CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF BOICENCO v. MOLDOVA

(Application no. 41088/05)

JUDGMENT

STRASBOURG

11 July 2006

FINAL

11/10/2006

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 Boicenco v. Moldova,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr J. ŠIKUTA, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 20 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 41088/05) 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 Nicolae Boicenco ("the applicant") on 16 November 2005.

2. The applicant was represented by Mr Vitalie Nagacevschi and Mr Vladislav Gribincea, lawyers practising in Chişinău and members of the non-government organisation "Lawyers for Human Rights". The Moldovan Government ("the Government") were represented by their Agent, Mr Vitalie Pârlog.

3. The applicant alleged that he had been subjected to severe police brutality and that the authorities had failed to carry out an adequate investigation into the incident, in breach of Article 3. He also complained about lack of proper medical care while in detention and about a breach of his right to liberty under Article 5 of the Convention. He finally complained under Article 34 about being hindered by the domestic authorities in bringing his case before the Court.

4. The application was allocated to the Fourth Section. On 13 December 2005 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. It also decided to give priority to the case under Rule 41 of the Rules of Court in view of the applicant's poor state of health.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1961 and lives in Chişinău.

1. The applicant's arrest and his subsequent medical condition

7. On 20 May 2005 the applicant was arrested on suspicion of fraud by the Centre for Fighting Economic Crime and Corruption (CFECC).

8. At the time of his arrest he showed no apparent abnormality in his normal physical state. According to a medical file dating from March 2005 the applicant weighed 133 kilograms.

9. According to the reports drawn up on 21 May 2005 by the policemen who arrested him, he attempted to escape, verbally abused them and even attempted to resist by trying to reach for a pistol which he had on him and by throwing away the arrest order when presented with it. It does not appear from those reports that any force was applied to the applicant or that he was injured in any way during his arrest. The applicant denies having resisted arrest.

10. It appears from the police reports that the applicant was arrested at approximately 6.45 p.m. According to the applicant, he was arrested at 4.30 p.m.

11. It is alleged on behalf of the applicant that after being brought to the CFECC premises he was beaten up by the police officers, as a result of which he lost consciousness. The Government deny that.

12. According to a medical report drawn up at 8.34 p.m. on the same date by a doctor from the CFECC, the applicant was unconscious. The doctor noted in the report that, according to the police officers, he had lost consciousness due to "intense emotions", and recommended that the applicant be seen by a cardiologist. It does not appear from the report that the applicant had been injured in any way during arrest.

13. One of his lawyers saw the applicant at approximately 10.20 p.m. at the CFECC and noted in the minutes of arrest (*proces verbal de reţinere*), which was drawn up by the police officers in his presence, that the applicant was unconscious. At the request of the lawyer an ambulance was called at 11.37 p.m. and at 1.30 a.m. on 21 May 2005 the applicant was taken to the Cardiology Hospital, still unconscious.

14. It appears from the medical records from the Cardiology Hospital that the applicant regained consciousness after being brought there, but it is not clear when that happened. According to the medical records, he was suffering from arterial hypertension and a syndrome of confusion of unclear origin. The applicant would not respond to questions and would not react to anything. He also suffered headaches and nausea. There is no information in

the medical file concerning his weight at the time of his hospitalisation. The doctors recommended *inter alia* that the applicant be given a brain scan in order to exclude the possibility of the applicant having had a cerebral stroke. The doctors concluded that a final diagnosis would be possible only after the latter tests had been carried out.

15. On 24 May 2005 the applicant was transferred to a Prison Hospital. On 25 May 2005 he was seen by a neurologist, who wrote in the medical file that on 20 May 2005 he had suffered a head trauma followed by loss of consciousness. The neurologist recommended various forms of medical treatment but did not recommend a brain scan. On 26 May 2005 a doctor noted in the medical file that the applicant had pain in his kidneys and red urine. On 2 June 2005 the applicant was examined by a commission of senior doctors from the hospital, who established a final diagnosis of, *inter alia*, acute head trauma and concussion and recommended, *inter alia*, that the applicant undergo a psychiatric investigation. On 7 June 2005 a doctor made a note in the medical file to the effect that the applicant urgently needed medication, but none was available.

16. The applicant was kept in the Prison Hospital until 1 September 2005, when he was moved to a prison for fifteen days until his further transfer to the Psychiatric Hospital. According to the medical records, during his stay in the Prison Hospital he never got out of bed. He had not fed himself and had been spoon-fed by the paramedical personnel with liquid food. He did not go to the toilet and had been kept in incontinence pads and smelt strongly of excrement. On rare occasions he would answer the doctors' questions in a very low voice or using gestures indicating headaches and pain in his kidneys. His urine was red. Most of the time he would not react to any questions and kept his eyes closed. On at least five occasions in May and August 2005 the medical personnel reported in writing to their superiors that, due to his state, the applicant was unable to swallow his medication. On at least seven occasions the doctors noted in the medical file that the applicant's condition was satisfactory. On several occasions the doctors speculated in the medical file that the applicant's condition was bogus.

17. On several occasions between May and September 2005 one of the applicant's lawyers and his wife requested that an independent doctor be given access to the applicant, but they received no answer.

18. During the applicant's stay in the Prison Hospital, his wife was able to visit him only once, on 5 July 2005, for ten minutes. His mother was not allowed to see him. On one occasion she wrote to the Buiucani District Court and to the Prison Hospital and asked *inter alia* for his picture; however, she received no answer.

19. On 1 August 2005 the Chief Doctor of the Prison Hospital recommended a psychiatric examination of the applicant in order to

"confirm or exclude simulation". On 3 August 2005 the Buiucani District Court ordered a forensic and a psychiatric examination of the applicant.

20. On 18 and 30 August and 6 and 13 September 2005 one of the applicant's lawyers and his wife requested the Buiucani District Court and the Ministry of Justice to have the applicant transferred to the Psychiatric Hospital and to speed up the psychiatric investigation. They argued *inter alia* that due to the lack of a clear diagnosis, no appropriate medical care was possible at that moment. The applicant's wife also offered to cover all the costs of his transportation, examination and medical care. No answer to these requests was received.

21. Following the court order of 3 August 2005, the applicant underwent three medical investigations. A forensic investigation was carried out on 28 October 2005 and the doctors' report stated *inter alia*:

> "... On 20 May 2005 [the applicant] suffered a head trauma with loss of consciousness.
>
> At the time of hospitalisation he suffered headaches, dizziness, and noises in his head, nausea, and fatigue... pain in his lower back...
>
> Diagnosis: acute head trauma, concussion of average severity...
>
> No visible injuries on the applicant's body have been found during his stay at either [the Cardiology Hospital or the Prison Hospital]; however, it was established that he suffered a head trauma.
>
> On 23 May 2005, the doctors from the Cardiology Hospital established a disorder of the central nervous system, the origin of which has not been determined due to the lack of modern clinical investigation (magnetic resonance, brain scan), and consequently no adequate medical treatment was possible.
>
> According to the medical records made by the doctors between 20 May 2005 and 1 September 2005 it appears that during that period of time [the applicant] was incapable of actively participating in a criminal investigation"

22. On 20 September 2005 a psychiatric investigation was conducted. However, the Buiucani District Court considered the report incomplete and ordered a supplementary investigation, which took place on 15 November 2005. The reports of 20 September and 15 November 2005 stated *inter alia*:

> "...The commission concludes that [the applicant] is not suffering from any chronic mental disease, but that he is suffering from the consequences of a head trauma, arterial hypertension...
>
> ... As from 26 May 2005 the [applicant] has stopped answering questions; he never gets out of bed; he is dirty and eats only liquid food.... He was brought to the hospital on a stretcher. He does not move, does not react to others... he lies with his eyes closed and with his hands on his chest. He has a pale and anaemic face with moist skin... He makes no resistance to medical investigations ..., he is indifferent, passive and does not cooperate with the doctors. He did not object when his mouth was opened but did not show his tongue. His arms and legs fall down lifeless when lifted.

> When the doctors attempted to check his pupils, he rolled his eyes up. His clothes are dirty; he wears incontinence pads and has a strong smell of urine.... He does not take care of himself... and is being taken care of (fed, washed and changed) by the medical personnel...
>
> ... The stress (the arrest, the criminal investigation) triggered a reactive psychosis with a depressive and stupor syndrome [mental sub-responsiveness not as severe as coma, in that the person can still be partially roused by some stimuli, such as pain] which deprived him of the use of reason and he needs treatment in conditions of rigorous supervision."

23. On 15 September 2005 the applicant was hospitalised in the Central Psychiatric Hospital, Department of Judicial Investigations, where he is held to date.

24. It appears from the medical file submitted by the Government in December 2005 that, by that date, most of the time the applicant was in a state of stupor. He regained consciousness for a period of three weeks, between 2 and 24 October 2005, but then fell back into a state of stupor after being subjected to a body search in the cafeteria of the hospital. The Government submitted copies of bills for medication for the applicant for the months of October, November and December 2005.

25. The Court has no information as to whether the applicant has ever recovered from the state of stupor. It appears that on 23 December 2005 the Buiucani District Court ordered that the applicant be held in the Central Psychiatric Hospital for treatment until full recovery.

26. According to a medical report issued at the request of one of the applicant's lawyers on 5 December 2005 by Dr. I. Berghi, Psychiatrist, untreated psychosis with a depressive and stupor syndrome triggered in traumatic conditions can have as a consequence the development of a chronic psychiatric disease.

27. According to a medical report issued at the request of one of the applicant's lawyers on 6 February 2006 by the applicant's family doctor, Dr T. Moraru, the applicant had, for a long period before his head trauma of 20 May 2005, suffered from diabetes and arterial hypertension. During his stay in the Prison Hospital he suffered malnutrition and lost 30-35 kilograms. Due to his state of stupor he could not be fed and therefore needed transfusions of glucose, amino acids, vitamins C and B and others. Due to this condition he ran a serious risk of developing a diabetic coma, a stroke or a heart attack. It appeared from the applicant's medical file from the Prison Hospital that he was not provided with sufficient treatment and medical investigation. His stupor syndrome was discovered only four to five months later.

28. On 28 March 2005 the applicant's lawyer Mr Gribincea was received by the Deputy Doctor in Chief of the Psychiatric Hospital, Mr I. Catrinici, who informed Mr Gribincea *inter alia* that at the time of hospitalisation in the Psychiatric Hospital, the applicant weighed less than

100 kilograms and that lately, after gaining some weight, he weighed about 100 kilograms. Mr Catrinici also informed the lawyer that the applicant had been given a brain scan two weeks earlier. The Government have not disputed this.

2. The applicant's complaint about ill-treatment

29. On 27 May 2005, when the applicant temporarily re-gained consciousness, he told one of his lawyers, in the presence of a doctor, that he had been beaten up by the police and that he had severe headaches and pain in the region of his kidneys. The doctor informed the lawyer that the applicant had suffered a head trauma and some disorder in his kidneys.

30. On 31 May 2005 one of the applicant's lawyers lodged a complaint with the Prosecutor General's Office about the way the CFECC representatives had ill-treated the applicant and requested the institution of criminal proceedings. He informed the Prosecutor's Office about what he had been told by the applicant and the doctor.

31. Similar complaints were lodged by the applicant's wife on four occasions between June and August 2005.

32. On 10 August and 10 October 2005 the applicant's lawyer asked the General Prosecutor's Office whether his complaint of 31 May 2005 had been examined. He did not receive any reply.

33. Only on 23 December 2005, after repeated requests made during court hearings in the criminal proceedings against the applicant, the applicant's lawyer was handed a decision dated 8 June 2005, by which his complaint of 31 May 2005 had been dismissed. The decision was signed by Mr Nicolae Catană, the same prosecutor who had lodged the charges against the applicant and applied to court for his remand in custody (see paragraphs 45-46 below).

34. Mr Catană argued *inter alia* in the above decision that since the lawyer's complaint of 31 May 2005 did not contain any specific information concerning the circumstances of the alleged ill-treatment, and in order to clarify the situation, he had attempted to hear the applicant in person on 25 and 30 May 2005. However, the applicant had categorically refused to talk to him. Moreover, even the doctors had confirmed that the applicant would refuse to talk to investigators and prosecutors and would talk only to his lawyers and the doctors, and that he was faking his symptoms. Mr Catană concluded that in any event the applicant was presumed to have been intending to use a gun during his arrest. In such circumstances, the police officers were entitled to use force and their use of force could be treated as legitimate defence.

35. On an unspecified date the applicant's lawyer lodged an appeal against the decision of the Prosecutor General's Office dated 8 June 2005.

36. On 23 February 2006 Judge Gheorghe Morozan from the Râşcani District Court dismissed the appeal. He argued *inter alia* that the

investigation had been carried out carefully and in an objective manner without any derogation from the law. He found that the applicant refused to talk to the prosecutor on 25 and 30 May 2005. Moreover, the applicant had not complained to the prosecutor about being subjected to torture and physical violence. Nor had the doctors said anything to the prosecutor about ill-treatment, even though they were under an obligation to inform him of such matters. The medical file did not disclose any visible signs of violence on the applicant's body.

3. The complaints about lack of medical care

37. On 1 July 2005 the applicant's wife complained to the Prosecutor General's Office *inter alia* that she was not allowed to see her husband and to provide him with medical care. The policemen and the doctors from the Prison Hospital were keeping the applicant's medical condition secret in order to hide signs of torture. She also complained that her request to allow an independent doctor to consult the applicant had been rejected. The Prosecutor's Office never replied to this letter.

38. On 18 August 2005 one of the applicant's lawyers complained to the Buiucani District Court that the psychiatric investigation ordered by it on 3 August 2005 would not be carried out for unknown reasons. In order to ensure proper medical care to the applicant the court was asked to order the authorities to allow a private doctor to consult the applicant and to speed up the psychiatric investigation. The Buiucani District Court never examined this request.

39. On 6 September 2005 the applicant's wife complained to the Buiucani District Court that the psychiatric investigation would not be carried out. She informed the court that she had found out that the applicant would not be moved to the Psychiatric Hospital due to the lack of facilities for transporting unconscious people. She argued that her husband's state of health would become worse and that due to the lack of a diagnosis no appropriate medical care would be possible. She offered to cover all the expenses related to the applicant's transportation, medical investigation and medical care. This complaint was never examined by the Buiucani District Court.

40. On 6 September 2005 the applicant's mother wrote to the Buiucani District Court and asked it *inter alia* to order the speedy psychiatric evaluation of her son, to stop the inhuman treatment and to provide him with medical care appropriate for a human being. This complaint was never examined by the Buiucani District Court.

41. On 13 September 2005 the applicant's wife wrote to the Buiucani District Court, the Prosecutor General's Office and to the Chief of the Prison Hospital. She complained *inter alia* that the psychiatric evaluation of her husband would be postponed on purpose by the police and by the persons who had ordered the criminal investigation of her husband and that

this made it impossible to provide him with appropriate medical care. The applicant's wife did not receive any answer to this complaint.

42. On 5 October 2005 one of the applicant's lawyers wrote to the Buiucani District Court that following the psychiatric investigation of 20 September 2005 the applicant was diagnosed with a serious psychiatric condition. Since the Prison Hospital, where the applicant was detained until 1 September 2005, did not treat psychiatric diseases no diagnosis and thus no appropriate treatment was possible there. Accordingly he was deprived of medical care needed by a human being and was subjected to inhuman suffering. The Buiucani District Court never replied to this letter.

43. On 6 October 2005 the applicant's wife complained to the Buiucani District Court *inter alia* that her husband was not provided with appropriate medical care while in the Prison Hospital. The court did not react to this complaint either.

44. On 24 November 2005 one of the applicant's lawyers asked the Buiucani District Court for permission to have the applicant visited by a private doctor. He informed the court that for more than six months the applicant had not regained consciousness and that the treatment provided to him by the State was not effective. He also informed the court that the delay in answering his request would amount to inhuman and degrading treatment of the applicant by hindering his recovery. He also informed the court that all the expenses would be covered by the applicant's family. The court has never examined this request.

4. The proceedings concerning the applicant's detention on remand

45. On 23 May 2005, following a request by the Prosecutor Nicolae Catană, the Buiucani District Court issued a warrant for the applicant's detention for 10 days. The reasons given by the court for issuing the warrant were that:

> "[the applicant] is suspected of having committed a very serious offence, for which the law provides imprisonment for more than two years; the evidence submitted to the court was obtained lawfully; the isolation of the suspect from society is necessary; he could abscond from law enforcement authorities or the court; he could obstruct the finding of the truth in the criminal investigation or re-offend".

46. On 25 May 2005 an accusation was officially brought to the applicant by Prosecutor Nicolae Catană.

47. On 25 May 2005 the applicant appealed against the order of remand and argued *inter alia* that there was no evidence of a risk of his absconding, obstructing the investigation or re-offending. He argued that the criminal proceedings had been pending since February 2004 and that nothing in his behaviour since then could justify suspecting him of such intentions. Moreover, his medical condition was an important argument in favour of his release.

48. On 27 May 2005 the Chişinău Court of Appeal dismissed the appeal lodged by the applicant's lawyers without giving any reasons.

49. The remand was prolonged by the Buiucani District Court on 30 May and on 22 June 2005 on the same grounds. The applicant's appeals against the prolongations were dismissed by the Chişinău Court of Appeal on 3 and 30 June 2005 respectively.

50. On 23 July 2005 the detention warrant expired, but the applicant was not released.

51. On 25 July 2005 the Prosecutor's Office submitted the criminal case-file to the competent court.

52. On 26 July 2005 one of the applicant's lawyers asked the Buiucani District Court to release the applicant from detention because, *inter alia*, the detention warrant had expired several days earlier. The request was dismissed on 3 August 2005.

5. The examination by private doctors of the applicant and of his medical file after his transfer to the Psychiatric Hospital

53. The facts presented under this heading are based on the submissions of the applicant and the documents submitted by him. The Government have not disputed them.

54. After 16 November 2005, a private doctor had access to the applicant on only one occasion, in early January 2006. According to the applicant, the purpose of the doctor's visit was to assess his medical condition and to evaluate the costs of future treatment.

55. After consulting the applicant, Doctor T. Moraru concluded that a number of investigations would be necessary in order for him to reach a conclusion. His written report was sent to the Psychiatric Hospital and to the Buiucani District Court and the applicant's wife offered to bear all the medical costs.

56. In February 2006 Doctor T. Moraru attempted to visit the applicant again to examine him, but he was not allowed to do so.

57. On 8 February 2006 the applicant's wife complained to the Buiucani District Court about the refusal of the Psychiatric Hospital authorities to allow a visit by Dr. T. Moraru, but it was dismissed by the court on 10 February 2006 on the ground that the court had no right to interfere with the applicant's medical treatment by giving instructions to the doctors from the hospital. Similar repeated requests by the applicant's wife and lawyer were rejected on 16 and 19 February 2006, the court adding that since the criminal proceedings against the applicant were suspended, it would be able to issue orders about him only once the proceedings had been resumed.

58. On an unspecified date the applicant's wife asked permission from the Psychiatric Hospital to have her husband examined by a private doctor. On 16 February 2006 the Deputy Doctor in Chief of the Psychiatric Hospital wrote to the applicant's wife that the applicant did not need to be

seen by Dr. T. Moraru since he was receiving all necessary medical treatment from the hospital doctors.

59. The applicant's wife made a similar unsuccessful request on 22 February 2006.

60. On 14 and 22 March 2006 one of the applicant's lawyers (Mr Gribincea) called the Government Agent's Office and asked Ms Lilia Grimaschi for assistance in obtaining access to the applicant and to his medical file for him and a private doctor. His request was unsuccessful.

61. On 20 and 28 March 2006 the applicant's lawyers lodged with the Doctor in Chief of the Psychiatric Hospital two requests for access for Mr T. Moraru to the applicant and his medical file. They submitted in their requests that such access was needed in order to pursue the application before the Court and relied *inter alia* on Article 34 of the Convention.

62. On the same date the applicant's lawyer, Mr Gribincea, had a meeting with the Doctor in Chief of the Psychiatric Hospital, Mr I. Catrinici, who verbally rejected his request and argued that no access to the applicant was possible without a court order.

63. On 31 March 2006 Mr I. Catrinici replied in writing to the letter of 28 March 2006 by a letter containing nothing but the text of section 9 of the Law on Psychiatric Assistance (see paragraph 69 below) in two languages, Romanian and Russian.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Detention on remand

64. Article 25 of the Constitution of the Republic of Moldova, insofar as relevant, states as follows:

> "(4) Detention takes place on the basis of a warrant issued by a judge for a maximum period of 30 days. The lawfulness of the warrant may be challenged, in accordance with the law, before a hierarchically superior court. The period of detention may be extended only by a court, in accordance with the law, to a maximum of twelve months."

65. The relevant provisions of the Code of Criminal Procedure ('the CCP') read as follows:

> Section 176
>
> "(1) Preventive measures may be applied by the prosecuting authority or by the court only in those cases where there are serious grounds for believing that an accused ... will abscond, obstruct the establishment of the truth during the criminal proceedings or re-offend, or they can be applied by the court in order to ensure the enforcement of a sentence.

(2) Detention on remand and alternative preventive measures may be imposed only in cases concerning offences in respect of which the law provides for a custodial sentence exceeding two years. In cases concerning offences in respect of which the law provides for a custodial sentence of less than two years, they may be applied if ... the accused has already committed the acts mentioned in § (1).

(3) In deciding on the necessity of applying preventive measures, the prosecuting authority and the court will take into consideration the following additional criteria:

1) the character and degree of harm caused by the offence,

2) the character of the ... accused,

3) his/her age and state of health,

4) his/her occupation,

5) his/her family status and existence of any dependants,

6) his/her economic status,

7) the existence of a permanent place of abode,

8) other essential circumstances.

...

Section 177

...

(2) Detention on remand ... can be applied only on the basis of a court decision...

Section 185. Detention on remand

(1) Detention on remand means the detention of the suspect, accused or indicted person in a state of arrest in places and in conditions provided for by law.

(2) Detention on remand may be applied to someone in the circumstances and in the conditions provided for in Article 176, as well as when:

1) the suspect, the accused or the indicted person does not have a permanent place of residence on the territory of the Republic of Moldova;

2) the suspect, the accused or the indicted person is unknown;

3) the suspect, the accused or the indicted person has breached the conditions imposed on him/her concerning other preventive measures.

...

(4) The decision by which detention on remand is ordered can be challenged by way of an appeal before the hierarchically superior court.

Section 186. The length of the remand and its prolongation

(1) The duration of a person's remand starts to run from the moment of his or her arrest, or, if the person was not arrested, from the moment of enforcement of the court decision ordering the remand. ...

(2) The remand during the investigation stage of the proceedings, before the case file is sent to the competent court [by the prosecutor] shall not be longer than thirty days, except in cases provided for in the present code. The running of the duration of the remand during the investigation stage of the proceedings ceases on the date when the prosecutor sends the criminal case-file to a court and when the detention on remand is revoked or is replaced with another preventive measure which does not involve a deprivation of liberty.

...

(5) Any prolongation of the detention on remand may not be for a period longer than 30 days.

(6) If it is necessary to prolong the duration of the detention on remand of an accused, the prosecutor shall, not later than 5 days before the expiry of the remand order, make a request in that respect before the investigating judge.

(7) When deciding on the prosecutor's request about the prolongation of the remand, the investigating judge, or, as the case may be, the court, has the right to replace the detention on remand with home detention, release under judicial control or bail.

(8) After the sending of the bill of indictment to a court all the requests concerning the detention on remand shall be examined by the court in charge of the criminal case.

(9) The prolongation of the duration of remand for up to 6 months shall be decided upon by the investigating judge on the basis of a request of the district prosecutor. In case of a necessity to prolong the duration of the remand for over 6 months the request shall be lodged by the district prosecutor with the consent of the Prosecutor General or his deputies.

(10) The decision concerning the prolongation of the detention on remand may be challenged by way of an appeal to the hierarchically superior court.

Section 190

A person detained on remand under the provisions of Article 185 may request, at any time during the criminal investigation, his provisional release under judicial control or on bail.

Section 191. The provisional release under judicial control of a remanded person

(1) A provisional release under judicial control of a remanded person, or of a person in respect of whom a request for detention on remand has been made, may be granted by the investigating judge or by a court only in case of offences committed through negligence or intentional offences punishable with less than 10 years of imprisonment.

(2) A provisional release under judicial control may not be granted to an accused who has outstanding criminal convictions for serious, very serious or exceptionally serious offences or if there exists information that he or she will commit another offence, will try to influence the witnesses, will try to destroy evidence or will abscond.

(3) A provisional release under judicial control of a remanded person shall be accompanied by one or more of the following obligations:

1) not to leave the town of residence except in the conditions set by the investigating judge or by the court;

2) to inform the investigation organ or the court of any change of address;

3) not to go to certain places;

4) to appear in front of the investigation organ or the court when summonsed;

5) not to make contact with certain persons;

6) not to commit acts capable of hindering the discovery of the truth;

7) not to drive cars or not to exercise any profession of the kind used for committing of the offence.

...

Section 195

(1) A preventive measure applied may be replaced by a harsher one, if the need for it is proved by evidence, or by a lighter one, if by applying it the proper behaviour of ... the accused is ensured, with the aim of ensuring the normal course of the criminal investigation and of enforcing the sentence imposed.

Section 329

(1) In examining a case the court, *ex-officio* or at the request of the parties and having heard their opinion, shall have the power to apply, revoke or discontinue the preventive measure applied to the accused. A new request for the application, replacement or revocation of a preventive measure may be submitted if there are grounds for such a request, but not earlier than one month from the date of entry into force of the last decision in this respect or if new circumstances have appeared.

Section 345

(1) Within ten days from the date when the case was distributed for judgment, the judge or the bench, having examined the case-file, shall set a date for the preliminary

hearing. The preliminary hearing in cases where the person is arrested shall be held urgently and with priority.

...(4) At the preliminary hearing the following issues shall be examined:

...6) preventive and protective measures.

Section 351

...(7) In setting a date for the examination of the case, the court shall order the maintenance, revocation or discontinuation of preventive measures, in conformity with the present Code."

66. The explanatory judgment of the Plenary Supreme Court of Justice of 28 March 2005 states *inter alia* that release under judicial control can be granted by the investigating judge or by the trial court only to persons charged with offences committed through negligence or intentional offences punishable with less than 10 years of imprisonment.

67. The Commentary of the Code of Criminal Procedure, edited in 2005, the authors of which are amongst others the President and several judges from the Supreme Court of Justice and several senior law professors, states the following in respect of section 191:

"The first paragraph of section 191 provides for the first condition of admissibility of release under judicial control which is determined by the gravity of the offence with which the accused is charged. This condition [the gravity of the offence] is determined in the documents issued by the investigation body or by the prosecutor, who establish the qualification of the offence...

The investigating judge is not empowered with assessing whether the legal qualification of the offence is correct since he does not examine the evidence on which the qualification is made ...

At the trial stage, the trial court can give a new qualification to the offence with which the accused is charged..."

B. Domestic remedies invoked by the Government

68. In *Drugalev v. the Ministry of Internal Afairs and the Ministry of Finance* (final judgment of the Chişinău Court of Appeal of 26 October 2004), after being released, the applicant claimed and obtained compensation for having been held in inhuman and degrading conditions during his pre-trial detention, in the amount of approximately 950 euros (EUR). The court based its award directly on Article 3 of the Convention.

69. Article 53 of the Constitution reads as follows:

"(1) A person whose rights are violated by a public authority through an administrative act or through the failure to examine a request within the statutory

period, is entitled to obtain the recognition of the right claimed, the annulment of the act and compensation for damage.

(2) The State bears pecuniary liability, according to the law, for harm caused through errors committed in criminal proceedings by the investigating authorities and courts."

70. The relevant provisions of the Civil Code read as follows:

"Section 1405. Liability of the State for damage caused by the actions of the criminal investigation organs, prosecution and courts

(1) Damage caused to a natural person through illegal conviction, illegal prosecution, illegal application of preventive measures in the form of detention on remand or of a written undertaking not to leave the city, and illegal subjection to the administrative sanction of arrest or of non-remunerated community work, is to be fully compensated by the State, whether or not officers in the criminal investigation organs, the prosecution or judges were at fault. ..."

71. The relevant provisions of the Law No. 1545 on compensation for damage caused by the illegal acts of the criminal investigation organs, prosecution and courts read as follows:

"Section 1

(1) In accordance with the present law, individuals and legal entities are entitled to compensation for the moral and pecuniary damage caused as a result of:

a) illegal detention, illegal arrest, illegal indictment, illegal conviction;

b) illegal search carried out during the investigation phase or during trial, confiscation, levy of a distraint upon property, illegal dismissal from employment, as well as other procedural acts that limit the person's rights;

c) illegal administrative arrest or order to work for the community, illegal confiscation of the property, illegal fine;

d) carrying out of unlawful investigative measures;

e) illegal seizure of accounting documents, other documents, money or stamps as well as blocking of banking accounts.

(2) The damage caused shall be fully compensated, irrespective of the degree of fault of the criminal investigation organs, prosecution and courts.

Section 4

A person shall be entitled to compensation in accordance with the present law when one of the following conditions is met:

a) pronouncement of an acquittal judgment;

b) dropping of charges or discontinuation of investigation on the ground of rehabilitation;

c) adoption of a decision by which an administrative arrest is cancelled on the grounds of rehabilitation;

d) adoption by the European Court of Human Rights or by the Committee of Ministers of the Council of Europe of a decision in respect of damages or in respect of a friendly settlement agreement between the victim and the representative of the Government of the Republic of Moldova before the European Court of Human Rights. The friendly settlement agreement shall be approved by the Government of the Republic of Moldova; ..."

C. Medical confidentiality and freedom of medical information

72. Section 9 of the Law on Psychiatric Assistance reads as follows:

"Any information about mental diseases suffered by a person, his or her requests for psychiatric medical assistance and treatment in a psychiatric hospital, as well as any other information about his or her mental health constitutes a medical secret. With a view to realising his or her rights and interests, a person suffering from a mental disease or his or her legal representative can obtain any information about his or her psychiatric health and about the psychiatric assistance received."

THE LAW

73. The applicant complained under Article 3 of the Convention about being ill-treated by the police on 20 May 2005 and suffering a head trauma and a prolonged state of stupor as a result. He also complained about lack of proper medical assistance while in detention and about the failure to investigate properly his complaint about ill-treatment. Article 3 of the Convention reads as follows:

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

74. The applicant also complained that his detention on remand between 23 May 2005 and 23 July 2005 was not based on "relevant and sufficient" reasons. The Court also considered it necessary to examine *ex officio* whether the provisions of section 191 of the Code of Criminal Procedure were compatible with the Article 5 § 3 of the Convention. The relevant part of Article 5 § 3 reads:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

75. The applicant further submitted that his detention on remand between 23 and 25 July 2005 when the detention warrant had expired had not been "lawful" within the meaning of Article 5 § 1 of the Convention. He also complained under Article 5 § 3 that after the expiry of the detention warrant, a person was detained illegally. The Court decided *ex officio* to examine the problems raised by the applicant under Article 5 § 1, in the light of *Baranowski v. Poland*, (no. 28358/95, ECHR 2000-III), and to obtain the parties' submissions thereon. The relevant part of Article 5 § 1 reads:

> "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;
>
> ..."

76. Finally, the applicant complained under Article 34 of the Convention that his lawyers were not given access to his medical file and that no independent doctor had access to him in order to assess the harm done to his health for the purpose of submitting to the Court observations on the case. The relevant part of Article 34 reads:

> "...The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

I. ADMISSIBILITY OF THE COMPLAINTS

A. The complaint about the lack of access to the criminal file during the remand proceedings

77. In his initial application the applicant submitted a complaint under Article 5 § 4 of the Convention about lack of access to the part of the criminal file containing the evidence relied on by the prosecution in support of the decision to detain him in custody. However, in his observations on the admissibility and merits, the applicant informed the Court that at a later stage of the criminal proceedings, after gaining access to the criminal file, he discovered that it did not contain any such evidence. He therefore asked the Court to discontinue the examination of this complaint. Accordingly the Court will not examine it.

B. Failure to exhaust domestic remedies

78. The Government submitted that the applicant had not exhausted all the domestic remedies available to him, without specifying the relevant complaints. In particular, they reasoned that he could have, but did not, make use of the provisions of Article 53 of the Constitution, Article 1405 of the Civil Code and of Law 1545 (see paragraphs 69-71 above). Moreover, he could have invoked directly Article 3 of the Convention, as did the applicant in the case of *Drugalev* (see paragraph 68 above).

79. The applicant disagreed with the Government and argued that he had exhausted all the domestic remedies available to him. He also submitted that the remedies suggested by the Government were in any event irrelevant for his case.

80. The Court recalls that an individual is not required to try more than one avenue of redress when there are several available (see among others *Yagiz v. Turkey*, App. No. 19092/91, 75 D.R. 207). It clearly appears from the documents submitted to the Court, and the Government have not disagreed, that the applicant complained to the Prosecutor's Office and/or to the domestic courts about his alleged ill-treatment on 20 May 2005 (see paragraphs 29-36 above), the alleged lack of adequate medical care (see paragraphs 37-44 above) and his alleged illegal detention (see paragraphs 45-52 above). The Government have not argued that the remedies attempted by the applicant were ineffective and should not have been exhausted by him.

81. In such circumstances, the Court concludes that the application cannot be declared inadmissible for non-exhaustion of domestic remedies and accordingly the Government's objection must be dismissed.

C. Conclusion on admissibility

82. The Court considers that the applicants' complaints under Articles 3, 5 and 34 of the Convention raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no other 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 3 OF THE CONVENTION

A. The submissions of the parties

1. Concerning the alleged ill-treatment

83. The Government submitted that on 20 May 2005, after being brought to the police station, the applicant lost consciousness. His loss of consciousness was not due to the actions of the police, since nobody hit him. The fact that he was not ill-treated was confirmed by the findings of the doctors from the Prison Hospital to the effect that he had no bruises on his body. The diagnosis of acute head trauma and concussion established by the doctors of that hospital was a subjective one since it was established solely on the basis of the applicant's complaints to the doctors about suffering from a head trauma and losing consciousness on 20 May 2005 and about suffering from headaches, dizziness, nausea, pain in his back, etc. Moreover, the applicant had not presented any evidence to show that he had been ill-treated and he has not given a detailed description of the alleged abuses.

84. The Government argued that the reports of Doctors Berghi and Moraru (see paragraphs 26 and 27 above) should be disregarded since these doctors had not had access to the medical file during the period after 15 September 2005 and had not seen the applicant. As to the applicant's submission that he had blood in his urine, the Government argued that laboratory tests found no blood. They did not specify when the tests were carried out and they did not submit copies of the relevant medical reports.

85. The applicant pointed to the fact that the Government had not disputed that he was in good health at the moment of his arrest on 20 May 2005 and that he had lost consciousness while in custody. He further pointed to the diagnosis of the doctors from the Prison Hospital of 25 May 2005 to the effect that he had suffered a head trauma followed by a loss of consciousness on 20 May 2005 and to the note in the medical file to the effect that he complained of pain in his kidneys and red urine. The applicant submitted that the Government gave no explanation as to how he had obtained the above injuries while in custody. He also argued that he had no medical history of suddenly losing consciousness or of kidney disease.

2. Concerning the alleged lack of proper medical assistance while in detention

86. According to the Government, the applicant received all the necessary medical care during his detention. While in the Cardiology Hospital between 21 and 24 May 2005 he was seen by a neurologist who

recommended a brain scan in order to determine a final diagnosis. However, such a procedure was not possible because the applicant's body weight of 147 kilograms exceeded the maximum weight allowed for the scanning machine, which was 135 kilograms. The Government submitted a copy of a brochure of a scanning machine with the relevant technical specifications. The recommendation to carry out a brain scan was not confirmed by the next neurologist who consulted the applicant on 25 May 2005 at the Prison Hospital. Nor was it repeated by a third neurologist from the Psychiatric Hospital.

87. The Government submitted that the applicant was provided with full medical assistance during his stay in the Prison Hospital between 24 May 2005 and 1 September 2005 and in the Psychiatric Hospital starting on 15 September 2005. They submitted copies of bills for medication for the applicant for the months of October, November and December 2005 and argued that it was obvious from the medical files that he received adequate medical care. The applicant could not claim to have been denied adequate medical care since he was refusing to swallow the medication. He was fully capable of taking the medication since the medical file shows on one occasion in May, on four occasions in June, on one occasion in July and on one occasion in August 2005 that his condition was satisfactory.

88. The Government argued that in their view the psychiatric investigation ordered on 3 August 2005 was carried out within a reasonable time. The fact that it did not take place before 20 September 2005 was due to the preliminary administrative procedures necessary for its fulfilment, such as the notification of the court order, preparation of all the necessary elements for the carrying out of the investigation, transmission of the relevant documents to the Psychiatric Hospital, request to the prison authorities to bring the applicant to the hospital and escorting the applicant to the hospital. After receiving the results on 8 October 2005, the court considered that the investigation was not complete and ordered a supplementary investigation. The supplementary investigation was carried out on 15 November 2005 and, on the basis of its results, the court ordered on 23 December 2005 the applicant's hospitalisation in a specialised psychiatric institution until his full recovery from his state of stupor.

89. The applicant submitted first that the police officers did not react in a proper way to his loss of consciousness. Although he lost consciousness at 8.34 p.m., an ambulance was not called until over three hours later, and then only at his lawyer's insistence. According to the applicant his lawyer had to insist for approximately one and a half hours in order to convince the police officers to call an ambulance. The applicant argued that the Government had not provided a plausible explanation for this lack of prompt reaction by the police.

90. The Government had also failed, in the applicant's view, to give reasons for their failure to give him a brain scan, as recommended by the

doctors from the Cardiology Hospital. He denied the Government's submission that he weighed 147 kilograms and argued that this argument was invented by the Government and had not been confirmed. He presented extracts from his medical file according to which on 4 March 2005 he weighed 133 kilograms. In any event, the applicant stated that between his arrest on 20 May 2005 and 15 September 2005 he lost 30-35 kilograms; however, a brain scan was only performed on him in March 2006. He argued that a brain scan was important for his treatment and for the identification of the causes of his condition.

91. The applicant also argued that while in the Prison Hospital he constantly complained of pain in his kidneys, but no medical investigation had been carried out.

92. He also argued that on 2 June 2005 the doctors from the Prison Hospital recommended a psychiatric investigation, but their recommendation was ignored.

93. The lack of sufficient medical care during the applicant's stay in the Prison Hospital was confirmed by the report of the forensic investigation of 28 October 2005 and by the note in the medical file made by a doctor on 7 June 2005.

94. The applicant also suffered malnutrition during his stay in the Prison Hospital as demonstrated by his loss of 35 kilograms in 99 days. The applicant also submitted that he was not properly taken care of by the paramedical personnel. He pointed to the notes in the medical file made by doctors, according to which the room in which he was kept smelt strongly of excrement, his sheets were dirty and he was taken care of by inmates.

95. During the period 1-15 September 2005 the applicant was kept in the medical section of Prison No. 3, where conditions were not suitable for a person in a state of stupor.

96. The applicant also argued that the psychiatric investigation ordered by the court on 3 August 2005 was only completed on 15 November 2005, that is 75 days later. In his view, that could not be considered as a reasonable duration in view of his state.

97. The applicant concluded that he was kept in the Prison Hospital deliberately in order to hide the traces of his ill-treatment. Referring to the ill-treatment to which he was allegedly subjected and to the inappropriate medical treatment received, the applicant argued that they amounted to torture within the meaning of Article 3 of the Convention.

3. Concerning the alleged inadequacy of the investigation

98. The Government argued that the applicant's allegations lacked *prima facie* evidence. In any event, the Prosecutor's Office conducted a thorough investigation following which it decided on 8 June 2005 not to institute criminal proceedings. Following the complaint lodged by the applicant's lawyer on 1 June 2005, the Prosecutor's Office questioned the police

officers who arrested the applicant and the doctors from the Prison Hospital and attempted to question the applicant on 25 and 30 May 2005, but he refused to talk to them. Moreover, the medical files did not disclose any evidence of the applicant having been ill-treated and at the material time the doctors suspected that the applicant was exaggerating his symptoms. Neither the applicant nor his lawyer gave a detailed description of the alleged abuses.

99. The applicant submitted *inter alia* that the criminal file concerning the investigation of his complaint about ill-treatment contains no evidence of doctors or police officers having been questioned about his condition or about the events that took place on 20 May 2005. He also argued that on 25 and 26 May 2005 the doctors made notes in the medical file to the effect that on 20 May 2005 he suffered a head trauma followed by a loss of consciousness, that he had pain in the region of his kidneys and that his urine was red. Nevertheless, the prosecutor stated that the medical file contained no evidence of any form of ill-treatment. The applicant argued that the prosecutor had not even consulted the medical file. The fact that he did not speak to the prosecutor on 25 and 30 May 2005 was due to his medical condition; however, irrespective of that fact, the prosecutor was under a duty to investigate.

100. Moreover, the applicant has only come to know the results of the investigation on 23 December 2005, which could not be considered a reasonable time.

101. The applicant also submitted that the prosecutor who investigated his ill-treatment complaint lacked independence since he was the same prosecutor who was in charge of the criminal case against him.

B. The Court's assessment

1. Concerning the alleged ill-treatment

102. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and the *Assenov and Others v. Bulgaria* judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93).

103. 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*, § 87).

104. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

105. It is not disputed in the present case that between his arrest in the afternoon of 20 May 2005 and his subsequent admission to a hospital at 11.37 p.m., the applicant was in custody at the CFECC. It is also undisputed that before his arrest the applicant did not exhibit any particular abnormality in his normal physical state (see paragraph 8 above), but, after leaving the police station, he was unconscious for more than fours hours (see paragraphs 12-13 above).

106. The Government argued that the applicant lost consciousness as a result of stress and was not ill-treated, as demonstrated by the absence of bruises on his body. Moreover, the Government expressed their doubts about the diagnosis determined by the doctors from the Prison Hospital concerning the applicant's acute head trauma and concussion.

107. The Court does not see any reason not to trust that diagnosis. In this respect it notes that the diagnosis was determined by the doctors from the Prison Hospital. The Government have not presented any counter medical opinion and, in any event, the diagnosis was subsequently confirmed by the forensic investigation of 28 October 2005 and in the reports of the psychiatric investigation of 20 September and 15 November 2005, which had both been ordered by a domestic court (see paragraphs 21-22 above).

108. Moreover, the head trauma is not the only injury of the applicant to be unaccounted for. According to the medical file from the Prison hospital, he also suffered pain in his kidneys and had red urine (see paragraphs 15-16 above). The Government have not presented any evidence that these symptoms were due to any causes other than his alleged ill-treatment on 20 May 2005.

109. The fact that the applicant did not have bruises and other visible signs of ill-treatment on his body is not conclusive in the Court's view. The Court is well aware that there are methods of applying force which do not leave any traces on a victim's body.

110. The applicant alleged that his state of stupor after 20 May 2005 had been caused by the ill-treatment inflicted on him by police officers. The Government denied that allegation. The Court notes with concern the applicant's condition after his encounter with the police; however, given the limited evidence in its possession, notably the lack of an alternative medical report submitted by the applicant, it is unable to establish a direct causal link between the ill-treatment and the state of stupor.

111. On the basis of all the material placed before it, the Court concludes that the Government have not satisfied the burden on them to persuade it that the applicant's injuries were caused other than by ill-treatment while in police custody. Accordingly, there has been a violation of Article 3 of the Convention in that he was subjected to inhuman and degrading treatment.

2. Concerning the alleged lack of proper medical assistance while in detention

112. The Court recalls 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 *Sarban v. Moldova*, cited above, § 77).

113. The Court has to determine whether the applicant needed regular medical assistance, whether he had been deprived of it as he claims and, if so, whether this amounted to treatment contrary to Article 3 of the Convention (cf. *Farbtuhs v. Latvia*, no. 4672/02, § 53, 2 December 2004).

114. The evidence submitted by both parties confirms that, besides an acute head trauma and pain in his kidneys, the applicant appeared to be in a state of stupor, a very serious medical condition which required constant medical care and rigorous supervision (see paragraph 22 above). It appears that he entered this state immediately after his encounter with the police on 20 May 2005 and remained in it until 2 October 2005. On 24 October he fell back into a state of stupor and the present medical condition of the applicant is not clear from the submissions of the parties.

115. The Court considers the conclusions of Doctors Berghi and Moraru (see paragraphs 26 and 27 above) to be relevant, since, contrary to the Government's statements, they were based on the examination of the medical file from the Prison Hospital and on general medical knowledge.

116. The Court notes next that the applicant's diagnosis of stupor was established only on 20 September 2005 when a psychiatric investigation

was carried out for the first time (see paragraph 22 above). Until that date, the medical files from the Cardiology Hospital and from the Prison Hospital referred to his state only as "a syndrome of confusion of unclear origin" or as a possible simulation (see paragraphs 14 and 16 above).

117. The Government argued that the psychiatric investigation was carried out in due time and invoked administrative delays linked *inter alia* to the transfer of the applicant from the Prison Hospital to the Psychiatric Hospital. However, the Court cannot accept such arguments given the critical condition of the applicant and the fact that a psychiatric investigation was ordered for the first time not on 3 August 2005, as contended by the Government, but on 2 June 2005, as appears from the medical file from the Prison Hospital (see paragraph 15 above).

118. In the light of the above, the Court concludes that between 20 May 2005 and 20 September 2005, given the lack of any clear diagnosis of the applicant's condition, the only medical assistance possible for him was to keep him alive. However, even that conclusion is open to doubt, given the fact that between 1 and 15 September 2005 the applicant was kept in a regular prison and there is no evidence of any medical care being provided to him there. Accordingly, the Court concludes that the applicant was not provided with proper medical care until 20 September 2005. It is unable to determine on the basis of the material before it (see paragraph 158 below) whether the treatment following the diagnosis on 20 September 2005 was appropriate and adequate.

119. In conclusion, the Court considers that the lack of any adequate medical treatment amounted to a violation of Article 3 of the Convention.

3. Concerning the alleged inadequacy of the investigation

120. The Court recalls that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

121. For an investigation to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see e.g. *Barbu*

Anghelescu v. Romania, no. 46430/99, § 66, 5 October 2004). This means not only a lack of hierarchical or institutional connection but also a practical independence (see for example the case of *Ergı v. Turkey* judgment of 28 July 1998, *Reports* 1998-IV, §§ 83-84 where the public prosecutor investigating the death of a girl during an alleged clash showed a lack of independence through his heavy reliance on the information provided by the gendarmes implicated in the incident).

122. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used by the police was or was not justified in the circumstances (see *Kaya v. Turkey* judgment of 19 February 1998, *Reports* 1998-I, § 87).

123. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see the *Assenov and Others v. Bulgaria* judgment cited above, § 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony and forensic evidence (see, *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq. and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

124. The Court notes in the first place that the independence of the prosecutor who conducted the investigation, Mr Catană, was open to doubt. It observes that he was the same prosecutor who officially filed criminal charges against the applicant and who applied to the Buiucani District Court for the applicant's remand and for prolongations of his remand (see paragraph 33 above).

125. The Court further notes that Mr Catană did not undertake any investigative measures after receiving the complaint from the applicant's lawyer. That follows clearly from his decision dated 8 June 2005, in which he stated that in order to investigate the complaint of 31 May 2005 he unsuccessfully attempted to hear the applicant in person on 25 and 30 May 2005. Those statements were confirmed by Judge Gheorghe Morozan from the Râşcani District Court in his decision of 23 February 2006 dismissing the applicant's appeal.

126. Moreover, there is no indication in the decision of 8 June 2006 that the applicant's medical file had been examined by Mr Catană, or that the diagnosis of acute head trauma was even noted by him. Nor is there any indication that any doctors were questioned about the applicant's medical condition. Indeed, it appears that the only investigative measures undertaken by Mr Catană were the two unsuccessful attempts to talk to the applicant, prior to the latter's complaint about ill-treatment being lodged. According to

the medical documents in the Court's possession, the applicant was in a state of stupor and was unable to talk. The Court finds particularly striking Mr Catană's conclusion that the applicant's ill-treatment would in any event be justified since he was presumed to have wanted to use a gun during his arrest.

127. In such circumstances the Court concludes that the State authorities failed to conduct a proper investigation into the applicant's allegations of ill-treatment and that there has accordingly been a violation of Article 3 of the Convention in this respect also.

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

A. The submissions of the parties

128. Referring to the problem of compatibility of section 191 of the Code of Criminal Procedure with Article 5 § 3 of the Convention, the Government submitted that it was indeed impossible for a person accused of an offence punishable with imprisonment of more than 10 years to be released pending trial. However, release would be possible if the trial court decided to change the charge against the accused for an offence punishable with imprisonment of less than 10 years. Moreover, beside a release under section 191 of the Code of Criminal Procedure, there was also a possibility to obtain a release on bail in accordance with section 192, or a release in exchange for a personal guarantee or that of an organisation in accordance with sections 179, 180 and 195 of the Code of Criminal Procedure.

129. Concerning the reasoning of the decisions to remand the applicant, the Government submitted that the applicant's detention was necessary because he was suspected of having committed a serious offence punishable with imprisonment of 10 to 25 years and that he could abscond, influence the witnesses, obstruct the discovery of the truth and re-offend. Moreover, in view of his health problems he might have preferred to abscond rather than to risk having to serve a prison sentence.

130. The applicant argued that, in accordance with section 191 of the Code of Criminal Procedure, a judge was obliged to issue a remand warrant irrespective of the existence of reasons for detention if the accused was charged with an offence punishable with more than 10 years' imprisonment and that no real judicial control of the reasons for detention was possible. The applicant pointed to the explanatory judgment of the Plenary Supreme Court of Justice which confirmed his position.

131. The applicant submitted that the domestic courts gave no reasons for his remand but only restated in their decisions the wording of the legal

provisions on detention on remand. They also failed to give reasons for dismissing the arguments put forward by his defence.

132. The applicant also argued that the circumstances of the present case in respect of the reasons for remand were identical to those of *Sarban* (cited above) and *Becciev v. Moldova*, no. 9190/03, 4 October 2005, where the Court had found a violation of Article 5 § 3.

133. Moreover, the applicant's detention was not necessary since during the entire period of his detention he was in a state of stupor and he could not even get out of bed, let alone abscond or attempt to influence the investigation.

B. The Court's assessment

1. Concerning the compatibility of section 191 of the Code of Criminal Procedure with Article 5 § 3 of the Convention

134. The Court notes that in *S.B.C. v. the United Kingdom* (no. 39360/98, 19 June 2001) it found a violation of Article 5 § 3 because the English law did not allow the right of bail to a particular category of accused. The Court found in that case that the possibility of any consideration of pre-trial release on bail had been excluded in advance by the legislature.

135. The present case is similar to *S.B.C.* in that under section 191 of the Moldovan Criminal Procedure Code no release pending trial is possible for persons charged with intentional offences punishable with more than 10 years' imprisonment. It appears that in the present case the applicant was charged with such an offence.

136. The Government's argument that the charge against the accused could theoretically be changed to a milder charge and thus make it possible for him to obtain release pending trial cannot be accepted by the Court. In the first place, the Court notes that such a change cannot be effected by the investigating judge who issues and prolongs the detention warrant, but only by a trial judge after the criminal case-file is transmitted to the court for the examination of the merits (see paragraph 67 above). Secondly, and most importantly, follows from *S.B.C.* that the right to release pending trial cannot in principle be excluded in advance by the legislature.

137. As to the Government's argument that the applicant could have requested release on bail or release under a personal guarantee or under the guarantee of an organisation, the Court considers it to be irrelevant for the present case since the domestic proceedings at issue referred to release pending trial only.

138. Accordingly, the Court concludes that there has been a violation Article 5 § 3 of the Convention in that under section 191 of the Code of

Criminal Procedure it was not possible for the applicant to obtain release pending trial.

2. Concerning the lack of sufficient reasons to remand the applicant

139. The Court recalls that under the second limb of Article 5 § 3, a person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify his continuing detention (*Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 52).

140. Moreover, the domestic courts "must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release" (*Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 35).

141. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152-53, ECHR 2000-IV).

142. While Article 5 § 3 of the Convention "does not impose an obligation on a judge examining an appeal against detention to address every argument contained in the appellant's submissions, its guarantees would be deprived of their substance if the judge, relying on domestic law and practice, could treat as irrelevant, or disregard, concrete facts invoked by the detainee and capable of putting in doubt the existence of the conditions essential for the "lawfulness", in the sense of the Convention, of the deprivation of liberty." (*Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II). In this context, "[a]rguments for and against release must not be 'general and abstract'" (*Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX (extracts), *Sarban v. Moldova*, cited above, § 99).

143. In the present case, the Court notes that both the first-instance court and the Court of Appeal, when ordering the applicant's detention and the prolongation thereof, have cited the relevant law, without showing the reasons why they considered to be well-founded the allegations that the applicant could obstruct the proceedings, abscond or re-offend. Nor have they attempted to refute the arguments made by the applicant's defence. Thus, the circumstances of this case are similar to those in *Becciev v. Moldova*, §§ 61-62 and *Sarban*, §§100-101, cited above, in which this

Court found violations of Article 5 § 3 of the Convention on account of insufficient reasons given by the courts for the applicants' detention. Since the Government presented no reasons for distinguishing this case from the above cases, the Court considers that the same approach should be adopted in the present case.

144. In the light of the above, the Court considers that the reasons relied on by the Buiucani District Court and by the Chişinău Court of Appeal in their decisions concerning the applicant's detention on remand and its prolongation were not "relevant and sufficient".

145. There has accordingly been a violation of Article 5 § 3 of the Convention in this respect.

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

A. The submissions of the parties

146. The Government stated that after the applicant's case-file was submitted to the trial court on 23 July 2005, it was for the trial court to deal with any requests regarding the applicant's detention on remand, which detention was based on the clear provisions of the law, namely sections 186 (2) and (8), 329(1), 351(7) and 345(1) and (4) CCP (see paragraph 65 above). This and the fact that the applicant's detention was ordered by an investigating judge and not a prosecutor distinguished the case from *Baranowski* (cited above). The trial court had an express time-limit of ten days to set a date for a preliminary hearing (section 345 CCP) and it held such a hearing on 3 August 2005. It was clear to everyone from the context of that hearing that the applicant should remain in detention on remand. In addition, the applicant could at any moment request his release if he considered his detention unlawful.

147. The applicant argued *inter alia* that between 23 July and 23 December 2005 he was detained illegally since no detention warrant was issued by a judge for that period. He pointed to Article 25 of the Constitution according to which persons may be arrested only under warrant issued by a judge for a maximum period of 30 days and argued that the situation in the present case resembles that in the case of *Baranowski*.

B. The Court's assessment

148. The Court reiterates that the "lawfulness" of detention under domestic law is the primary but not always decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 which is to

prevent persons from being deprived of their liberty in an arbitrary fashion. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein (*Baranowski*, cited above, § 51).

149. On this last point, the Court stresses 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 – if need be, with appropriate advice – 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* judgment of 23 September 1998, *Reports* 1998-VII, § 54).

150. In the present case the Court notes that after 23 July 2005 no detention warrant was ever issued by a court, authorising or prolonging the applicant's detention.

151. The Government invoked several sections of the Code of Criminal Procedure which in their view constituted a legal basis for the applicant's detention after the expiry of his detention warrant of 23 July 2005 (see paragraph 146 above).

152. Having analysed those sections, the Court notes that none of them provides for the detention of the applicant without a detention warrant. Moreover, even assuming that any of the provisions invoked by the Government would have provided for such a detention, this would run contrary to Article 25 of the Constitution, which states in clear terms that detention is possible only on the basis of a warrant and that it cannot be longer than 30 days. This is confirmed by the provisions of section 177 of the Code of Criminal Procedure (see paragraph 65 above), which repeats the provisions of Article 25 of the Constitution in that detention on remand can be applied only on the basis of a court order.

153. It follows from the above that the applicant's detention after the expiry of his detention warrant on 23 July 2005 was not based on a legal provision.

154. There has, accordingly, been a violation of Article 5 § 1 of the Convention also in this respect.

V. ALLEGED FAILURE TO OBSERVE ARTICLE 34 OF THE CONVENTION

A. The submissions of the parties

155. The applicant argued that the refusal of the authorities to allow his lawyers and a private doctor to see him and his medical file amounted to an obstruction of his access to the Court. He argued that an examination by an independent doctor was needed in order to determine the cause of his condition after 20 May 2005, his present condition and the quality of the medical treatment received in the Psychiatric Hospital. Such a report would also have been useful for assessing the approximate cost of his future treatment, in a way similar to the assessment referred to in *Mikheyev v. Russia*, no. 77617/01, 26 January 2006.

156. The Government argued that the applicant's lawyers had not lodged any request with the Psychiatric Hospital for information concerning the applicant's state of health and about the medical assistance provided to him. As regards an examination by a private doctor, the Government reiterated that the applicant received all necessary medical care from the Psychiatric Hospital doctors. The Government did not submit any observations in respect of the merits of the complaint, which was made by the applicant for the first time in his observations dated 31 March 2006. They made only a general submission in their observations on just satisfaction to the effect that there had been no violation of Article 34 of the Convention.

B. The Court's assessment

157. The Court recalls that Article 34 of the Convention imposes an obligation on a Contracting State not to hinder the right of individual petition. The undertaking not to hinder the effective exercise of the right of individual application precludes any interference with the individual's right to present and pursue his complaint before the Court effectively (see, among other authorities and *mutatis mutandis*, *Akdivar and Others v. Turkey*, 16 September 1996, Reports 1996-IV, p. 1219, § 105; *Kurt v. Turkey*, 25 May 1998, Reports 1998-III, p. 1192, § 159; *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV; *Sarli v. Turkey*, no. 24490/94, §§ 85-86, 22 May 2001; and *Orhan v. Turkey*, no. 25656/94, 18 June 2002).

158. In the present case the Court notes that the essence of the applicant's complaint under this head is that his lawyers wanted to have the applicant's medical condition established by an independent source, notably a private doctor. The Court notes further that the applicant's lawyers clearly informed the State authorities that it would be necessary for them and a doctor to see the applicant and his medical file for the purpose of defending

his rights before the Court (see paragraphs 60-61 above). The request was reasonable in the Court's view and it does not appear that there was any public interest in rejecting it. Moreover, the Court notes that the applicant's lawyers were unable to present their observations in respect of pecuniary damage due to the lack of access to the applicant and to his medical file. The Court concludes that this constituted an interference with the applicant's right of individual petition, which amounted to a failure on the part of the respondent Government to comply with their obligation under Article 34 of the Convention. Accordingly, there has been a breach of this provision.

159. The Court has already expressed grave concern in the context of Article 3 about the inability of the applicant's lawyers and doctors to have access to him. It considers that the continuing denial of access amounts to an aggravated breach of Article 3 and stresses the urgent need for the respondent Government to secure to the applicant's lawyers and doctors immediate and unrestricted access to the applicant and his medical file.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

160. 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. Pecuniary damage

161. The applicant submitted that since his lawyers and an independent doctor had not been allowed to see him and his medical file, he was unable to present any observations concerning the costs of his future medical treatment arising from the breach of his Convention rights. Accordingly, he asked the Court to reserve this question and to indicate to the Government in its judgment that his lawyers and an independent doctor should be given unrestricted access to the medical file and to him.

162. The Government reiterated its position that there was no breach of Article 3 and that therefore no question of pecuniary damage could arise.

163. The Court considers that the question of the application of Article 41 in respect of pecuniary damage is not ready for decision. The question must accordingly be reserved and the further procedure fixed with due regard to the possibility of agreement being reached between the Moldovan Government and the applicant.

B. Non-pecuniary damage

164. The applicant claimed EUR 75,000 for non-pecuniary damage. He argued that he suffered mental anguish of particularly severe intensity. He reiterated his submissions about his ill-treatment, his state of stupor and lack of medical assistance, his malnutrition, due to which he lost 35 kilograms in 99 days, lack of investigation of his complaint about ill-treatment, his illegal deprivation of liberty and the hindrance of his access to the Court.

165. The Government disagreed with the amount claimed by the applicant and argued that he had failed to present any examples of relevant case law in support of his claims. They asked the court to dismiss the applicant's claims for just satisfaction in respect of non-pecuniary damage.

166. The Court notes the significant number and the extreme gravity of the violations suffered by the applicant. His ill-treatment and his subsequent detention in the Prison Hospital were considerably aggravated by the failure of the authorities to investigate his allegations of ill-treatment and by the subsequent hindrance of the applicant's access to the Court. He was also illegally deprived of liberty for a long time after being detained for three months without any reasons. Making its assessment on an equitable basis, the Court awards EUR 40,000 plus any tax that may be chargeable.

C. Costs and expenses

167. The applicant's lawyers claimed EUR 139.8 for postal expenses and EUR 6,683.25 for representation costs.

168. Insofar as the postal expenses are concerned, they sent the Court copies of DHL receipts proving the payment of EUR 139.8. They argued that since the present case was urgent under Rule 41 of the Court, the use of rapid post was justified.

169. As to the representation fees, the lawyers sent the Court copies of bank receipts proving the payment of the entire amount of 6,683.25 EUR to them by the applicant's wife.

170. They also submitted a copy of a contract between them and the applicant's wife, according to which the hourly fee for each lawyer was EUR 75. They attached to the contract detailed time-sheets according to which Mr Nagacevschi spent 25 hours on the case while Mr Gribincea spent 64.11 hours. The evaluation in the time-sheets did not include the time spent on the complaint under Article 5 § 4, which was subsequently withdrawn by the applicant.

171. They argued that the number of hours spent by them on the case was not excessive and was justified by its complexity and abundance of detail. The case-file has about 800 pages. The time was also justified by the repeated attempts to obtain access to the medical file and by the fact that

almost all the correspondence with the Court was conducted in a foreign language.

172. As to the hourly fee of EUR 75, the applicant's lawyers argued that it was within the limits of the fees recommended by the Moldovan Bar Association which were EUR 40-150. They submitted a copy of a document concerning the recommended fees issued by the Bar Association on 29 December 2005.

173. Moreover, they argued that an hourly fee of EUR 75 was reasonable in view of their experience and of the cases previously won by them before the Court. They argued that the status of a not for profit organisation of the "Lawyers for Human Rights" was not an impediment to their charging their clients. In this respect they submitted that the grant obtained by their organisation was not sufficient to cover even the expenses linked with the maintenance of their offices. They also pointed to the high costs of living in Chişinău and gave examples of prices of accommodation and petrol.

174. The Government did not contest the amount claimed for postal expenses. However, they disagreed with 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. While acknowledging the complexity of the case, they disputed the number of hours spent by the applicant's lawyers and the hourly fees charged by them. They also pointed to the not-for-profit character of the Organisation "Lawyers for Human Rights" and to the fact that Mr Nagacevschi was also an attorney at law and had therefore other sources of revenue besides the representation of clients before the Court.

175. 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-...).

176. In the present case, regard being had to the itemised list submitted, the complexity of the case and the important input of the lawyers, the Court considers that the amounts claimed for costs and expenses were actually and necessarily incurred and are reasonable as to their quantum. Accordingly it awards the entire amounts claimed.

D. Default interest

177. 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 since the applicant was subjected to inhuman and degrading treatment on 20 May 2005;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the lack of any adequate medical treatment between 20 May 2005 and 20 September 2005;

4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the applicant's complaints about being ill-treated by the police;

5. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's detention without a legal basis between 23 July and 23 December 2005;

6. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of the insufficient reasons for the applicant's detention between 23 May and 23 July 2005;

7. *Holds* that there has been a violation of Article 5 § 3 of the Convention in that under section 191 of the Code of Criminal Procedure it was not possible for the applicant to obtain release pending trial;

8. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;

9. *Holds*
   (a) that the respondent State must secure to the applicant's lawyers and doctors immediate and unrestricted access to the applicant and his medical file;
   (b) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 40,000 (forty thousand euros) in respect of non-pecuniary damage and EUR 6,823 (six thousand eight hundred and twenty three euros) 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;
   (c) 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;

10. *Holds* that the question of the application of Article 41 of the Convention in respect of pecuniary damage is not ready for decision; accordingly,
(a) reserves the said question;
(b) invites the Moldovan Government and the applicant to submit, within the forthcoming three months, their written observations on the matter and, in particular, to notify the Court of any agreement they may reach;
(c) reserves the further procedure and delegates to the President of the Chamber power to fix the same if need be.

Done in English, and notified in writing on 11 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President