



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF GAVRILOVICI v. MOLDOVA

(Application no. 25464/05)

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 Gavrilovici 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,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 15 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 25464/05) 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 a Moldovan national, Mr Alexandru Gavrilovici (“the applicant”), on 28 June 2005.

2. The applicant was represented by Mr V Gribincea from “Lawyers for Human Rights”, a non-governmental organisation based in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that he had been detained in inhuman conditions and that his right to freedom of expression had been breached as a result of the sanction imposed on him.

4. The application was allocated to the Fourth Section of the Court. On 6 November 2008 the President of the Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954 and lives in Palanca.

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

1. The background of the case

7. The applicant's wife and son have been suffering from chronic renal failure (a gradual and progressive loss of the ability of the kidneys to excrete waste, concentrate urine, and conserve electrolytes) since 1998 and 2002 respectively. Consequently they need haemodialysis (a medical procedure that uses a machine to filter waste products from the bloodstream and to restore the blood's normal constituents). They are both disabled on account of their disease (first degree disability, 100% unfit for work).

8. While they live in Palanca village in Ștefan-Vodă county, they have to travel to Chișinău to receive their haemodialysis treatment. Initially, their transportation costs were covered by the regional hospital. However, starting from early 2004, the hospital no longer covered these expenses. In order to continue to benefit from financial help, the applicant's wife and son had to apply to the regional council, which could include the relevant expenses in the regional budget. The hospital informed the regional council about the situation. It also requested a confirmation that the applicant's wife and son actually lived in Palanca. Such a confirmation from the competent State authority was provided on 12 May 2004.

9. On 15 July 2004 the regional council discussed amendments to the regional budget in order to include additional expenses to cover transportation costs for five persons requiring haemodialysis in the county. All those in need of such support were granted it, except for the applicant's wife and son. The reason for the refusal was certain information about the fact that they lived in Chișinău and not in Palanca and therefore did not need transportation to obtain haemodialysis treatment. The decision regarding the applicant's wife and son was postponed.

10. On 5 August 2004 the regional council did not include on its agenda the issue of financial aid to the applicant's wife and son.

11. On 4 November 2004 the regional council met again, and a declaration from the applicant's wife was distributed to all the councillors. The issue concerning financial aid to the applicant's wife and son was put on the agenda. When it was examined, several councillors spoke against introducing the amendments. The county President I.M. stated that he had only seen the applicant twice (implying that the latter did not live in Palanca) and that he was against misappropriation of public funds. Some

councillors spoke of the applicant's wife and son living at specific addresses in Chişinău and not needing financial support. Others mentioned the applicant's complaints to various authorities, including courts, against I. M., and the need to protect him from unwarranted attacks.

12. Then the applicant took the floor. According to the minutes of the meeting, he stated: "... what is most insulting is that my son was indeed a student until 2002, when his health worsened and he had to abandon his studies. My wife asked for help in 2004, but that was refused. They told her that she was good to go cultivate the land. My boy is not [in Chişinău]. I do not take back my words that [I. M.] is a fascist...".

13. According to the applicant, he did not insult anyone during the meeting and did not use the word fascist.

14. After the applicant's statement, he was invited to leave the room and he eventually did so.

15. I. M., the president of Ştefan-Vodă county, used to be the head of the regional police station in the same county. In April 2001 he initiated criminal proceedings against the applicant for failure to pay taxes, following which the applicant was convicted on 12 December 2001. At the meeting on 4 November 2004 one councillor noted that the applicant had made 37 complaints against I.M. to various authorities, including courts.

2. The proceedings against the applicant

16. On 27 December 2004 I. M. asked the regional police station to initiate proceedings against the applicant for insulting members of the regional council "during a meeting on 3 December 2004". He lodged an identical request with the prosecutor's office.

17. The applicant unsuccessfully asked the police to discontinue the proceedings, in the absence of a proper written or audio record of the statements made during the meeting on 4 November 2004. According to the applicant, at the beginning of the meeting it was declared that an audio recording was being made. The applicant asked for a copy of the audio record of the meeting, which was refused. He later initiated court proceedings in order to obtain that record, but the courts rejected his claims.

18. On 26 January 2005 a police officer charged the applicant with having insulted I. M. on 4 November 2004. The case file was sent to the local court, together with the minutes of the meeting on 4 November 2004 and statements by three witnesses. One of the witnesses stated that the applicant had called I. M. a fascist for leaving his family without any help, while another said that the applicant had used a number of insulting words, without specifying which. The third (V. B.) explained that the applicant had not insulted anybody and even if some of his words could be considered vulgar, nobody was affected.

19. Again on 26 January 2005 the applicant was brought before the court. According to the applicant, he asked for witnesses to be heard in

order to confirm that he had not insulted anyone. Without reacting to his request, and after a five-minute hearing, the judge convicted and sentenced him to five days' detention. The court found that the applicant had called I.M. a "fascist" and "other insulting words". The applicant was immediately placed in detention and served all five days.

20. On the same day the applicant appealed, referring to the absence of an audio record of the meeting and the statement by one of the three witnesses regarding the absence of any insulting meaning in his words during the meeting.

21. The Bender Court of Appeal scheduled the hearing of the applicant's appeal for 16 February 2005. On the morning of that day he registered a request with that court's registry to postpone the hearing due to the fact that he already had another hearing scheduled before the Supreme Court of Justice on the same day. The court held the hearing on 16 February 2005 and did not refer to the applicant's request. It rejected the applicant's appeal as unfounded, finding that the lower court had properly examined the case and established that the applicant had insulted I. M.

22. On 25 March 2005 the newspaper *Flux* published an article describing the applicant's case. In reaction to that article, on 26 April 2005 V.B. and another regional councillor present at the meeting of 4 November 2004 wrote to the applicant's wife, explaining the reasons for the decision taken earlier rejecting help for her and her son due to the lack of information. They added that the applicant had not insulted anyone during that meeting.

23. The applicant asked for the reopening of the proceedings in view of his absence from the hearing of 16 February 2005, but the request was refused on 25 May 2005. A further request to the Prosecutor General's office to initiate the reopening of the proceedings was also refused on 30 May 2005.

24. In parallel to the above events, on 28 December 2004 I. M. asked the police to initiate criminal proceedings against the applicant for forging documents confirming his family's residence in Palanca. The investigation was discontinued on 8 April 2005 because the applicant and his family had their true residence in Palanca. On 22 April 2005 the prosecutor's office initiated court proceedings aimed at deleting the applicant's family's registration as residents of Palanca. On 9 June 2005 the Prosecutor General's office withdrew that court action.

3. Conditions of detention in the regional police station

25. The applicant contends that he was detained for five days, together with three other persons, in a cell measuring approximately 12 square metres. The cell was in the basement of the police station and was damp and dark, the window being covered by a metal sheet with holes in it. There was a wooden platform in the cell, approximately 1.8 metres wide, which was

used as a bed by all four detainees. No bed linen was provided and all the detainees had to sleep in their clothes. Heating was very limited and it was cold in the cell. All the other detainees smoked, exposing the applicant to passive smoking. Food was served three times a day and two of the meals were limited to a pot of tea and a slice of bread. There was no toilet or running water in the cell. Detainees were escorted to the toilet twice a day for 3-5 minutes each, which was insufficient for their needs. They therefore had to urinate into plastic bottles in between their visits to the toilet, in plain view of the other detainees. There was no hot water and the applicant could not take a bath during his detention.

26. On 27 January 2005 the applicant's wife and daughter wanted to visit him, but this was refused because of the short term of the applicant's detention. His request to meet his family was also rejected because he was "without exit", as noted also on the minutes of the personal search to which he was subjected upon being placed in detention.

27. On 29 January 2005 the applicant asked permission to visit a church in order to attend religious services after his mother's death on 24 January 2005. This request was refused since he had not yet served all five days of detention. The applicant did not leave the cell during the whole five days, except for the short visits to the toilet. Since his glasses were taken away upon placement in the detention cell, he could not read newspapers and there was no radio or TV in the cell.

II. RELEVANT NON-CONVENTION MATERIALS

A. Relevant domestic law and practice

28. The relevant provisions of the Code of Administrative Offences read as follows:

"Article 31. Administrative detention

Administrative detention shall be applied only in exceptional cases for certain categories of administrative offences for a period of up to thirty days. Administrative detention shall be applied by the court..."

"Article 47/3. Insult (*injuria*)

Insult, i.e. an intentional attack on a person's honour and dignity by act, orally or in writing, shall be punished by 7-15 times the conventional unit or by administrative detention of up to fifteen days..."

29. The Government submitted examples of domestic courts' case-law awarding compensation to persons who had been detained in inhuman conditions of detention. The courts relied on Article 1422 of the Civil Code.

The cases included the case of T. Ciorap v. The Ministry of Finances, Ministry of Internal Affairs and Prosecutor General's Office (nr. 2a-1529/07) and the case of V. Drugalev (cited in *Holomiov v. Moldova*, no. 30649/05, § 88, 7 November 2006).

B. Report by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Government's response thereto

30. In its report concerning its visit to Moldova on 14-24 September 2007 the CPT found, *inter alia*, the following (unofficial translation from original French):

“4. Conditions of detention

...

b. cells at local police stations

40. The cells seen by the delegation at the local police stations visited were not suitable for holding persons for more than a few hours. They were dark, unventilated, unheated, dilapidated and dirty, and were equipped at best with a bench. In addition to cells, local police stations had a barred enclosure, referred to as a “waiting room”, which usually measured some 5 to 6 sq.m and was devoid of any equipment.

According to police staff, the cells were being used for periods of detention not exceeding 3 hours. However, the delegation received many allegations – and found documentary evidence in the custody records – that persons had in fact frequently been held overnight, on occasion for up to 5 days Further, it became apparent that administrative detainees had spent up to 10 days in cells at local police stations. The persons concerned had not been provided with mattresses or blankets, and had not been offered anything to eat (the only food available was that brought by detainees' families).

The current situation is totally unacceptable. **The CPT calls upon the Moldovan authorities to take effective steps to ensure that nobody is kept overnight at local police stations. Immediate steps should also be taken to equip all cells and “waiting rooms” with a means of rest (e.g. a bench). Furthermore, all persons detained in local police stations, irrespective of their legal status, should be offered food at normal mealtimes.**”

31. The Government's response to paragraph 40 of the CPT report 2007 included the following statement (unofficial translation from original French):

“Despite the measures taken in the field of creating decent conditions of detention, in view of the insufficient funding, in certain IDPs the situation remains complicated. Following verifications made during the first eight months of 2008, the Ministry of Internal Affairs ordered, due to derogations from the legislation in force, the closing down of the IDPs in police stations of ..., Ștefan-Vodă, ...”.

THE LAW

32. The applicant complained of a violation of Article 3 of the Convention because of the inhuman and degrading conditions of his detention. Article 3 reads as follows:

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

33. He also complained of a violation of his right to freedom of expression, contrary to Article 10 of the Convention, which reads:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

I. ADMISSIBILITY

34. The Government considered that the applicant had not exhausted available domestic remedies as he had failed to lodge a civil law action claiming compensation for damage caused by the allegedly inhuman conditions of detention. They submitted examples of case-law where the domestic courts awarded compensation to detainees who had been detained in inhuman conditions of detention (see paragraph 29 above). The applicant considered that the remedies suggested were ineffective since they implied lengthy court proceedings, as confirmed by the very examples relied on by the Government. Moreover, the case-law of Moldovan courts was generally unavailable to the general public except for a part of the jurisprudence of the Supreme Court of Justice and only starting from late 2008. Moreover, the miserable compensation awarded bore no reasonable relationship to the level of suffering of the two detainees in the case-law relied on by the Government.

35. In so far as the remedy of a civil action to request an immediate end to the alleged violation is concerned (the Drugalev case), the Court has already found that it did not constitute sufficient evidence that such a remedy was effective at the relevant time (see *Holomiov*, cited above, § 106). The more recent case submitted by the Government (the Ciorap case) does not change that conclusion, since it was not argued that the court

could have ordered an immediate improvement of the conditions of detention. The proceedings would certainly have taken longer than the five days during which the applicant was detained. It is also noted that in the case mentioned above Mr Ciorap lodged an application with the Court (no. 7481/06) in respect of what he considered to be a very low level of compensation awarded to him (3,000 Moldovan lei (MDL), equivalent of 181 euros (EUR) at the time) for confirmed acts of torture, failure to provide medical help and inhuman conditions of detention. In such circumstances and since Mr Ciorap's application is still pending, the Court cannot accept this case as clearly establishing a consistent domestic practice of effectively redressing any damage caused by violations of Article 3 of the Convention. Finally, the Court notes that in *Malai v. Moldova* (no. 7101/06, §§ 45-46, 13 November 2008), it found a violation of Article 13 of the Convention on account of lack of effective remedies in Moldova against inhuman and degrading conditions of detention. That finding was confirmed in *Straisteanu and Others v. Moldova* (no. 4834/06, § 67, 7 April 2009).

Therefore, the Court considers that the Government have not submitted sufficient evidence that a civil law action would have offered complete redress for the alleged damage caused to the applicant. This objection must therefore be rejected.

36. The Court also notes that the applicant initially complained under Article 6 of the Convention, referring essentially to the same procedural issues as those raised under Article 10 of the Convention. In his subsequent observations he did not pursue this complaint. The Court will therefore not examine it.

37. The Court considers that the application raises questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits. It therefore declares the application admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider its merits.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. The parties' submissions

1. The applicant

38. The applicant complained of a violation of his rights guaranteed under Article 3 of the Convention. He referred to his earlier description of conditions of detention (see paragraphs 25-27 above) and added that the Government had failed to rebut several of his assertions about the

conditions, such as overcrowding, high humidity, the fact that he had to sleep on a small wooden platform instead of a bed, sharing it with three other persons, that he had been exposed to passive smoking, that there was no toilet or tap water in the cell, that he could visit the toilet only twice a day and could not take a shower throughout his detention, and that he had no daily walks. Neither was it in dispute that the applicant's wife and daughter had been denied the right to visit the applicant and that he had been prevented from attending a church service after his mother's death.

39. The applicant added that the conditions described were a general feature of police stations throughout the country. There was no evidence that the authorities had allocated money for improving detention facilities in the local police stations. The findings of the CPT were valid for Ștefan-Vodă police station where the applicant had been detained, even though the CPT had never visited that station (it had visited 32 out of 39 police stations). The Government submitted no evidence to substantiate their claim that Ștefan-Vodă police station was different from all the other similar stations which the CPT had visited. The fact that the situation was generally bad throughout the country was confirmed by the CPT finding in its 2004 report that the budget allocated for feeding each detainee was EUR 0.28 per day or 30% of the minimum calculated by the domestic authorities themselves. Again, this coincided with the applicant's claim that he had received very little food of very poor quality, and was moreover prevented from receiving any food from his family. In this latter respect the case was different from the case of *Gorea v. Moldova* (no. 21984/05, §§ 47-51, 17 July 2007). Moreover, in that case the applicant was able to see his family and to benefit from a minimum of hygiene, which was totally absent in the present case. Finally, unlike in *Gorea*, the applicant in the present case suffered considerably from being unable properly to honour his mother's death in a church service and worried for the health of his family as he was its only breadwinner and they were very ill.

2. The Government

40. The Government submitted that the applicant had been detained in a well-lit and ventilated cell and had access to hot water and bed linen. Moreover, there was sufficient space in the cell to satisfy the requirements of 4 square metres per detainee accepted as a minimum by the CPT. The applicant received food in sufficient quantity and of sufficient quality, in accordance with the relevant Government decision. The budget provided for each detainee MDL 9.19, equivalent to EUR 0.56 euros at the time) per day for food. Moreover, the applicant had not asked for medical assistance or to receive any visits. In any event, the applicant had been detained for only five days, a much shorter period than the fourteen days' detention of the applicant in *Gorea*, cited above, where no violation of Article 3 was found.

B. The Court's assessment

41. The Court reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Kudla v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI, and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers*, cited above, § 74).

42. In the present case, the Court notes that the applicant gave a detailed description of his conditions of detention in Ștefan-Vodă police station. That description was only partly challenged by the Government, which did not challenge the applicant's submissions concerning the size of the cell, the number of persons detained there, with whom he had to share the wooden platform for sleeping, the lack of heating, the absence of a toilet in the cell or that the applicant was subjected to passive smoking. More importantly, it follows from the statement made by the Government in response to the CPT report of 2007 that in 2008 the detention centre of Ștefan-Vodă police station was one of those which had to be closed down by the Ministry of Internal Affairs since it did not correspond to legal requirements (see paragraph 31 above). It follows that the domestic authorities themselves considered that the conditions of detention offered in the police stations concerned, including that in Ștefan-Vodă, were so bad as to be incompatible with any type of detention.

43. The Court also points out the recommendation made by the CPT in its 2007 report, after having visited a number of detention centres in Moldovan police stations, that such detention facilities should never serve to detain a person for anything other than a brief period, and that nobody should be detained there overnight (see paragraph 30 above). However, the applicant was detained there for five days. In this respect the present case is to be distinguished from *Gorea*, cited above. It appears both from the CPT report and the decision to close down the relevant detention centre that it was particularly unsuitable for detention of any kind. This was not the case in *Gorea*.

44. The Court considers that the particularly harsh conditions of the applicant's detention, combined with the added suffering from his inability to meet ill members of his family and to go to church to honour his recently deceased mother (see paragraphs 26 and 27 above; the Government did not submit that the applicant had not made the two requests referred to in these

paragraphs or that they had been accepted), attained a minimum level of severity so as to constitute treatment contrary to Article 3 of the Convention. In the particular circumstances of the present case, the short period of his detention does not affect that finding.

There has, accordingly, been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

A. The parties' submissions

1. The applicant

45. The applicant alleged that his right to freedom of expression had been breached as a result of the administrative sanction applied to him. He contended that there had been an interference with his rights guaranteed under Article 10 of the Convention, but conceded that it had been “prescribed by law”. He doubted that the real aim of the sanction had been to protect the reputation of I.M. rather than to punish him for making many complaints against the region's leadership.

46. The interference was not “necessary in a democratic society”, since it was a form of revenge by I.M., who had previously prosecuted the applicant, for the latter's criticism of him. The applicant attempted to prove that he had not insulted I.M. by asking for witnesses to be heard and for the audio record of the hearing to be examined, but to no avail. One of the three witnesses relied on by the police in fact denied that the applicant had insulted I.M. Moreover, the applicant was sanctioned for calling I.M. a “fascist” and for using “other insulting words”. During the hearing, which lasted some five minutes, neither of the two courts which examined his case even tried to verify his version of the events, or at least to establish exactly which “other insulting words” he had used. Moreover, it was unclear why the three witnesses had given written explanations to the police concerning the incident on 10 and 22 December 2004, given that a complaint was not lodged with the police by I.M. until 28 December 2004.

47. At the hearing of 4 November 2004 a heated exchange took place and the applicant's reaction was in response to I.M.'s provocative words. While for ten months his wife and son had not received much needed help, they were again accused of abuse during the meeting. Hence, even if the applicant had overreacted this was natural in the light of the context in which he had spoken. Finally, the five days' detention applied by the court constituted a clearly disproportionate sanction, given that the law also provided for a fine as an alternative. The domestic courts never attempted to

apply Article 10 principles and were not concerned with issues such as proportionality.

2. The Government

48. The Government submitted that the applicant had used his freedom of expression “irresponsibly” by insulting I.M. Calling someone a “fascist” and attacking someone's honour and reputation by means of groundless insults had no place in a democratic society.

49. Moreover, the sanction applied to the applicant was not the most serious measure, since the law allowed for up to fifteen days' imprisonment. Imprisonment itself was not incompatible with observance of Article 10 and the applicant's expressions had certainly been serious enough to warrant a serious response.

B. The Court's assessment

50. It is common ground between the parties, and the Court agrees, that the decisions of the domestic courts and the sanction imposed on the applicant amounted to “interference by [a] public authority” with the applicant's right to freedom of expression under the first paragraph of Article 10. Such interference will entail a violation of Article 10 unless it is “prescribed by law”, has an aim or aims that are legitimate under paragraph 2 of the Article and is “necessary in a democratic society” to achieve such aim or aims.

1. “Prescribed by law”

51. The Court notes that the interference complained of had a legal basis, namely Article 47 of the Code of Administrative Offences (see paragraph 28 above). The Court considers that this provision is both accessible and foreseeable in its application. Accordingly, the Court concludes that in this case the interference was “prescribed by law” within the meaning of Article 10 § 2.

2. “Legitimate aim”

52. The Court notes that the applicant disputes that the interference pursued the legitimate aim of protecting I.M.'s reputation. However, the Court does not see any reasons to doubt that the interference served the legitimate aim of protecting I.M.'s reputation. It therefore remains to be examined whether the interference was “necessary in a democratic society”.

3. “Necessary in a democratic society”

53. The relevant general principles have been summarised in *Busuioc v. Moldova* (no. 61513/00, §§ 56-62, 21 December 2004), *Timpul Info-Magazin and Anghel v. Moldova*, no. 42864/05, §§ 29-30, 27 November 2007 and *Flux v. Moldova* (no. 6), no. 22824/04, § 24-26, 29 July 2008).

54. The Court notes that in the present case the applicant was sanctioned for calling I.M. a “fascist” and for “using other insulting words”, which were never specified by the courts. It considers that sanctioning someone on the basis of such vague and unverified facts as “using other insulting words” without having at least determined what those words were amounts in itself to a violation of Article 10 of the Convention.

55. As for calling I.M. a fascist, the applicant claims that he never used that word. He asked for witnesses to be heard and for the audio record and transcript of the hearing to be examined in order to verify his claim. However, the courts refused without giving any reasons for considering that I.M.'s version was true and without hearing a single witness. The Court considers that, in ignoring the evidence adduced to support the applicant's submissions and thereby to show that he had not insulted I.M., the finding of the Moldovan courts that he had uttered such insults could not be justified as necessary in a democratic society (see, *mutatis mutandis*, *Jerusalem v. Austria*, no. 26958/95, § 45-46, ECHR 2001-II; *Savitchi v. Moldova*, no. 11039/02, § 59, 11 October 2005, and *Busuioc*, cited above, § 88).

56. The Court also considers that, even assuming that the applicant called I.M. a “fascist”, the domestic courts failed to address the crucial issue of whether the utterance attributed to him was capable of being a value judgment, the veracity of which, unlike a statement of fact, is not susceptible of proof. It recalls that it has previously found that terms such as “neo-fascist”, and “Nazi” do not automatically justify a conviction for defamation on the ground of the special stigma attached to them (see *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 43, ECHR 2003-XI). In *Bodrožić v. Serbia* (no. 32550/05, § 51, 23 June 2007), the Court repeated its view that the generally offensive expressions “idiot” and “fascist” may be considered to be acceptable criticism in certain circumstances (see *Bodrožić*, cited above; *Oberschlick v. Austria* (no. 2), judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV; *Feldek v. Slovakia*, no. 29032/95, ECHR 2001-VIII). It further observed in the *Bodrožić* case that calling someone a fascist, a Nazi or a communist cannot in itself be identified with a factual statement of that person's party affiliation (see, *mutatis mutandis*, *Feldek v. Slovakia*, cited above, § 86).

57. The Court must examine the specific circumstances of a case as a whole in order to establish whether an applicant's criminal conviction for

having used such expressions can be considered proportionate to the legitimate aim pursued (see, for example, *Bodrožić*, cited above, § 51).

58. Turning to the instant case, and even supposing that the applicant had used the impugned words, this must be considered to have been clearly in response to I.M.'s own declarations, made against the background of the longstanding animosity between them (see paragraphs 11 and 15 above). Since the applicant participated in the meeting and saw that his family risked being refused once more the much-needed financial assistance, and despite having submitted all the required documents confirming their right to obtain it, he must have been in a state of despair and anger. His intervention shortly after that of I.M. was akin to one “made in the course of an oral exchange and not in writing, after careful consideration” (see *Fuentes Bobo v. Spain*, no. 39293/98, § 48, 29 February 2000 and *Raichinov v. Bulgaria*, no. 47579/99, § 51, 20 April 2006). These considerations did not form part of the domestic courts' analysis.

59. At the same time, the domestic court gave no consideration to the fact that the words allegedly used by the applicant were uttered against a public official at a council meeting, a political context in which statements comprising value judgments deserve particular protection. It must also be noted that the council meeting was held in camera, and there had been no media coverage of the incident. The Court recalls that the limits of acceptable criticism are wider as regards a politician than as regards a private individual. In any event, the effect of his speech must in the circumstances have been minimal, especially given that all those present were well aware of the tensions between the applicant and I.M. and had heard the statements which had provoked the applicant's reaction (see, *mutatis mutandis*, *Nikula v. Finland*, no. 31611/96, § 52 *in limine*, ECHR 2002-II).

60. Finally, the Court recalls that imposing criminal sanctions on someone who exercises the right to freedom of expression can be considered compatible with Article 10 “... only in exceptional circumstances, notably where other fundamental rights have been seriously impaired ...” (see, *mutatis mutandis*, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 115, ECHR 2004-XI). In the present case, the courts did not refer to any such exceptional circumstance and did not establish whether the harm caused to I.M. was of such a degree that it required a five days' prison term to be imposed on the applicant.

61. The Court considers that by summarily convicting the applicant without attempting to verify the circumstances of the case and by failing to examine the context in which the applicant's alleged statement had been made, and without any analysis of the need to send the applicant to prison, the domestic courts did not establish a “pressing social need” for the interference with his right to freedom of expression. Article 10 of the Convention has therefore been violated in the present case.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed EUR 9,000 in compensation for non-pecuniary damage caused to him as a result of the inhuman conditions of his detention following a totally unwarranted conviction in violation of Article 10 of the Convention. He referred to similar awards made in other Article 3 and Article 10 cases.

64. The Government submitted that the amount claimed had been excessive in comparison with other similar cases, considering also that in the present case freedom of the press and its fundamental role in imparting information was not at stake.

65. In the light of the circumstances of the present case and judging on an equitable basis, the Court awards the applicant EUR 6,000.

B. Costs and expenses

66. The applicant also claimed EUR 2,826.5 for legal costs. He submitted a detailed time-sheet and a contract according to which the lawyer had worked for 33.25 hours at an hourly rate of EUR 85. The fee charged was in any event half the maximum recommended by the Moldovan Bar Association for representation before international courts and the lawyer's reputation as one who had successfully represented applicants in a number of serious cases before the Court allowed him to charge such fees. Moreover, the case was of a certain complexity.

67. The Government disagreed with the amount claimed and argued that the case was not very complex in comparison to similar cases, in which the Court had awarded smaller amounts of compensation for legal costs.

68. In the present case, regard being had to the itemised list submitted and the complexity of the case, the Court awards the applicant EUR 2,000 for costs and expenses.

C. Default interest

69. 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 application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 10 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Moldovan lei at the rate applicable at the date of settlement:
 - (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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;
5. *Dismisses* the remainder of the applicant's 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