CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 25198/02
by Vitalie IORDACHI and Others
against Moldova

The European Court of Human Rights (Fourth Section), sitting on 5 April 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 23 May 2002,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Vitalie Iordachi, Vitalie Nagacevschi, Snejana Chitic, Victor Constantinov and Vlad Gribincea are Moldovan nationals, who were born in 1972, 1965, 1980, 1961 and 1980, respectively. They live in Chişinău. They were all represented before the Court by the first applicant, Mr Vitalie Iordachi, a lawyer practising in Chişinău. The respondent Government were represented by Mr Vitalie Pârlog, their Agent.

A. The circumstances of the case

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

The applicants are members of a non-governmental organisation called "Lawyers for Human Rights". According to them, after the coming to power of the Communist Party, the number of violations of human rights increased considerably. In that context their organisation was created, whose sole purpose was the protection of human rights by assisting persons who sought to introduce applications with the European Court of Human Rights.

As a result, the applicants considered that they had caused serious damage to the image of the Government and financial loss as a result of the findings of violation in cases they had helped to bring before this Court.

The applicants maintained that they ran a serious risk of having their telephones tapped as a result of their activity, due to the state of the legislation in force. They did not claim to have been victims of any specific interception of their communications, whether by telephone or post, and they had not instituted any domestic proceedings in that respect.

B. Relevant domestic law and practice

1. Law of 12 April 1994 on operational investigative activity (prior to its amendment in 2003 and 2004)

"Section 2. The aims of operational investigative activity

a) revealing attempts to commit crime; preventing, suppressing or discovering criminal offences and the persons who organise, commit or have already committed such offences, as well as ensuring compensation for damage caused by a criminal offence;

b) searching for persons absconding from the preliminary investigative authorities, the preliminary investigation or the court, or who are fleeing from a criminal sanction, or for persons who have disappeared;

c) collecting information on events or actions which endanger the State or the military, economic or environmental security of the Republic of Moldova.

...

Section 4. The legal basis for operational investigative activity

(1) The Constitution, the present Law and other regulations adopted in accordance with them constitute the legal basis for operational investigative activity.

(2) The authorities which are entitled to conduct operational investigative activity may issue, within the limits of their competence, in accordance with the law and with the consent of the Supreme Court of Justice and the General Prosecutor's Office, regulations governing the organisation, methods and tactics of carrying out operational investigative measures."

The above-mentioned regulations are not public.

"Section 5. Respect for human rights and liberties in conducting operational investigative activity

(2) Anyone who considers that the actions of the authority which has carried out investigative measures have infringed his or her rights and liberties may lodge a complaint with the hierarchically superior authority, the General Prosecutor's Office or the courts.

(3) In order to ensure a full and thorough examination of the complaint lodged by a person against whom operational investigative measures have been applied without due grounds, the authorities which have applied such measures shall, at the request of the prosecutor, present the latter with a record of every operational action taken on duty. Data concerning persons who have confidentially contributed to the conduct of operational investigative measures shall be presented only at the request of the General Prosecutor.

(4) Should the authority (the official) exercising the operational investigative activity have infringed the legitimate rights and interests of natural and legal persons, the hierarchically superior authority or prosecutor shall take measures restoring such legitimate rights and interests, and afford compensation for the damage caused, in accordance with the law.

Section 6. Operational investigative measures

(1) Operational investigative measures shall be carried out only in accordance with the law and only when it is otherwise impossible to achieve the aims provided for in section 2.

(2) For the purpose of accomplishing the stated aims, the authorities carrying out operational investigative measures are entitled, with due observance of the rules of conspiracy, to: ...

(l) intercept telephone and other conversations; ...

The operational investigative measures provided for under ..., (l), ... may be carried out only by the Ministry of Internal Affairs and the Information and Security Service under the statutory conditions and only when such measures are necessary in the interests of national security, public order, the economic situation of the country, the maintenance of legal order and the prevention of crime, and the protection of health, morals, and the rights and interests of others. ...

Section 7. The grounds for carrying out operational investigative activity

"(1) The grounds for carrying out operational investigative activity are:

(a) unclear circumstances concerning the institution of criminal proceedings;

(b) information of which the authority carrying out operational investigative activity has become aware in connection with:

- an illegal act that is being prepared, committed or has already been committed, or persons who are preparing, committing or have already committed such an act, where the basis for instituting criminal proceedings is insufficient;

- persons who are fleeing from a criminal investigation or the courts, or who are avoiding a criminal sanction; ...

(c) instructions given by a criminal investigator, investigative body, prosecutor or court in pending criminal cases;

(d) requests from the bodies carrying out an operational investigative activity based on the grounds provided for in the present section. ...

Section 8. The conditions and manner of carrying out operational investigative activity

(1) Operational investigative measures which infringe lawful rights - the secrecy of correspondence, telephone and other conversations, telegraphic communications, and inviolability of the home - shall be permitted only for the purpose of collecting information about persons who are preparing or attempting to commit serious offences or are committing or have already committed serious offences, and only with the authorisation of the prosecutor pursuant to a reasoned decision of one of the heads of the relevant authority. ...

(2) In urgent cases where otherwise there would be a risk of commission of serious criminal offences, it shall be permitted, on the basis of a reasoned conclusion of one of the heads of the authority carrying out the operational investigative activity, to carry out operational investigative measures: the prosecutor must be notified within 24 hours.

(3) Should danger to the life, health or property of certain persons become imminent, interception of their telephone conversations or other means of communication shall be permitted, following the request or written consent of such persons on the basis of a decision approved by the head of the authority carrying out the investigative activity, and the prosecutor shall be notified.

Section 9. The conduct of operational control

(1) In cases envisaged under Section 7, bodies exercising operational investigative activity are entitled to carry out operative control. Carrying out operational control is subject to mandatory registration.

(2) Operational control shall be carried out with the authorisation and under the supervision of the head of the body conducting it. The results of operational investigative measures applied shall be reflected in duly filed official operational documents. ...

(3) Official operational documents shall be submitted to the prosecutor in order to obtain approval for carrying out operational investigative measures.

(4) The operational control shall be suspended when the specific aims of the operational investigative activity set out in Section 2 are accomplished or when circumstances are established proving that it is objectively impossible to accomplish the aim.

Section 10. Use of the results of the operational investigative activity

(1) The results of operational investigative activity may be used for preparing and carrying out criminal investigative activities and for carrying out operational investigative measures in order to prevent, stop or discover criminal offences, and as evidence in criminal cases.

(2) Data obtained during operational control shall not constitute a reason for limiting the rights, liberties and legitimate interests of natural and legal persons.

(3) Information about the persons, means, sources (with the exception of the persons who may provide assistance to the authorities carrying out such measures), methods, plans and results of the operational investigative activity, and about the organisation and the tactics of carrying out the operational investigative measures which constitute State secrets, may be disclosed only in accordance with the conditions provided by law.

Section 11. The authorities which may carry out operational investigative activity

(1) Operational investigative activity shall be exercised by the Ministry of Internal Affairs, the Ministry of Defence, the Information and Security Service, the Protection and State Security Service, the Department of Customs Control attached to the Ministry of Finance and the Prison Department attached to the Ministry of Justice. ...

...

Section 18. Parliamentary scrutiny

Scrutiny, on behalf of Parliament, of operational investigative activity shall be exercised by the relevant permanent parliamentary commissions. The authorities which exercise operational investigative activity shall submit information to these commissions in accordance with the law.

Section 19. Supervision by the prosecutor

(1) Enforcement of the laws by the authorities carrying out operational investigative activity and the lawfulness of the decisions adopted by these authorities shall be supervised by the General Prosecutor, his or her deputy, and the municipal and county prosecutors."

2. Law of 12 April 1994 on operational investigative activity (as amended in 2003 and 2004)

The following Laws have amended the above-described Law of 1994:

- Law No. 197 of 15 May 2003
- Law No. 206 of 29 May 2003
- Law No. 333 of 24 July 2003
- Law No. 482 of 4 December 2003
- Law No. 87 of 25 March 2004

After the above amendments, the relevant articles of the consolidated Act read as follows:

"Section 6. Operational investigative measures

(1) Operational investigative measures shall be carried out only in accordance with the law on **Criminal Procedure** and only when it is otherwise impossible to achieve the aims provided for in section 2.

(2) For the purpose of accomplishing the stated aims, the authorities carrying out operational investigative measures are entitled, with due observance of the rules of conspiracy, to: ...

(l) intercept telephone and other conversations; ...

The operational investigative measures provided for under ..., (l), ... may be carried out only by the Ministry of Internal Affairs and the Information and Security Service under the statutory conditions and only when such measures are necessary in the interests of national security, public order, the economic situation of the country, the maintenance of legal order and the prevention of **very serious** crime**s**, and the protection of health, morals, and the rights and interests of others. ...

Section 7. The grounds for carrying out operational investigative activity

(1) The grounds for carrying out operational investigative activity are:

(a) unclear circumstances concerning the institution of criminal proceedings;

(b) information of which the authority carrying out operational investigative activity has become aware in connection with:

- an illegal act that is being prepared, committed or has already been committed, or persons who are preparing, committing or have already committed such an act, where the basis for instituting criminal proceedings is insufficient;

- persons who are fleeing from a criminal investigation or the courts, or who are avoiding a criminal sanction; ...

(c) instructions given by an **officer of criminal investigation**, investigative body, prosecutor or court in pending criminal cases;

(d) requests from the bodies carrying out an operational investigative activity based on the grounds provided for in the present section. ...

Section 8. The conditions and manner of carrying out operational investigative activity

(1) Operational investigative measures which infringe lawful rights - the secrecy of correspondence, telephone and other conversations, telegraphic communications, and inviolability of the home - shall be permitted only for the purpose of collecting information about persons who are preparing or attempting to commit **very serious** offences or are committing or have already committed **very serious** offences, and only with the authorisation of the **investigating judge** pursuant to a reasoned decision of one of the heads of the relevant authority. ...

(2) In urgent cases where otherwise there would be a risk of commission of serious criminal offences, it shall be permitted, on the basis of a reasoned conclusion of one of the heads of the authority carrying out the operational investigative activity, to carry out operational investigative measures: **the investigating judge should be informed within 24 hours. He shall be presented with the reasons and shall verify the legality of the measures taken.**

(3) Should danger to the life, health or property of certain persons become imminent, interception of their telephone conversations or other means of communication shall be permitted, following the request or written consent of such persons on the basis of a decision approved by the head of the authority carrying out the investigative activity, and the **investigating judge shall give his authority**.

Section 9. The conduct of operational control

(1) In cases envisaged under Section 7, bodies exercising operational investigative activity are entitled to carry out operative control. Carrying out operational control is subject to mandatory registration.

(2) Operational control shall be carried out with the authorisation and under the supervision of the head of the body conducting it. Results of operational investigative measures applied shall be reflected in duly filed official operational documents. ...

(3) The operational control shall be suspended when the specific aims of the operational investigative activity set out in Section 2 are accomplished or when circumstances are established proving that it is objectively impossible to accomplish the aim.

...

Section 19. Supervision by the prosecutor

(1) Enforcement of the laws by the authorities carrying out operational investigative activity and the lawfulness of the decisions adopted by these authorities shall be

supervised by the General Prosecutor, his or her deputy, the municipal and regional prosecutors, **the anti-corruption prosecutors and the chief criminal investigators, and, in any other prescribed case, by investigating judges**.

3. Relevant extracts from the Constitution of the Republic of Moldova

Article 60

"(1) Parliament shall be the supreme representative body of the people and the sole legislative authority of the State in the Republic of Moldova."

Article 134

"(1) The Constitutional Court shall be the sole body of constitutional jurisdiction in the Republic of Moldova."

4. Law of 18 May 1995 on post

Section 6 (2)

"For the purpose of discovering crimes and unveiling truth in criminal matters, the post office officials are obliged to provide the criminal investigative authorities and the courts with the *corpus delicti* mail and necessary documents. Putting under distraint and interfering with mail at post offices shall be carried out only with the prosecutor's consent, in accordance with the law."

5) Law of 7 July 1995 on Telecommunications

Section 4

"(4) In order to ensure national security, public order, the economic welfare of the country, the maintenance of order and the prevention of crime and the protection of the health, morals, rights and liberties of others, communications may be intercepted by the authorities authorised by law."

6. Law of 23 December 1999 on the Information and Security Service

Section 10. The rights of the Service

"(1) The Service shall be entitled to:

(a) carry out operational investigative activity in accordance with the law;..."

7. The Criminal Code in force until 12 June 2003

The Code set in Section 7/1 a list of about seventy offences which were considered as serious.

8. The Code of Criminal Procedure in force until 12 June 2003

"Section 156/1. Grounds for intercepting telephone and other conversations

The interception of telephone conversations or other means of communication used by a suspect, defendant or other person involved in a criminal offence may be carried out in connection with criminal proceedings instituted in accordance with a decision of the authority conducting the preliminary investigation or the criminal investigator with the authorisation of the prosecutor, or in accordance with a court decision, where such a measure is deemed necessary in a democratic society in the interests of national security, public order, the economic welfare of the country, the maintenance of order and the prevention of crimes, or the protection of the health, morals, rights and liberties of others. The interception of telephone or other conversations may not last more than six months. ... Conversations held over the telephone or other means of communication may be recorded.

Section 156/2. Manner of interception and recording

The interception and recording of telephone conversations or other means of communication shall be carried out by the criminal investigator unless the task is entrusted to the authority in charge of the preliminary investigation. In this case, the criminal investigator shall draw up a warrant and a decision concerning the interception, which shall be sent to the authority in charge of the preliminary investigation. At the same time the criminal investigator shall liaise with the authority in charge of the preliminary investigation or specify in the warrant the circumstances and manner of interception of the conversations and recording, modification and disposal of the information obtained. ...

Section 156/3. Record of the interception and recording

Following the interception and recording, a record shall be drawn up giving a summary of the content of the taped conversations relevant to the case. The tape shall be attached to the record and the part which does not relate to the case shall be destroyed once the judgment becomes final."

9. The Code of Criminal Procedure in force after 12 June 2003

"Section 41. Competence of the investigating judge

The investigating judge ensures judicial supervision during the criminal prosecution by:

...

5. authorising the interception of communications, seizure of correspondence, video recording;..."

...

SECTION V: Interference with correspondence and interception of communications

"Section 133. Sequestration of postal correspondence

(1) Whenever there are sufficient grounds to suppose that correspondence sent or received by a suspect, accused or defendant may contain data, which may be important evidence in a criminal case, concerning serious or exceptionally serious crimes, or in case the evidence cannot be collected by other procedural means, the criminal prosecution body has the right to sequester the correspondence of the above-mentioned persons.

(2) The following fall into the category of correspondence that may be sequestered: letters of all kinds, telegrams, radiograms, parcels, mail containers, money orders, faxes and e-mail communications.

(3) The prosecuting body draws up an warrant regarding the sequestration of correspondence, which is submitted to an investigating judge, or, depending on the case, to a court for authorisation. The warrant shall contain the following information: the reasons for the sequestration of the correspondence, the name of the post office which would be likely to retain the correspondence, the name and surname of the person or persons, whose correspondence is to be retained, the exact address of these persons, the type of correspondence to be sequestered and the duration of the measure. The duration of the sequestration of correspondence may be prolonged under the conditions outlined in the present article.

(4) The warrant regarding the sequestration of correspondence duly authorised is submitted to the manager of the relevant post office and the latter is obliged to execute this warrant.

(5) The manager of the post office will immediately inform the body issuing the warrant about the retention of the correspondence as stipulated in the warrant.

(6) The prosecuting body issuing the warrant, the hierarchically superior prosecutor, the investigating judge, or, depending on the case, the court are entitled to cancel the sequestration of correspondence once the duration provided for in the warrant is over, and must do so before the end of the criminal prosecution.

Section 134. Correspondence examination and sequestration

(1) The representative of the criminal prosecution body hands over to the manager of the post office the warrant requesting the sequestration of correspondence and the manager signs it as confirmation. The representative of the criminal prosecution body opens and examines the correspondence.

(2) Whenever objects and documents are discovered which have a clear importance for the criminal case, the representative of the prosecuting body seizes them, or makes copies of them. Should no such objects or documents be found, the representative of prosecuting body gives an instruction to forward the correspondence to its addressee.

(3) A minute is drawn up in the case of each examination or seizure of correspondence, in accordance with sections 260 and 261. The minute must record the type of correspondence; when, where and by whom the correspondence was examined, seized or delivered to its destination; the type of technical means used; and what facts were discovered. All participants and persons present during this procedure will be warned about the necessity to observe the confidentiality of the correspondence and the principle of non-disclosure of information linked to the criminal investigation as well as about criminal responsibility for which sections 178 and 315 of the Criminal Code provide. This fact must be recorded in the minute.

Section 135. Interception of communications

(1) The interception of communications (telephone conversations, or communications by radio or using other technical means) is carried out by the prosecution body on the basis of an authorisation issued by the investigating judge issued on the basis of reasoned warrant of a prosecutor charged with the examination of very serious and exceptionally serious crimes.

(2) In case of urgency, when a delay in obtaining an authorisation as stipulated in the paragraph (1) could cause serious harm to the evidence gathering procedure, the prosecutor may issue a reasoned warrant allowing for the interception and recording of communications. S/he is obliged to inform the investigating judge about this immediately and within no later than 24 hours. The latter, in no more than 24 hours, is required to take a decision regarding the warrant issued by the prosecutor. When s/he confirms it, s/he authorises the further interception if necessary. When s/he does not confirm it, s/he orders its immediate suspension and the destruction of records already made.

(3) The interception of communications may be carried out at the request of the victim of a crime, a witness and members of his/her family, in case of threats of violence, extortion or commission of other crimes affecting such parties, based on a reasoned warrant of the prosecutor.

(4) The interception of communications during a criminal investigation is authorised for a maximum of 30 days. The interception may be prolonged on the same conditions if justified. Each prolongation however may not exceed 30 days. The total duration may not exceed 6 months. In any case, it may not last longer than the criminal prosecution.

(5) The interception of communications may be stopped before the end of the period for which it had been authorised, if the grounds initially justifying it no longer exist.

(6) During a criminal prosecution, after the end of an authorised interception, and after having asked the opinion of the prosecutor who supervises and carries out the criminal prosecution, the investigating judge shall inform in writing the persons

whose conversations were intercepted and recorded. This shall be done within a reasonable time, and must be done before the termination of the criminal prosecution.

Section 136. Interception and recording and their authorisation

(1) The interception of communications is carried out by the criminal prosecution body. Persons whose responsibility is technically to facilitate the interception and recording of communications are obliged to preserve the secrecy of the procedure and the confidentiality of correspondence. They are liable, in case of a violation of their obligations under the provisions of sections 178 and 315 of the Criminal Code. That these obligations have been so explained must be recorded in the minute of the interception.

(2) A minute of the interceptions and recording carried out by the prosecution body must be drawn up in conformity with the provisions of sections 260 and 261. It must record information about the authorisation given by the investigating judge, the intercepted telephone number or numbers and their addresses, together with details of the radio or other technical equipment used for conversations. The record will also indicate the name (where known) of the parties and the date and time of each separate conversation and the number assigned to the tape used for the recording.

(3) Recorded communications must be fully transcribed and annexed to the minute along with the authorisation of the criminal prosecution body, after its verification and signature by the prosecutor carrying out or supervising the criminal prosecution. Communications in languages other than the one in which the criminal prosecution is carried out are translated with the assistance of an interpreter. The tape containing the original recorded communications is also annexed to the minute after having been sealed and after the stamp of the criminal investigation body has been applied.

(4) The tape with the recorded communications, the transcript and the minutes of the interception and recording of communications are handed over to the prosecutor within 24 hours. The prosecutor assesses which parts of the collected information are important for the respective case and draws up a minute in this regard.

(5) Original copies of the tapes along with the complete written transcript and copies of the minutes are handed over to the investigating judge who authorised interception of the communications for further storage in a special place in a sealed envelope.

(6) The court adopts a decision regarding the destruction of records which are not important for the criminal case. All the other records will be kept up to the moment when the file is deposited in the archive.

Section 137. Video recording

Video recording must be carried out in conditions and in conformity with the procedures established for the interception of communications provided for by sections 135 and 136, respectively.

Section 138. Verification of interception recording

Evidence collected under provisions in sections 135 and 137 may be verified through technical expert examination by the court at the request of the parties or *ex officio*."

10. The Code of Civil Procedure

"Section 5. Access to justice

(1) Every person shall have the right to bring an action before the courts, in accordance with the law, with a view to protecting his or her rights....

Section 7

(1) Civil proceedings shall be initiated by a court on receipt of a request from a person who seeks the protection of a right, freedom or a legitimate interest which has been infringed or contested...."

11. The Law of 11 May 2000 on access to information

This Law guarantees to everyone access to public and private information. According to Section 8 of the Law, any person shall have free access to his or her own personal data and shall have the right to obtain, when appropriate, the correction or destruction of such data which has been improperly used. Section 21 of the Law guarantees the right of anyone who considers that his or her legitimate rights or interests have been violated by the information providers, to challenge the alleged violation in the courts. According to Section 23 of the Law, the courts may impose sanctions for breaches of the right of access to information and grant compensation to the victims of such breaches.

12. The Law of 19 July 1994 on petition

According to this Law any person who considers that one of his or her rights has been violated may address a request to any public authority and expect to receive a reply. The failure of the public authority to reply within thirty days or any reply which is considered unsatisfactory entitles the person to institute administrative proceedings against the public authority in question.

13. The Code of Administrative Offences

According to Section 193/3 of the Code, the failure of public servants to observe the rules for dealing with petitions is punishable with a fine of 180-900 Moldovan Lei (MDL).

14. The Law of 10 February 2000 on the Administrative Court

According to this Law, any individual who considers that his rights have been breached by an act or by an omission of a public authority, may challenge that act or omission in court.

15. The Law of 13 May 1999 on Advocacy

According to Section 15(5) of the law, a lawyer's professional correspondence can be intercepted only under the conditions provided for by the law. According to Article 15 (13), the confidentiality of a lawyer's correspondence with his client is guaranteed and the correspondence cannot be intercepted.

16. Relevant judicial practice

The Government sent the Court a copy of a letter of 3 September 2004 addressed to the Ministry of Justice by the President of the Râşcani District Court in which it was stated that a person named V.B. had introduced two actions against the Ministry of Finance and the General Prosecutor's Office claiming *inter alia* a breach of the right to correspondence and requesting compensation. The court partially admitted one of the actions and, following an appeal, it was sent to the Supreme Court of Justice. The second action had not yet been examined.

The Government also sent the Court a copy of a letter of 19 August 2004 in which the President of the Botanica Distict Court informed the Ministry of Justice that her court had never examined any case regarding freedom of correspondence. However, if received, such actions would certainly be examined in accordance with national law and the international treaties to which Moldova is party.

COMPLAINTS

1. The applicants complained under Article 8 of the Convention that their right to freedom of correspondence had not been respected since the domestic law governing telephone tapping and interference with correspondence did not contain sufficient guarantees against abuse by the national authorities. They did not claim to have been victims of any specific interception of their communication by telephone or post.

2. Since the decision of the investigating authority regarding telephone tapping is never communicated to the person concerned, the applicants complained that they did not have an effective remedy under Article 13 of the Convention.

THE LAW

A. Failure to exhaust domestic remedies

The Government submitted that the applicants have not exhausted remedies available to them under Moldovan Law, as required by Article 35 § 1 of the Convention. In particular, they submitted that the applicants could have made use of Articles 5-7 of the Code of Civil Procedure. In any event, if the domestic law did not provide for relief, the applicants were entitled to rely directly on the provisions of the Convention. The applicants could have also complained to the prosecutor or to the investigating judge. In support of their submissions, the Government present copies of letters addressed to the Ministry of Justice by the Presidents of the Râşcani District Court and of the Botanica District Court (see the "Domestic Law" part).

The applicants submitted that the remedies invoked by the Government did not exist until 30 April 2004 and that, accordingly, they were not pertinent to the alleged violations of Article 8 that took place prior to that date. As to the period after 30 April 2004 to date, these remedies were not effective because it is impossible to prove the existence of an interception due to its secret character.

The Court notes that the applicants did not complain of any specific act of interception of their telephone or postal communications. As in *Klass and Others v. Germany,* (judgment of 6 September 1978, Series A no. 28), their complaint refers only to the state of the law and the alleged lack of legal safeguards against abuse. In these circumstances, the Court is not convinced that a complaint lodged with the General Prosecutor's Office, the investigating judge or even with the courts could provide redress to the applicants. It is noted that according to Moldovan law, only the Parliament can make amendments to laws and only the Constitutional Court, to which individuals and organisations do not have direct access, can declare laws unconstitutional (see the Domestic Law above). As regards the letter of the President of the Râşcani District Court relied upon by the Government (see above), the Court notes that the case described therein appears to refer to a specific act of interference and not to the threat stemming from the very existence of the legislation concerning secret surveillance.

In view of the above, the Court concludes that the application cannot be declared inadmissible for non-exhaustion of domestic remedies and accordingly this objection must be dismissed.

B. The applicants' victim status

The Government also submitted that the applicants could not claim to be victims of the state of the law. They considered this case to be

distinguishable from the case of *Klass* (cited above) where three of the applicants were lawyers and one was a judge. Conversely, in the present case only two applicants (Mr Nagacevschi and Mr Constantinov) were lawyers who had licences issued by the Ministry of Justice to practise. Moreover, the applicants have not adduced evidence that among their clients there were persons who belonged to the categories of persons to whom the relevant Law applied.

The applicants submitted that, even though they did not all possess licences issued by the Ministry of Justice to practise, they all represented applicants before the European Court of Human Rights. They were all members of the "Lawyers for Human Rights" Organisation, which was considered by the Government as a subversive organisation acting against the interest of the State. The "Lawyers for Human Rights" Organisation represented many persons who met the criteria referred to by the Government both in domestic proceedings and in proceedings before the European Court of Human Rights. The applicants gave the example of such persons as P.P. who was condemned to life imprisonment, P.S. and M.U. who were accused of having killed the son of the Speaker of the Parliament, C. Becciev, E. Duca, I. Roşca who was the leader of the parliamentary opposition, V.C. another member of the Christian Democratic People's Party, many persons who had disputes with the leaders of the ruling Communist Party and two persons who brought proceedings against the Secret Services of Moldova. The applicants submitted that, even though not all the members of their organisation worked on serious cases, all members used the telephones of the organisation and therefore risked interception.

The Court considers that the question of victim status is so closely bound up with the merits of the case that it is inappropriate to determine it at the present stage of the proceedings. Accordingly it decides to join it to the merits of the case.

C. Alleged abuse of the right of petition by the applicants

The Government submitted that the application should be struck out of the list of cases because of its abusive character. They stated that the expression "after the coming to power of the Communist Party, the number of violations of human rights increased considerably", used by the applicants in their application, is defamatory of the Government.

The applicants disagreed that the expression used by them was defamatory and untrue. In support of their position they submitted examples of numerous reports drawn up by different international organisations in respect of the standard of protection of human rights in Moldova which, according to them, indirectly proved the truthfulness of their statement.

The Court recalls that while the use of offensive language in proceedings before it is inappropriate, except in extraordinary cases, an application may

be rejected as abusive only if it was knowingly based on untrue facts (see *Varbanov v. Bulgaria*, no. 31365/96, 5.10.2000, § 36).

Having regard to the statements made the applicants in the present case and to the language used by them, the Court does not consider that they amount to an abuse of the right of petition. Accordingly this objection is also dismissed.

D. The merits of the complaint

1. The applicants complained under Article 8 of the Convention about the breach of their right to freedom of correspondence. Article 8, insofar as relevant, reads as follows:

> "1. Everyone has the right to respect for his ... correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Government submitted that no interception of their correspondence had taken place. They could not pretend to be even potential victims since the legislation in force clearly established the circle of persons susceptible of being exposed to interception measures and not every person within the jurisdiction of the Republic of Moldova was targeted by that legislation.

According to the Government the pertinent legislation in force contained sufficient safeguards. The interception of correspondence was regulated by the Law on Operational Investigative Activity and by the Code of Criminal Procedure. Article 6 of the Law on Operational Investigative Activity provided that the interception could be carried out only in accordance with the law. The interception measures were authorised in a public manner. However, the methods and techniques of surveillance were secret.

The circle of persons liable to have their correspondence intercepted in accordance with the Moldovan legislation was limited. Only persons involved in serious offences were targeted by the legislation. In case of interception of correspondence of other persons, it was necessary to have their written consent and there must have existed plausible reasons.

In the Government's view, the interception of correspondence was not carried out arbitrarily but only on the basis of a warrant issued by the investigating judge on the basis of a reasoned decision of one of the heads of the bodies carrying out the interception. In urgent cases interception measures could be carried out on the basis of a decision of a prosecutor, who had to inform the investigating judge within not more than twenty four hours. In such cases the investigating judge had the right to order the cessation of the interception measures and the destruction of the materials

obtained by way of interception. Any person who considered that his or her rights had been infringed by interception measures carried out against him or her, had the right to complain before the hierarchically superior organ, the prosecutor or the investigating judge.

As to the regulations issued in accordance with Section 4 (2) of the Law on Operational Investigative Activity, the Government submitted that they constituted State secrets in accordance with the Law on State Secrets.

The applicants maintained their complaint that the legislation in force both at the moment of the introduction of their application and currently violated their right to respect for their correspondence. They submitted that neither legislative regime satisfied the requirement of foreseeability as neither provided for sufficient safeguards against arbitrary interception and abuse.

The Court considers that the above-described complaint raises serious questions of fact and law under Article 8 of the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicants also complained under Article 13 that they had no effective remedy before a national authority in respect of the breach of Article 8 of the Convention. Article 13, insofar as relevant, provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...."

The Government submitted that according to Article 20 of the Constitution of the Republic of Moldova, Article 4 of the old Civil Procedure Code and Article 5 of the Code of Civil Procedure, the applicants could bring an action in order to defend their rights. If the applicants were not satisfied with the decision of the first instance court, they could have challenged it before a hierarchically superior court. Moreover, Article 5 (2) of the Law on the Operational Investigative Activity affords the right to complain to anyone who considers that his rights were breached as a result of investigative measures.

The Court considers that this part of the application also raises serious questions of fact and law which are of such complexity that their determination should depend on an examination on the merits. It cannot, therefore, be considered manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established.

For these reasons, the Court by a majority

Declares the application admissible, without prejudging the merits of the case.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President