



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF LEVA v. MOLDOVA

(Application no. 12444/05)

JUDGMENT

STRASBOURG

15 December 2009

FINAL

15/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Leva 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 24 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 12444/05) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Moldovan nationals, Mr Simion Leva and Mr Octavian Leva (“the applicants”), on 23 March 2005.

2. The applicants were represented by Mr A. Chiriac, a lawyer based in Strasbourg. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicants alleged, in particular, that they had been arrested in the absence of a reasonable suspicion of having committed a crime, that they had not been informed promptly of the reasons for their arrest and that they had not been allowed time and facilities to prepare their defence.

4. On 11 January 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1953 and 1981 respectively and live in Saint Petersburg and Bucharest respectively.

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

7. On 10 March 1995 S.L. (the first applicant) was appointed director of S.A. Aroma, a State company producing alcohol. Between 13 April 2002 and 21 May 2003 he worked as the director of the agroindustrial department Moldova-Vin. In June 2003 his son O.L. (the second applicant) graduated from the Moldovan Academy of Economic Sciences and on 1 November 2003 he was hired as an economist in Vinis N.L.G. He also owns a 16.8% stake in that company.

8. The applicants are accused of having organised, between 1 June 2000 and 1 November 2003, the purchase by S.A. Aroma of bottles using the services of Vinis N.L.G. and Dimplox S.R.L., instead of buying them directly from the producer, and thus damaging the State company's interests. The profits made were then channelled to Aroma-Floris S, a private company registered in Latvia in which S.L. owned a 22% stake. His associate A.F. owned a 23% stake and was also arrested and accused of co-authorship in the crime.

9. According to the applicants, not contradicted by the Government, Vinis N.L.G. is the owner of the well-known registered bottles Barza Neagră and Djin, which are used by various companies, including S.A. Aroma, for brandy. The bottles are produced by the Chişinău glass factory on the basis of contracts with Vinis N.L.G. The glass factory could not lawfully sell such bottles to anyone without the consent of the owner of the registered bottles, Vinis N.L.G.

1. S.L.'s arrest

10. In the morning of 5 November 2004 at approximately 10 a.m. S.L. was leaving for work when he was approached by two masked men who grabbed him by the hands. A third man introduced himself as an officer of the Centre for Fighting Organised Crime and Corruption ("the CFECC") and handed S.L. a summons to appear at the CFECC. A fourth man filmed the event. Sequences of the film were later shown on the national television channel. According to the Government, the applicant was arrested at 12.20 a.m.

11. S.L. was forced into a car and driven to the CFECC, where he was allegedly informed that he needed a lawyer and that his arrest had been ordered by the highest leadership of Moldova. Since he did not have his

diary, S.L. could not call his lawyer. Despite his insistence on being assisted by the lawyer of his choice, his request was rejected and he was offered the services of a lawyer appointed by the investigator.

12. According to S.L., he could not freely discuss his case with that lawyer, since a masked man and the investigator were present at their discussion, which took place in the investigator's office.

13. S.L. was then informed that he was charged with large-scale fraud. He was formally recognised as a suspect on the same day and placed in the CFECC remand centre. Investigation no. 2004036575 was the only investigation referred to in the record of S.L.'s arrest.

All his subsequent meetings at the CFECC with the lawyer chosen by him were held in the lawyer-client room, where they were separated by a glass wall and allegedly had to shout to hear each other. In the lawyer-client meeting room of the CFECC detention centre the space for detainees is separated from the rest of the room by a door and a window. The window is made of two plates of glass. Both plates have small holes pierced with a drill; however the holes do not coincide, so that nothing can be passed through the window. Moreover, there is a dense green net made either of thin wire or plastic between the glass plates, covering the pierced area of the window. There is no space for documents to be passed between the lawyer and his client. S.L. and his lawyer allegedly could not work with documents properly and felt that there was a risk of being overheard by the CFECC officers.

2. O.L.'s arrest

14. On 5 November 2004 O.L.'s car was stopped by masked men at about the same time as his father was being arrested. O.L. was forced into a car and driven to the CFECC. His request to allow him to come to the CFECC in accordance with the summons which had just been handed to him (and which did not indicate the time he was expected at the CFECC) was ignored. The event was filmed. According to the Government, the applicant was arrested at 4.20 p.m.

15. At the CFECC he was informed that he needed a lawyer. He called a colleague and asked him to call his lawyer. When the lawyer arrived, they were unable to confer in private and had to discuss matters in the investigator's office, in the presence of the investigator and a masked man.

16. After he had made statements to the investigator O.L. was formally recognised as a suspect and placed in the CFECC remand centre.

17. All his subsequent meetings with his lawyer at the CFECC were held in the meeting room, where they were separated by the glass partition and could not work with documents properly and where there was a risk of being overheard by the CFECC officers.

18. The minutes of each of the applicants' arrest reproduced, *inter alia*, the text of Article 166 of the Code of Criminal Procedure (see paragraph 34

below) with place reserved for notes in respect of each potential ground for arrest. The only such ground which was filled in was that

“eyewitnesses identified [each applicant] directly as having committed the crime punished under Article 195 § 2 of the Criminal Code”.

3. Proceedings regarding the applicants' detention

19. Both applicants challenged the record of their arrest in court as unlawful. They submitted that they had not been identified by any witness as having committed a crime. The prosecution asked the court to remand the applicants in custody. It relied on the materials gathered within the framework of criminal investigation no. 2004036575 in respect of both applicants, according to which they were suspected of large-scale fraud at a State-owned company which S.L. had administered until 2003.

20. On 8 November 2004 the investigating judge of the Buiucani District Court adopted two decisions, rejecting the prosecutor's request for the applicants to be remanded in custody. The court found that, even though the applicants were suspected of having committed a serious crime and the proceedings had been initiated in accordance with the law, no evidence had been submitted in either of the two case files as to the alleged danger of the applicants' absconding or committing further crimes. No eyewitness statement was submitted to the court identifying the applicants as the authors of a crime. In addition, they had permanent residence in Chişinău and families, and S.L. was seriously ill and needed permanent medical assistance.

21. The court also found that the prosecution had submitted incomplete materials gathered within the framework of criminal investigation no. 2003035083 and that the latter had not been joined to investigation no. 2004036575, which was the basis for the prosecutor's request.

22. The court did not order any restriction on the applicants' freedom of movement, and they were released immediately. S.L. underwent a surgical operation on 9 November 2004 and left the hospital on the same day.

23. On 8 November 2004 the prosecution appealed, invoking, *inter alia*, the failure of the court to take into account the materials gathered within the framework of criminal investigation no. 2003035115.

24. On 10 November 2004 the Chişinău Court of Appeal accepted the prosecution's appeal and quashed the lower court's decision in respect of S.L., remanding him in custody for ten days. This decision was final. On 12 November 2004 the same court adopted a similar decision in respect of O.L.

25. The court gave similar reasons for remanding each of the applicants in custody, namely:

“[each applicant] is accused of committing a very serious offence and there is a risk of influencing witnesses and of absconding”.

26. The court added that the investigating judge should have refrained from examining the case of S.L., whom he had represented in a previous criminal investigation. That decision was final.

4. Proceedings concerning the applicants' extradition to Moldova

27. On 9 November 2004 the applicants and A.F. left the country. S.L. left for Russia, where he requested and obtained asylum and was granted Russian citizenship on 15 February 2006. O.L. left for Romania and A.F. left for Latvia. On 12 November 2004 the applicants were officially indicted.

28. On 13 September 2005 the Moldovan authorities asked the relevant Romanian authorities to extradite O.L. Having requested additional explanations and documents from the Moldovan authorities, on 15 November 2005 the Bucharest Court of Appeal rejected that request. The court found that the documents submitted by the Moldovan Prosecutor General's Office had not revealed a well-founded accusation that O.L. had committed a crime. The materials showed that other persons, including O.L.'s father, had been accused of having committed fraud. The court also found from the documents at its disposal that during the period under investigation and until June 2003 O.L. had been a student and had not held a management position in any of the companies mentioned in the criminal file. As confirmed by the Moldovan authorities, O.L. did not have the right to sign any documents in the name of Vinis N.L.G., which directly contradicted the assertion made by the Moldovan prosecutors that he had been the director of that company in 2002. No evidence was submitted to the court that O.L. had assisted in any manner in the alleged perpetration of the crime.

29. On 9 December 2005 the Romanian Supreme Court of Justice upheld the decision of the lower court. The court stressed that the materials submitted mentioned O.L. as an accomplice, without giving details, but essentially concerned his father.

30. On an unknown date the Moldovan authorities asked the relevant Russian authorities to extradite S.L. On 21 March 2006 the Russian authorities replied that they could not extradite S.L. as he was a Russian citizen.

31. According to the respondent Government, on 28 November 2006 the criminal investigation against the applicants was suspended since their whereabouts could not be established and since the investigation could not be finished in the applicants' absence.

32. In a letter dated 21 March 2007, the CFECC informed the Government Agent that the applicants had been informed of the charges against them as part of investigation no. 2004036575. Since the two other investigations had been initiated not against the applicants personally but against "persons with decision-making power" at S.A. Aroma, it was not

necessary to inform the applicants of those investigations. In a letter addressed to the Government Agent in April 2007 the Prosecutor General's Office stated that the applicants had been informed of the subject-matter of investigation no. 2004036575. They were not informed of the two other criminal investigations, given that only the person or authority which had asked for the initiation of the investigations was to be informed under the law.

II. RELEVANT DOMESTIC LAW

33. The relevant domestic law has been set out in *Sarban v. Moldova* (no. 3456/05, §§ 51-56, 4 October 2005), and *Boicenco v. Moldova* (no. 41088/05, §§ 64-67, 11 July 2006).

34. In addition, Article 166 of the Code of Criminal Procedure reads as follows:

“Article 166. Grounds for arresting a person suspected of having committed a crime

(1) The Investigating authority has the right to arrest a person suspected of having committed a crime which is punished by law with more than one year's imprisonment only in the following cases:

- 1) if he was caught in the act;
- 2) if an eyewitness, including the victim, point directly at him as having committed the crime;
- 3) if clear signs of a crime are discovered on his body or clothes, or in his house or vehicle.

(2) In other situations where there are reasons to believe that the person committed a crime he can only be arrested if he tried to abscond or has no permanent residence or if his identity could not be established. ...”

“Article 176. Grounds for taking preventive measures.

1. Preventive measures may be taken by the investigating authority or the court only if there are reasonable grounds to believe that the suspect or accused could abscond from the investigating authority or the court, prevent the verification of truth in the criminal proceedings or reoffend; they can also be taken by a court in order to ensure enforcement of a sentence.

...”

THE LAW

35. The applicants complained under Article 5 § 1 of the Convention that they had been unlawfully deprived of liberty.

The relevant part of Article 5 reads as follows:

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

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

36. They also complained under Article 5 § 2 of the Convention that they had not been informed promptly of the reasons for their arrest.

Article 5 § 2 reads as follows:

“2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.”

37. The applicants also complained under Article 6 § 1 of the Convention that the courts had not examined the substance of the case before remanding them in custody since they had not discovered the existence of two new investigations against them.

The relevant part of Article 6 reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ...”

38. They further complained under Article 6 § 3 of the Convention that there were no proper conditions for confidential meetings with their lawyers at the CFECC remand centre. S.L. complained under the same Article that he had not been allowed to be represented by a lawyer of his choice on 5 November 2004. The relevant part of Article 6 reads as follows:

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

... (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ...”

39. The applicants finally complained under Article 13 of the Convention that there were no remedies against the unlawful decisions.

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.”

I. ADMISSIBILITY

40. The applicants complained under Article 6 § 1 that the courts had not examined their case in detail before deciding to order their detention pending trial. The Court considers that Article 6 was inapplicable to the hearing in question, since it concerned exclusively the applicants' detention pending trial and not the substance of the accusations against them. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4.

41. The Court notes that in their initial application the applicants complained of a violation of their rights guaranteed under Article 6 § 3 of the Convention. However, the Court considered that this complaint, which relates to the alleged inability to have confidential meetings with the applicants' lawyer to discuss pre-trial detention issues, was more appropriately examined under Article 5 § 4 of the Convention. The parties were, accordingly, asked to submit their comments in the light of Article 5 § 4, which reads:

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

42. The Court considers that the applicants' complaints under Article 5 §§ 1, 2 and 4 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. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

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

A. Arguments of the parties

1. *The applicants' submissions*

43. The applicants complained that they had been arrested unlawfully, contrary to domestic law. In particular, the only reason for their arrest on 5 November 2004 mentioned by the arresting officer in the record of the hearing was that “eyewitnesses identified [each applicant] directly as having committed the crime punished under Article 195 § 2 of the Criminal Code”. However, as established by the investigating judge (see paragraph 20

above), the materials submitted to the court did not include any witness statement accusing either applicant of having committed a crime.

44. Moreover, the applicants were arrested in the absence of a reasonable suspicion of having committed a crime. The case amounted to persecution as a revenge for insisting on the enforcement of a final judgment of over 885,000 United States dollars against S.A. Aroma and in favour of Aroma Floris, partly owned by S.L. and A.F. A complaint in respect of that case had been lodged with the Strasbourg Court. The criminal investigation was reopened shortly after a newspaper article was published in the *Timpul* newspaper on 8 October 2004, accusing the authorities of knowingly failing to enforce the judgment because the debtor, SA Aroma, was allegedly part of the business interests of the son of the country's President. That article also informed the public of application no. 25058/04 lodged with the Court. In September 2008, after communication of the case to the Moldovan Government, that company was paid the entire amount of outstanding debt and settled the case with the Government (see *Aroma Floris v. Moldova* (dec.), no. 25058/04, 13 November 2008).

45. Finally, the applicants submitted that each of them had been detained for over seventy-two hours prior to their release on 8 November 2004, contrary to the law.

2. *The Government's submissions*

46. The Government submitted that at the time of the applicants' arrest the investigating authorities had a reasonable suspicion that they had committed a crime, as amply proved by the materials in three criminal investigations, two of which were joined in February 2005.

47. As for the applicants' argument that no eyewitness statement was to be found in the case file opened within the framework of investigation no. 2004036575 to support the investigator's decision to arrest them, the Government submitted that such witness statements were to be found in the case file opened within the framework of investigations nos. 2003035083 and 2003035115. Given that they were so many and so voluminous, it was impossible to note all of them in the small part of the page reserved for the reasons for arrest in the minutes of the applicants' arrest. Moreover, this being an economic crime, documentary evidence was equally important.

48. Contrary to the applicants' statements, the Russian and Romanian authorities had not found them innocent, but had only refused extradition for lack of sufficient information. Moreover, S.L. had absconded to Russia on purpose, knowing that as a citizen of that country he could not be extradited.

49. According to the Government, the applicants were arrested on 5 November 2004 at 12.20 a.m. and 4.20 p.m. respectively and brought

before the investigating judge within the seventy-two-hour time-limit established by domestic law.

B. The Court's assessment

50. The Court reiterates that “the ‘reasonableness’ of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1 (c) of the Convention. Having a ‘reasonable suspicion’ presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as ‘reasonable’ will however depend upon all the circumstances”. While special circumstances may affect the extent to which the authorities can disclose information, even “the exigencies of dealing with terrorist crime cannot justify stretching the notion of ‘reasonableness’ to the point where the essence of the safeguard secured by Article 5 § 1 is impaired” (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 32, Series A no. 182, and *Stepuleac v. Moldova*, no. 8207/06, § 68, 6 November 2007).

51. The Court also reiterates that where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention, a standard which requires that the law at issue be sufficiently precise to allow the person – with appropriate advice if need be – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see the *Steel and Others v. the United Kingdom*, 23 September 1998, § 54 *Reports of Judgments and Decisions 1998 VII*, and *Holomiov v. Moldova*, no. 30649/05, § 126, 7 November 2006).

52. The Court notes that under Article 166 of the Code of Criminal Procedure (“the CCP”) a person suspected of a crime could be arrested only if certain requirements were met, in particular when there are grounds for arrest. One of the grounds for arrest is “if an eyewitness, including the victim, points directly at him as having committed the crime” (see paragraph 34 above). The arresting officer relied only on that ground in the minutes of the applicants' arrest (see paragraph 18 above). However, as later established by the investigating judge, no such witness statements had been included in the case file at the hearing of 8 November 2004 (see paragraph 20 above).

53. The Court notes the Government's assertion that eyewitness statements could be found in the two other sets of criminal investigation and that they were too numerous to mention in the minutes of arrest. It agrees

that it may be impossible to include in the limited space available in the minutes of arrest full details about the eyewitnesses or their statements. However, nothing prevented the investigator from submitting the relevant statements to the investigating judge at the hearing of 8 November 2004. Indeed, having examined the part of the materials of investigation no. 2003035083 submitted by the investigator in addition to the main investigation under examination (no. 2004036575), the court did not find any witness statement in that case file either (see paragraphs 20 and 21 above). Finally, the higher court which annulled the investigating judge's decision of 8 November 2004 did not mention any eyewitness statement and did not contradict the factual findings on that issue.

It follows that, contrary to the statement made by the investigator, at the time of the applicants' arrest the case file submitted to the investigating judge contained no eyewitness statement accusing the applicants of having committed a crime.

54. The Government also argued that, in any event, the type of crime of which the applicants were suspected required documentary evidence, in addition to eyewitness statements, and that such evidence had been submitted to the investigation judge. For the purposes of verifying compliance with domestic law, the Court does not need to determine the existence and extent of such additional evidence. It notes that, while additional evidence may have existed and could have been a lawful ground for taking preventive measures (see, for instance, Article 176 of the CCP, cited in paragraph 34 above, which apparently refers to the existence of a "reasonable suspicion" that the person committed a crime), the investigator relied exclusively on the presence of eyewitness statements. The Government suggest that Article 166 § 1 (2) of the CCP (see paragraph 34 above) should be interpreted extensively and should include documentary and other evidence, despite the rather clear formulation of that legal provision. In the Court's opinion, that would seriously undermine the foreseeable character of that law, especially since it establishes precise grounds for depriving persons of their liberty (see paragraph 51 above).

55. It follows that the applicants' arrest on 5 November 2004 on the ground that eyewitnesses had identified them as having committed a crime was contrary to domestic law. There has, accordingly, been a violation of Article 5 § 1 of the Convention.

56. In the light of this finding, the Court considers that it is not necessary to examine separately the complaint under Article 5 § 1 of the Convention concerning the observance of the seventy-two-hour limit on the applicants' arrest period, since the entire period of their arrest was contrary to that provision.

III. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

57. The applicants complained that they had not been promptly informed of all the charges against them. In particular, they were initially informed of investigation no. 2004036575 and only later found out about the two other investigations concerning them (nos. 2003035083 and 2003035115).

58. The Government submitted that the applicants were informed of the main facts and charges in respect of all three investigations from the very beginning.

59. The Court notes that the CFECC, which investigated the alleged crimes, and the Prosecutor General's Office both replied to the Government Agent that the applicants had not been informed of the two investigations (see paragraph 32 above). It appears from the facts of the case that the applicants found out about the other two sets of investigations on 8 November 2004 (see paragraphs 21 and 23 above) and the prosecutor mentioned the other in his appeal on points of law of the same date.

60. The Court also notes that the CFECC officers decided that separate investigations were required, thus confirming that in their own opinion the subject matter and/or the evidence gathered were sufficiently distinct to warrant separate examination. This, in turn, shows that the applicants also needed to know about the two other sets of proceedings concerning them.

61. The Government argued that there was no need to inform the applicants of the two additional investigations since the latter had been opened to investigate a suspected crime and it was found only later that they included materials proving the applicants' guilt. The Court notes, however that already on 8 November 2004 the prosecutor considered it necessary to submit to the investigating judge materials from one of the two other investigations, and on the same day referred to the materials of the other investigation in his appeal in cassation. It follows that those materials were sufficiently related to the applicants and, since they could have served as a basis for their detention, the applicants should have been given a minimum of information concerning those two additional investigations.

62. The Court lastly notes that the applicants found out about the new charges against them indirectly, from various decisions and appeals, and after three days of detention. They were informed officially of the additional charges on an even later, unknown date.

63. In view of the delay with which the applicants were informed of two additional investigations concerning them and of the fact that the investigators and prosecutors expressly relied on those additional materials in requesting the applicants' detention pending trial, the Court concludes that the authorities did not comply with their obligations under Article 5 § 2 of the Convention. There has accordingly been a violation of that provision.

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

64. The applicants complained that they had not been allowed to meet in private with their lawyers, since they had to have their discussions directly in the investigator's office in his presence and that of a masked guard. O.L. also met with his lawyer in a room where they were separated by a glass wall and they had to shout to hear each other. There was, therefore, no confidentiality of lawyer-client communication. The applicants lodged their initial complaint under Article 6 § 3 of the Convention, but in their subsequent observations they referred to it under Article 5 § 4 of the Convention.

65. S.L. also complained of the refusal to allow him to contact the lawyer of his own choice and his replacement by a State-appointed lawyer whom he could not trust.

66. The Government stated that each applicant met with his lawyer in the investigator's office, and that for that period everyone else had left that office in order to ensure confidentiality of the meeting. Moreover, the applicants did not complain of lack of confidentiality, which proved that it had not been affected. S.L. had had one meeting in the room separated by a glass wall, and O.L. had met his lawyer only in the investigator's office.

67. The Government submitted that at the CFECC S.L.'s mobile phone had been seized for security reasons. He was therefore offered another mobile phone to call his lawyer, but could not remember the name and telephone number. Therefore, in order to ensure observance of his rights a State-appointed lawyer was invited. Moreover, no complaint was made to the investigating judge concerning the refusal to allow the lawyer of S.L.'s choice to represent him.

68. In so far as S.L.'s complaint under Article 5 § 4 concerning the glass partition in the CFECC detention centre is concerned, the Court reiterates that it has already found violations in respect of similar complaints in such cases as *Castravet v. Moldova* no. 23393/05, § 61, 13 March 2007; *Istratii and Others v. Moldova* nos. 8721/05, 8705/05 and 8742/05, § 101, 27 March 2007; *Modarca v. Moldova* no. 14437/05, § 99, 10 May 2007; and *Musuc v. Moldova* no. 42440/06, § 57, 6 November 2007. In such circumstances and in view of the similarity of the complaint in the present case with those in the above cases, the Court does not consider it possible to depart from its reasoning and its findings in those cases. Accordingly, there has been a violation of Article 5 § 4 of the Convention in this respect in the case of S.L.

69. The Court notes, however, that O.L. did not contradict the Government's assertion that he had not had any meetings with his lawyer in the room with the glass partition. Accordingly, the Court finds no violation of Article 5 § 4 in respect of this complaint in the case of O.L.

70. The Court also notes that the parties disagree as to whether the investigator and the guard left the office to allow confidential discussions between each of the applicants and their lawyers. Since it has no evidence to verify the applicants' allegation in this respect, and given the absence of a formal complaint to the domestic authorities, it finds that it has not been established that an interference with the confidentiality of the meetings took place. There has, accordingly, been no violation of Article 5 § 4 in this respect.

71. Finally, as concerns S.L.'s complaint that he was initially not allowed to be represented by a lawyer of his own choice, the Court notes that he was in fact assisted by a State-appointed lawyer in view of his inability to recall his lawyer's phone number. Moreover, he did not notify the investigator at the relevant time of any reason not to trust the State-appointed lawyer, nor did he ask for an opportunity to have someone else find his lawyer, as his son had done (see paragraph 15 above). More importantly, S.L. did not submit that his statements made in the presence of that lawyer had been obtained under some form of duress or that they had negatively affected the course of the proceedings against him (see, *mutatis mutandis* and *a contrario*, *Salduz v. Turkey* [GC], no. 36391/02, §§ 50-62, 27 November 2008). In such circumstances, the Court finds that there has been no violation of S.L.'s right to be represented by a lawyer under this head.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

72. The applicants finally complained that they had not had an effective remedy in respect of their complaints under Article 5 § 1 of the Convention. They referred to two complaints filed by A.F. with the prosecution office which remained without an appropriate answer.

73. The Government disagreed and noted that A.F. was not one of the applicants, who could thus not rely on anything but their own complaints.

74. The Court notes that the applicants had the right to challenge in court their detention and that they did so, having even regained their freedom after the decision of the first-instance court. While the higher court reversed that decision and remanded them in custody pending trial, this does not render the remedies available to them ineffective just because the decision was not in their favour.

75. The Court therefore finds that there has been no violation of Article 13 in the present case.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Non-pecuniary damage

77. The applicants claimed 15,000 euros (EUR) each in compensation for the non-pecuniary damage caused to them and to their professional reputation by their unlawful detention.

78. The Government considered that the applicants' claims had been unsubstantiated and exaggerated in comparison to other similar cases.

79. Having regard to the violations found above, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards EUR 4,000 to each of the applicants.

B. Costs and expenses

80. The applicants made no claim for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* inadmissible the complaint under Article 6 § 1 of the Convention and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of both applicants;
3. *Holds* that there has been a violation of Article 5 § 2 of the Convention in respect of both applicants;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of the first applicant's complaint concerning the glass partition at the CFECC remand centre, and no violation of the same provision concerning his alleged lack of legal representation during the first police interviews ;
5. *Holds* that there has been no violation of Article 5 § 4 of the Convention in respect of the second applicant;
6. *Holds* that there has been no violation of Article 13 of the Convention in respect of either applicant;
7. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) to each of the applicants in respect of non-pecuniary damage, 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;
8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President