



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

FOURTH SECTION

CASE OF GRĂDINAR v. MOLDOVA

(Application no. 7170/02)

JUDGMENT

STRASBOURG

8 April 2008

FINAL

08/07/2008

This judgment may be subject to editorial revision.

In the case of Grădinar v. Moldova,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Stanislav Pavlovschi,

Lech Garlicki,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 7170/02) 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 Mrs Nina Grădinar (“the applicant”), on 28 November 2000.

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

3. The applicant complained, in particular, about the failure of the authorities to protect her late husband’s life and about the unfairness of the criminal proceedings against him.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 11 April 2006 a Chamber of that Section decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956 and lives in Comrat. She acts on behalf of her deceased husband, Mr Petru Grădinar (“G.”).

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

1. The background of the case

7. G. was in conflict with a number of officers of the Comrat police and was allegedly persecuted by those officers for criticising them and helping alleged victims of police abuse. In 1993 G. was allegedly abducted by the local police and a ransom was requested. Having been kept for 15 days in the woods, he was released and on 24 December 1993 lodged a complaint against several officers of the local police, including D., the Deputy Chief of the Comrat police. A criminal investigation was opened but was discontinued for lack of evidence.

8. On 11 March 1995 M., a subordinate of D., made a complaint against G. for resisting the legitimate orders of the police. On the same day G. made a complaint against D., M. and another officer for abusing their power by beating him up at his home and requested the opening of a criminal investigation. The judge examining the two cases closed the first one for lack of evidence. The criminal investigation into G.’s complaint was discontinued some time later.

9. On 4 May 1995 the personnel of the local police station wrote a letter to various authorities in support of the three officers and against D.C. (one of the three accused in the present case). The Prosecutor General found that many of the statements by the police officers in that letter were unfounded and tendentious and contained gratuitous accusations against G., D.C. and the prosecutor who had opened the criminal investigation. There was mention of talk among the officers about possibly resorting to “illegal methods of fighting” the suspects.

10. On 16 September 1995 a burnt-out car was found in a forest near Comrat. The police found the remains of a person in the boot of the car. A criminal investigation was opened and led to the conclusion that the victim was D. Three persons became the prime suspects: the C. brothers (D.C. and G.C.) and G.

11. According to the prosecution, the following events led to the murder of D. on the night of 15 to 16 September 1995. In 1994 D. had opened a criminal investigation against G.C. for “aggravated hooliganism”. The C. brothers and G. were in serious conflict with D. On 15 September 1995 D. visited a bar in Comrat, where he met with the C. brothers and G., was

insulted by them and was hit outside the bar. They agreed to meet at around 4 a.m. at a roundabout to finish the dispute.

12. When they met at 4 a.m., the C. brothers and G. beat D. and then forced him into the back of his police car and drove to a forest, followed by G. in his own car. In the forest, they continued beating D. and then loaded him into the boot of his car, sprayed petrol all over it and set the car on fire.

The applicant disputed this version of events.

13. On 20 May 1997 the Chişinău Regional Court acquitted all three suspects. On 21 October 1997 the Court of Appeal upheld that judgment.

14. On 5 December 1997 a bomb exploded near G.'s house but nobody was hurt. G. lodged a complaint and requested measures of protection. The criminal investigation initiated at his request could not identify the bombers and was closed in February 1998. The Ministry of the Interior refused to apply measures of protection to him because he had not received any threats and there was no reason to expect a repeat of the bombing.

15. On 12 January 1998 the Supreme Court of Justice quashed the lower courts' judgments of 20 May and 21 October 1997 and ordered a full rehearing of the case.

16. On 11 June 1999 G. and his son were killed in their car by gunmen. The criminal investigation subsequently launched did not reveal the identities of the killers. On 6 July 1999 the applicant insisted on the continuation of her late husband's retrial in order to prove his innocence. She was recognised as his legal representative and was allowed to make submissions to the courts in addition to those made by the lawyer whom she had appointed.

2. Findings of the Chişinău Regional Court (judgment of 16 September 1999)

17. On 16 September 1999 the Chişinău Regional Court ("the first-instance court"), the only one which examined the witnesses in the case directly (except for P.O., the prison hospital doctor), found the following facts:

(a) Administrative proceedings against D.C. and G.

18. On 17 September 1995 D.C. was taken to the local police station and questioned as a witness about the events of the night of 15 to 16 September 1995. On 18 September 1995 G. was taken to the same police station and also questioned as a witness about the same events.

19. They were not informed of their rights and were not assisted by lawyers. They were handcuffed while questioned. After the questioning, administrative files were opened on the basis of their alleged insults to D. at the bar and a judge ordered their arrest for ten days as an administrative sanction. During the administrative arrest further questioning took place and other procedural steps were taken, resulting in evidence later used in the

criminal case against them. In particular, during this period (18-22 September 1995), G. and D.C. confessed to having murdered D.

20. The court found that the initial reports which had served as a basis for the administrative arrest had been filed in breach of the proper procedures. There had been no grounds for the administrative arrest because the two men were suspects in a criminal case and any detention should have been ordered on that basis.

21. On 19 September 1995 G. and D.C. were taken to a remand centre in Chişinău, where they were questioned again until 21 September 1995 as witnesses and without legal assistance. They made statements accepting their guilt during the questioning.

22. On 21 September 1995 they were, for the first time, interviewed as suspects (as opposed to witnesses), still without having their rights explained and without access to a lawyer.

(b) Alleged ill-treatment

23. On 9 October 1995 both D.C. and G. were questioned for the first time in the presence of their lawyers and each confessed to having committed the crime. However, when signing the record of the questioning, each wrote that he did not accept any guilt. The same happened on 7 November 1995 in respect of G.C., who had been arrested in Russia and extradited to Moldova. In his statement G.C. mentioned that G. and D. had fought in the woods and had both fallen to the ground before D. was immobilised and burned in his car. D.C. noted that after taking C.S. to the hospital where she worked after 3 a.m., they had driven back by the police station building and towards the roundabout. However, the court found that this was contradicted by the officer P.V., who had been in a police car parked next to the police station and who had not seen any car drive past the station at that time.

24. In early October 1995 G. lodged two complaints about ill-treatment by the police. On 15 December 1995 the investigating judge requested the prosecutor to investigate the allegations. On 1 March 1996 the prosecutor answered in respect of one complaint that the facts had not been confirmed but did not attach any documents from the investigation as required by law. There was no evidence of any investigation of the second complaint.

25. In October 1995 G. was admitted to a hospital for detainees, where he was examined by Dr P.O. on 13 October 1995. Dr P.O. testified in court that G. had complained to him of ill-treatment by the police, but because there were no visible signs, this had not been recorded in the medical report. The court noted that the medical report had been drawn up almost a month after the alleged ill-treatment, which prevented the verification of the allegations. However, G.'s medical file showed that he had complained of pain in the kidneys and broken chest bones and that he had been treated for injuries to his head and leg ("post-traumatic neuritis of the right leg").

Dr P.O. testified that such damage to the leg normally appeared as a result of blows or contusions to that area. The doctor's conclusion that no chest-bone fractures had been found was not backed up by X-ray evidence as required by law. Subsequent X-ray pictures were of too poor a quality to establish whether the bones were intact.

26. On 20 March 1996 another medical examination of G. was carried out at the request of the investigator. While no signs of ill-treatment were found, the diagnosis was "mild consequences of craniocerebral trauma with hypertonic syndrome" and G. was advised to undergo in-patient treatment. He refused, but in May 1996 he had to be admitted to the hospital as a result of the head injuries and neuritis in the leg. He stayed at the hospital until December 1996.

27. The court also found that, owing to various violations of the rules on criminal procedure, including the use of ill-treatment for the purpose of obtaining a confession, the self-incriminatory declarations made by the third suspect, G.C., who had been arrested in Russia, could not be accepted as evidence. No proper request had been made by the Moldovan authorities to their Russian counterparts to question G.C. and he could not properly be questioned by the Russian authorities because he was not a Russian citizen.

28. The court found that in all the statements made by the suspects there was no fact of which the prosecution had not already been aware before the questioning. Furthermore, G.'s complaint that he had been shown a video of D.C.'s statements, including those made during the crime scene investigation, had been made at a time when he was still a witness and had no right of access to the case file; he was not even supposed to have known of the existence of that video recording. The court concluded that the only way for G. to have known about the recording was by having seen it, which confirmed his claim that he had been shown it in order to ensure that his confession concurred with those of D.C.

29. On the basis of all the evidence, the court found that the statements made by the suspects during questioning had not been given voluntarily but had been taken from them illegally under duress and could not constitute valid evidence.

(c) Witness statements

30. The court then turned to the witness statements. The witnesses had given evidence on three matters: (i) the quarrel at the bar; (ii) the existence of unfriendly relations between the accused and D. (motive for the crime); and (iii) the events at around 4 a.m. at the C. brothers' parents' house (alibi for G.).

(i) Witness statements regarding the quarrel at the bar

31. The court examined a number of witnesses whose written statements made at the police station about the events at the bar apparently confirmed

that the accused had initiated the fight and been aggressive towards D. A number of those witnesses declared in court that they had been threatened or otherwise forced by the police to sign witness statements, whereas they had not witnessed the events described in the statements. One of these witnesses was C.E., who stated that under pressure from the police he had signed a false witness statement about having seen the accused's car being driven in the direction of the roundabout at about 3 a.m. on the date of the crime.

32. The statements taken from seven other witnesses by the police in 1995 were read out in court, including that of M.E. who had been with C.E. and had confirmed his statement (see the preceding paragraph). They referred mostly to the events at the bar. Since these witnesses were uncontactable abroad and the accused could not confront and properly challenge them, and in virtue of guarantees provided for in Article 6 of the Convention, the court rejected their statements as evidence.

33. Another witness, a former colleague of D. who had been accused by G. of beating him up in 1995, confirmed his earlier statements attributing the initiation of the fight to the accused. He had gone with D. to the police station and, rather than talking about subsequently returning for any further meeting, they had agreed to go home after visiting the police station. The witness C.S. declared in court that she had seen part of a quarrel at the bar between the accused and D. but that later (at around 3.30 a.m.), when she had been taken to work by the accused in their car, they had been calm and had not spoken about the policemen.

34. The court concluded that not a single witness, including D.'s colleagues, had confirmed the prosecution's version that D. and the suspects had agreed after the incident at the bar to meet at a later time near the roundabout to continue the dispute.

35. Some of the police officers declared that G.C. had threatened D. with violence because of the administrative file opened against him. The court failed to see why in such circumstances and after allegedly being threatened that same night by the suspects, D. would have agreed to return for a fight, alone and without warning anyone, including the officer on duty at the police station, and without taking his weapon from the safe.

36. D.'s colleague, a police officer who was present during all the events at the bar, had not informed his superiors of any such meeting even though he would have been obliged to report anything suspect. Indeed, he did not confirm that such an agreement had taken place. Moreover, having called his wife from the police station, he had gone outside to be taken home by D. in his car but had not seen D. or his police car. He had run down the street hoping to see him, but passing by the roundabout several minutes later, he had not seen D. or anyone else there.

37. The court's conclusion was that the incident at the bar, to the extent that it had happened, had ended there.

(ii) Witness statements regarding the existence of unfriendly relations between the accused and D. (motive for the crime)

38. Other witness statements related to the alleged motives for the crime, for example, that relations between the suspects and D. were hostile on account of the criminal file opened against G.C. and that D. was worried about vengeance on their part. However, the court found no objective confirmation of such fears. On the contrary, D. had declared during questioning in the case in which G. had accused him of abduction in 1993 that he was on good terms with G.

39. In addition, while D. had opened a criminal investigation in respect of G.C. on 16 June 1994, he had not taken any measures in relation to him before handing the case to another investigator on 1 July 1994. There was no evidence in the file suggesting that G.C. had seen the materials in the file and thus found out about D.'s involvement in the case, and the case had been closed by another investigator in December 1994 following G.C.'s admission of having committed hooliganism. The court thus did not find any reasonable motive for revenge by G.C. based on that investigation.

40. Other witnesses called by the prosecution not only denied the allegation that G.C. had told them about killing D. while they were travelling in Russia, but declared that they had seen G.C. being beaten to obtain a confession from him. The court likewise rejected the evidence of a former officer from the police station in Comrat where D. had worked to the effect that he had been told by G.C. about the murder and its details. The court found that the witness was not impartial.

(iii) Witness statements regarding the events at around 4 a.m. at the C. brothers' parents' house (alibi for G.).

41. Another group of witnesses testified about the events at the house of the C. brothers' parents. These witnesses (not only the parents) stated that they had butchered and processed a pig for about two hours and then taken the meat to the market at about 5.30 a.m. Two of them declared that they had been made to sign statements which did not entirely correspond to what they had witnessed, in particular being pressed by the police to indicate that the butchering had begun at a different time and to declare that G. had not been present. A meat seller at the market confirmed that at about 5.30 a.m. he had received meat from G.C. and that, judging by its weight, the butchering had taken between one and a half and two hours.

42. Considering all the above witness statements, the court found that at around 4 a.m., the time of the murder according to the prosecution, the suspects had been at C. brothers' parents' house and could not have been in the woods to commit the crime as alleged.

(d) Minutes of the crime scene investigation

43. The report of the crime scene investigation, together with a video recording of the investigation, depicted each of the accused showing the place and the manner in which they had allegedly committed the crime. According to the testimony of one of the police officers who had taken part, the investigation had been carried out on 18 September 1995.

44. The court found a number of violations of the rules on criminal procedure in the investigation of the crime scene. In particular, the report had been signed and annexed to the case-file only at a much later stage, whereas by law, it should have been signed during or immediately after the investigation. The witnesses to the crime scene investigation confirmed that they had signed the report but that they had not been allowed near the crime scene and had seen the burnt-out car only from a distance. Contrary to legal requirements, they had not had any explanation of their rights and obligations as witnesses, they had not seen what the police had found on the scene and they had not seen the video recording of the event before signing the report and map.

45. In addition, while a car tyre print had been found at the crime scene, a copy had not been made. D.'s documents, found intact and "conspicuously displayed" nearby, had not been examined for fingerprints, even though they had a plastic cover that could have retained prints.

46. A piece of fabric found on a bush had been described but not located on the map and not subjected to expert analysis. The analysis of the suspects' clothes which they had worn on that night did not reveal any element suggesting that they had been at the crime scene.

A petrol tank found at the scene had likewise not been analysed by the experts.

47. The prosecution had not produced to the court the video recording of the crime scene investigation. The map drawn did not indicate the exact position of a number of items and marks noted in the report as having been found at the crime scene. This made it impossible for the court to verify whether what the accused had indicated at the crime scene coincided with the map and the traces found.

48. The report of the investigation described the finding of a plastic tube in September 1995, but no details or measurements were given. It was only on 28 February 1996 that the investigator had presented as evidence a piece of plastic tubing which had allegedly been found at the crime scene and had been used for taking fuel from D.'s car in order to set the car on fire. The court rejected that evidence, along with the result of a forensic experiment that merely showed the possibility of evacuating fuel from the car's tank in that manner.

49. In the light of these findings, the court excluded the crime scene report as a whole from the evidence on account of the serious procedural violations.

(e) An unexplored alternative lead

50. The court examined additional facts determined during the investigation. A witness testified that he worked as a security guard in a café near the roundabout and had seen a police car and another car stopping there and a fight taking place between their occupants. They had then all got back into their cars and shots had been heard. One car had left, followed by the police car, in the direction of Chişinău. He had not seen either of the two cars return in the direction of the wood where the burnt-out car was later found.

51. Other witnesses confirmed in court that they had heard shots that night but could not confirm their location.

52. The defence claimed that, after a brief initial investigation of the shooting, including a ballistics report, the relevant evidence had been withdrawn and examined in a new criminal case, in order to prevent the examination of alternative leads in the accused's case. The court found no evidence of any ballistics report, but noted the presence of records of interviews of witnesses who had heard the shots. Moreover, a cartridge case was found in D.'s car, the origin of which had not been explained. The court concluded that initially there had been another lead in the case which had not been fully investigated.

53. The court also examined the evidence relating to the identification of the human remains found in the car and decided that the identity of the victim had not been established.

54. The court also found, from the statements of a number of witnesses, including police officers, that the assumption that the three suspects had committed the crime had emerged immediately and remained not just the main scenario under consideration, but in fact the only one examined during the entire investigation. In the court's view, this was confirmed by the failure to examine in any detail the established fact of the shooting in the area of the roundabout.

55. The court also noted the general attitude of the local police officers towards the suspects displayed in their letter of 4 May 1995 (see paragraph 9 above), which had led it to conclude that the local police had formed a strongly negative attitude towards the suspects even before the crime had been committed. Added to that was the loss to the police station in the form of the police car that had been destroyed. The court concluded that that police station should not have been involved at all in the investigation of the crime. Nonetheless, most procedural steps in the initial phase of the investigation of the case had been performed by officers from that police station.

(f) Expert reports

56. The court examined the expert reports on various items found in and around the car. It concluded that most of those reports had been filed in

serious breach of the rules on criminal procedure (notably, the presumed identity of the human remains found in the burnt-out car had already been written on the materials presented to the experts, who were under the impression that the fact had already been established) or had been seriously undermined by the improper manner in which samples had been obtained during the crime scene investigation.

57. The court concluded that these reports neither confirmed, nor denied the identity of the victim. The objects found in the car and identified as belonging to the alleged victim were not inseparable from him and could have been placed there. Moreover, the prosecution had given no explanation as to why those who had committed the crime, having taken measures thoroughly to destroy all traces, had left D.'s personal documents untouched in an open space nearby, "conspicuously displayed" with his picture attached.

(g) Overall conclusion of the Chişinău Regional Court

58. The court considered that credibility could be attached to the statements by the accused that illegal forms of pressure had been used on them and to those made by some witnesses about being forced by the police to give false statements.

59. The court also found that the investigation had been unilateral and biased against the suspects. It found that it had not been proved that the remains in the burnt-out car belonged to the alleged victim. While it had been proved that a crime had been committed by burning the car and an unidentified person inside it, there was no evidence to show that the suspects were the perpetrators of the crime. Most of the evidence gathered was unreliable owing to breaches of criminal procedure and could not serve as a basis for a conviction. On the basis of its findings, the court acquitted all three suspects.

3. Judgment of the Chişinău Court of Appeal (31 January 2000)

60. On 31 January 2000 the Court of Appeal quashed the judgment of the Chişinău Regional Court and adopted a new one, convicting D.C., G.C. and G. It did not sentence G. because of his death in 1999.

61. The court recounted in detail the sequence of events as submitted by the prosecution. It then examined the parties' submissions and the material in the case file and examined one witness (Dr P.O.). The court noted the contents of the interviews of each of the accused during the investigation (of G.C. on 1 and 7 November 1995, of D.C. from 17 to 20 September, 9 October and 10 November 1995 and of G., without specifying any specific date in his case but rather stating that he had given genuine confessions "throughout the investigation").

62. It found that the three suspects had on a number of occasions made genuine and consistent confessions in the presence of their lawyers and that

G.C. had written one of his confessions himself. D.C.'s confession of 19 and 20 September 1995 had been filmed.

63. The court considered that all of the above precluded the possibility of ill-treatment and that the suspects' confessions had incorrectly been excluded from the evidence by the first-instance court. The suspects had changed their statements towards the end of the investigation only to avoid criminal responsibility.

64. In the court's opinion, there was no evidence of any ill-treatment of the accused. The officers questioned in that regard all denied having applied such treatment and G.'s personal medical file from his hospital treatment in October 1995 did not establish any evidence of ill-treatment. Dr P.O. did not confirm the ill-treatment.

65. The officer who had questioned G.C. after arresting him in Russia testified to the fact that G.C. had been lawfully questioned and that he had not been subjected to any form of ill-treatment. Because G.C. had a Russian residence visa in his passport for 1995, the Russian investigating authorities had treated him as a Russian citizen and there had thus been no need for a special request by any Moldovan authority to that effect.

66. The court noted that all three suspects had made similar statements, differing only as regards their respective roles in committing the crime. The court considered that their subsequent denial of committing the crime and the slight variations in their versions of events was an attempt to avoid criminal responsibility.

67. The crime scene investigation had been conducted in the presence of witnesses and G.'s lawyer and was filmed. Both D.C. and G. had been able clearly to indicate the place and the manner of D.'s killing.

68. D.'s wife had identified the objects found in the burnt-out car and declared that the accused had often threatened her husband and family because of a criminal investigation opened by her husband against G.C. On 17 September 1995 the local police had called to inform her that her husband's corpse had been found burned in the woods, together with his keys and documents. The court found that D. had indeed opened a criminal investigation against G.C. on 16 June 1994.

69. The car found at the crime scene belonged to the local police station. Blood samples from around the car coincided with the D.'s blood group. Moreover, no other disappearances had been reported during the relevant period in the region. There was no doubt in the view of the Court of Appeal that the corpse found in the car was D.

70. The court stated, without giving any further details, that a number of witnesses had "directly and indirectly shown that the accused were connected to the crime". The statements of two other witnesses, excluded from the evidence by the first-instance court, were declared admissible by the Court of Appeal, although it did not specify why, or what those statements included.

71. Moreover, the witness statements of M.F. and S.P. had been read in court but unlawfully excluded from the evidence by the first-instance court.

72. The court also found that the first-instance court had not given reasons for its decision to reject from the file several types of evidence. The court rejected as unproven, without giving any explanation, all the other evidence taken into account by the first-instance court in favour of the accused. It found each of the accused, including G., guilty as charged and decided to discontinue the proceedings against G. because of his death.

5. Judgment of the Supreme Court of Justice (30 May 2000)

73. On 30 May 2000 the Supreme Court of Justice upheld the judgment of the Court of Appeal.

74. The court first recounted in detail the prosecution's version of events, the findings of the lower courts in the case and the arguments raised by the defence, including an alibi for the accused.

75. The court declared that it accepted only lawfully obtained evidence as the basis for its judgment, evidence which it found "sufficient to confirm the guilt of the accused [G.C.], [D.C.] and [G.] in having committed the acts of which they are accused". It referred to the contents of the self-incriminating statements made by the accused on 9 October and 7 November 1995 and noted that these statements had been made in the presence of their lawyers. It confirmed the Court of Appeal's acceptance of the self-incriminating statements as the "decisive evidence" in the case. The accused had made similar statements; the discrepancies relating to the role of each in committing the crime were the result of their attempt to transfer most of the guilt to the others.

76. The court also found that the accused had not withdrawn their statements until 6 March 1996, when they declared that they had been ill-treated. The first-instance court:

"gave credibility to the accused's declarations, even though they had not been proved, while deciding, without any basis, that witnesses who testified that there had been no ill-treatment were interested persons and should thus have their testimony excluded."

77. The court also noted the statements of several witnesses who confirmed that the quarrel at the bar had taken place, that the accused had initiated it and that they had left for the hospital, while D. had left for the police station after 3 a.m. The testimonies largely coincided, as to the time and sequence of events, with the initial statements by the accused.

78. The witness C.S. confirmed that the accused had driven her to the hospital after 3 a.m. and confirmed the quarrel at the bar. Her statements largely coincided with those made by D.C. on 17 September 1995. The witnesses C.E. and M.E. stated that they had seen the accused in their car and the police car driving towards the roundabout shortly after 3 a.m.

79. The officer who had been on duty that night at the police station noted that D. and his colleague M. had come to the station at around 3.22 a.m. and that minutes later D. had left in the car.

80. Officer M. (se paragraph 8 above), remembered one of the accused shouting in the Gagauz language “I will burn you”. The officer did not speak that language but remembered the word and had later found out its meaning.

81. The court noted that D. had opened a criminal investigation against G.C., which might have constituted a motive for revenge.

82. The court examined various pieces of evidence which proved, in its view, that the human remains found at the crime scene were those of D.: an expert report had found that the corpse was, in all probability, that of a man; the blood stains found coincided with D.’s blood group; and items found in and around the car, such as keys and documents, belonged to D. and had been recognised by his wife.

83. Lastly, the court declared that the above and “other evidence taken into account by the Court of Appeal” proved the accused’s guilt. No further details were given.

II. RELEVANT DOMESTIC LAW

84. The relevant provisions of the Code of Criminal Procedure in force at the material time read as follows:

Section 5

“Criminal proceedings cannot be instituted, and those already instituted shall be discontinued:

...

(8) against a deceased person, with the exception of those cases where the proceedings are necessary for the rehabilitation of the deceased ...”

Section 55

“...

Evidence obtained in violation of the present Code or not properly examined during the court hearing cannot constitute the basis of a court conviction or of other procedural documents.”

Section 59

“... A witness who refuses to testify shall be liable in accordance with Section 197 of the Criminal Code, and shall be liable for falsely testifying in accordance with Section 196 of the Criminal Code. ...”

Section 62

“... When the accused is first questioned after being taken into custody, the questioning may take place only in the presence of defence counsel, whether chosen or officially appointed.”

Section 115

“The minutes of an investigatory procedure shall be filed during the procedure or immediately thereafter. ...

After the end of the questioning the audio or video recording shall be reproduced in full for the person questioned. ... The audio or video recording shall end with a declaration by the person questioned confirming the correctness of the recording.”

Section 365

“...

The following have the right to introduce a revision request:

...

(b) the spouse and other close relatives of a convicted person, even after his or her death.”

85. The relevant provisions of the Act on compensation for damage caused by the illegal acts of the criminal investigating authorities, prosecuting authorities and courts (no. 1545 (1998)) read as follows:

Section 3

“(1) Pursuant to the present Act, compensation shall be payable for pecuniary and non-pecuniary damage caused to a natural or legal person as a result of:

(a) unlawful detention or arrest ...;

(b) unlawful conviction ...;

...

(d) unlawful administrative detention or arrest ...”

Section 7

“(1) At the time of notifying about ... an acquittal ..., the natural person (in case of his or her death the heirs) ... shall be handed a notice in a typical form explaining their right and procedure for asking reparation for damage caused.”

Section 12

“(1) The prosecutor responsible for the criminal investigation or the hierarchically superior prosecutor shall make an official apology in the name of the State to the groundlessly prosecuted person.

(2) Official apology of the prosecutor shall be made in the case where:

...

(c) an acquittal becomes final; ...

(3) The prosecutor shall make an official apology in written form to the victim of the unlawful acts or to the latter’s close relatives.”

THE LAW

86. The applicant submitted that the State had been responsible for failing to protect her husband G. from attack, despite his complaints against the local police, in breach of Article 2 of the Convention, the first paragraph of which reads:

“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

87. She also complained about the unfairness of the proceedings against G., alleging a breach of Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

88. She also considered that the authorities’ failure to protect her husband amounted to a violation of Article 18 of the Convention, which reads:

“The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

I. ADMISSIBILITY OF THE COMPLAINTS

A. Complaints under Articles 2 and 18 of the Convention

89. The Court considers that the applicant has not substantiated her complaints under Articles 2 and 18 of the Convention. It notes that a criminal investigation was opened into the 1997 attack but had to be closed for lack of information about the perpetrators of the attack (see paragraphs 14 and 16 above). There was no follow-up to that attack, or any threats or other information regarding an imminent attack or a specific source of danger to G. Another criminal investigation was conducted into G.'s murder. The applicant did not submit evidence to show that either of the two investigations had been superficial or inefficient. The authorities cannot, in such circumstances, be held responsible for failing to protect G. (compare, for example, *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII).

Accordingly, the Court concludes that the complaints under Articles 2 and 18 of the Convention are manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

B. Complaints under Article 6 of the Convention

90. The Court also notes that the present application was lodged by the applicant after the death of her husband (G.). It recalls that a person, non-governmental organisation or a group of individuals must, in order to be able to lodge a petition in pursuance of Article 34, claim "to be the victim of a violation ... of the rights set forth in the Convention...". While it is true the rules of admissibility governed by Article 35 must be applied with some degree of flexibility and without excessive formalism, Article 34 requires that an individual applicant should claim to have been actually affected by the violation alleged (see *Karner v. Austria*, no. 40016/98, § 25, ECHR 2003-IX and *Fairfield and others v. the United Kingdom* (dec.), 24790/04, 8 March 2005).

91. The Court has consistently rejected as inadmissible *ratione personae* applications lodged by the relatives of deceased persons in respect of alleged violations of rights other than those protected by Articles 2 and 3 of the Convention (see, for instance, *Fairfield*, cited above, and *Biç and Others v. Turkey*, no. 55955/00, § 24, 2 February 2006 and the further case-law mentioned therein). In this respect it has distinguished between applications continued by the relatives of the applicants who had personally lodged applications and died during the proceedings before the Court (see

Dalban v. Romania [GC], no. 28114/95, § 39, ECHR 1999-VI) and those lodged by the relatives after the death of the applicants.

92. However, it has also been established in the Court's case-law that "the right to enjoy a good reputation and the right to have determined before a tribunal the justification of attacks upon such reputation must be considered to be civil rights within the meaning of Article 6 § 1 of the Convention" (*Werner v. Poland*, no. 26760/95, § 33, 15 November 2001; *Kurzac v. Poland* (dec.), no. 31382/96, ECHR 2000-VI). Accordingly, Article 6 of the Convention may apply under its civil head to proceedings which affect a person's reputation even if, as happened in *Kurzac*, the proceedings concern a determination of a criminal charge against another person.

93. It is important, in such situations, to verify whether there was a "dispute" ("*contestation*") over the civil right so invoked which can be said, at least on arguable grounds, to be recognised under domestic law. The Court must also be satisfied that the result of the proceedings at issue was directly decisive for the right asserted (see, *mutatis mutandis*, the *Georgiadis v. Greece* judgment of 29 May 1997, *Reports* 1997-III, p. 958-59, § 30, and the *Rolf Gustafson v. Sweden* judgment of 1 July 1997, *Reports* 1997-IV, p. 1160, § 38).

94. The Court also reiterates its finding in *Nölkenbockhoff v. Germany* (no. 10300/83, 25 August 1987, § 33) that

the principle of the presumption of innocence is intended to protect "everyone charged with a criminal offence" from having a verdict of guilty passed on him without his guilt having been proved according to law. It does not follow, however, that a decision whereby the innocence of a man "charged with a criminal offence" is put in issue after his death cannot be challenged by his widow under Article 25. She may be able to show both a legitimate material interest in her capacity as the deceased's heir and a moral interest, on behalf of herself and of the family, in having her late husband exonerated from any finding of guilt (see, *mutatis mutandis*, the *Deweert* judgment of 27 February 1980, Series A no. 35, pp. 19-20, § 37).

95. Turning to the circumstances of the present case, the Court notes that G., the applicant's late husband, died after his case was sent for a full retrial and before any of the judgments in the new proceedings were adopted. Notwithstanding his death, G. was found guilty as charged. The Court considers that the present case resembles that in *Nölkenbockhoff*, cited above, in respect of the applicant's victim status since G.'s conviction post-mortem has affected the applicant in a direct manner. In this respect, the Court notes that the only ground for the courts to have continued to examine the charges against G. was his widow's express desire to prove that her late husband had not committed any crime. In their additional observations of 10 September 2007 the Government confirmed this by stating that the ultimate goal of the proceedings against G. after his death had been to establish the truth and that, had G. been proved innocent in those

proceedings, he would have been fully rehabilitated, with important effects for any civil law claims.

96. The Court must verify whether domestic law gave the applicant any specific rights which could be considered “civil” within the meaning of Article 6 of the Convention. It notes that Moldovan law (see Article 5 (8) of the Code of Criminal Procedure (“CCP”), paragraph 84 above) prohibited the initiation or continuation of criminal proceedings against a deceased person, save when this was necessary for his or her rehabilitation. This appears to have been the case in respect of G. (see the preceding paragraph).

97. Moreover, Act no. 1545 (see paragraph 85 above) allowed the applicant, if she succeeded in proving the innocence of her deceased husband, to claim compensation and public apologies from the prosecution’s office for G.’s unlawful detention and conviction. Both these rights fall within the meaning of “civil rights” under Article 6 of the Convention.

98. It follows that the domestic law gave the applicant distinct rights in her own name when she was allowed to intervene in the proceedings following her husband’s death.

99. The Court also recalls that it is not its primary task to interpret domestic law. It notes that the domestic courts did not object to the applicant’s victim status and allowed her to intervene in the proceedings, recognising her a number of procedural rights such as the right to appeal, to submit evidence and to lodge civil claims. Such recognition of the applicant’s rights by the domestic courts creates a *prima facie* presumption that she indeed enjoyed the relevant rights, and that, since the domestic law allowed her to have the case examined by the courts, Article 6 of the Convention applied (cf., *mutatis mutandis*, *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 57, ECHR 2007-...).

100. In view of the clear legal provisions, as interpreted by the domestic courts, by virtue of which the applicant could exercise her own civil rights within the criminal proceedings against G., the Court concludes that the applicant could rely on Article 6 of the Convention under its civil head (see *Kurzac*, cited above).

101. Moreover, the Court considers that the exercise of the applicant’s rights, as well as the protection of the applicant’s former husband’s good name in line with the presumption of innocence (as in *Nölkenbockhoff*, cited above), depended solely on the outcome of the criminal proceedings against G. The finding of G.’s guilt in those proceedings precluded any civil claim since all such claims were subject to proving the unlawful detention or conviction of G. (see paragraph 85 above), an issue that became *res judicata* once G. had been convicted by a final court judgment. The Court therefore considers that any shortcomings in the proceedings capable of preventing the fair examination of the case against the applicant’s late husband and leading to an unfair conviction would necessarily result in violations of her

own civil rights, since all her claims were subject to the finding of G.'s guilt or innocence.

102. The Court further notes that the Moldovan Government have not raised any objection relating to the applicant's victim status, or lack of it.

103. In conclusion, the Court considers that for the foregoing reasons and in the exceptional circumstances of the present case, the applicant has standing to introduce the present application.

104. The Court considers that the applicant's complaint under Article 6 of the Convention raises questions of fact and law which are sufficiently serious that its determination should depend on an examination of its merits. No grounds for declaring it inadmissible have been established. The Court therefore declares this complaint 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 complaint.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

A. Arguments of the parties

105. The applicant complained that the criminal proceedings against her husband had been unfair. She claimed that over 100 various legal provisions had been breached during the criminal investigation and the trial, as plainly confirmed by the Chişinău Regional Court.

106. The Government submitted that the domestic courts had adopted reasoned judgments after examining all the evidence in the file and fully assessing the circumstances of the case. In their view, the Court could not take the place of the domestic courts by re-examining evidence. The domestic courts which examined G.'s case had been "independent and impartial" in accordance with Article 6 requirements, ensuring "equality of arms" and other procedural safeguards for G.'s representatives.

B. The Court's assessment

1. General principles

107. The Court reiterates that the effect of Article 6 § 1 is, *inter alia*, to place a "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence, without prejudice to its assessment or to whether they are relevant for its decision, given that the Court is not called upon to examine whether arguments are adequately met (see *Perez v. France* [GC], no. 47287/99, § 80, ECHR 2004-I, and *Buzescuv. Romania*, no. 61302/00, § 63, 24 May 2005). Nevertheless, although Article 6 § 1

obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, judgment of 19 April 1994, Series A no. 288, p. 20, §§ 59 and 61, and *Burg v. France* (dec.), no. 34763/02, ECHR 2003-II). The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain* and *Hiro Balani v. Spain*, judgments of 9 December 1994, Series A nos. 303-A and 303-B, p. 12, § 29, and pp. 29-30, § 27, respectively, and *Helle v. Finland*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 55).

108. For instance, in *Ruiz Torija v. Spain* (judgment of 9 December 1994, Series A no. 303-A, §§ 29 and 30) the Court found that the failure of the domestic court to deal with the applicant's contention that the court action against her had been time-barred amounted to a violation of Article 6 of the Convention. Similar failures to give sufficient reasons resulted in findings of violations of Article 6 of the Convention in *Hiro Balani* (cited above, §§ 27 and 28), *Suominen v. Finland* (no. 37801/97, §§ 34-38, 1 July 2003), *Salov v. Ukraine* (no. 65518/01, § 92, ECHR 2005-... (extracts)), *Popov v. Moldova* (no. 2), (no. 19960/04, §§ 49-54, 6 December 2005), *Melnic v. Moldova* (no. 6923/03, §§ 39-44, 14 November 2006) and other similar cases.

2. Application of these principles to the present case

109. In the present case, although G. died before the re-examination of the case against him, he was found guilty of the crime with which he had been charged. The Court has serious reservations in respect of a legal system allowing the trial and conviction of deceased persons, given the obvious inability of such persons to defend themselves. However, the very special circumstances of the case include a request by the applicant, as the deceased person's relative and legal representative, to continue the proceedings in order to prove his innocence. In view of this request and of its findings below, the Court does not consider it necessary to decide whether G.'s conviction after his death constituted in itself a violation of Article 6 of the Convention in the present case.

110. The Court notes that in her submissions the applicant relied on the findings of the Chişinău Regional Court as confirming the alleged breaches of domestic procedural law during the criminal investigation. Accordingly, it will examine whether the proceedings as a whole, including the manner in which the higher courts addressed specific findings of the lower court, were in compliance with Article 6 § 1 of the Convention.

111. The Court notes that a number of findings of the Chişinău Regional Court were not contradicted by the findings of the higher courts and that, accordingly, they must be considered as established facts (see *Bimer S.A.*

v. Moldova, no. 15084/03, §§ 57-59, 10 July 2007). These included the fact that G. and the other accused were arrested and detained on the basis of a fabricated administrative offence, during which period of detention they were questioned and made self-incriminating statements in the absence of any procedural safeguards (see paragraphs 18-22 above). There was no response to the finding that G. had unlawfully been shown the video recording of D.C.'s statement at the crime scene (see paragraph 28 above) in order to obtain consistent statements by all the accused.

112. The Court further notes that the higher courts did not deal with the finding of the lower court that G. and the other co-accused had an alibi for the presumed time of the crime (see paragraphs 41-42 above), and that a number of serious procedural violations made unreliable most of the expert reports (see paragraphs 56-57 above).

113. The higher courts also relied on the many witness statements in G.'s case. However, the Court observes that no comment was made on the finding by the lower court that some of those statements were fabricated by the police (see paragraphs 31 and 41 above).

114. The Court concludes that while accepting as "decisive evidence" (see paragraph 75 above) the self-incriminating statements made by the accused, the domestic courts chose simply to remain silent with regard to a number of serious violations of the law noted by the lower court and to certain fundamental issues, such as the fact that the accused had an alibi for the presumed time of the murder. The Court could not find any explanation for such omission in the courts' decisions and neither did the Government provide any clarification in this respect.

115. In the light of the above observations and taking into account the proceedings as a whole, the Court considers that the domestic courts failed to give sufficient reasons for convicting G. and thus did not satisfy the requirements of fairness as required by Article 6 of the Convention.

116. The Court recalls its finding that the proceedings against G. concerned directly the applicant's own rights (see paragraph 101 above). It concludes that G.'s conviction, in the absence of sufficient reasons, necessarily breached the applicant's right to a fair trial.

117. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. 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.”

119. Having been invited by the Court to make claims for just satisfaction under Article 41 of the Convention, the applicant did not submit any such claims. Accordingly, the Court makes no award under this head.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously inadmissible the complaints under Articles 2 and 18 of the Convention;
2. *Declares* by five votes to two admissible the complaint under Article 6 of the Convention;
3. *Holds* by five votes to two that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 8 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rules 74 § 2 of the Rules of Court, the following separate opinions annexed to this judgment:

- (a) joint concurring opinion of judges Garlicki and Šikuta;
- (b) dissenting opinion of judge Bratza joined by judge Pavlovschi;
- (c) dissenting opinion of judge Pavlovschi.

N.B.
T.L.E.

JOINT CONCURRING OPINION OF JUDGES GARLICKI AND ŠIKUTA

While we agree that there has been a violation of Article 6 § 1 of the Convention, we are of the opinion that the violation results from the very fact that the retrial of G. took place after his death.

We can accept that, in some situations, there may be a need for judicial examination of criminal charges even in respect of a deceased person. This may be so, in particular, in the case of so-called rehabilitation proceedings whose purpose is to correct a wrongful conviction.

Moldovan law appears to be in line with the above when it states, in Article 5 (8) of the Code of Criminal Procedure: “Criminal proceedings cannot be instituted, and those already instituted, shall be discontinued:....against a deceased person, with the exception of those cases, where the proceedings are necessary for the rehabilitation of deceased....”.

However, we consider that the continuation of the criminal proceedings in respect of G. in the present case could not be considered as true “rehabilitation” proceedings, for the following reasons.

First, rehabilitation proceedings can take place only in a situation where there was a prior conviction. In the absence of such prior conviction, the presumption of innocence applies and there is no room for any rehabilitation. In the present case, G. had not been convicted by any court before his death and therefore the presumption of innocence applied in his case.

Second, rehabilitation means restoring, repairing broken reputation. Rehabilitation processes are processes separate from those leading to a person’s conviction. Rehabilitation processes often concern situations where, under a previous totalitarian regime, a person is convicted based on non-democratic rules. Such rehabilitation proceedings lead to verdicts rehabilitating a person and discharging him or her of all accusations, restoring his or her reputation as a person without a criminal record. Proceedings in question in the instant case cannot be considered as rehabilitation proceedings. Rather, they appear to have been geared towards finishing those criminal proceedings which had been instituted against G. before his death.

Finally, any posthumous continuation of a criminal trial carries inherent risks of unfairness, since the accused person cannot exercise the right to defend himself. Resurrections do not come into the province of criminal trials. Thus, when a trial ends with the conviction of a person who – at the time of his death – enjoyed the benefit of being presumed innocent, it is *per se* incompatible with the *ensemble* of guarantees afforded by Article 6 § 1 of the Convention.

It is true that G.'s trial took place as a result of an express wish of his widow, and that a confirmation of his acquittal could have entitled her to compensation. But if the only way to obtain such entitlement was to try a dead person, it cannot legitimise such a trial and it simply shows the deficiency of the system of domestic remedies.

DISSENTING OPINION OF JUDGE BRATZA JOINED BY JUDGE PAVLOVSKI

1. I regret that I am unable to agree with the majority of the Chamber that the application is admissible and that the applicant's rights under Article 6 have been violated. In my view, the case should have been declared inadmissible, not on the grounds that the applicant could not claim to be a victim – a point which, for the reasons given below, I would prefer to leave open – but on the grounds that the complaint is essentially of a “fourth instance” nature, the applicant being unable to show that the determination of the criminal charge against her husband, G., was vitiated by unfairness or that, on the material before the Court, his conviction can be qualified as arbitrary or unreasonable.

(i) Victim status

2. At the time of his death in June 1999, G. and his two co-defendants (D.C. and G.C.) had been acquitted of the murder of D. by the Chisinau Regional Court and this acquittal had been upheld by the Court of Appeal. In January 1999, the Supreme Court had quashed the lower courts' judgments and ordered a full rehearing of the case. G.'s death would, in principle, have meant that the proceedings against him were discontinued under section 5 (8) of the Code of Criminal Procedure. However, apparently on the insistence of his widow (the applicant), G. was re-tried, together with the two C. brothers. It appears that the applicant was recognised by the Regional Court as G.'s “legal representative” in the criminal proceedings and that she was permitted to make submissions to the various courts which heard the matter, in addition to those made by the lawyer whom she had appointed.

3. Having on the retrial been acquitted at first instance by the Regional Court, G. was, on 31 January 2000, found guilty by the Court of Appeal and this finding was upheld by the Supreme Court on 30 May 2000. In its judgment, the Court of Appeal, in finding G. guilty of the offences of which he had been charged, discontinued the proceedings against him under section 5 (8) of the Code of Criminal Procedure on the grounds of his death.

4. It is the proceedings before the two appellate courts which the applicant complains were unfair and in violation of her rights under Article 6 of the Convention. The central point at issue is whether she can claim to be “the victim of a violation” of her rights within the meaning of Article 34 of the Convention, that is, whether she can claim to have been personally affected by the alleged lack of fairness of the criminal proceedings against her deceased husband.

5. Although having the status of “legal representative” of her husband in the domestic proceedings, the applicant was at no stage herself subject to a

“criminal charge” for the purposes of Article 6 and cannot claim to have been directly affected by any alleged unfairness in the criminal proceedings. Nor, since G. had died before any application was lodged with the Court, can the applicant claim to be pursuing on behalf of her husband proceedings already commenced by him. As is noted in the judgment (§ 91), the Court has in this regard drawn a distinction between cases where relatives seek to continue with an application duly lodged by an applicant who died during the proceedings before the Court (as in the case of *Dalban v. Romania* [GC], no. 28114/95, ECHR 1999-VI) and those where the application itself has been lodged by the relatives after the death of the alleged victim (as in the cases of *Biç and Others v. Turkey*, No. 55955/00 and *Fairfield and Others v. the United Kingdom* (dec.) 24790/04, 8 March 2005). In the former case, the Court has normally acceded to a request by the relatives to pursue the proceedings before the Court, in the latter, with the exception of cases involving alleged violations of Articles 2 and 3 of the Convention, it has been the consistent practice of the Court to reject the application as inadmissible *ratione personae*, even in a case such as the present where the relatives have been granted standing in the domestic forum to act on behalf of the alleged victim (see, for example, the case of *Fairfield and Others*, cited above).

6. In concluding that the applicant may claim to be a victim of Article 6 in the present case, the majority of the Chamber have relied on the civil rather than the criminal aspect of that Article. It is argued, in the first place, that the right to enjoy a good reputation is a civil right and that Article 6 may apply under its civil limb to proceedings which affect the reputation of an applicant, even if those proceedings involve a criminal charge against another person, in this case the applicant’s husband. Secondly, reliance is placed on the fact that the applicant, as G.’s widow, had a legitimate, moral and material interest in the proceedings against G., in that, had G. been found innocent, he would have been rehabilitated with important consequences for any civil law claims, in particular a claim for compensation and a public apology for G.’s unlawful detention and conviction. Two precedents are principally invoked in support of the majority’s reasoning – the Court’s decision declaring admissible the case of *Kurzac v. Poland* ((dec.), no. 31382/96, ECHR 2000-VI) and the Court’s judgment in the case of *Nölkenbockhoff v. Germany* (judgment of 25 August 1987, Series A no. 123).

7. Despite the persuasive value of these authorities, I have considerable doubt whether they afford a sufficiently strong basis on which to found the victim status of the present applicant.

The *Kurzac* case concerned the special provisions of a Polish law which expressly entitled close relatives of a deceased victim of political repression to seek a review of his criminal conviction on his behalf and under the same conditions as those laid down for the victim himself. As the Court observed,

the law “recognise[d] and protect[ed] a right to obtain, retrospectively, the acquittal of a deceased member of one’s family if his conviction was in fact not the result of a lawful finding that he was guilty of a criminal offence but a form of State persecution for activities against the totalitarian system”. It is true that the Court went on to state that, even though the applicant, as a sibling of the deceased victim, was not entitled to any financial reparation as a result of any acquittal, his civil rights were affected since an acquittal allowed him “to clear his brother’s name” and “to restore the honour and reputation of his family which was for a long time inevitably disgraced and brought into disrepute by his brother’s wrongful conviction”. However, I consider that this statement must be read in the particular context in which it was made, involving proceedings brought for the specific purpose of rehabilitating victims of political repression. The Court’s statement cannot, in my view, be applied generally to confer victim status on a widow who alleges that her deceased husband was convicted of an offence after an unfair trial, let alone in a case such as the present where, at the time of his death, G. had not been convicted of any offence.

8. The majority appear to consider the retrial proceedings in the present case to be rehabilitation proceedings (§ 96) and, in this respect, find support in the submissions of the respondent Government, where it is affirmed that the ultimate goal of the proceedings against G. after his death had been to establish the truth and that “had G. been proved innocent in those proceedings, he would have been fully rehabilitated, with important effects for any civil law claims” (§ 95). I share the doubts of Judges Garlicki and Šikuta in their Joint Concurring Opinion as to whether the proceedings against G. can, on any view, be regarded as rehabilitation proceedings, which as they correctly point out, apply only where there has been a prior conviction. There is, moreover, nothing in the judgments of the domestic courts to suggest that the proceedings against G. were viewed as rehabilitation proceedings and the fact that the Court of Appeal invoked section 5 (8) of the Code of Criminal Procedure to discontinue the proceedings against D. on the grounds that he had died, indeed suggests the contrary. I do not, therefore, find the *Kurzac* decision to be of any real assistance in the present case.

9. The same applies to the more recent authority of the Court in the case of *Brudnicka and Others v. Poland* (no. 54723/00, ECHR 2005-II) which similarly gave rise to an issue of the victim status of the applicant parties to a special form of procedure. The applicants were the heirs of members of a crew who had died in a shipwreck and the proceedings in question took place before the maritime chambers, administrative bodies whose role, *inter alia*, was to establish the cause of the accident. The applicants took part in the proceedings in which members of the crew were criticised by the maritime chambers and found to have been partly to blame for the accident. As heirs of the deceased crew members, the applicants were held by the

Court to have victim status under Article 6 to claim that the maritime chambers were not independent and impartial tribunals. Although, in reaching this conclusion, the Court again founded on the civil right of the applicants to defend their reputation and that of their deceased relatives, I do not consider that the Court's reasoning can be extended beyond the particular context to cover criminal proceedings resulting in the conviction of the applicant's relative.

10. The *Nölkenbockhoff* judgment appears at first sight to be of greater assistance to the applicant, concerned as it was with the standing of a widow to complain of criminal proceedings against her husband. In the passage quoted in paragraph 94 of the current judgment the standing of the applicant as a widow to lodge proceedings in the Court is put on two bases – “the legitimate material interest” of the widow in her capacity as the deceased heir and “a moral interest, on behalf of herself and her family, in having her late husband exonerated from any finding of guilt”. However, this passage of the Court's judgment must also be seen against the factual background of that case.

The applicant's late husband had been found guilty of several charges of breach of trust, criminal bankruptcy and fraud and was given a prison sentence. He appealed but died before a decision was taken on his appeal. His widow applied to the Regional Court for an order that the Treasury should bear the cost incurred by her husband in connection with the proceedings leading to his conviction and, in the alternative, that a decision on her application should be adjourned until such time as judgment on the appeal of one of her husband's co-defendants had been given. The Regional Court rejected her application and, in the course of its judgment, observed that “had her husband not died, he would almost certainly have been convicted or his conviction would almost certainly have been upheld”. The applicant appealed against the decision to the Court of Appeal, complaining that the Regional Court's finding before the judgment against her husband had become final violated the Basic Law and the presumption of innocence. The Court of Appeal dismissed her appeal and the Constitutional Court refused to entertain the applicant's constitutional complaint.

11. In her Strasbourg proceedings, the applicant in the *Nölkenbockhoff* case complained of a number of violations of the Convention. These included a complaint that the criminal proceedings against her husband had been unfair and unduly lengthy in violation of Article 6 § 1 and that the refusal of the reimbursement of her husband's costs and expenses had violated the principle of the presumption of innocence under Article 6 § 2 because they were based on the reasoning that her husband would have been, or would have remained, convicted. The former complaint was declared inadmissible, the Commission holding, *inter alia*, that

“... these complaints are closely linked with the applicant’s late husband personally and the applicant... herself does not have a sufficient legal interest to justify their examination on her behalf.” (DR 50, page 187).

The complaint under Article 6 § 2 was declared admissible by the Commission on the grounds that

“... the close relatives of an accused, in particular his spouse and children have an interest of their own that the principle of presumption of innocence is respected in case the accused dies before a final conviction, as any statements violating this principle not only affect the accused’s reputation but to a certain extent also that of his family.” (ibid.)

It is this latter complaint alone which the Court was addressing in upholding the applicant’s victim status in the passage quoted.

12. Despite the superficial similarity between the two cases, I am not persuaded that the Court’s reasoning in the *Nölkenbockhoff* case has any direct application to the present case. Although the judgment of the Chamber in the present case seems to assimilate the two by asserting that the applicant was seeking to protect her husband’s good name “in line with the presumption of innocence” (§ 101), Article 6 § 2 is not raised in the present case. The applicant’s complaint is not that the presumption of G.’s innocence was violated without his guilt having been proved but, on the contrary, that his guilt had been proved in a trial which was unfair, a complaint which was found to be inadmissible in the *Nölkenbockhoff* case itself. I have similar doubts as to the majority’s reliance on the applicant’s “legitimate material interest” as G.’s heir in proving the innocence of her husband, the argument being that in such an event she would have been entitled to claim compensation from the prosecution’s office for G.’s unlawful detention and conviction. Although, as noted above, the Government appear to concede that, if G. had been acquitted, this would have had “important effects for any civil law claim”, I remain sceptical whether this is so. In the *Nölkenbockhoff* case the final acquittal of the applicant’s husband would have entitled her to recover the costs and expenses incurred by her husband in defending the proceedings; in the present case, it is far from clear to me that the acquittal of G. on his retrial would have entitled him or his heirs to pecuniary or non-pecuniary damage under Act No. 1545, such award being confined to cases where the detention or conviction was “unlawful”.

13. The speculative nature of any pecuniary interest which the applicant may have had in the outcome of the retrial of her husband serves to distinguish the case also from that of *Ressegatti v. Switzerland* (no. 17671/02, judgment of 13 July 2006), in which a Chamber held that the heirs of a plaintiff, who had died after unsuccessfully claiming a share in the profits from the exploitation of a boating marina in legal proceedings, could claim to be victims of a violation of Article 6 on the grounds that the proceedings had a direct effect on their inheritance rights, given that they

were bound by the judgment and could not, in view of the rule of *res judicata*, seek to obtain a different result.

14. For these reasons, I am very doubtful whether, despite the unusual features of the procedure followed in the present case, the circumstances are such as to justify the Court in departing from its consistent case-law, rejecting applications lodged by relatives of alleged victims of a violation of Article 6 who have died. I note, however, that the Government have not only failed to raise any objection to the applicant's victim status but appear even to have encouraged the Court to accept that she enjoys such status. This being so, I would prefer in the end to leave the question open and to base my decision as to the admissibility of the complaint on substantive grounds.

(ii) Fairness of the proceedings

15. I should say at the outset that I have some sympathy with the view of Judges Garlicki and Šikuta in their Joint Concurring Opinion that the criminal trial of an individual who has died is of its very nature unfair and a breach of Article 6 of the Convention. However, I do not feel able to follow their approach in the present case, since this is not the nature of the applicant's complaint; nor could it be, since it was on the applicant's own insistence that her husband was retried.

16. In concluding that Article 6 was violated, the other members of the Chamber making up the majority rely on the inadequacy of the reasons given by the appellate courts to convict G., with the consequence that, in their view, the proceedings did not satisfy the requirements of fairness.

17. I have no quarrel with the statement of the general principles concerning the giving of reasons which is contained in paragraphs 107 and 108 of the judgment. In particular, I accept that Article 6 §1 has been interpreted as obliging courts and tribunals to give reasons for their decisions. However, as is correctly emphasised in the judgment, the Article cannot be understood as requiring a detailed answer to every argument. Equally importantly, the extent to which the duty to give reasons applies will inevitably vary according to the nature of the decision in question and the particular circumstances of the case. Moreover, while fairness requires that a tribunal conduct a proper examination of the submissions, arguments and evidence before it, it is for the tribunal to assess the extent to which they are relevant for its decision and the Court will in principle interfere only in a case where that assessment is manifestly arbitrary or unreasonable.

18. In concluding that insufficient reasons were given to convict G. four features of the decisions of the appellate courts are principally relied on: the failure of those courts to challenge the uncontradicted findings of the Regional Court that G. had been arrested on the basis of "a fabricated administrative offence" and had made self-incriminatory statements in the

absence of procedural safeguards and that he had been unlawfully shown the video-recording of D.C.'s statement at the crime scene; the court's failure to deal with the finding of the Regional Court that G. had an alibi for the presumed time of the crime and with the alleged unreliability of the expert reports; the lack of comment on the finding of the lower court that some of the witnesses' statements had been fabricated; and the failure to comment on "a number of serious violations of the law noted by the lower court".

19. Although dissatisfied with the outcome of the appeal proceedings, the applicant does not complain about unfairness in the procedures before the Court of Appeal and the Supreme Court. All the defendants were legally represented in both courts and it is not suggested that there was any breach of the principle of equality of arms or that the applicant was unable through her counsel to present such arguments and submissions as she wished.

20. It is unclear from the judgment of the Court of Appeal what weight, if any, was placed by the defendants on the various findings of the Regional Court referred to in paragraph 18 above. What is clear from the judgment is that the principal focus of the appeal in that court as well as in the Supreme Court related to the statements made by each of the applicants admitting their involvement in the murder of D., which were held by the Court of Appeal to be "the decisive evidence" in the case. In those statements, the defendants recounted in detail the events of the night of 15-16 September 1995 – the quarrel with D. in the bar in Comrat; the agreement with D. to meet again later that night; the forcible taking of D. by the defendants at the roundabout and his being driven in the police car to the forest of Feranpont; and the beating of D. and setting alight of his car in the forest.

21. The Regional Court found that the defendants' statements had not been given voluntarily but had been taken under duress and were inadmissible in evidence. The Court of Appeal and the Supreme Court rejected this finding, concluding on the evidence before them that the three suspects had on several occasions made genuine and consistent confessions which had been lawfully obtained. In reaching this conclusion, the two appellate courts placed reliance in particular on a number of factors:

(i) G. and D.C. had first made statements accepting their guilt on 19 and 20 September 1995, D.C.'s confessions having been filmed. Their confessions had been repeated in their statements made in the presence of their lawyers on 9 October 1995. G.C., who had been arrested in Russia, had likewise confessed in statements made on 1 and 7 November 1995 in the presence of a lawyer and had written one of the confessions himself.

(ii) There was no evidence of any ill-treatment of the defendants. The seven officers who had questioned G. and D.C. and who had given evidence at the trial, but whose evidence had been excluded by the Regional Court on the grounds that they were interested persons, had all denied any such treatment. Moreover G.'s personal medical file following his admission to

hospital did not disclose any evidence of ill-treatment. The applicant's allegations of ill-treatment were not confirmed by Doctor P.O. who had been recalled to give evidence before the Court of Appeal. It was not until 6 March 1996 that the defendants had sought for the first time to withdraw their statements on the grounds that they had been obtained by ill-treatment.

(iii) The statements of the defendants as to the confrontation in the bar had been confirmed by the statements of several witnesses; other witnesses had given statements to the effect that they had seen the defendants driving in the direction of the roundabout at about 3.00 a.m. that D., having returned to the police station from the bar, had again left in the car shortly after 3.00 a.m.

(iv) The crime scene investigation had been conducted in the presence of witnesses and G.'s lawyer and was filmed. D.C. and G. had been able clearly to indicate the place and manner of D.'s killing.

(v) The evidence of D.'s wife confirmed that the defendants had often threatened her husband and family because of a criminal investigation which had been opened by her husband against G.C. The Court of Appeal confirmed that D. had opened such an investigation in June 1994.

22. On the basis of the material before the Court, the unanimous conclusion of the appellate courts that G.'s confession to the crime was genuine and voluntary cannot in my view be said to be arbitrary or unreasonable. Moreover, contrary to the view of the majority of the Chamber, the reasons given by the appellate court were, I consider, sufficient to justify the conviction of G. While it is true that the Supreme Court did not specifically address each of the complaints made by the defendants' lawyers and while it might have been desirable that they should have done so, I am not persuaded that this failure gave rise to a violation of Article 6. The appellate courts having explained why they accepted the validity of the confessions made by the defendants, contrary to the view of the Regional Court, it was in my view unnecessary to address each of the other matters which had been relied on by the Regional Court and invoked by the defendants in the appeal proceedings.

DISSENTING OPINION OF JUDGE PAVLOVSKI

I regret very much that it is impossible for me to share the majority's finding that there has been a violation of Article 6 in the case before us.

I fully agree with Judge Bratza's position, expressed in his Dissenting Opinion, and readily join him.

At the same time I find it necessary to add a few words of my own concerning the fourth-instance nature of the present application.

It is generally accepted that the standard of proof applicable in criminal proceedings when finding a person guilty is "beyond a reasonable doubt". This is the standard trial judges must apply after properly conducted judicial examination of the case.

It is not open to international judges to re-assess the facts and the law in the place of national courts, because international judges do not have the possibility to fully examine charges brought against an accused, because they do not have sufficient knowledge of the member-State's language, or of its national legislation or the practical application thereof. But to examine this issue *in abstracto*, in my view, would run counter to the basic principles of justice.

In so far as the applicant's complaint may be understood to concern assessment of the evidence and the result of the proceedings before the domestic courts, it is necessary to reiterate that, according to Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

That is why it is not by chance that the European Court of Human Rights has constantly refused to act as a "fourth-instance" court.

The same issue arises before us once more in the case of *Grădinar v. Moldova*.

In substance, the applicant complained mainly about the assessment of evidence and the result of the proceedings before the domestic courts. This Court has already stated on numerous occasions that it is not its task to act as an appeal court of "fourth instance" by calling into question the outcome of domestic proceedings. The domestic courts are best placed to assess the credibility of witnesses and the relevance of evidence to the issues in the case and to interpret and apply the rules of substantive and procedural law

(see, amongst many authorities, *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, § 33).

During the domestic proceedings the applicant had the benefit of adversarial proceedings. She was legally represented throughout the proceedings and was able to present her position and call witnesses in support of her case. She failed to submit any single piece of evidence that the national judicial authorities had in any way restrained her rights or acted in any other arbitrary manner.

The national courts held hearings on the merits of the case, heard statements from all necessary witnesses and the accused, and examined and assessed all the evidence at their disposal. Moreover, the factual and legal reasons for the national courts' findings were set out at length both in the judgment of the Court of Appeal of 31 January 2000 and in that of the Supreme Court of Justice of 30 May 2000. In their judgments the national judicial authorities gave a very persuasive and detailed analysis of all the relevant circumstances of the case. In no way may their findings be considered "arbitrary" or "unreasonable".

Moreover, even the majority in their finding of a violation in the present case do not allege that Mr. G's conviction was "arbitrary or unreasonable".

Insofar as the relevant domestic decisions do not reveal any manifestly arbitrary reasoning, I consider that the applicant's complaint under Article 6 § 1 is manifestly ill-founded and should have been rejected in accordance with Article 35 §§ 3 and 4 of the Convention or, alternatively, that no violation should have been found in the instant case.