



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

FOURTH SECTION

CASE OF LEVINȚA v. MOLDOVA

(Application no. 17332/03)

JUDGMENT

STRASBOURG

16 December 2008

FINAL

16/03/2009

This judgment may be subject to editorial revision.

In the case of Levinta v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 25 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 17332/03) 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 two Moldovan nationals, Mr Vitalie Levința and Mr Pavel Levința (“the applicants”), on 12 April 2003.

2. The applicants, who had been granted legal aid, were represented by Mr T. Ungureanu, a lawyer practising in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicants alleged, in particular, that they had been ill-treated in order to force them to confess and had not been given sufficient medical assistance thereafter; that their complaints regarding ill-treatment had not been properly investigated; that they were arbitrarily convicted on the basis of their self-incriminating statements, given as a result of ill-treatment; that the rights of the defence had not been observed; and that they did not have at their disposal effective remedies in respect of their complaints concerning ill-treatment.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 17 October 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. Mr Vitalie Levința (“the first applicant”) was born in 1971 and Mr Pavel Levința (“the second applicant”) was born in 1974. They live in Cahul.

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

1. The applicants’ arrest and alleged ill-treatment

7. On 30 October 2000 the applicants, who are brothers, were arrested in Russia by the local police following a request from the Moldovan authorities. They were suspected of membership of a criminal organisation and of murdering, or attempting to murder, a number of persons in Moldova (see *Popovici v. Moldova*, nos. 289/04 and 41194/04, 27 November 2007 for more details in respect of other persons accused of membership of the same criminal group). All five of the other persons on trial with the applicants made self-incriminating statements during the pre-trial investigation, and fully accepted their guilt in committing the crimes with which they had been charged. All (with one exception, a former police officer) retracted these statements at a later stage, claiming that they had been tortured in order to extract those statements.

8. On 31 October 2000 the applicants were examined by a doctor, who found bruising around their eyes, a bruise on the knee of the first applicant, a reddish area on the chest of the second applicant and marks left by handcuffs on each of the applicants’ wrists. The applicants explained that these injuries had been caused during their arrest.

9. On 3 November 2000 they were handed over to the Moldovan police and flown to Moldova, where they were detained in the Chișinău police inspectorate from approximately 3 p.m. According to a document signed by both the Russian and Moldovan authorities, no complaints or other issues were raised by either the applicants or the Moldovan authorities.

10. According to the applicants, they were ill-treated throughout the afternoon of 3 November 2000 and the night of 3-4 November by Mr V. Ivarlac, the investigator from the Department in the Prosecutor General’s Office responsible for investigating exceptional cases, and by officers G. Stavila, V. Gusev, V. Ciobănaș and V. Railean from the Chișinău police inspectorate. The officers put gas masks on them and suspended them for hours on a metal bar with their hands tied behind their backs (a method known as “swallow” (*ласточка*), and somewhat similar to “Palestinian hanging”). While in that position, the applicants were hit with rubber sticks on their bodies and the soles of their feet and weights were

hung around their necks. From time to time the flow of air through the gas mask was stopped until they fainted.

11. At approximately 3.30 p.m. on 4 November 2000 an ambulance was called to give emergency medical aid to the first applicant. The doctors found bruises on his face and head, and diagnosed him as suffering from contusion of the soft tissues on his face, head trauma and possible post-traumatic encephalopathy (a second-degree emergency). They also noted that “because he is very dangerous, the police have not authorised [the applicant’s] admission to a hospital”.

12. The applicants asked to see a lawyer. On 4 November 2000 at approximately 3.30 p.m. the applicants were briefly allowed to meet their lawyers, in the presence of the investigator and police officers, whose presence effectively excluded the possibility of giving proper legal advice. Observing signs of ill-treatment and having spoken to their clients in the presence of the investigator, the lawyers requested a medical examination of their clients.

13. Medical examinations of both applicants were carried out on the same day at their lawyers’ request, in the presence of the investigators. The medical expert found that the first applicant had bruises to his eyes and the head, circular irritations on the wrists and three oval bruises on one hand, and injuries to the soles of both feet. In response to a specific question, the expert stated that the injuries had been caused four to six days earlier and could have been caused on 31 October 2000. After signing and sealing the report, the expert added a note, according to which the first applicant’s injuries were considered “minor body injuries”. In the case of the second applicant, the expert found bruises on the face, chest, ribs, the soles of the feet, circular irritations on the wrists and two oval bruises covered with crusts on his hand. The expert also noted that the injuries could have been caused on 31 October 2000 and were considered to be minor injuries.

14. According to the applicants, a number of the injuries found by the expert were not mentioned in the medical report drawn up in Russia on 31 October 2000, prior to the applicants’ transfer to Moldova.

2. Alleged violations of the rights of the defence

15. During their interrogation on 4 November 2000 both applicants denied involvement in any crime. Although their lawyers obtained permission from V. Maiduc, the deputy Commissioner of the Chișinău police inspectorate, to meet their clients as of 4 November 2000, the authorisation was not signed until 8 November 2000 and the authorities refused to allow the applicants to meet their lawyers before that date. Mr Maiduc was frequently unavailable, but was allegedly the only person who could authorise a meeting between the lawyers and the applicants. As a result, the lawyers could not meet their clients for four days to give them proper legal advice (see paragraph 12 above).

16. On 6 November 2000 a court ordered that the applicants be remanded in custody for 30 days. During that hearing they both denied having committed any crime. On the same day the Deputy Prosecutor General rejected the first applicant's lawyer's challenge to the investigator, finding that the latter had given the lawyer proper permission to meet his client and had allowed the medical emergency team to see the accused, and that no translator had been requested or was necessary.

17. The applicants submit that, no longer able to resist ill-treatment, they signed self-incriminating statements on 7 and 8 November 2000. Only then were they again allowed to see their lawyers on 8 November 2000.

18. According to the first applicant, during the meeting of 8 November 2000, he could not speak privately with his lawyer but was immediately interrogated in his presence and in the presence of both the investigator and an officer of the Chișinău police inspectorate. The police officer present in the room was not initially mentioned in the minutes of the interviews. The Government disputed these circumstances, stating that the confidentiality of the meetings had been observed. The minutes of the interview with the first applicant on 8 November 2000 included a statement by the lawyer, according to which a request to have a private discussion with his lawyer before the interview had been refused and an "operative agent", who was not an investigator, was present. His presence was, in the lawyer's view, intended to subject the applicant to psychological pressure.

19. On 13 November 2000 the first applicant's lawyer complained to the Prosecutor General's Office, invoking Articles 3, 5 and 6 of the Convention, stating that his client was being ill-treated in order to obtain confessions from him, and that the rights of the defence were being seriously violated by the failure to allow him to meet his client. He alleged that investigator V. Ivarlac had told him that he could meet his client only after the first interview. The lawyer added that during the interview of 8 November 2000 his client whispered to him and indicated, using signs, that he had been ill-treated again and nodded towards a police officer (Mr Lungu), who was present at the interview. He queried the participation of the police officer in the interrogation process since that was the prerogative of the investigator alone.

20. The lawyer suggested that the police officer was there in order to ill-treat his client and put psychological pressure on him. After noting the presence of the police officer in the minutes of the interview, the investigator wrote a note stating that the officer had been included in the investigating team and thus could question the applicant. The lawyer submits that at the beginning of the investigation he was not given a list of all the persons included in the investigating team, as required by Article 110 of the Code of Criminal Procedure (see paragraph 58 below).

21. The lawyer also alleged that threats were made against him personally (to the effect that a criminal case would be fabricated against him

and that he would be arrested) following his challenge to the investigator and his comments on the various procedural irregularities. Investigator Ivarlac and officer Lungu shouted at him and threatened him in the presence of his client. Having seen how they treated his lawyer, the first applicant was even more afraid and asked the lawyer to stop arguing, since he would be ill-treated again as a result.

22. The investigator stated that the first applicant had signed a confession on 7 November 2000 but refused to show this to his lawyer. His client's request to speak in private with his lawyer was rejected in an abrupt manner.

23. A similar complaint on behalf of the second applicant was addressed to the Chișinău prosecutor's office on 16 November 2000. On 30 November 2000 prosecutor V. Pitel asked the Chișinău Police Commissioner to allow the lawyers' access to the applicants. On 15 December 2000 he informed one of the lawyers that "certain of the complaints" had been found to be partially well-founded and had formed the grounds for making submissions to the Chișinău Police Commissariat, the Ministry of the Interior and the Ministry of Justice.

24. On 11 December 2000 the head of the investigations department of the Prosecutor General's Office, Mr Ș. Ștogrea, replied to the first applicant's lawyer's letter of 13 November 2000, that no violation of procedure had been established and that the first applicant had not personally made any complaints. He did not annex a copy of the decision in accordance with Article 93 of the Code of Criminal Procedure (see paragraph 58 below).

25. On 12 December 2000 the first applicant's lawyer complained to the Chișinău prosecutor's office, stating that his client had been detained since 4 November 2000 in police cells in the Chișinău police inspectorate, rather than in a remand centre of the Ministry of Justice, as required by Article 380 CCP (see paragraph 58 below). In further letters of 15 and 20 December 2000 the applicants' lawyers requested their clients' transfer to the remand centre of the Ministry of Justice in Chișinău (also known as "prison no. 3"). They referred to the lack of necessary facilities for meeting their clients in the premises of the police cells in the Chișinău police inspectorate and to the applicants' medical condition, which could not be treated in their current place of detention. They submitted that, according to the regulations, an individual's detention in the police cells of the Chișinău police inspectorate could not last for more than 10 days. On 15 March 2001 the lawyers were informed that their clients would shortly be transferred to prison no. 3.

26. On 14 November 2000 judge V. Potlog from the Chișinău Regional Court informed the Chișinău Police Commissioner that during the examination of the first applicant's appeal against the court decision of 20 April 2000 to remand him in custody, the court had found that the first applicant's right to meet with his lawyer had been violated by officers of the

Chișinău police commissariat. He asked the Commissioner to take measures to prevent similar conduct in the future.

3. Alleged further ill-treatment

27. On 20 December 2000 the second applicant asked the Prosecutor General to have his arm examined by a doctor since, he alleged, he had lost all movement in it as a result of ill-treatment by the police on 4 November 2000. He never received a reply. On 22 March 2001 his lawyer asked the Prosecutor General to reply to his client's request of 20 December 2000. He was informed, by a letter of 4 April 2001, that his client had been sent a reply on 29 December 2000 in which it was explained that any complaints were to be addressed directly to the trial court following the submission of the case to that court. In addition, a medical examination of the second applicant had been carried out. In reply, the lawyer requested confirmation from the court to which his client's complaint had been forwarded, as well as the outgoing number of the letter addressed to him, since he had not received any letter dated 29 December 2000. In addition, no medical examination of his client had been carried out following his complaint of 20 December 2000. The lawyer considered inadequate a further reply from the Prosecutor General dated 12 May 2001 and he requested detailed answers to his questions. It is not clear whether he received an answer.

28. During the examination of the case by the Court of Appeal in 2001 the applicants also complained about their ill-treatment. The court forwarded their complaint to the Prosecutor General's Office. No action appears to have been taken on the basis of that complaint.

29. In January 2003 the applicants informed the administration of prison no. 29/13 in Chișinău about their fear of reprisals by a group of detainees in that prison. The applicants asked to be transferred to prison 29/4. They were transferred to that prison on 12 January 2003, and did not inform the administration of any threat received or otherwise alert the authorities to any danger to their lives or health in that prison. On 19 April 2003 the applicants were severely beaten by other detainees from their own brigade. They claim that for dubious reasons the security personnel were absent from their posts and thus did not intervene, and that the metal gates separating their block from other blocks were left unlocked, in violation of the rules. According to several reports submitted by the Government, during their free time detainees could either remain in their cells or visit common areas within their brigade's premises. There were therefore no metal gates or other barriers between inmates from the same group of cells and there could not be "forced entry" into the applicants' cell. The applicants had declared that the injuries had been self-inflicted while practising martial arts, and had refused to make any written statement.

30. Both applicants were taken to a hospital and were then transferred to prison no. 29/15. According to the Government, the prison administration

gave the applicants the option of requesting detention in separate premises from the other detainees, in order to protect them from a possible future attack, but they refused. They were placed in an increased security cell, but were free to visit common areas. On 6 September 2003 they allegedly went to a meeting in a common area organised by another detainee. The meeting ended with a fight, as a result of which the applicants were again severely beaten by other detainees. The applicants claim that the security personnel disappeared for about 30 minutes during the event. They were again taken to hospital with serious injuries, and later transferred to another prison. According to the applicants, no serious investigation into these two assaults has taken place and none of the attackers has been identified and punished. According to the Government, three organisers of the meeting were identified and a criminal investigation was opened into the event. The applicants never complained about either of the attacks and refused to make statements to the administration against the detainees who had attacked them. The various investigations opened into the events of April and September 2003 ended on 12 May, 15 October and 10 December 2003 respectively, finding that the applicants had refused to avail themselves of additional measures of protection offered to them by the prison administration, fearing that such measures would diminish their reputation in the criminal world. The administration of the two prisons in which the attacks had taken place took measures to reinforce security, in order to minimise the risk of similar acts in the future.

31. In a letter to the Court of 28 February 2006 the first applicant complained that he had not received the specialised medical treatment which he required, on account of the absence of the necessary medical equipment. He also claimed that his transfer to prison no. 5 in Cahul on 10 March 2004 had been premature, in that he had not yet recovered from the last assault on him.

4. The findings of the Court of Appeal of 16 April 2002

32. On 16 April 2002 the Court of Appeal, acting as a first-instance court, found all seven suspects guilty. Each applicant was sentenced to twenty years' imprisonment.

33. The court found that each applicant had been involved in seven different criminal acts (murder and attempted murder), typically assisting others to commit the crimes (driving getaway cars, supplying weapons and uniforms, etc.). Each applicant was a member of the criminal organisation and was guilty of illegal possession of weapons.

34. The evidence on which the court based its judgment was, in each case, the declarations of the seven co-accused, declarations by surviving victims or their relatives, statements of witnesses and expert reports.

35. In the court's opinion, the declarations of the co-accused were consistent and the fact that they had all subsequently withdrawn their

statements, alleging that they had been obtained by ill-treatment, was merely an attempt to avoid responsibility. The court emphasised the dates on which each of the accused had made confessions in the presence of their lawyers; some of these confessions had been recorded on film. This excluded any possibility that the statements had been made as a result of ill-treatment, given also that no evidence of ill-treatment had been adduced. The court referred to a medical report of 9 April 2000 (before the applicants' arrest and apparently drawn up in respect of some of the other accused) in which no signs of ill-treatment had been found.

36. The surviving victims and their relatives, as well as witnesses, testified as to the manner in which the crimes had been committed, or described having sold cars to "unknown persons" or having seen such unknown persons carry out the crimes. None of them declared that they had seen any of the co-accused at the scene of the crimes.

37. The expert reports determined the manner in which the crimes had been committed and the types of weapons used.

38. In the attempted murder of Mr Durnopian and others a weapon was used which was subsequently found during a search conducted on 24 March 2000 in an apartment rented by the second applicant. Further weapons were found in that apartment, including automatic rifle ammunition which was identical to some of the cartridges found at the scene of the murder of Mr Rotari and Mr Gancu.

39. In addition, a mobile telephone operator submitted a list of all incoming and outgoing calls made from a telephone belonging to the first applicant (which, the trial court stated without any further detail, had also been used by the second applicant). During the preparation of the murder of Mr Grișcenco on 10 February 2000, this telephone had been frequently used to contact several of the co-accused.

40. Two witnesses confirmed that unknown persons had come to them five or six years earlier and had purchased five sets of dark uniforms. These were later used during the murder of Mr Grișcenco.

5. The applicants' appeal

41. In their appeal in cassation against the judgment of the Court of Appeal, the applicants submitted the following.

42. O.S., one of the alleged masterminds of most of the crimes attributed to the criminal organisation of which the applicants were allegedly members, declared in court that he had committed some of the crimes he was charged with, but that the applicants had not participated in any of them. He claimed that he had been forced to make declarations against the applicants as a result of ill-treatment. According to the applicants, even the declarations made by O.S. during the investigation were contradictory, since he had claimed to have seen one of the applicants in two different places at the same time. In his statement, another co-accused (S.) declared that he

was not sure whether he had seen the second applicant in the getaway car and then replied to the lawyer's direct question that he had not seen him at the crime scene. However, the trial court had merely stated that S. confirmed the second applicant's participation in the crime.

43. Despite the court's statement that there was no evidence of ill-treatment, substantial evidence confirming ill-treatment had been submitted to the court in the form of medical reports and complaints.

44. The court had paid no attention to the complaints regarding the violation of the rights of the defence, notably the lack of access to their lawyers during the period when they had been ill-treated.

45. On 17 September 2001 the prosecutor had declared that all charges against the applicants were withdrawn due to a lack of evidence of their guilt. However, on 21 September 2001 he radically changed his position and requested the court to find them guilty, although no new evidence had been added to the file. This contradictory behaviour confirmed, in the applicants' view, that the prosecution itself was not convinced of their involvement.

46. On 24 September 2001 the prosecutor had requested and obtained the suspension of the trial and the re-opening of the investigation, having shown the judge a letter from the Prosecutor General. None of the co-accused or their lawyers was shown the contents of that letter, despite their requests to that effect.

47. During the hearings in court, three of the co-accused declared that the applicants had nothing to do with the crimes and that they had made their statements as a result of ill-treatment.

48. In their address to the Supreme Court of Justice the applicants added that neither of them had been informed of his right not to make statements incriminating the other, since the law entitled them not to testify against close relatives.

49. During the reconstruction of events officers had committed serious violations of procedure, as was clear from the video recording of the event: they had asked leading questions and even given their own answers to them, and had then shown the accused where to go, where to stop, etc. The second applicant was not involved in any reconstruction of events.

50. Two of the charges against the applicants (conspiracy to commit murder and murder of Mr Grișcenco) were not brought against them until 25 December 2001, during the court hearing, and those charges had been based only on statements made by one of the co-accused on 19 December 2001. However, the author of those statements declared that he had refused to cooperate in the conspiracy and that he was unaware of any tangible actions or plan by the applicants to commit the murder.

51. In addition, although the prosecution claimed that the second applicant rented the apartment from O.I. after seeing her advertisement in newspaper M., no such advertisement had appeared in that newspaper and O.I. stated in court that she had not placed such an advertisement. She

declared that she knew the second applicant and allowed him to use her apartment in 1999. In early 2000 she agreed with the second applicant to give the keys of the apartment to O. Thereafter the applicants left for Russia. During the investigation she had to make false statements under pressure from the investigators. The applicant argued that he could not be held responsible for what happened in the apartment after he transmitted the key and left for Russia.

52. The first applicant had made five self-incriminating statements, three of which were dated 7 November 2000. The two others had not been dated, nor properly registered as evidence, yet they formed part of the evidence on which the court had based its judgment.

53. The video recording of the reconstruction of events with one of the co-accused (L.) clearly showed one of the police officers wearing sunglasses which later appeared on L. In court L. declared that he had been ill-treated in the police car in order to testify as instructed. He was then told what to say and how to proceed and was made to wear the sunglasses in order to disguise signs of ill-treatment. He testified in court that he had not known the applicants and that the police and investigators had shown him their pictures.

54. In restating the various violations of their rights and their ill-treatment, the applicants invoked the Constitution and the Convention. They stated that all their complaints had been examined superficially and that all the evidence against them had been obtained through violent and unlawful means.

6. The findings of the Supreme Court of Justice of 22 October 2002

55. The Supreme Court of Justice reviewed the findings of the Court of Appeal and found that that court had adopted a lawful judgment. In particular, it found that the lower court had not based its judgment only on the statements by the co-accused, but also on other evidence, although the confessions were the basis for the applicants' convictions.

56. The court cited the relevant parts of the declarations made by the co-accused, including the applicants, and emphasised that in each case the statements were made in the presence of lawyers and were often recorded on film, which depicted no signs of ill-treatment or undue influence. The court noted that the first applicant had made statements at the interview of 7 November 2000 and that the second applicant made statements at the interviews of 16 November and 1 December 2000.

57. The court also found that "[i]t is not true that the statements were made under the influence of unlawful methods by the police. During the hearing the court has verified these arguments and they have not been confirmed".

The Supreme Court of Justice dismissed the applicants' appeal in cassation.

II. RELEVANT DOMESTIC LAW

58. The relevant provisions of the Code of Criminal Procedure, in force at the time, read:

“Article 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.”

“Article 62

... The first questioning of an accused who has been taken into custody is to be conducted only in the presence of a defender, chosen [by the accused] or appointed *ex-officio*.”

“Article 90

The following shall serve as a ground for initiating a criminal investigation:

(1) declarations, letters from citizens;

... (6) the direct discovery by the investigating authority, the investigator, prosecutor, judge or court of the elements of a crime.

The proceedings may be initiated in cases where there is sufficient information regarding the crime committed.”

“Article 93

... In response to a declaration or a notification received, one of the following decisions shall be adopted within 3 days or, if additional verification is needed, within 15 days:

(1) to initiate a criminal investigation;

(2) to refuse the initiation of a criminal investigation;

(3) to forward the declaration or notification to the authority competent to deal with it.

The decision taken under paragraphs 3 and 4 above shall be brought to the attention of the person who made the declaration or notification”

“Article 110

In complex or voluminous cases the investigation may be carried out by several investigators. This is to be mentioned in the decision to initiate the criminal

investigation or in a decision adopted for that purpose. ... In such cases the ... accused ... is to be informed of the names of all the participating investigators and his [or her] right to challenge any of them is to be explained to him [her].”

“Article 380

The place of detention on remand of persons against whom preventive measures have been applied shall be remand centres. In certain cases such persons may be detained in prisons, in police cells....

Persons detained on remand may be detained in police cells for up to three days. If they cannot be brought to a remand centre because of the considerable distance or the lack of appropriate transport facilities, they may be detained in police cells for longer periods, not exceeding 30 days.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

59. The applicants complained under Article 3 of the Convention, stating that the police had had ill-treated them in November 2000 and had failed to properly investigate their allegations of ill-treatment; that the first applicant was not given sufficient medical assistance on 4 November 2000 and that no investigation was carried out into the second applicant’s complaint of 20 December 2000; that they were held in inhuman and degrading conditions; that the authorities had allowed the applicants’ ill-treatment by other detainees in 2003 and had failed to properly investigate their complaints concerning that ill-treatment. Article 3 provides:

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

1. Admissibility of the complaints under Article 3 of the Convention

60. The applicants complained of a failure by the prison administration to prevent the attacks by other detainees in April and September 2003 (see paragraphs 29 and 30 above). They also submitted that the authorities had failed to properly investigate their complaints about ill-treatment by other detainees.

61. The Government disagreed, referring to the special measures taken by the administration of all three prisons in which the applicants were detained in 2003 (see paragraphs 29 and 30 above). They also submitted copies of a number of reports concerning the investigations into the two attacks. The Government emphasised that on each occasion the applicants

refused to cooperate and did not ask for the investigation to proceed, explaining that they had caused the injuries to themselves during sports activities.

62. The Court considers that it has not been shown beyond reasonable doubt, nor could it be reasonably presumed, that the authorities had been aware of a risk of attack on the applicants by other detainees and had been able to prevent such attacks. It appears that the applicants informed the administration of their fears of an attack only once, in prison no. 29/13, and they expressed their wish to be transferred to prison no. 29/4. As a result, they were transferred to prison no. 29/4 and there was no reason to suppose that they risked any attack there (see paragraph 29 above). After the first attack, the authorities were alert to a possible continued threat and they placed the applicants in a separate cell in prison no. 29/15, warning them against meetings with other detainees in the common areas. The Court considers that these were reasonable steps to protect the applicants against possible danger, while preserving their right to contact with other detainees. There is no evidence in the file to support the applicants' contention that the security personnel had left open any barrier to facilitate an attack. Moreover, it appears that in each case the attackers were inmates detained together with the applicants, and that there was therefore no physical barrier to reaching the applicants in the common areas.

Therefore, it could not be said that the authorities had been able to prevent the attacks, having taken reasonable action to protect the applicants. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

63. As for the investigation into the attacks in 2003, the Court notes that the prison authorities and the prosecution initiated investigations in order to identify the perpetrators, and that some of the attackers were identified. However, in contrast to their action with regard to the alleged ill-treatment in 2000, the applicants did not lodge any complaints and did not insist on the continuation of the investigation after the refusal to initiate criminal proceedings in respect of the attacks in 2003. Moreover, unlike the "verification" in 2000 (see paragraph 77 below), the investigations carried out in 2003 resulted in specific decisions refusing to initiate criminal proceedings (see paragraph 30 above). These decisions could have been challenged in court, but the applicants and their lawyers did not do so.

It follows that this complaint must be rejected for failure to exhaust domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

64. The applicants also contended, for the first time in their observations of 5 April 2007, that they had been detained in prison conditions amounting to inhuman and degrading treatment, contrary to Article 3, during the period of November 2000 and April 2001. The Court notes that this submission was made six years after the relevant events. Therefore, this complaint was introduced outside the time-limit set by Article 35 § 1 of the Convention

and must be rejected as inadmissible pursuant to Article 35 § 4 of the Convention

65. Having regard to the submissions and to the materials in the case-file, the Court considers that the applicants' other complaints under Article 3 of the Convention (namely their alleged ill-treatment in 2000, the failure to properly investigate their allegations of such ill-treatment and the alleged failure to provide sufficient medical assistance) raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits and that no grounds for declaring them inadmissible have been established. The Court therefore declares these complaints admissible.

2. Merits

a. Alleged ill-treatment in November 2000

66. The applicants claimed that they had been ill-treated by the investigating authorities in early November 2000 in order to obtain self-incriminating statements from them. They referred to the results of the medical examinations showing that they had sustained injuries, some of which differed from those noted by the Russian doctors in their medical reports of 31 October 2000. They also referred to the authorities' refusal to investigate their additional complaints concerning ill-treatment inflicted after 8 November 2000.

67. The Government disagreed. They submitted that the applicants had sustained injuries during their arrest by the Russian authorities, as was clear from the medical reports drawn up in Russia and later confirmed by similar reports drawn up in Moldova.

68. The Court reiterates the general principles developed in its case-law concerning allegations of ill-treatment of persons while in detention (see, for instance, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 92-94, *Reports of Judgments and Decisions* 1998-VIII). In particular, where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment (see *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004). It is incumbent on the State to provide a plausible explanation of how the injuries were caused, failing which a clear issue arises under Article 3 of the Convention (*Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V, and *Pruneanu v. Moldova*, no. 6888/03, § 43, 16 January 2007).

69. The Court notes that the applicants were examined twice by doctors in order to verify the presence of injuries on their bodies: on 31 October 2000 in Russia and 4 November 2000 in Moldova. The medical report drawn up in Moldova attested to a number of injuries which had not been mentioned in the report prepared in Russia. In particular, both applicants

had injuries to the soles of their feet, in addition to several new bruises to their heads and limbs (see paragraphs 8 and 13 above). The Court notes that no mention of these additional injuries was made on the applicants' transfer to Moldova, the investigator having signed a statement that neither the applicants nor the Moldovan authorities had raised any issues (see paragraph 9 above).

70. The Moldovan authorities' decision not to subject the applicants to a medical examination immediately on their arrival can only mean, in the Court's opinion, that the findings made by the Russian medical expert regarding the injuries to the applicants were still valid on the date of their transfer to Moldova. It has to be assumed, therefore, that the applicants were in the same medical condition as that described in the Russian medical certificates dated 31 October 2001.

71. The Court further notes that on the first applicant's transfer to Moldova on 3 November 2000, no mention was made of any special medical condition requiring medical assistance. After one day in detention, however, an emergency medical intervention was required and the doctors found his condition to be sufficiently serious to recommend his in-patient treatment (see paragraph 11 above). The first applicant claimed that his condition resulted from ill-treatment. The Government have not provided any reasonable explanation for the cause of this emergency. Moreover, they did not provide a plausible explanation at least for some of the injuries sustained by both applicants while in detention in Moldova. In particular, whatever the cause of the other injuries, those on the soles of the applicants' feet (similar to those sustained in the practice known as *falaka*) could not have been caused as part of a struggle during their arrest or detention. Such injuries reveal a clear intent to cause severe pain and can only be considered as torture within the meaning of Article 3 of the Convention (see *Corsacov v. Moldova*, no. 18944/02, § 65, 4 April 2006).

72. The Court notes the Government's submission that the applicants themselves did not confirm that they had been ill-treated when questioned by a prosecutor. It also observes that the applicants were questioned while they were still detained at the Chișinău police inspectorate, where they were under the full control of the officers accused of their ill-treatment. The Court has already found that the detention of an accused in the premises of the investigating authority as opposed to detention in a remand centre provided additional opportunities for abuse (see *Stepuleac v. Moldova*, no. 8207/06, § 63, 6 November 2007).

73. Moreover, after the initial ill-treatment the applicants were not allowed to see their lawyers for several days, which must have made them feel even more vulnerable to any abuse. In this regard, the Court notes that a prosecutor and a domestic court acknowledged that the applicants' lawyers had been prevented from having access to their clients (see paragraphs 23 and 26 above). The Court finds it particularly disturbing that the applicants

were deprived of access to their lawyers during the crucial first days of their detention and were not given full opportunity to benefit from legal advice even thereafter. This failure of the authorities to grant the lawyers access to their clients was an especially serious one due to the credible allegations made by the lawyers that their clients were being ill-treated in order to obtain confessions from them. In view of the applicants' ill-treatment of 4 November 2000, evidence of which was available to the authorities, and the state of fear to which the authorities subjected the applicants by leaving them at the mercy of the same persons to whom ill-treatment can be attributed, it is particularly striking that a number of serious complaints made by lawyers were dismissed in formalistic answers by the various authorities with reference to a failure by the applicants themselves to complain.

74. In such circumstances, and given the complaints about ill-treatment made by the applicant's lawyers combined with the medical evidence of such ill-treatment, the Court considers that the absence of a complaint submitted personally by the applicants during their first days in detention does not affect its above findings concerning their ill-treatment.

75. After the applicants were subjected to torture on 3-4 November 2000, they had a reasonable ground to be afraid of possible further ill-treatment by the same officers, who retained control over the case and over the accused. Thus the failure to transfer the applicants to a safe place on 4 November 2000 must be considered as a continuation of ill-treatment to which they were subjected.

b. Effectiveness of the investigation into the ill-treatment in November 2000

76. The applicants also complained of the insufficiency of the investigation into their complaints with regard to ill-treatment in 2000. They referred to the authorities' refusal to initiate a criminal investigation into their allegations of ill-treatment, especially during the period of 5 to 8 November 2000, and the failure to give any reply to the second applicant's complaint of 20 December 2000 (see paragraph 27 above).

77. The Government submitted a letter from the Prosecutor General's office dated 9 January 2007, according to which a verification of the applicants' allegation had been carried out and had concluded that no ill-treatment had taken place. Moreover, they did not personally complain about ill-treatment. The letter did not specify the date of the verification or give any other detail. The Government did not annex the copy of any decision adopted at the end of that verification.

78. The Court refers to the general principles developed in its case-law concerning the manner of conducting investigations into serious allegations of ill-treatment (see, for instance, *Labita v. Italy* [GC], no. 26772/95, §§ 131-133, ECHR 2000-IV; *Tanrikulu v. Turkey* [GC], no. 23763/94,

§ 104, ECHR 1999-IV; *Kaya v. Turkey*, 19 February 1998, § 87, *Reports* 1998-I, and *Assenov and Others*, cited above, § 103).

79. The Court notes that the medical examination on 4 November 2000 originated in a request from the lawyers and not in that of either of the applicants. This contradicts the Government's submission that, in the absence of a personal complaint by an accused, the authorities could not act. Moreover, such a position is contrary to the Court's case-law, since a state authority which realises that treatment contrary to Article 3 may be occurring must react on its own motion (see, *mutatis mutandis*, *Aksoy v. Turkey*, 18 December 1996, § 65, *Reports* 1996-VI; and *Ostrovar v. Moldova* (dec.) no. 35207/03, 22 March 2005). This is also a requirement of the domestic law (see Article 90 of the Code of Criminal Procedure, cited in paragraph 58 above).

80. The Court further notes that, despite the assurances by the Prosecutor General's Office concerning a "verification" of the alleged ill-treatment in November 2000 (see paragraphs 24 and 77 above), the Government have not submitted a copy of such a document, nor have they given any details, such as the date of the verification or the name of the person who carried it out.

81. Moreover, ill-treatment of a detainee must be considered a serious criminal offence and the Court finds it inappropriate to deal with complaints of such a nature through a simple "verification", which is thus outside the regular criminal procedure. Indeed, the domestic law required one of three outcomes in response to an allegation of such ill-treatment: the initiation of a criminal investigation, a refusal to do so or the transmission the complaint to the competent authority for adoption of one of the above decisions (see Article 93 of the Code of Criminal Procedure, paragraph 58 above). Such a decision could be appealed in court. The Government have not submitted a copy of any decision concerning the complaints by the applicants' lawyers alleging ill-treatment (as opposed to specific decisions taken in respect of the 2003 attacks, see paragraph 30 above).

82. The Court also notes that, in response to the second applicant's complaint of 20 December 2000, the prosecution allegedly informed him of his right to address the trial court, but that the latter forwarded his complaint to the prosecution without any follow-up. This meant, in practice, that the complaint was not examined at all.

83. The Court concludes that even assuming that a "verification" into the complaints of the applicants' ill-treatment was carried out, those measures and the examination of the second applicant's complaint of 20 December 2000, do not satisfy the requirements of a thorough investigation, in compliance with Article 3 of the Convention.

84. The only documents submitted to the Court which show that the domestic authorities examined the applicants' complaint of ill-treatment are the court judgments in the criminal proceedings against them. The courts

referred to the absence from the case file of any evidence of ill-treatment, using this as a ground for dismissing the applicants' submission that the case against them was based on evidence obtained through ill-treatment. The Government relied on these findings by the courts. The Court considers, however, that the domestic courts' analysis, made approximately two years after the events complained of, and limited to examining the documents in the file, could not remedy in any manner the failure to carry out a thorough investigation immediately after the events.

c. Medical assistance provided to the applicants in 2000

85. The applicants further complained of the failure to provide them with appropriate medical treatment when necessary and when requested. In particular, the first applicant was not authorised to be admitted to hospital despite the recommendation of the medical emergency team on 4 November 2000 (see paragraph 11 above). On 20 December 2000 the second applicant asked for medical assistance for his arm, which he felt had lost its function (see paragraph 27 above), but he did not receive any assistance, nor a reply.

86. The Government submitted that the applicants were provided with all the necessary medical assistance.

87. The Court reiterates that although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Hurtado v. Switzerland*, 28 January 1994, § 79, Series A no. 280-A; and *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005).

88. It observes that on 4 November 2000 a medical emergency team examined the first applicant and recommended in-patient treatment, which was refused because of the particular danger posed by the applicant (see paragraph 11 above). Since the doctors recommended in-patient treatment, the Court concludes that whatever medical assistance was available at the Chișinău police inspectorate, the emergency team considered it insufficient for the first applicant's condition.

89. The Court is aware of the need to take into account security arrangements when providing detained persons with medical assistance. It observes, however, that security considerations cannot be understood as exempting the authorities from giving proper medical assistance to a detainee who requires it. In the present case, security concerns were given overriding precedence, without any attempt to find alternative solutions to the problem faced by the investigating authorities. Such alternatives could have included the first applicant's placement in a civilian hospital under guard or his transfer to the prison hospital in the town of Cricova, which offered an increased level of security. Instead, the authorities chose to leave him in detention, although they were aware that the level of medical

assistance available there was insufficient. They therefore subjected the first applicant to suffering exceeding the threshold for the application of Article 3 of the Convention.

90. The Court refers to its findings (see paragraphs 82-84 above) concerning the manner in which the second applicant's complaint of 20 December 2000 was dealt with. That complaint included, besides a clear reference to his ill-treatment by the police on 4 November 2000, a request to treat his arm, which he claimed had lost its function as a result. There is nothing in the case-file to show that the second applicant was examined by a doctor following this complaint, and the Government did not submit any arguments in this respect.

91. The Court concludes that both applicants were deprived of the medical assistance which they required while in detention, contrary to Article 3.

d. Conclusion

92. The Court finds that by subjecting the applicants to torture on 4 November 2000 and failing to transfer them to safety thereafter, failing to investigate properly their credible complaints of ill-treatment and to provide them with the requisite medical assistance, the authorities have breached the provisions of Article 3 of the Convention.

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

93. The applicants complained under Article 6 of the Convention because of their arbitrary conviction. The relevant part of Article 6 provides:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ...

1. Admissibility

94. Having regard to the submissions and to the materials in the case-file, the Court considers that the applicants' complaint under Article 6 § 1 of the Convention raises questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits and that no grounds for declaring them inadmissible have been established. The Court therefore declares this complaint admissible.

2. Merits

a. The parties' submissions

95. The applicants complained under Article 6 of the Convention that their conviction had been based on evidence obtained as a result of ill-

treatment and in the absence of any real evidence of their guilt. They added that they had not been allowed to see a lawyer for 24 hours following their placement in detention in Moldova, and had been *de facto* prevented from having such meetings in the period of 4-8 November 2000 and thereafter; and that they had not been allowed to meet in private with their lawyers.

96. The Government disagreed and analysed the evidence in the file concerning each accusation against the applicants, in order to prove that they had been correctly convicted. Moreover, the applicants' conviction had not been based on evidence obtained as a result of ill-treatment. Their confessions had not formed an important part of the courts' judgments, since the confessions of the other accused would have been sufficient to convict the applicants. Moreover, the applicants had been assisted by their lawyers without any restriction on the frequency or duration of their meetings. The privacy of the meetings was observed and there was no evidence to the contrary.

b. The Court's assessment

(i) General principles

97. The Court reiterates that it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140; *Teixeira de Castro v. Portugal*, 9 June 1998, § 34, Reports 1998-IV; and *Heglas v. the Czech Republic*, no. 5935/02, § 84, 1 March 2007).

98. It is not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the “unlawfulness” in question and, where the violation of another Convention right is concerned, the nature of the violation found (see, *inter alia*, *Khan*, no. 35394/97, § 34, ECHR-V; *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 76, ECHR 2001-IX; and *Allan v. the United Kingdom*, no. 48539/99, § 42, ECHR 2002-IX).

99. As to the examination of the nature of the Convention violation found, the Court reiterates that particular considerations apply in respect of the use in criminal proceedings of evidence recovered by a measure found to be in breach of Article 3. The use of such evidence, obtained as a result of a violation of one of the core rights guaranteed by the Convention, always raises serious issues as to the fairness of the proceedings (see *İçöz v. Turkey*

(dec.), no. 54919/00, 9 January 2003; *Jalloh v. Germany* [GC], no. 54810/00, §§ 99 and 104, ECHR 2006-...; *Göçmen v. Turkey*, no. 72000/01, § 73, 17 October 2006; and *Harutyunyan v. Armenia*, no. 36549/03, § 63, ECHR 2007-...).

100. In particular, the Court has found that the use as part of the evidence in the criminal proceedings of statements obtained as a result of torture rendered the proceedings as a whole unfair, irrespective of whether the admission of the evidence was decisive in securing the applicant's conviction (see *Harutyunyan*, cited above, §§ 63 and 66). Relying on evidence obtained as a result of acts of torture "serves to legitimate indirectly the sort of morally reprehensible conduct which the authors of Article 3 of the Convention sought to proscribe or, in other words, to 'afford brutality the cloak of law'" (see *Jalloh*, cited above, § 105).

(ii) Application of those principles to the present case

101. The Court refers to its finding that the applicants were ill-treated on 4 November 2000 (see paragraphs 71 and 92 above) with the purpose of extracting confessions from them and that that ill-treatment amounted to torture. In view of its findings below, the Court considers that it is not necessary to examine the applicants' submission that they were subjected to further ill-treatment in the period between 4 and 8 November 2000, submissions which they could not substantiate due to the absence of a proper investigation into these allegations (see paragraph 92 above).

102. The Court has found that, following their ill-treatment on 4 November 2000 and after proof thereof was obtained on 5 November 2000, the authorities knowingly left the applicants under the full control of those who had ill-treated them. It has found that that in itself amounted to a continuation of ill-treatment in breach of Article 3 (see paragraphs 71-75 above).

103. The applicants made a number of self-incriminating statements on 7 and 8 November 2000, in which they fully recognised their guilt in having committed the crimes with which they were charged. The Court refers to its finding (see paragraph 73 above) that they did not have any contact with their lawyers in the period of 4-8 November 2000 and that they made their initial statements without benefiting from legal advice.

104. The Court considers that the statements obtained from the applicants in such circumstances, following their torture and while being deprived of any support from their lawyers (aside from their intervention on 4 November 2000) and faced with a total lack of reaction by the authorities to their lawyers' complaints (see paragraph 83 above), fall within the category of statements which should never be admissible in criminal proceedings since use of such evidence would make such proceedings unfair as a whole, regardless of whether the courts also relied on other evidence (see paragraph 100 above).

105. Since the applicants in the present case have been subjected to torture, the Court considers it unnecessary to determine the extent to which the domestic courts relied on evidence obtained as a result and whether such evidence had been determinant to the applicants' conviction. The mere fact that the domestic courts actually relied on evidence obtained as a result of torture rendered the entire trial unfair.

106. In such circumstances, there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 6 § 3 and 13 OF THE CONVENTION

107. The applicants finally complained under Articles 6 § 3 and 13 of the Convention of their inability to meet their lawyers and to do so in confidence and of the lack of any response or follow-up measures to their complaints of ill-treatment.

Article 6 § 3 reads as follows:

“3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing ...”

Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

108. The Court considers that in view of its findings in respect of the complaints under Articles 3 and 6 § 1 of the Convention no separate issue arises under Articles 6 § 3 and 13.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. 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

110. Each of the applicants claimed 150,000 euros (EUR) in compensation for the non-pecuniary damage sustained as a result of the ill-treatment in November 2000 and in April and September 2003.

111. The Government disagreed with the amount claimed by the applicants and argued that no violation of any provision of the Convention had taken place. In any event, the amounts claimed were excessive and no evidence of suffering or other loss had been adduced. They asked the Court to dismiss the applicant's claims for just satisfaction.

112. The Court considers that the applicants must have been caused stress and anxiety as a result of the violations of their rights, notably their ill-treatment and failure to properly investigate it, as well as the subsequent use of evidence obtained through ill-treatment at their trial. However, the amounts claimed are excessive. Based on the materials in its possession, the Court awards each applicant EUR 8,000 in respect of non-pecuniary damage, together with any value-added tax that may be chargeable (see *Popovici*, cited above, § 90).

113. The Court also considers that where, as in the instant case, an individual has been convicted following proceedings that have entailed breaches of the requirements of Article 6 of the Convention, a retrial or the reopening of the case, if requested, represents in principle an appropriate way of redressing the violation (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV, and *Popovici*, cited above, § 87).

B. Costs and expenses

114. The applicants claimed EUR 1,600 for representation costs before the Court and 9,117 Moldovan lei (EUR 575) for legal costs in the domestic proceedings. They relied on a contract with their representative in that respect, dated 7 March 2007.

115. The Government contested the amount claimed for representation, calling it excessive and unreal in the light of the economic situation of the country and of the average monthly salary. They doubted that the contract between the wife of one of the applicants and a lawyer for representation before the Court was real and referred to the lawyer's failure to specify the services provided to his clients and the hourly fee.

116. The Court recalls that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-III).

117. In the present case, the Court has no reason to question the validity of the contract submitted by the applicants, since the Government did not

substantiate in any manner the reason for their doubts in this respect. The Court also considers that the absence of a itemised list of hours spent on the case by the lawyer, while affecting the Government's ability to comment on the level of expenses and the Court's ability to decide on them, is not a reason for dismissing the claim for compensation altogether. Given the late stage of the proceedings at which the applicants' lawyer took up the case (after communication of the application to the Government), but also the complexity of the case, the number of complaints declared admissible by the Court, and the translation expenses as evidenced by the relevant documents, it awards the applicants EUR 2,000 for costs and expenses, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 of the Convention concerning the alleged failure to prevent the attacks in 2003 and the investigation into those attacks, as well as the degrading conditions of detention inadmissible, 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 applicants' ill-treatment on 4 November 2000 and the failure to remove them to safety thereafter, the insufficient medical assistance to the applicants and the failure to properly investigate their complaints regarding ill-treatment in 2000;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that no separate issue arises under Articles 6 § 3 and 13 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros) each in respect of non-pecuniary damage and EUR 1,150 (one thousand one hundred and fifty euros) jointly in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

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

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

Done in English, and notified in writing on 16 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President