34578/97, ECHR 2000-IX), and claimed that, following the referral of the case to the trial court on 20 February 2006, his detention did not have a legal basis. He also complained about the inhuman conditions of his detention in Prison no. 13 and referred to the findings of the European

Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in respect of that remand centre.

12. The Buiucani District Court rejected his request because

“[the applicant is] accused of a serious crime and the court does not find at the present time any ground for changing or annulling the preventive measures”.

13. On 28 September 2006 the Buiucani District Court accepted the applicant's request for release, relying on new relevant circumstances of the case, namely that most evidence had already been examined in court or recorded by the prosecution and that the applicant's health had worsened, and surgery was needed. On 31 October 2006 the same court gave the applicant permission to undergo medical treatment abroad.

II. RELEVANT NON-CONVENTION MATERIALS

1. Relevant domestic law

14. The relevant domestic law and practice have been set out in *Boicenco v. Moldova* (no. 41088/05, § 88). In particular, as regards the exhaustion of domestic remedies, the Government relied on the following.

15. The relevant part of Article 186 of the Code of Criminal Procedure reads as follows:

“Article 186. Length of pre-trial detention and its prolongation

...

(2) Pre-trial detention during the investigation stage of the proceedings, before the bill of indictment is sent to the competent court, shall not exceed thirty days, except in cases provided for in the present code. The running of the duration of pre-trial detention during the investigation stage of the proceedings stops on the date when the prosecutor sends the bill of indictment to a court ...”

16. The Government referred to Article 53 of the Constitution, Article 1405 of the Civil Code and Law no. 1545 on compensation for damage caused by the illegal acts of the criminal investigation organs, prosecution and courts, as well as to the case of *Drugalev v. the Ministry of Internal Affairs and the Ministry of Finance*, cited in *Holomiov v. Moldova*, (no. 30649/05, § 88, 7 November 2006).

17. On 24 October 2003 Parliament adopted decision no. 415-XV, regarding the National Plan of Action in the sphere of human rights for 2004-2008. The plan includes a number of objectives for 2004-2008 aimed at improving conditions of detention, including the reduction of overcrowding, improvement of medical treatment, involvement of detainees in work and reintegration, as well as the training of personnel. Regular reports are to be drawn up on the implementation of the Plan. On 31 December 2003 the Government adopted a decision on the principles of

reorganisation of the penitentiary system, and the Plan of Action for 2004-2013 for the implementation of the principles of reorganisation of the penitentiary system, both having the aim, *inter alia*, of improving the conditions of detention in penitentiaries.

18. On an unspecified date the Ministry of Justice adopted its “Report on the implementing by the Ministry of Justice of Chapter 14 of the National Plan of Action in the sphere of human rights for 2004-2008, approved by Parliament Decision no. 415-XV of 24 October 2003”. On 25 November 2005 the Parliamentary Commission for Human Rights adopted a report on the implementation of the National Plan of Action. Both those reports confirmed the insufficient funding of the prison system and the resulting failure to fully implement the action plan in respect of the remand centres in Moldova, including Prison no. 13 in Chişinău. The first of these reports stated, *inter alia*, that “as long as the aims and actions in [the National Plan of Action] do not have the necessary financial support ... it will remain only a good intention of the State to observe the human rights described in Parliament Decision no. 415-XV of 24 October 2003, the fate of which is non-implementation, or partial implementation.”

2. Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

19. The relevant parts of the CPT report concerning the visit to Moldova between 20 and 30 September 2004 read as follows (unofficial translation):

“50. The CPT delegation again heard repeated complaints from persons charged with and convicted of administrative offences concerning the refusal of permission for them to receive visits or have contact with the outside world in EDPs.

The CPT reiterates (see paragraph 61 of the report on the 2001 visit) that, where persons awaiting trial are concerned, if it is necessary in the interests of the investigation to place restrictions on visits for some of them, the restrictions should be strictly limited in time and applied for the shortest period possible. In no circumstances should visits to a detained person by family and friends be prohibited for a prolonged period. If there is thought to be an ongoing risk of collusion, it is better to allow visits under strict supervision. ...

55. The situation in the majority of penitentiaries visited, in view of the economic situation in the country, remained difficult and the delegation encountered a number of problems already identified during its visits in 1998 and 2001 in terms of physical conditions and detention regimes.

Added to this is the problem of overcrowding, which remains serious. In fact, even though the penitentiaries visited were not operating at their full capacity – as is the case of Prison no. 3 in which the number of detainees was appreciably smaller than during the last visit of the Committee – they continued to be extremely congested. In fact, the receiving capacity was still based on a very unsatisfactory 2 m² per detainee; in practice, this was often even less.

73. Facilities for contact with the outside world left much to be desired. Although there was no restriction on parcels and letters, inmates were entitled only to brief visits totalling three hours every three months, which were in practice often reduced to one hour. What is more, visits took place under oppressive conditions in a room where prisoners were separated from visitors by a thick wire grille, with a guard stationed nearby at all times.

79. The follow-up visit to Prison no.3 in Chişinău revealed an unsatisfactory situation. The progress noted was in fact minimal, limited to some running repairs. The ventilation system had been repaired primarily thanks to the financial support of civil society (especially NGOs), and the creation of places for daily recreation had been made possible only as a result of contributions by the detainees and their families.

The repair, renovation and maintenance of cells are entirely the responsibility of detainees themselves and of their families, who also pay for the necessary materials. They must also obtain their own sheets and blankets, the institution being able to give them only used mattresses.

In sum, the conditions in the great majority of cells in Blocks I-II and the transit cells continue to be very poor indeed. ...

Finally, despite the drastic reduction in overcrowding, the rate of occupancy of cells is still very high, not to say intolerable.

83. Except in the Lipcani Re-education Colony for Minors, where the efforts made in this respect are to be highlighted, the quantity and quality of detainees' food everywhere is a source of grave concern. The delegation was inundated with complaints regarding the absence of meat and dairy products. The findings of the delegation, regarding both the stocks of food and the menus, confirm the credibility of these complaints. Its findings also confirmed that in certain places (in Prison no. 3, ...), the food served was repulsive and virtually inedible (for instance, insects and vermin were present). This is not surprising given the general state of the kitchens and their modest equipment.

The Moldovan authorities have always claimed financial difficulties in ensuring the adequate feeding of detainees. However, the Committee insists that this is a fundamental requirement of life which must be ensured by the State to persons in its charge and that nothing can exonerate it from such responsibility. ...”

THE LAW

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

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

21. He also complained that his detention after the referral of the case to the trial court on 20 February 2006, had not been “lawful” within the

meaning of Article 5 § 1 of the Convention, the relevant part of which provides:

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

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;”

22. The applicant also complained that his 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.”

I. ADMISSIBILITY

A. The Government's preliminary objection

23. The Government argued that the applicant had not exhausted available domestic remedies in respect of the complaints under Article 3 of the Convention. They referred to the *Drugalev* case (mentioned in paragraph 16 above).

24. In so far as the remedy of a civil action to request an immediate end to the alleged violation is concerned (see the *Drugalev* case), the Court has already found that such an action did not constitute sufficient evidence that such a remedy was effective at the relevant time (see *Holomiov*, cited above, § 106). Not having been informed of any development since the *Drugalev* decision, the Court does not see any reason for departing from that finding in the present case. It follows that this complaint cannot be rejected for failure to exhaust available domestic remedies.

B. The applicant's complaint regarding insufficient medical treatment

25. The applicant complained about the insufficient medical assistance provided to him while in detention in Prison no. 13. He referred to the diagnosis of “asteno-vegetative syndrome; vertebral disc related radiculopathy with algic syndrome and disorder of statics; myositis of the

right trapezius muscle”, established by an ambulance crew when they had visited him while in detention at the CFECC on 27 December 2005. Notwithstanding that diagnosis, he had been declared “practically healthy” upon admission to Prison no. 13. His wife's request of 29 March 2006 to allow a specialist doctor to visit the applicant had been left unexamined by the trial judge. On 13 April 2006 the court rejected a habeas corpus request in which the applicant asked for his release in order to undergo surgery. Since there were no doctors at Prison no. 13 specialising in the type of health problems the applicant had, he had refused to talk to the available doctors, whom he could not trust given the clean bill of health they had given him on admission despite the diagnosis mentioned above. On 28 September 2006 the trial court confirmed the absence of specialised medical personnel at Prison no. 13 when it ordered his release in order to allow him to undergo surgery.

26. The Government submitted that the applicant had been examined by doctors when his wife first requested it. However, on 6 April 2006 he had refused to talk to a commission of three doctors. On 10 April 2006 he had been examined by a neurologist. On 11 and 14 April 2006 he had been visited by a psychiatrist and two generalist doctors. On 20 April 2006 they had had to return in order to inquire about his refusal to follow the treatment they had prescribed to him and to which he had agreed. Further visits had been made by various doctors, such as two neurology professors from the psychiatry chair at the State Medical and Pharmaceutical University on 11 May 2006, a psychiatrist on 14 June 2006 and another neurology professor on 1 September 2006. A set of tests had been carried out in a specialised hospital on 8 September 2006 and a commission of three renowned neurologists had seen him on 15 September 2006. Each time the doctors had prescribed him treatment to follow. The applicant had therefore been provided with the necessary medical assistance, which he had initially refused.

27. The Court considers that it was not presented with sufficient evidence to find that the applicant had not been given the medical assistance which he needed. It notes that the first request to see a specialist doctor was made only on 29 March 2006 and that relatively soon thereafter prison doctors attempted to verify the need for medical intervention and whether specialist doctors needed to be called upon, but the applicant refused to cooperate. Soon thereafter he was seen by neurologists and other specialists and the file does not include any opinion that the applicant needed treatment outside the prison. When further investigation showed that the applicant's condition had deteriorated, he was released and allowed to leave the country. The Court is concerned about the refusal of the domestic courts to allow medical examinations of the applicant by the doctors he had chosen, which no doubt caused him to be suspicious. However, in the particular circumstances of the present case it does not consider that that refusal

amounted to treatment contrary to Article 3 of the Convention, given that the applicant was seen expeditiously by a number of well-known doctors whose reputation was never called into doubt.

28. Accordingly, the applicant's complaint regarding the insufficient medical treatment in Prison no. 13 must be declared inadmissible as manifestly ill-founded.

C. Conclusion

29. The Court considers that the applicant's complaints under Articles 3 (regarding the conditions of detention) and 5 §§ 1 and 3 of the Convention raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits. It therefore declares these complaints admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

1. Arguments of the parties

30. The applicant complained about the inhuman conditions of his detention in Prison no. 13 after his transfer there on 16 January 2006. He described those conditions as follows. The cell measured around 8 sq. m. and some 5 sq. m. were occupied by furniture (bunk beds, table, toilet and sink). Had a fridge and other equipment referred to by the Government been present in the room, which they had not, they would have occupied virtually all of the remaining space. The space free of furniture was little more than 1 sq. m. per person, since the applicant was detained in the cell with three other men. The applicant's lawyer requested permission to take photographs in the cell in order to prove the real state of affairs, but on 24 October 2006 the prison administration refused that request, citing security reasons. The administration added that a detailed video recording of the cell had been provided by the Government to the Court as evidence in the case of *Modarca v. Moldova* (no. 14437/05, 10 May 2007). Accordingly, the applicant's lawyer relied on that recording and on his own submissions made in that case in respect of the same cell.

31. The applicant stated that he had had to bring his own bedding, clothes and toiletries and make repairs at his own expense. He claimed that the cell had been poorly heated in winter and too hot in summer. Access to daylight had been severely limited by three layers of thick metal wiring on the window. Moreover, the food served had been of very poor quality and insufficient in quantity, the applicant having had to rely exclusively on

parcels brought to him by his wife on a weekly basis. Finally, the applicant relied on the latest report by the CPT, which confirmed his statements.

32. The Government disputed the description of the conditions of detention made by the applicant and referred to significant changes which had occurred in Prison no. 13 since 2004, when the CPT had visited that penitentiary. In particular, they referred to several decisions adopted by the domestic authorities aimed at improving conditions of detention (see paragraph 17 above). They stated that the cell in which the applicant had been detained had been designed for former law-enforcement officers and offered better conditions than those described in the CPT report, including a fridge, a television set and a ventilator in the 9.8 sq. m. room. The room had been properly heated and ventilated.

33. Moreover, the applicant had not complained to the prison administration about his conditions of detention. In addition, on 29 May 2006 a new Government regulation had been adopted, improving significantly the quality of food served, and funds had been released in 2005 for repairing many of the cells in Prison no. 13.

2. *The Court's assessment*

34. The Court refers to the principles established in its case-law on Article 3 of the Convention regarding, in particular, conditions of detention and medical assistance to detainees (see, among others, *Kudla v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; *Ostrovar v. Moldova*, no. 35207/03, §§ 76-79, 13 September 2005; and *Sarban*, cited above, §§ 75-77).

35. It observes that the applicant was detained in the same cell as the applicant in the above-mentioned case of *Modarca*, in which the Court found that the conditions of detention were contrary to Article 3 of the Convention. The circumstances of the complaints in both cases are very similar and the applicant expressly states that they are the same. Therefore, it considers that it could reach a different conclusion in the present case only if it were shown that the conditions of detention had changed between the date of Mr Modarca's release and that of the applicant's transfer to the cell.

36. The Court recalls that Mr Modarca was released from Prison no. 13 on 15 November 2005 (see *Modarca v. Moldova*, cited above, § 28). The applicant in the present case was transferred to that prison on 16 January 2006 (see paragraph 8 above), that is, two months later.

37. While the Court cannot exclude the possibility that the conditions of detention change over time, it has not been presented with any specific information to support the view that the conditions were any different for the applicant in comparison to those present only two months earlier in the same cell. As to the various documents adopted by the authorities with the aim of improving the conditions of detention, referred to by the Government, they are a good sign of a positive change. However, the

domestic authorities themselves considered that those documents had not been implemented to the desired level by the end of 2005 (see paragraph 18 above) and the Court was not presented with any more recent findings. Indeed, the prison administration's reliance on the video recording of Mr Modarca's cell as faithfully representing the conditions obtaining in the applicant's cell in the present case as late as 24 October 2006 (see paragraph 30 above) supports the view that the conditions have not changed since 2005. The Court finds encouraging the improved food arrangements made after 29 May 2006 (see paragraph 33 above). However, they applied, accordingly, only to a part of the applicant's detention.

38. The Government referred to the Court's finding in *Sarban* (cited above, § 78) that the material conditions of the applicant's detention did not exceed the level of severity required for an issue to arise under Article 3 of the Convention. However, the Court referred in that paragraph to the conditions of detention at the Centre for Fighting Economic Crime and Corruption ("the CFECC", see paragraphs 26 and 45-47 in *Sarban*), while the applicant complained in the present case about the conditions of detention in Prison no. 13, another institution. The Court recalls the CPT's finding in paragraph 53 of its 2004 report in respect of the CFECC that "the material conditions in this remand centre prove that it is clearly possible to ensure in Moldova adequate material conditions of detention". Unfortunately, the same could not be said about Prison no. 13 in Chişinău.

39. In view of the above and of the similarities of the present applicant's complaint with that in *Modarca*, and for the reasons given in that case (§§ 62-69), the Court finds that there has been a violation of Article 3 of the Convention in respect of the conditions of the applicant's detention in Prison no. 13.

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

40. The applicant complained about his detention without a legal basis, contrary to Article 5 § 1 of the Convention. He considered that the Moldovan practice of not requiring the courts to issue any new detention orders following the submission of the case file to the trial court was similar to that found to be in breach of Article 5 § 1 in cases such as *Baranowski* and *Ječius* (both cited in paragraph 11 above).

41. The Government submitted that the applicant's detention was provided by law and referred to a number of legal provisions, essentially repeating the arguments they relied on in *Boicenco* (cited above, §§ 64-71). They also informed the Court that on 3 November 2006 the law modifying Article 186 (2) of the Code of Criminal Procedure entered into force, providing for specific time-limits for the detention of persons during the judicial phase of the criminal proceedings.

42. The Court recalls that it found a violation of Article 5 § 1 of the Convention in *Boicenco* (cited above, § 154), *Holomiov* (cited above, § 130) and *Modarca* (cited above, § 74). Having examined the material submitted to it, the Court considers that the file does not contain any element which would allow it to reach a different conclusion in the present case. While the changes made to the law referred to by the Government did not affect the applicant's case, the Court could take them into account when examining any future applications.

43. The Court finds, for the reasons given in the cases cited above, that the applicant's detention pending trial after 20 February 2006, when the last court order for his detention expired, was not based on any legal provision.

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

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

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

46. The Court does not consider it necessary to examine separately this complaint in view of its finding (see paragraph 44 above) that the applicant's detention lacked any legal basis as from 20 February 2006 (see also *Sarban*, cited above, § 104).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 12,000 euros (EUR) for non-pecuniary damage suffered as a result of the violation of his rights under the Convention. He cited the Court's case-law to prove that comparable amounts had been awarded for violations of these Articles.

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

50. The Court recalls that it has found a breach of Article 3 of the Convention in this case, which must have increased his existing stress and anxiety resulting from the authorities' failure to respect his rights guaranteed by Article 5, namely his detention without any legal basis for over seven months. It awards the applicant the total sum of EUR 9,000 for non-pecuniary damage (see *Baranowski*, cited above, § 82, and *Ječius*, cited above, § 109).

B. Costs and expenses

51. The applicant claimed a further EUR 3,792 for legal costs and expenses. He submitted a list of hours worked by his lawyer in preparing the case (amounting to thirty-four hours) and the hourly fee for each type of activity (EUR 60-100). He also referred to a decision of the Moldovan Bar Association, adopted on 29 December 2005, which recommended the level of remuneration for lawyers representing applicants before international courts (an hourly fee of EUR 40-150).

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

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

54. In the present case, the Court notes that the lawyer was properly authorised to represent the applicant in the proceedings before this Court and they both signed the itemised list of hours worked in preparing his case. It is also clear that a certain amount of work has been done, considering the quality of the submissions. However, the amount requested is excessive and should only partly be accepted. Regard being had to the itemised list of hours worked, the Court awards the applicant EUR 2,000 for legal costs and expenses (cf. *Sarban*, cited above, § 139).

C. Default interest

55. 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* inadmissible the complaint under Article 3 insofar as it concerns the insufficient medical assistance in Prison no. 13, and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant's conditions of detention in Prison no. 13;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's detention without a legal basis after 20 February 2006;
4. *Holds* that there is no need to examine separately the complaint under Article 5 § 3 of the Convention;
5. *Holds*:
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros) for non-pecuniary damage and EUR 2,000 (two thousand euros) for costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President