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

FOURTH SECTION

CASE OF ISTRATII AND OTHERS v. MOLDOVA

(Applications nos. 8721/05, 8705/05 and 8742/05)

JUDGMENT

STRASBOURG

27 March 2007

FINAL

27/06/2007

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 Istratii and Others 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 K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. ŠIKUTA, *judges*,
and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 6 March 2007,

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

PROCEDURE

1. The case originated in three applications (nos. 8721/05, 8705/05 and 8742/05) 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 Moldovan nationals, Mr Viorel Istratii, Mr Alexandru Burcovschi and Mr Roman Luţcan ("the applicants"), on 5 March 2005.

2. The applicants were represented by Mr A. Tănase, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Pârlog.

3. The applicants alleged that they had been held in inhuman conditions and denied medical assistance, that the courts had not given relevant and sufficient reasons for their detention, that the judges who ordered their detention were not competent to do so under the law and that they were prevented from communicating in confidence with their lawyers.

4. The applications were allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 15 June 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants, Mr Viorel Istratii, Mr Alexandru Burcovschi and Mr Roman Luţcan, are Moldovan nationals who were born in 1971, 1970 and 1976 respectively and all live in Chişinău.

7. The facts of the case, as submitted by the parties, may be summarised as follows (most events happened in the same way and on the same date in respect of all the applicants; whenever facts differ, it is specified in the text).

1. The criminal proceedings against the applicants and their detention on remand

8. On 25 October 2004 the Department for Cross-Border and Information Crime of the Ministry of Internal Affairs opened a criminal investigation against the applicants for fraud in connection with the purchase of plots of land in Chişinău, which allegedly cost the State approximately 15,000 euros (EUR).

9. On 12 November 2004 the prosecutor requested warrants for the pre-trial detention of the applicants. On the same day three Buiucani District Court judges issued warrants for the applicants' pre-trial detention for ten days for the following reasons:

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

10. On 15 November 2004 the applicants appealed against the decisions ordering their pre-trial detention, questioning the grounds for that detention. They submitted that they had appeared before the investigating authorities when summoned and had not attempted to interfere in any way with the investigation or to abscond thereafter. Each applicant emphasised that he had no criminal record, had a family, including minor children, and a permanent residence in Chişinău, and had special medical needs. Mr Burcovschi submitted that he was the only breadwinner in his family and that his detention might cause serious hardship for his family, including his elderly mother who suffered from cardiac disease. Mr Luţcan added that he had come to the investigating authority directly from the maternity hospital and that he had not even seen his son, born on the day he was arrested, and could not give any support to his wife and child.

11. On 18 November 2004 the Chişinău Court of Appeal rejected the appeals, without responding explicitly to any of the above submissions. It rejected Mr Istratii's appeal for the following reasons:

> "In exceptional circumstances, depending on the complexity of the criminal case and the gravity of the crime and where there is a risk that the accused might abscond or put pressure on witnesses, the period of pre-trial detention during the criminal investigation may be prolonged ... taking into account that Mr Istratii is suspected of committing a particularly serious offence, that there is a risk that he could put pressure on witnesses, could abscond from law enforcement authorities; the separation of the suspect from society remains necessary".

It rejected Mr Burcovschi's appeal for the following reasons:

> "The request to remand Mr Burcovschi was examined within the limits of the law and was correctly accepted on the basis of documents in the criminal file, which was opened in accordance with the law and with the need to remand the suspect".

The Court of Appeal rejected Mr Luţcan's appeal for the following reasons:

> "Mr Luţcan is suspected of committing a serious offence for which the law provides a punishment of deprivation of liberty for more than two years; he could abscond from law enforcement authorities or the court; could obstruct the finding of truth in the criminal investigation. ... The lower court correctly reasoned the applicant's remand without committing any procedural violations".

2. Prolongations of the applicants' detention on remand

12. On 18 November 2004 the Buiucani District Court prolonged the applicants' detention on remand for another 30 days. The applicants made submissions against their continued detention. The court gave similar reasoning in each case, citing Article 186 § 3 of the Criminal Procedure Code ('CPC', see paragraph 24 below).

13. On 24 November 2004 the Chişinău Court of Appeal upheld those decisions. The court used similar reasoning in each case, finding that:

> "The circumstances which were the basis for his detention remained valid; there was a risk that [each applicant] might put pressure on victims and witnesses. In prolonging the remand no violations of the law affecting the lawfulness of the decision have been established".

14. The prosecutor obtained decisions from the Buiucani District Court prolonging the applicants' detention on remand on three occasions, in December 2004, January 2005 and February 2005. All of these decisions were upheld by the Court of Appeal. The reasons given for each of these prolongations were similar to those in the court decisions of 18 and 24 November 2004 mentioned above.

3. Habeas corpus requests

15. The applicants made *habeas corpus* requests to the investigating judge of the Buiucani District Court, noting, *inter alia*, that some of their property had been seized by the court and that this would be an additional guarantee of their proper conduct. The requests were rejected in December 2004 and in February 2005. The court used similar reasoning in each case, finding that:

> "[the applicant] is accused of committing a particularly serious offence for which the law provides a punishment of deprivation of liberty for more than two years; the prosecution case is not complete and a further criminal investigation is to be conducted, there is a risk that he may abscond from law enforcement authorities; there is a continued need to separate him from society and the grounds for his detention on remand remain valid".

16. On 29 April 2005, following another *habeas corpus* request, the Rîşcani District Court ordered the applicants' release, subject to an obligation not to leave the country, finding that:

> "[the applicants] have no criminal record, all have permanent residence, are well appreciated at work, have families and minor dependants. Mr Luţcan suffers from a serious illness, Mr Istratii underwent surgery during detention and needs treatment; all have jobs and none has absconded from the investigation authorities; there is no evidence that they have obstructed the investigation in any manner; the criminal file is now ready for trial; all the prosecution evidence has been gathered and all witnesses have made statements.
>
> Accordingly, the court considers that the accused cannot abscond from the court, obstruct the criminal investigation or commit other crimes and considers it possible to replace the preventive measure of detention on remand with an obligation not to leave the country".

4. Conditions of detention

(a) Mr Istratii's medical treatment while in detention

17. Between 12 November 2004 and 23 February 2005 Mr Istratii was held in the remand centre of the Centre for Fighting Economic Crime and Corruption in Chişinău (CFECC).

18. Until 11 February 2004 there were allegedly no medical personnel in that institution. The applicant had an acute crisis of paraproctitis with rectal haemorrhage on 18 November 2004. He was transported to a hospital three hours after the incident. He was handcuffed to a wall heater until his surgery on 19 November 2004 and was guarded at all times by two CFECC officers.

Some four hours after the operation, the CFECC officers accompanying him requested his transfer to the Pruncul detainee hospital. The applicant was admitted to the detainee hospital two and a half hours after leaving the civil hospital where he had been operated upon. Medical reports drawn up

after the transfer confirm that Mr Istratii complained about post-surgery problems in the months following his transfer.

19. In response to the applicant's lawyer's questions, Dr M.E., the surgeon who had operated upon the applicant, wrote that the recovery period after such surgery was typically about one month and that on 18-19 November 2004 the applicant had been handcuffed to a wall heater at the request of CFECC officers, who had stayed in his hospital room. According to Dr M.E., the patient could not move after the surgery because of pain and the risk of bleeding.

The Government annexed to their observations of January 2006 an explanatory note written by Dr M.E. The doctor explained that Mr Istratii had not been handcuffed during the surgery, but had been handcuffed to a wall heater before surgery and that no ill-treatment of any kind had been applied to him. The doctor confirmed that a one-month recovery period was necessary after surgery of the type undergone by the applicant.

(b) Conditions of detention of all three applicants in the remand centre of the Ministry of Justice

20. On 23 February 2005 all three applicants were transferred to the remand centre of the Ministry of Justice in Chişinău (also known as prison no. 3). According to the applicants, they were detained in inhuman and degrading conditions there (see paragraphs 61-65 below).

The conditions in this particular remand centre were reviewed three times by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT, see paragraph 29 below). The problem of overcrowding and insufficiency of funding for repairs, meat, fish, dairy products and bedding was also emphasised in two domestic reports (see paragraph 28 below).

5. Alleged interference with communication between the applicants and their lawyers

21. The applicants' lawyers asked for permission to have confidential meetings with their clients. They were offered a room where they were separated by a glass wall and allegedly had to shout to hear each other. It appears from the photographs and video recording submitted by the Government that in the lawyer-client meeting room of the CFECC detention centre, the space for detainees is separated from the rest of the room by a door and a window. The window appears to be made of two plates of glass. Both plates have small holes pierced with a drill; however the holes do not coincide so that nothing can be passed though the window. Moreover, there is a dense green net made either of thin wire or plastic between the glass plates, covering the pierced area of the window. There appears to be no space for passing documents between a lawyer and his client.

22. According to the applicants, they were able to hear conversations between other detainees and their lawyers, which made them refrain from discussing at length their cases. The Government did not dispute this.

II. RELEVANT NON-CONVENTION MATERIALS

A. Domestic law and practice

23. The relevant domestic law has been set out in the case of *Sarban v. Moldova* (no.3456/05, §§ 51-56, 4 October 2005).

24. In addition, the relevant provisions of the Code of Criminal Procedure read as follows:

> "Article 176
>
> "(1) Preventive measures may be applied by the prosecuting authority or by the court only in those cases where there are sufficient reasonable 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 paragraph (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:
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> 1) the character and degree of harm caused by the offence,
>
> 2) the character of the ... accused,
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> 3) his/her age and state of health,
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> 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.

Article 186

(3) In exceptional circumstances, depending on the complexity of the criminal case and the gravity of the crime and where there is a risk that the accused will abscond or put pressure on witnesses, destroy or tamper with evidence, the period of pre-trial detention during the criminal investigation may be prolonged...”

25. Between 1 and 3 December 2004 the Moldovan Bar Association held a strike, refusing to attend any procedures regarding persons detained in the remand centre of the CFECC until the administration had agreed to provide lawyers with rooms for confidential meetings with their clients. The demands of the Bar Association were refused (see *Sarban v. Moldova*, no. 3456/05, § 126, 4 October 2005).

26. On 26 March 2005 the Moldovan Bar Association held a meeting at which the President of the Bar Association and another lawyer informed the participants that they had taken part, together with representatives of the Ministry of Justice, in a commission which had inspected the CFECC detention centre. During the inspection they asked that the glass partition be taken down in order to check that there were no listening devices. They pointed out that it would only be necessary to remove several screws and they proposed that all the expenses linked to the verification be covered by the Bar Association. The CFECC administration rejected the proposal.

27. On 24 October 2003 the Parliament adopted decision no. 415-XV, regarding the National Plan of Action in the Sphere of Human Rights for 2004-2008. The plan includes a number of objectives for 2004-2008 aimed at improving the conditions of detention, including the reduction of overcrowding, improvement of medical treatment, involvement in work and reintegration of detainees, as well as the training of personnel. Regular reports are to be drawn up on the implementation of the Plan.

28. At an unspecified date the Ministry of Justice adopted its “Report on the implementing by the Ministry of Justice of Chapter 14 of the National Plan of Action in the Sphere of Human Rights for 2004-2008, approved by the Parliament Decision no. 415-XV of 24 October 2003”. On 25 November 2005 the Parliamentary Commission for Human Rights adopted a report on the implementation of the National Plan of Action. Both those reports confirmed the insufficient funding and related deficiencies and the failure to implement fully the action plan in respect of most of the remand centres in Moldova, including Prison no. 3 in Chişinău. The first of these reports mentioned, *inter alia*, that “as long as the aims and actions in [the National Plan of Action] do not have the necessary financial support ... it will remain only a good attempt of the State to observe human rights, described in Parliament Decision no. 415-XV of 24 October 2003, the fate of which is non-implementation, or partial implementation”. On 28 December 2005 the Parliament adopted its decision no. 370-XVI “Concerning the results of the verification by the special Parliament Commission regarding the situation of persons detained pending trial in the remand centre no. 13 of the

Penitentiaries Department whose cases are pending before the courts". The decision found, *inter alia*, that "the activity of the Ministry of Justice in the field of ensuring conditions of detention does not correspond to the requirements of the legislation in force."

B. Non-Convention material

1. Findings of the CPT

29. The relevant findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), read as follows (unofficial translation):

a. Visit to Moldova of 11-21 October 1998 (unofficial translation)

"76. Although not a deliberate ill-treatment, the CPT is compelled to point out that at prison No. 3, the vast majority of prisoners were subjected to a combination of negative factors - overcrowding, appalling material and hygiene conditions, virtually non-existent activity programmes - which could easily be described as inhuman and degrading treatment.

In contrast, in all the other detention areas, living conditions of the vast majority of the prison population left a considerable amount to be desired. In the most of the cells, the living space per prisoner was well below the minimum standard set and the cramming in of persons had reached an intolerable level. ... In addition, the delegation observed that cells of 8 m² to 9 m² accommodated up to four people.

Furthermore, in these cells access to natural light was very limited, artificial lighting was mediocre, and the air polluted and rank. For prisoners still under investigation (i.e. over 700 prisoners), the situation was even worse, their cells being virtually totally without access to natural light because of the thick external metal blinds covering the windows. By force of circumstances, the equipment was reduced to the bare minimum, comprising metal or bunk beds which were extremely rudimentary and in a poor state, and a table and one or two benches. Furthermore, in many cells, there were not enough beds and prisoners had to share them or sleep in turns. In addition, the bedding was in a bad condition; the very small stocks of mattresses, blankets and sheets was not enough and many prisoners without family or resources had to sleep just on the bed frame and/or the mattress.

The cells had a sanitary annex, a real source of infection. Above the Asian toilet was a tap which served both as a flush and as a source of water which prisoners could use to freshen up or wash. Moreover, this area was only partially partitioned by a small low wall less than one metre high, which meant that it was not possible to preserve one's privacy.

The state of repair and cleanliness in the cell blocks, overall, was also of considerable concern. In addition, many of the cells were infested with cockroaches and other vermin and some prisoners also complained that there were rodents.

To sum up, the living and hygiene conditions for the vast majority of the prison population were execrable and, more particularly, constituted a serious health risk."

b. Visit to Moldova of 10-22 June 2001 (unofficial translation)

"37. The CPT recommends that the right of access to a lawyer as from the very outset of custody be rendered fully effective in practice. It also recommends that detainees be able to receive visits from lawyers in conditions fully ensuring the confidentiality of the discussions. ...

70. In certain prisons, particularly those serving as remand establishments, the situation was exacerbated by sometimes severe overcrowding (as at Prison No. 3 in Chişinău, which in 2001 held 1,892 prisoners, compared with an official capacity of 1,480. ...

The 2001 visit showed how urgent it is for the authorities to put their plans for legislative reforms into effect; the extension of the prison estate does not constitute a solution. As already stressed in the previous CPT report, it is far more important to revise the current legislation and practice concerning detention on remand and sentencing and execution of sentences, and the range of available non-custodial sentences. This is a *sine qua non* if there is to be any hope in the near future of offering decent conditions in prisons. ...

82. ... the follow-up visit to Prison No. 3 in Chişinău revealed positive changes which the CPT welcomes. It particularly approves of the removal of the heavy blinds covering the windows of cells looking onto the interior of the establishment.

That said, the appalling living conditions and state of hygiene in buildings I, II and III, including the transit cells, described in paragraphs 80 and 81 of the previous report, had not changed (except as far as access to natural light is concerned). Indeed, the acute overcrowding in these buildings exacerbated matters still further. In the few cells viewed that were properly equipped and fitted out, this was due to the prisoners themselves, who had been able to procure what was needed from their families."

c. Visit to Moldova of 20-30 September 2004 (unofficial translation)

"b. Remand Centre of the Centre for Fighting Economic Crime and Corruption

53. The material conditions in this remand centre were in clear contrast to those in the remand centre of the Ministry of Justice. The cells, approximately 14m^2, could accommodate a maximum of four detainees. They had access to daylight, had sufficient artificial lighting and were well ventilated. They had partially separated toilets and lavatories, as well as full bed linen (mattress, sheets, pillow, blanket). ...

In sum, the material conditions in this remand centre prove that it is clearly possible to ensure in Moldova adequate material conditions of detention.

55. The situation in the majority of penitentiaries visited, faced with the economic situation in the country, remained difficult and one recounted a number of problems already identified during the visits in 1998 and 2001 in terms of material conditions and detention regimes.

Added to this is the problem of overcrowding, which remains serious. In fact, even if the penitentiaries visited did not work at their full capacity – as is the case of prison no. 3 in which the number of detainees was sensibly reduced in comparison with that during the last visit of the Committee – they continued to be extremely congested. In fact, the accommodation capacity was still based on a very criticisable $2m^2$ per detainee; in practice often even less.

77. The follow-up visit to Prison no. 3 in Chişinău does not give rise to satisfaction. The progress found was in fact minimal, limited to some current repair. The repair of the ventilation system could be done due primarily to the financial support of civil society (especially NGOs), and the creation of places for daily walk was due to support by the detainees and their families.

The repair, renovation and maintenance of cells is entirely the responsibility of detainees themselves and of their families, who also pay for the necessary materials. They must also obtain their own bed sheets and blankets, the institution being able to give them only used mattresses.

79. ... In sum, the conditions of life in the great majority of cells in Blocks I-II and the transit cells continue to be miserable. ...

Finally, despite the drastic reduction of the overcrowding, one still observes a very high, even intolerable, level of occupancy rate in the cells.

83. ... everywhere the quantity and quality of detainees' food constitutes a source of high preoccupation. The delegation was flooded with complaints regarding the absence of meat, dairy products. The findings of the delegation, regarding both the food stock and the communicated menus, confirm the credibility of these complaints. Its findings also confirmed that in certain places (in Prison no.3, ...), the food served was repulsive and virtually inedible (for instance, presence of insects and vermin). This is not surprising, given the general state of the kitchens and their modest equipment.

Moldovan authorities have always emphasized financial difficulties in ensuring the adequate feeding of detainees. However, the Committee insists that this is a fundamental requirement of life which must be ensured by the State to persons in its charge and that nothing can exonerate it from such responsibility. ...”

2. Acts of the Committee of Ministers of the Council of Europe

30. Resolution (73) 5 of the Committee of Ministers of the Council of Europe concerning the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Committee of Ministers on 19 January 1973), insofar as relevant, reads as follows:

“93. An untried prisoner shall be entitled, as soon as he is imprisoned, to choose his legal representative, or shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him, and to receive, confidential instructions. At his request he shall be given all necessary facilities for this purpose. In particular, he shall be given the free assistance of an interpreter for all essential contacts with the administration and for his defence. Interviews between the prisoner and his legal adviser may be

within sight but not within hearing, either direct or indirect, of a police or institution official."

31. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies), insofar as relevant, reads as follows:

"23.1 All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice. ...

23.4 Consultations and other communications including correspondence about legal matters between prisoners and their legal advisers shall be confidential. ...

23.6 Prisoners shall have access to, or be allowed to keep in their possession, documents relating to their legal proceedings."

THE LAW

32. The applicants complained about the conditions of their detention and the lack of medical treatment, contrary to Article 3 of the Convention, which provides as follows:

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

33. They also submitted that the decisions ordering their pre-trial detention had not been taken by an "investigating judge" as required by law. They also complained about the insufficient reasons given by the courts for their decisions ordering the applicants' pre-trial detention. Article 5 § 3 reads as follows:

"3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

34. The applicants also complained under Article 8 of the Convention that conversations with their lawyers were conducted through a glass wall and were overheard or possibly even recorded and that the authorities had failed to provide proper conditions for private discussions with their lawyers. The Court, which is master of the characterisation to be given in law to the facts of the case (see *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, § 44), decided to examine the problem raised by the applicants under Article 5 § 4 of the Convention and to obtain the parties' submissions thereon.

The relevant part of Article 5 § 4 reads:

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

I. ADMISSIBILITY OF THE APPLICATION

35. In their initial applications the applicants complained under Article 5 § 3 of the Convention that the judges who ordered and then prolonged their detention on remand were not "investigating judges" as required by the law and were not competent to order their release.

36. However, in their observations of December 2005 the applicants expressed their wish to withdraw this complaint in the light of the findings in *Sarban*, cited above. The Court will not therefore examine the complaint.

37. The Government submitted that the applicants had not exhausted all the domestic remedies available to them. In particular they 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. The case of *Duca* (cited in *Sarban*, §§ 57-59), who had received compensation at the domestic level on the basis of Law 1545, confirmed that possibility.

38. The Court notes that it has examined a preliminary exception based on the same argument in *Sarban* (cited above, §§ 57-62) and has found that the remedies relied on by the Government were not effective in that case, which concerned similar complaints under Articles 3 and 5 of the Convention. It finds that the Government have not submitted any arguments which would persuade it to depart from its conclusions in that case, or for distinguishing the present applications.

39. In view of the above, the Court concludes that the applications cannot be declared inadmissible for non-exhaustion of domestic remedies. Accordingly the Government's objection must be dismissed.

40. The Court considers that the applicants' complaints under Article 3 and Article 5 §§ 3 and 4 of the Convention raise questions of 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. Pursuant to Article 29 § 3 of the Convention (see paragraph 5 above), the Court will now consider the merits of these complaints.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

41. The applicants complained that the lack of medical assistance in the remand centre of the CFECC between 12 November 2004 and 11 February 2005 and the conditions of their detention in the remand centre of the

Ministry of Justice after 23 February 2005 amounted to inhuman and degrading treatment contrary to Article 3 of the Convention.

A. Arguments of the parties

1. Conditions of detention and the alleged lack of medical treatment in the CFECC remand centre

a. The applicants

42. Mr Burcovschi and Mr Luţcan made general complaints about the lack of medical assistance in the CFECC remand centre. They did not claim that they had any specific need of such assistance or that they were denied such assistance when they requested it.

Mr Istratii complained in particular that when he had had a medical emergency, which included serious bleeding, on 18 November 2004 he was not taken to a hospital until three hours after he had asked for help. In addition, he complained about the permanent presence of CFECC officers in his hospital room, about the fact that he had been held handcuffed while in the hospital, and that he was transported to a detainee hospital shortly after surgery even though he had not sufficiently recovered.

b. The Government

43. The Government submitted that the treatment to which the applicants had been subjected did not reach the minimum threshold under Article 3 of the Convention. Any suffering they might have experienced did not exceed what was inherent in detention. The conditions in the CFECC remand centre were appropriate. A doctor was employed there. In case of an emergency, detainees could be taken to a nearby hospital (in *Sarban*, cited above, the Government specified that the Municipal Emergencies Clinical Hospital was situated 500 metres from the CFECC remand centre), as happened on 18 November 2004 in the case of Mr Istratii. There was no obligation under the Court's case-law to transfer detainees outside their places of detention if they were offered appropriate medical assistance there.

44. In respect of the treatment of Mr Istratii on 18-19 November 2004, the Government submitted that his illness had been contracted before his detention and that the CEFCC authorities reacted immediately to his request for medical assistance, transferring him to a hospital. His state of health was not very grave since he was not operated upon on the day of his admission to the hospital but on the next day. Furthermore, he could walk without assistance and was obviously conscious.

45. The Government considered that Mr Istratii had not been handcuffed during surgery, and Dr M.E.'s note confirmed that (see paragraph 19 above). The applicant was taken to a detainee hospital four hours after surgery, which gave him sufficient time for recovery. He was not bleeding or unconscious and was in a relatively good condition during the transfer.

c. The Court's assessment

46. The Court recalls that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI, and *Sarban*, cited above, §§ 75 et seq.). Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (*Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

47. Although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Hurtado v. Switzerland*, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79). The Court has also emphasised the right of all prisoners to conditions of detention which are compatible with human dignity, so as to ensure that the manner and method of execution of the measures imposed do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention; in addition, besides the health of prisoners, their well-being also has to be adequately secured, given the practical demands of imprisonment (see *Kudła*, cited above, § 94).

48. The applicants complained about the lack of medical assistance while they were detained in the CFECC remand centre. The Court recalls that in the *Sarban* case cited above (§ 81), the Government did not submit any evidence of the presence in the remand centre of any medical personnel before 11 February 2005. They have not submitted any such evidence in the instant case either.

49. Two of the applicants did not claim that they needed any medical assistance either on a regular basis or for any emergency (see paragraph 42 above). The Court considers that the lack of medical assistance in circumstances where such assistance was not needed cannot, of itself, amount to a violation of Article 3 of the Convention.

50. On the other hand, Mr Istratii asked for medical assistance on 18 November 2004, when he had an acute paraproctitis with rectal haemorrhage. He was transported to a hospital three hours later (see paragraph 18 above).

51. It is common ground between the parties that Mr Istratii had contracted his illness well before his arrest. He was thus aware of the risks associated with any aggravation of his state of health. At the same time, on 18 November 2004 when he had an acute crisis, he had no possibility to obtain immediate medical assistance as there were no medical personnel in the CFECC remand centre (see paragraph 48 above).

52. Despite the assurances of the Government that in case of an emergency urgent medical assistance could be given without delay by calling an ambulance and transporting the patient to a nearby hospital (see paragraph 43 above), no explanation was offered for the three-hour delay before such assistance was given. While it was eventually determined that the crisis had not been very dangerous, the applicant had been left in pain and in a state of anxiety throughout that period, not knowing exactly what his condition was and when he would be given qualified medical assistance.

53. In this respect, the Court recalls its finding in the *Sarban* case cited above (§ 87 *in fine*) that "in order for a call for an ambulance to be made the CFECC administration had first to give permission, a difficult decision to take in the absence of professional medical advice". The present case reinforces the Court's view on this issue, given the delay in calling the ambulance.

54. It follows that the applicant was not given timely medical assistance in the CFECC remand centre and was left in a state of anxiety in respect of his health.

55. Mr Istratii also complained about his transfer to a detainee hospital without leaving him time for recovery and about his handcuffing while in hospital. The Court notes that less than four hours after the surgery the applicant was taken to a detainee hospital and that the transfer took two and a half hours (see paragraph 18 above). It also notes that the recovery period after such surgery is one month and that, according to Dr M.E., who had operated upon the applicant, the latter could not move independently after the surgery due to pain and a risk of bleeding (see paragraph 19 above).

56. In such conditions, where there was no risk of the applicant's fleeing and where the recovery time allowed was very short whereas the journey time was relatively long, the Court is not convinced that any concerns about the applicant's possible escape should have outweighed the clear need to ensure his recovery.

57. The Court notes that the Government gave no explanation for the need to handcuff the applicant, except to emphasise that he had not been handcuffed during surgery. Indeed, the applicant's medical condition (both before and after surgery) effectively excluded any risk of fleeing or of

causing violence, as noted in paragraph 54 above, and there was no claim that he had any record of violence. In such circumstances, and in light of the further fact that two CFECC officers guarded the applicant in his hospital room, his handcuffing to a wall heater was disproportionate to the needs of security and unjustifiably humiliated him, whether or not that had been the intention (cf. *Mouisel v. France*, no. 67263/01, § 47, ECHR 2002-IX; *Henaf v. France*, no. 65436/01, § 52, ECHR 2003-XI).

58. In the Court's view, the failure to provide immediate medical assistance to the applicant in an emergency situation, as well as his transfer to another hospital before he could sufficiently recover, together with his humiliation by being handcuffed while in hospital, amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention (see *Kudła*, cited above, § 94; *Farbtuhs v. Latvia*, cited above, § 51; *Nevmerzhitsky v. Ukraine*, no. 54825/00, § 106, 5 April 2005).

59. There has accordingly been a violation of Article 3 of the Convention in respect of Mr Istratii. There has been no violation of the same Article in this respect in the case of Mr Burcovschi and Mr Luţcan as regards the lack of medical assistance in the CFECC remand centre.

2. The applicants' conditions of detention in the remand centre of the Ministry of Justice

a. The applicants

60. The applicants complained that the conditions of detention in the remand centre of the Ministry of Justice were inhuman and degrading (see paragraph 20 above).

61. In particular, they complained about overcrowding, their cells measuring 10m^2 and holding between 4 and 6 detainees (thus, the personal space available varied between 1.6 and 2.5 m^2). Periodically, a seventh detainee was placed in Mr Istratii's cell and slept on the floor. According to a diagram of the cell drawn by the applicants' lawyer, most of the surface of the cell was occupied by three bunk beds, a toilet and a table, leaving a very small space in the middle of the cell.

62. In the absence of chairs, all detainees had to eat standing up. In Mr Luţcan's cell the table was situated next to the toilet. The toilet did not have a cistern. A hose was used for flushing and cleaning the toilet, washing hands and preparing food. There was no water supply during the night, which made detainees refrain from using the toilet so as to limit bad smells in the cell.

63. The cell window was covered with three layers of iron netting of various sizes, the combined effect of which was to block out most of the sun light. Ventilation was never switched on. During winter it was very cold in the cell (12ºC). Electricity was only switched on during several hours a day

and this made it difficult to prepare food. Detainees were allowed to take a bath only every two weeks.

64. The medical assistance was mediocre due to the poor financing of the medical service in prisons (limited to EUR 64,000 a year for all prisons). Bed linen was only available to 25% of detainees and most of it had been overused. No clothes or shoes were given to the detainees by the prison administration.

65. The food served was of very poor quality; the budget reserved for feeding detainees was EUR 0.28 a day per person or 30% of the minimum as estimated by the authorities. Meat, fish and dairy products were given only to vulnerable persons, the rest of the detainees receiving them "within the availability of funds", as confirmed by a report of the Ministry of Justice.

66. The applicants relied on the Court's finding of a violation of Article 3 in the case of *Ostrovar v. Moldova* (no. 35207/03, 13 September 2005) which concerned the conditions of detention in the same prison as in the present case. They further relied on the findings of the CPT in its 1998, 2001 and 2004 visits to that institution, and on the findings of the various domestic reports (see paragraph 28 above).

b. The Government

67. The Government submitted that the conditions of detention in the remand centre were acceptable: there was access to daylight, sufficient ventilation, a water tap, and a toilet (separated by a lateral wall) in each cell, as well as heating. Detainees were allowed to use their own television sets and radios, had access to sports facilities and daily one-hour walks. They were given food corresponding to their needs in accordance with the levels established by the Government, including meat and fish "depending on availability". They could also purchase food and personal hygiene products (limited to EUR 12 per month) and could receive packages once a month. In addition, there was no intention on the part of the remand authorities to subject detainees to inhuman or degrading treatment and sustained efforts had been made to improve the conditions of detention. A number of decisions and action plans had been adopted to that effect (see paragraph 27 above).

c. The Court's assessment

68. The Court notes that the conditions of detention in the remand centre of the Ministry of Justice were reviewed by the CPT in 1998, 2001 and 2004 and that on each occasion serious shortcomings were found, despite some recent repairs, mostly funded by the detainees themselves or charitable organisations (see paragraph 29 above). Those findings are corroborated by the various reports prepared by the domestic authorities (see paragraph 28 above).

69. While the Court does not exclude the possibility of improvements in the conditions of detention between the visit by the CPT in September 2004 and the applicants' detention in February-April 2005, the Government have not submitted any evidence of such improvements.

70. It notes that some of the applicants' claims (whether ventilation was switched on, electricity and water were periodically switched off, the low cell temperature) cannot be verified since they are denied by the Government and there is no other confirmation of the real state of affairs. However, other complaints coincide with the findings of the CPT, which the Court takes as a starting point, subject to any evidence to the contrary provided by the Government. In particular, the Court notes that the latest CPT report confirmed a "very high, even intolerable" occupancy rate of around $2m^2$ per detainee (see paragraph 29 above). This coincides with the applicants' claim that they had between 1.6 m^2 and 2.5 m^2 of space in the cells. In addition, the applicants' claim that the food was of bad quality and insufficient quantity coincides with the findings of the CPT that "the food served was repulsive and virtually inedible" and contained rodents and insects. The applicants supported their claims with reference to reports of the domestic authorities (see paragraph 28 above), which confirmed, *inter alia*, both the overcrowding in prisons and the insufficient funding which meant that only limited quantities of food were available. The domestic reports referred to above also confirmed the very limited availability of bedding, most of which was inadequate through overuse. The Government have not commented on the applicants' claim that the three layers of iron netting on the cell windows denied them access to natural light. They limited themselves to stating that there was access to daylight. The Government made no comment either on the number of detainees in the cells. The Court notes that the applicants spent 23 hours a day during more than two months in the conditions described above (see paragraph 67 above).

71. The Court considers that their conditions of detention in prison no. 3, principally the overcrowding and insufficient quantity and quality of food, the lack of adequate bedding and the very limited access to daylight, as well as the insufficient sanitary conditions in the cell amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

72. There has accordingly been a violation of Article 3 in respect of all three applicants.

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

73. The applicants complained that the decisions ordering their detention on remand and its prolongation, as well as the decisions rejecting their *habeas corpus* requests, were not based on relevant and sufficient reasons. The courts had essentially cited the provisions of the law and did not react

in any way to the applicants' arguments against each of the grounds of detention on remand, failing to give detailed reasons as to why any ground was well-founded in each case.

74. The Government submitted that the domestic courts gave sufficiently detailed reasons for their decisions, given that the existence of a reasonable suspicion sufficed to justify detention at the investigation stage and there was no obligation to submit proof of the guilt of those accused of a crime.

75. The Government added that the investigation into the applicants' cases revealed their participation in a number of similar crimes and that they had attempted to influence certain witnesses in order to convince them to make false statements. In addition, certain witnesses offered documents to the applicants in exchange for money, which demonstrated that those witnesses were prone to influence.

76. The Court recalls that "the persistence of 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, § 153, ECHR 2000-IV).

77. The Court also recalls that it has found a violation of Article 5 § 3 of the Convention in *Sarban v. Moldova* (cited above, § 104). Having examined the material submitted to it, the Court considers that the file does not contain any element which would allow it to reach a different conclusion in the present case. In particular, the Court notes that the domestic courts gave no consideration to any of the applicants' arguments in their decisions, even though they were obliged to consider such factors under Article 176 § 3 of the Code of Criminal Procedure (see paragraph 24 above). Moreover, according to Article 186 § 3 of the Code of Criminal Procedure (see paragraph 24 above), prolongation of detention on remand is to be ordered only "in exceptional circumstances". None of the courts prolonging the applicants' detention appears to have identified any exceptional circumstances requiring such a prolongation. It is, moreover, surprising that it was only on 29 April 2005 that a court ordered the applicant's release on grounds which had been invoked by them from the outset of their detention (see paragraph 16 above). This would appear to confirm that no proper consideration was given by the courts to the justification for the applicants' continued detention before that date.

78. There has, accordingly, been a violation of Article 5 § 3 of the Convention.

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

79. The applicants complained about the interference by the remand centre authorities with their right to communicate in confidence with their lawyers.

1. Arguments of the parties

80. The applicants submitted that they were able to talk to their lawyers only through a glass partition with holes which, due to bad acoustics, required them to shout and thus created the risk of being overheard by CFECC officers and other inmates. They claimed to have heard conversations between other detainees and their lawyers during such visits, which created an additional restraint on the contents of their discussions with the lawyers, thus greatly reducing the efficiency of their defence. They also learned from another detainee that he had been asked to give explanations about the contents of a discussion with his lawyer. The Government have not disputed these submissions. It was not until February 2005, after their transfer to another remand centre where they could speak freely to their lawyers that the latter were able to prepare a good defence case, as a result of which the applicants were released in April 2005.

81. The applicants submitted a copy of a decision of the Moldovan Bar Association to hold a strike on 1-3 December 2004, refusing to attend any procedural hearings regarding persons detained in the remand centre of the CFECC until the administration had agreed to provide lawyers with rooms for confidential meetings with their clients (see paragraph 25 above). The applicants claimed that there was a widely held suspicion amongst lawyers that their discussions with their clients detained at CFECC could be overheard and any information so obtained could be used against their clients.

82. The Government submitted that in their initial applications the applicants had complained under Article 8 only in respect of the alleged interference with their right to communicate with their lawyers, and had only asked the Court to consider the issue under Article 5 § 4 in the light of the subsequent *Sarban* judgment. This should, in their view, preclude the Court from examining this complaint under Article 5 § 4 of the Convention.

83. They also submitted that domestic law ensured the right to confidential meetings with lawyers without any limitation on their number and duration (the applicants having used that right on a number of occasions), and ensured the safety of the applicants and of their lawyers. Due to the dangerous character of the crimes dealt with by the CFECC, its remand centre had to be equipped with a room for meetings where lawyers and their clients were separated by a glass partition with holes allowing normal discussion. Moreover, the absence of a physical obstacle between

the lawyer and the client would allow lawyers to counterfeit documents by having them signed by their clients at the CFECC. The Government emphasised that the room had never been equipped with any technical means of recording or listening, as proved by the photos and video recording from the CFECC.

84. They relied on this Court's judgment in *Sarban*, cited above (§ 131), as well as the Chişinău Regional Court's decision of 3 December 2004 in response to a similar complaint (*Sarban*, cited above, § 127). Moreover, after their transfer to the remand centre of the Ministry of Justice, the applicants were able to freely communicate with their lawyers as there was no glass partition in the meeting room there.

2. The Court's assessment

85. Insofar as the Government's objection to the examination of this complaint under Article 5 § 4 of the Convention is concerned, the Court repeats that it is master of the characterisation to be given in law to the facts of the case (see paragraph 34 above). Since the applicants were in essence complaining that due to the glass partition in the lawyer-client meeting room he could not confer in private with his lawyer about issues related to the proceedings concerning his right to liberty, the Court considers that Article 5 § 4 is the more appropriate Article in this instance.

86. In *Reinprecht v. Austria*, no. 67175/01, § 31, ECHR 2005-... the Court summarised the principles arising from its case-law on Article 5 § 4 as follows:

> "(a) Article 5 § 4 of the Convention entitles an arrested or detained person to institute proceedings bearing on the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty (see, among many others, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 34-35, § 65).
>
> (b) Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see, for instance, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3302, § 162, and *Włoch v. Poland,* no. 27785/95, § 125, ECHR 2000-XI, both with reference to *Megyeri v. Germany*, judgment of 12 May 1992, Series A no. 237-A, p. 11, § 22).
>
> (c) The proceeedings must be adversarial and must always ensure "equality of arms" between the parties (see *Lamy v. Belgium*, judgment of 30 March 1989, Series A no. 151, § 29). In case of a person whose detention falls within the ambit of Article 5 § 1(c) a hearing is required (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II; *Assenov and Others*, cited above, § 162, with references to *Schiesser v. Switzerland*, judgment of 4 December 1979, Series A no. 34, p. 13, §§ 30-31; *Sanchez-Reisse v. Switzerland*, judgment of 21 October 1986, Series A

no. 107, p. 19, § 51; and *Kampanis v. Greece*, judgment of 13 July 1995, Series A no. 318-B, p. 45, § 47).

(d) Furthermore, Article 5 § 4 requires that a person detained on remand be able to take proceedings at reasonable intervals to challenge the lawfulness of his detention (see *Assenov and Others,* cited above, p. 3302, § 162, with a reference to *Bezicheri v. Italy*, judgment of 25 October 1989, Series A no. 164, pp. 10-11, §§ 20-21)."

87. Article 6 has been found to have some application at the pre-trial stage (see, for instance, *Imbrioscia v. Switzerland*, judgment of 24 November 1993, Series A no. 275, p. 13, § 36, and *John Murray v. the United Kingdom*, judgment of 8 February 1996, *Reports*, 1996-I, p. 54, § 62) during which the review of the lawfulness of pre-trial detention typically takes place. However, this application is limited to certain aspects.

The guarantees provided in Article 6 concerning access to a lawyer have been found to be applicable in *habeas corpus* proceedings (see for example *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, § 60). In *Bouamar v. Belgium*, (judgment of 29 February 1988, Series A no. 129, §60), the Court held that it was essential not only that the individual concerned should have the opportunity to be heard in person but that he should also have the effective assistance of his lawyer.

88. The Court's task in the present case is to decide whether the applicants were able to receive effective assistance from their lawyers so as to satisfy these requirements.

89. One of the key elements in a lawyer's effective representation of a client's interests is the principle that the confidentiality of information exchanged between them must be protected. This privilege encourages open and honest communication between clients and lawyers. The Court recalls that it has previously held that confidential communication with one's lawyer is protected by the Convention as an important safeguard of one's right to defence (see, for instance, *Campbell v. the United Kingdom*, judgment of 25 March 1992, Series A no. 233, § 46 and Recommendation Rec(2006)2 (see paragraph 31 above)).

90. Indeed, if a lawyer were unable to confer with his client and receive confidential instructions from him without surveillance, his assistance would lose much of its usefulness, whereas the Convention is intended to guarantee rights that are practical and effective (see, *inter alia*, the *Artico v. Italy* judgment of 13 May 1980, Series A no. 37, p. 16, § 33).

91. The Court considers that an interference with the lawyer-client privilege and, thus, with a detainee's right to defence, does not necessarily require an actual interception or eavesdropping to have taken place. A genuine belief held on reasonable grounds that their discussion was being listened to might be sufficient, in the Court's view, to limit the effectiveness of the assistance which the lawyer could provide. Such a belief would inevitably inhibit a free discussion between lawyer and client and hamper

the detained person's right effectively to challenge the lawfulness of his detention.

92. The Court must therefore establish whether the applicants and their lawyers had a genuine belief held on reasonable grounds that their conversation in the CFECC lawyer-client meeting room was not confidential. It appears from the applicants' submissions that their fear of having their conversations with their lawyers intercepted was genuine. The Court will also consider whether an objective, fair minded and informed observer would have feared interception of lawyer-client discussions or eavesdropping in the CFECC meeting room.

93. The Court notes that the problem of alleged lack of confidentiality of lawyer-client communications in the CFECC detention centre was a matter of serious concern for the entire community of lawyers in Moldova for a long time and that it had even been the cause of strike organised by the Moldovan Bar Association (see paragraph 25 above). The Bar's requests to verify the presence of interception devices in the glass partition was rejected by the CFECC administration (see paragraph 26 above), and that appears to have contributed to the lawyers' suspicion. Such concern and protest by the Bar Association would, in the Court's view, have been sufficient to raise a doubt about confidentiality in the mind of an objective observer.

94. The applicants' reference to their own experience of having overheard discussions between other detainees and their lawyers (see paragraph 80 above) is far from proving that surveillance was carried out in the CFECC meeting room. However, against the background of the general concern of the Bar Association, such speculation might be enough to increase the concerns of the objective observer.

95. Accordingly, the Court's conclusion is that the applicants and their lawyers could reasonably have had grounds to believe that their conversations in the CFECC lawyer-client meeting room were not confidential.

96. Moreover, the Court notes that, contrary to the Government's contention to the effect that the applicants and their lawyers could easily exchange documents, the pictures provided by the Government (see paragraphs 21 and 83 above) show that this was not the case because of the lack of any aperture in the glass partition. This, in the Court's view, rendered the lawyers' task even more difficult.

97. The Court recalls that in the case of *Sarban v. Moldova* it dismissed a somewhat similar complaint, examined under Article 8 of the Convention, because the applicant had failed to furnish evidence in support of his complaint and because the Court considered that the obstacles to effective communication between the applicant and his lawyer did not impede him from mounting an effective defence before the domestic authorities. However, having regard to the further information at its disposal concerning the real impediments created by the glass partition to confidential

discussions and exchange of documents between lawyers and their clients detained in the CFECC, the Court is now persuaded that the existence of the glass partition prejudices the rights of the defence.

98. The Government referred to the case of *Kröcher and Möller v. Switzerland* in which the fact that the lawyer and his clients were separated by a glass partition was found not to violate the right to confidential communications. The Court notes that the applicants in that case were accused of extremely violent acts and were considered very dangerous. However, in the present case the applicants had no criminal record (see paragraph 10 above) and were prosecuted for non-violent offences. Moreover, it appears that no consideration was given to the character of the detainees in the CFECC detention centre. The glass partition was a general measure affecting indiscriminately everyone in the remand centre, regardless of their personal circumstances.

99. The security reasons invoked by the Government are not convincing as there is nothing in the file to confirm the existence of a security risk. Furthermore, in exceptional circumstances where supervision of lawyer-client meetings would be justified, visual supervision of those meetings would be sufficient for such purposes.

100. In the light of the above, the Court considers that the impossibility for the applicants to discuss with their lawyers issues directly relevant to their defence and to challenging his detention on remand, without being separated by a glass partition, affected their right to defence.

101. There has accordingly been a violation of Article 5 § 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. Article 41 of the Convention provides:

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

A. Damage

103. The applicants claimed the following amounts in compensation for the non-pecuniary damage caused to them: EUR 11,000 for Mr Istratii and EUR 8,000 each for Mr Burcovschi and Mr Luţcan. They cited the Court's case-law to prove that comparable amounts had been awarded for violations of Article 3 and 5 of the Convention.

104. The Government disagreed with the amount claimed by the applicants, arguing that it was excessive in light of the case-law of the

Court. They submitted that the case-law cited by the applicants dealt with situations which had nothing in common with their cases in terms of the nature and seriousness of the alleged violations, the effects on the applicants and the attitude of the State authorities.

105. The Court considers that the applicants must have been caused a certain amount of anxiety and suffering, notably because the courts ordered their detention without giving relevant and sufficient reasons and then allowed their detention, between 23 February and 29 April 2005, in conditions which were inhuman and degrading. In addition, Mr Luţcan was particularly affected as a result of his inability to see his wife and newly-born child, and Mr Istratii suffered pain and anxiety from the authorities' failure to offer him timely medical assistance in an emergency situation, was humiliated while in hospital and was exposed to a danger to his health by being moved back into detention shortly after his surgery.

106. In light of the above and deciding on an equitable basis, the Court awards EUR 4,000 to Mr Burcovschi, EUR 5,000 to Mr Luţcan and EUR 6,000 to Mr Istratii in compensation for non-pecuniary damage.

B. Costs and expenses

107. The applicants claimed EUR 8,140 for legal costs and expenses. They annexed a list of hours worked in preparing the case (amounting to 77 hours) and the hourly fee for each type of activity. They referred to the fact that their lawyer had extensive experience in the field of human rights. They included postal expenses for rapid mail in their request, as well as an amount for tax.

108. The Government considered these claims to be unjustified. They questioned the need for researching the Court's case-law for 15 hours and the number of hours spent on drafting the applicant's observations. The Government questioned the nature and extent of the tax included since they did not know what kind of tax was referred to.

109. The Government emphasised the similarities in the three cases and between them and *Sarban*, in which the applicant was represented by the same lawyer. That lawyer must accordingly have spent less time preparing the cases. They asked the Court to reject the applicant's request for reimbursement of costs and expenses, as had been done in a number of earlier cases.

110. The Court recalls that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (*Croitoru v. Moldova*, no. 18882/02, § 35, 20 July 2004).

111. In the present case, regard being had to the itemised list submitted by the applicants, the number of applicants and the number and complexity

of the issues dealt with, the Court awards a total of EUR 4,000 for the combined legal costs and expenses of all the applicants.

C. Default interest

112. 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* admissible the applications;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the insufficient medical treatment and humiliation of Mr Istratii and no violation in respect of the other two applicants;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of each applicant as regards the conditions of their detention in prison no. 3;

4. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of the insufficiency of the reasons given for the detention of each applicant;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of the interference with the right of each of the applicants to communicate with his lawyer under conditions of confidentiality;

6. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) to Mr Burcovschi, EUR 5,000 (five thousand euros) to Mr Luţcan and EUR 6,000 (six thousand euros) to Mr Istratii for non-pecuniary damage and EUR 4,000 (four thousand 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;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI Deputy Registrar	Nicolas BRATZA President