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. 35207/03
by Vitalie OSTROVAR
against Moldova

The European Court of Human Rights (Fourth Section), sitting on 22 March 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 28 October 2003,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court.

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 applicant, Mr Vitalie Ostrovar, is a Moldovan national who was born in 1974 and lives in Chişinău. He was represented before the Court by Mr V. Nagacevschi, on behalf of "Lawyers for Human Rights", a non-

governmental organisation based in Chişinău. The Government were represented by Mr V. Pârlog, their Agent.

A. The circumstances of the case

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

1. Background

The applicant is the former senior assistant to the prosecutor of the Centru District of Chişinău. On 24 July 2002 the applicant was arrested by the Moldovan Secret Services on charges of bribe-taking. Later the charges were modified to corruption (*trafic de influenţă*).

On 15 August 2002 the Chişinău Regional Court ordered the remand of the applicant for a period of thirty days. The remand was later prolonged by the decisions of the Buiucani District Court of 2 September 2002 and 10 October 2002.

On 15 November 2002 the Court of Appeal ordered the applicant's release from detention.

On 4 April 2003 the applicant was convicted by the Court of Appeal and sentenced to ten years' imprisonment. He was immediately put in detention. The applicant appealed against that decision. The outcome of the proceedings is unknown to the Court.

2. The applicant's conditions of detention in the Remand Centre No. 3 of the Ministry of Justice

The applicant's complaints regarding the conditions of detention relate to two periods of detention served in the Remand Centre No. 3 of the Ministry of Justice *(Izolatorul Anchetei Preliminare Nr. 3)*, namely between 18 October 2002 and 15 November 2002, and between 4 April 2003 and 13 December 2003.

(a) The applicant's submissions

The applicant claims to have been detained in a 25 m² cell together with at times more than twenty people. There were twenty metal bunk-beds, with no mattresses or covering and it was not always possible to have access to a bed because of overcrowding. After lodging his application with the Court, he was transferred to a smaller cell of 15 m², where he claims to have had to take turns in sleeping, because of overcrowding, and where the conditions were allegedly considerably worse than before.

Smoking inside the cells was not prohibited by the internal regulations of the prison, and because of lack of smoking facilities, the inmates had to smoke inside the cells. The applicant suffered from asthma and he claims

that the prison administration must have been aware of this since he had been arrested and brought to prison a short time after undergoing asthma treatment in a hospital. Because of the exposure to cigarette smoke the applicant suffered many asthma attacks, which usually happened two or three times a day.

There was no adequate medical assistance. Although there were medical personnel in the penitentiary, their ability to help was limited because of lack of medication. The applicant asked the prison doctor on many occasions for medical assistance, but he was refused. He was told that the prison did not have the necessary medication. Because of the lack of medication he had to endure the attacks and wait for them to pass, being obliged to sit in a vertical position. His attacks became more frequent and started to last longer. While the prison doctor knew that the applicant suffered from asthma, he gave his permission for the applicant to be placed in a cell with smokers.

His situation was worsened by the fact that the cell's window was closed by shutters and there was no fresh air coming through it. Moreover, the cell was not provided with a ventilation system, and was therefore very damp.

Because of lack of heating and thermo-isolation the cell was very cold during the winter and very hot during the summer.

The shutters on the windows prevented daylight from coming in. Nevertheless, the prison administration limited the electricity supply to the cells to only six hours per day; therefore the inmates had to live in darkness and had great difficulties in preparing food.

Water was provided to the cell for only ten hours per day, sometimes less. Access to warm water was limited to only once in fifteen days. There were no facilities for washing and drying clothes. The inmates had to dry their clothes in the cell.

Because of poor medical assistance and bad hygienic conditions, the cells were infected with bed bugs, lice and ants. The inmates were exposed to infectious diseases like tuberculosis, skin and respiratory infections.

The toilet was situated at 1.5 metres from the dining table and was permanently open. It was impossible to prevent the bad smell because of the lack of adequate water supply and lack of cleaning products.

There was no library in the prison and the inmates did not have access to newspapers or other publications. There were no appropriate facilities for recreation and exercise.

The food served to the inmates was of a very bad quality. It consisted of boiled water with a bad smell and was almost inedible. The applicant submitted that the Government spent 2.16 Moldovan Lei (MDL) (the equivalent of 0.14 euros (EUR) at the time) for one detainee's food per day, while the price of a loaf of bread was more than MDL 3.

(b) The Government's submissions

The applicant was detained in cell no. 16 with a surface of 28.4 m², designed for fourteen detainees, and in cell no. 138 of 19.3 m², designed for ten detainees.

In accordance with Article 17 of the Law on Pre-Trial Detention, the applicant could have asked the prison authorities to be removed to another cell with non-smokers.

The detainees were provided with medical assistance in accordance with the law. When a prisoner needed medical assistance that could not be provided by the prison doctors, he could be taken to a regular hospital. The prison was provided with medication by the State; however, in cases when the prison lacked certain medication, the detainees had the right to receive it from their relatives. Since the applicant was provided with all the necessary medication, no medical report prescribing other medication was drafted.

The prison authorities were aware of the applicant's asthma. According to the prison register, during the material time the applicant asked twice for medical assistance: on 2 September 2003 and on 5 November 2003. On 5 November 2003 a doctor consulted him and prescribed medication.

The ventilation of the cells was effected by opening the windows and fanlights during the detainees' exercise and by the common ventilation system.

The heating was provided by the prison's own heating system which used natural gas and coal.

The cells had access to daylight, and electricity was provided continuously to the cells.

The cells were permanently provided with tap water, and accordingly the inmates enjoyed an adequate level of hygiene. The Government also stated that the detainees had access to warm water.

The toilets were separated from the rest of the cell by a wall in order to ensure the privacy of the detainees.

The cells were equipped with radio sets, sometimes with television sets.

The applicant enjoyed the right to a daily walk outdoors for one hour with the possibility of exercising.

The detainees were provided with free food in accordance with the norms provided by the Government and the quality of food was satisfactory. The prison was provided on a daily basis with bread, vegetable oil, vegetables, tea and sugar. Because of insufficient funding, the provision of meat, fish and dairy products was made according to what was possible. However, the detainees were allowed to receive once a month a parcel with food from their relatives. Moreover, the detainees had the right to buy food from the prison store at least once a month, and to spend up to MDL 18 (the equivalent of EUR 1.2 at the time).

There was no intention to humiliate or to debase the applicant and the prison authorities did not undertake any action in order to humiliate him.

3. Alleged interference with the applicant's correspondence

(a) The applicant's submissions

According to the applicant, the prison authorities were constantly interfering with his correspondence. The correspondence with his lawyer and with the prosecutor's office had been interfered with by the prison authorities. The applicant brought to the Court's attention a letter sent to him by his lawyer in September 2003 and a letter sent by the prosecutor's office in August 2003, which bore the prison's stamps on them. He also sent a copy of an envelope sent to him in January 2004 by the Information Office of the Council of Europe in Chişinău, which had an inscription made by the prison authorities on it.

On 13, 14 and 15 December 2003 while being transferred to another prison he was subjected to searches, during which his correspondence with the Court was examined by the prison authorities.

The letters sent to him by his mother did not always reach him. In support of this submission the applicant sent the Court a receipt of a registered letter with acknowledgement of receipt sent to him by his mother on 1 October 2003, which never reached him.

(b) The Government's submissions

The Government argue that the letter of September 2003 from the applicant's lawyer was not addressed to the applicant alone, but to the chief of the prison too. As to the letter from the Information Office of the Council of Europe, the Government submit that it was not written on the envelope that the sender was the Information Office of the Council of Europe. Moreover, the envelope arrived at the prison in a bad state and the prison officer made a note on it to that effect.

The Government submit that the searches that took place on 13, 14 and 15 December 2003 were provided for by law and had the aim of ensuring the internal order in the prison.

According to Article 18 of the Law on Pre-Trial Detention, detained persons needed a written authorisation from the body in charge of their cases in order to be able to correspond with their families. The applicant did not have an authorisation to correspond with or communicate by telephone with his relatives because of the seriousness of the offence he was charged with and in the interests of justice.

4. Alleged interference with the applicant's right to have contacts with his wife and daughter

(a) The applicant's submissions

The applicant also submits that he was precluded from seeing his wife and his daughter and that he could not have telephone contact with them.

On 30 June 2003 the applicant together with other cellmates lodged a complaint with the Prosecutor General, in which the applicant complained *inter alia* about the ban on receiving visits, including long term visits, from his family and other persons. The prisoners asked the Prosecutor General to order the prison authorities to allow them have long term visits, telephone conversations and other kinds of contact with their relatives.

On 7 July 2003, the Prosecutor General's Office informed the applicant that his complaint had been forwarded to the Prosecutor's Office of Chişinău.

On 25 August 2003 the applicant and his cellmates wrote a new letter to the Prosecutor General's Office complaining about the lack of reply from the Prosecutor's Office of Chişinău to their letter. The prisoners repeated the complaints about the ban on visits by relatives and on telephone conversations with them and complained about an alleged breach of Article 3 of the Convention.

On 28 August 2003 the applicant received a letter from the Prosecutor's Office of Chişinău dated 9 August 2003 by which his complaints about the ban on visits were dismissed. In particular it stated: "...all the rights of remanded persons are provided for by Article 16 of the Law on remand. Such rights as telephone conversations and long term or short term visits by relatives or other persons are not provided in that law. The fact that these rights are not expressly forbidden does not mean that they are guaranteed".

On 1 September 2003 the applicant and his cellmates challenged the Prosecutor's refusal of 9 August 2003 before the Râşcani District Court. Relying on Article 8 of the Convention and on domestic legislation, they complained about the prison authority's and prosecutor's denial of their right to have visits, including long term visits, from their relatives, telephone conversations and other kind of contacts with relatives and other persons. They asked the court to oblige the prosecutor to solve their problem. They also asked the court to hear the case in their presence.

On 11 September 2003 the Prosecutor General's Office wrote the applicant a letter in which it also dismissed the complaints.

On 3 November 2003 the applicant and his co-detainees lodged a supplementary application with the Râşcani District Court asking it to examine their application of 1 September 2003. They argued that in accordance with the Code of Criminal Procedure, the Court was obliged to examine their application within ten days of receipt. The court's failure to

comply with that deadline constituted a breach of their right to an effective remedy under Article 13 of the Convention.

In the meantime, on 23 October 2003, judge V.M. from the Râşcani District Court examined the applicant's and his cellmates' application of 1 September 2003 in their absence and dismissed it. The court considered that the application had a general character and did not refer to any specific events. The court issued a decision with the application number 13-69/03 dated 23 October 2003.

On the same date, the same judge from the Râşcani District Court examined an application of other detainees from Cricova prison concerning alleged abuses by police during a prison riot and dismissed it. The court's decision had exactly the same application number and the same date as the decision in respect of the applicant and his cellmates.

On 29 January 2004 the Râşcani District Court informed the applicant and his co-detainees that their application had been dismissed on 23 October 2003.

On 4 March 2004 the applicant and his co-detainees wrote a letter to the Râşcani District Court and asked for a copy of its decision of 23 October 2003.

On 10 March 2004 the applicant and his co-detainees appealed against the decision of 23 October 2003 to the Chişinău Court of Appeal. In their appeal application they stated *inter alia* that the Râşcani District Court had examined their case in their absence and that it had not even sent them a copy of its decision.

On 26 March 2004 the Râşcani District Court sent the applicant and his cellmates a copy of its decision of 23 October 2003 which referred to the riot at Cricova prison.

On 14 April 2004 the applicant and his cellmates sent a new letter to the Râşcani District Court and informed it that the decision sent to them on 26 March 2004 did not refer to their case and asked for a copy of their decision. The Court does not have information as to whether the applicant and his cellmates received a reply to this letter.

On 28 June 2004 the Chişinău Court of Appeal examined the applicant's appeal against the decision of the Râşcani District Court and dismissed it by a final judgment. In its judgment the Court of Appeal indicated that the applicant and his lawyer were present at the hearing. However, the facts and the law part referred to the Cricova prison riot and did not have any connection with the applicant's case.

(b) The Government's submissions on the facts

The Government submit that according to Article 19 of the Law on the detention on remand, a detained person needed a written authorisation from the investigation body in charge of his case in order to be able to receive visits from family or from other persons.

The applicant received visits from his mother on 30 May 2003, 12 November 2003 and 12 December 2003.

B. Relevant non-Convention material

1. Acts of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT)

Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment concerning the visit to Moldova between 11 and 21 October 1998

77. Prisoners were accommodated primarily in five buildings. Buildings I, II and VII for the most part accommodated remand prisoners. Male juveniles were held in a section of building III, the basement of which was reserved for prisoners in transit. Women had a separate detention area, situated in Building V. Sentenced prisoners were scattered among the various buildings, except for the buildings housing the detachment of convicted prisoners employed as workers, situated in Building VIII. It should also be noted that all prisoners sentenced to life imprisonment were accommodated in the basement of Building II.

80. 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 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. For example, in Buildings I and II, up to 16 people were accommodated in cells of 24 m², 24 people had to share a cell of 32 m², and 29 people were packed into a cell of 52 m². In the juveniles' section in Building III, 12 young people were placed in a cell of 21 m² and 16 in a cell of 23 m². 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.

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.

81. The three transit cells in use at the time of the visit in Building III deserve particular mention. The situation in terms of living space in the cells was without a doubt the worst seen. Up to 18 prisoners were crammed into cells of 18 m². Half of the surface was taken up by a two level wooden platform (without mattress and blankets) completely blocking the window. In addition, the artificial lighting was mediocre and the atmosphere there was suffocating. As the remaining surface of the cell was filled up with the detainees' belongings and an Asian toilet, the detainees had no other choice but to pile onto the two levels of the platform. A number of detainees had been accommodated in these intolerable conditions for three to four months.

82. As regards washing facilities for prisoners, they had weekly access to the showers. However, the number of showers was notoriously inadequate for the male population (23 showers for approximately 1400 detainees, and moreover, its functioning was unreliable). In addition, prisoners who were not in a position to receive the basic washing necessities from their families were totally left without because of the lack of soap and towels in the prison.

83. The material conditions described above were further aggravated by another major inconvenience. Prisoners had to put up with very loud and repetitive music which was ongoing throughout the day and broadcast by loud speakers in the yard from 6 o'clock in the morning to 10 o'clock at night. The reason given for this measure was to ensure that the various categories of prisoners had no contact with each other. Many prisoners complained about this situation and the delegation was able to see for itself how obtrusive it was. For example, in many of the cells it was virtually impossible to hold a conversation.

98. The health care staff in prison No. 3 comprised nine full-time doctors, assisted by seven assistants, 11 nurses and a psychologist. The nine doctors were as follows: one doctor in charge of the prison medical service, two general practitioners, two pneumologists, a psychiatrist, a dermatologist, a radiologist and a dentist. In addition to providing a consultation facility, the medical staff was responsible for an infirmary with a capacity of 70 beds, although in reality, this area accommodated 200 patients, primarily patients suffering from tuberculosis.

The medical team could at a pinch be considered sufficient. However, such is not the case for the team of assistants and nurses.

The Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment concerning the visit to Moldova between 10 and 22 June 2001

69. The visited penitentiary establishments were severely affected by the country's economic situation. The budget ceiling for spending on the prison service under the 2001 Finance Act had been set at 48.7 million Lei (approximately 4.2 million Euros) or 38,9% of the resources needed per year. As a result, prisons suffered from severe shortages from every standpoint. For example, the daily budget for feeding a prisoner

was 2.16 Lei, just 38.8% of the current statutory norm. Prisons also suffered form cuts in electricity, water and heating, not to mention the unavailability of medicines necessary for treating prisoners.

In their letter of 5 November 2001, the Moldovan authorities refer to the efforts made at the beginning of 2001 by the Department of Prison Administration to obtain humanitarian aid from international organizations and individuals, in order to resolve the most urgent problems of the prison system (2.3 million Lei have been obtained in this way).

The CPT recognizes the laudable efforts made by the Moldovan prison administration and these deserve to be supported. Nevertheless, the Committee has already recalled on several occasions that there are certain basic necessities of life that must, in all circumstances, including in a serious economic situation, be assured by the state in respect of persons for which it is responsible. Nothing can ever exempt the state from this responsibility.

As a consequence, the CPT calls upon the Moldovan authorities, at the highest political level, to take without delay the necessary measures in order that all prisons in Moldova may adequately assure the basic necessities of life for all detainees.

78. The description of Prison No. 3 in Chişinău in paragraph 77 of the report on the 1998 visit is still valid. As previously indicated, this establishment suffered from severe overcrowding: 1,892 prisoners (mainly remand prisoners), including 127 women and 122 juveniles, for 1,480 places.

82. For example, 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. It is also planned to replace the blinds on the windows looking onto the street with an alternative arrangement that will let in sufficient natural light.

... Major repairs had also been made to the heating with, in particular, the installation of a new boiler, while the prison's central showers had been completely renovated (three shower rooms were operational and a fourth was being repaired) with the help of former prisoners and prisoners' families. This made it possible for male prisoners to take a shower, with hot water, every ten days. In certain buildings, moreover, repair work on the electrical system and painting of the corridors had been completed. A few cells were currently undergoing refurbishment.

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.

87. The absence of organised activity programmes was a common feature of the establishments visited. This was undoubtedly a consequence of the economic situation and overcrowding, but also of the restrictive legislation governing the categories of prisoners accommodated there. Only a minute fraction of the prison population had work: some sixty in Bender and Chişinău and twenty-seven in Cahul. The majority of these prisoners formed part of the workforce allocated to the various prison duties.

Other forms of activity were almost non-existent. It should be noted, however, that some efforts had been made in Prison No. 3, following the CPT's recommendations. For example, the outdoor exercise areas had been equipped with modest sports facilities. In this context, management plans to fit out two sports halls as soon as possible deserve particular support. Improvements had also been made to the juvenile detention regime: a television room had been provided and a few activities organised, such as music, singing and group discussions/debates. However, these early attempts to meet the needs of young persons remain an isolated example. In the other establishments, they were left entirely to their own devices.

92. The follow-up visit to Prison No. 3 showed that compared with 1998 (see paragraph 98 of the report) the situation regarding health staffing levels had deteriorated. In particular, the number of nurses had fallen (from eleven to eight) added to which, two of these posts were vacant. The number of doctors and medical assistants remained the same, 9.5 and 7 respectively, but the post of head doctor was vacant. Such a team is not sufficient to meet the needs of almost 2,000 prisoners, a significant number of which were in the prison hospital (149), particularly as far as the care staff is concerned (medical assistants and nurses). The number of complaints received concerning access to medical staff and medical care is therefore hardly surprising.

95. As indicated in the preliminary remarks, the supply with necessary medication was problematic in the visited establishments. The detainees mostly depended on their families or on non-governmental organisations in order to obtain the necessary medication (for example, Pharmaciens sans Frontières at Prison No. 3)...

98. From the standpoint of medical confidentiality, medical examinations and consultations did not take place in appropriate conditions in any of the establishments. As a rule, everything took place in the custody areas at cell doors (through the hatch), in the presence of guards. If prisoners had to be treated in a consultation room, guards were also in attendance. The situation in Prison No. 3, in the so-called "procedure" room in the infirmary, was particularly undignified. Treatment was administered through a closed door with bars, with an opening measuring 37 cm^2. The patients concerned then had to present the relevant part of the body, be it forearm or buttocks, in full view of other prisoners and staff.

99. There also needs to be a review of access to a doctor and a medical assistant. The delegation observed that when they were doing their daily rounds, the medical assistants only had minimal contact with prisoners, and always in the presence of guards. As a result, it proved very difficult to request consultations, which had to be done through guards. Many complaints were received about the considerable delays in gaining access to care staff and the barriers erected by guards. The CPT recommends that this situation be remedied.

100. There are several indicators to suggest that the situation regarding tuberculosis, already a matter of concern in 1998, is deteriorating. For example, in Prison No. 3, there has been a constant increase in the number of recorded active cases, from 54 in January 2000 to 121 in June 2001). Moreover, according to statistics supplied, tuberculosis accounts for 42% of the deaths in prison.

121. The CPT notes the improvements made in Prison No. 3 to the conditions in which visits take place, with the refurbishment of the booths used for short visits and rooms fitted out for convicted prisoners' long visits. Nevertheless, the visiting areas

remain insufficient, given the capacity of the establishment. ... The CPT invites the Moldovan authorities to develop the facilities for visits in the establishments visited at the earliest possible opportunity.

2. Relevant domestic law

The Constitution of the Republic of Moldova

Article 30

"(1) The State shall ensure the privacy of letters, telegrams and other postal dispatches, of telephone conversations and of the use of other legal means of communication".

This principle was restricted in relation to detainees. Specific provisions relating to the privacy of prisoners' correspondence were set out in the Code for the Execution of Criminal Sentences.

The Code for the Execution of Criminal Sentences

Article 14

"(1) A convicted prisoner shall enjoy rights established in the legislation on the execution of criminal sanctions in accordance with the nature of the sanction and the restrictions of any of his rights imposed upon him by the sentencing court.

(2) A convicted prisoner shall be entitled:

(c) to receive and send mail, and to submit explanations, proposals and complaints in his language, and, if necessary, to use the services of an interpreter."

Article 73

"(1) A convicted prisoner shall be entitled to receive and send an unlimited number of letters and telegrams.

(2) A convicted prisoner's outgoing and incoming correspondence ... shall be subject to censorship. A petition addressed to an ombudsman by a detained person shall not be verified by the prison administration and shall be transmitted to the addressee within twenty-four hours (as amended by Law no. 18-XIV of 14 May 1998).

(4) A convicted prisoner's proposals, requests and complaints addressed to an hierarchically higher legal authority shall be dispatched to such authority within three days."

The Law on Pre-Trial Detention No. 1226-XIII

Article 16. The rights of the remanded persons

1. The remanded persons have the right to:

d) to be visited by their lawyer, relatives and other persons;

f) to correspond with their relatives and with other persons, to send complaints, requests and letters to public authorities and to public servants in accordance with the provisions of Article 18;

Article 17. The right to personal security

In case of any danger for his life and health, the remanded detainee has the right to make a request before the prison authority to be transferred to a cell where there is no such danger. In such a case, the prison authority has the duty to undertake urgent measures in order to transfer the detainee to a non-dangerous place.

Article 18. Correspondence, complaints and requests

(1) The remanded persons can correspond with their relatives and with other persons on the basis of a written authorisation by the person or the authority in charge with their case. The letters written or received by the remanded persons are sent to the addressees or handed by the prison authority to the remanded persons within three days.

By virtue of Law No. 206-XV of 29.05.2003 which entered into force on 18 July 2003 the following was added at the end of the first sentence:

who can limit the correspondence in the interest of the criminal investigation or in the interest of justice, as well as in the interest of security and order in the detention facility.

By virtue of the same law the words "within three days" were replaced with "within twenty-four hours".

Article 19

(1) The administration of the remand centre allows the remanded person to have contact with his or her relatives or other persons, if the contact is authorised by the investigating body charged with the remanded person's case. As a rule, the remanded person has this right once a month. The length of a meeting shall be from one to two hours.

Article 38

(1) Control over the respect of the law in places of detention on remand is exercised by the Prosecutor General and by the prosecutors subordinated to him in accordance with the Law on the Prosecution Office.

(2) The prosecutors' orders and decisions in respect of the order and conditions of detention of the remanded persons are compulsory for the administration of the remand centres.

The old Code of Criminal Procedure, in force between 24 March 1961 and 12 June 2003

Article 6

No one shall be deprived of his liberty save in accordance with the law and with the procedure provided for by the present code in the following cases:

1) the lawful detention of a person after conviction by a competent court;

2) the lawful arrest of a person for non-compliance with the lawful order of a court;

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

...

Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have the right to compensation.

The Code of Civil Procedure

Article 7

(1) Civil proceedings shall be initiated by a court after receiving a request from a person who seeks the protection of an infringed or contested right, of a freedom or of a legitimate interest....

Law No. 1545 on the compensation for damage caused by the illegal acts of the criminal investigation bodies, prosecution and courts

Article 1

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

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

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

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

d) carrying out of operative investigative measures with breaches of legal provisions;

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

(2) The caused damage shall be fully compensated, irrespective of the form of guilt of the persons from the criminal investigation organs, prosecution and courts.

Article 4

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

a) pronouncement of an acquittal judgment;

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

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

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

The Government sent the Court a copy of a letter of 14 May 2004 addressed to the Ministry of Justice by the President of the Tighina District Court in which it was stated that the Moldovan Helsinki Committee for Human Rights has brought a civil action against the Ministry of Justice claiming a breach of the right not to be detained in inhuman and degrading conditions and requesting compensation. The action had not been examined, but had been sent to the Supreme Court of Justice for clarification of the court's competence.

The Government also sent the Court a copy of a letter of 27 February 2004 in which the Prosecutor's Office informed the Chief of the Remand Centre No. 3 of the Ministry of Justice that following a routine check it discovered that five foreign detainees were kept in a cell designed for four detainees. In a reply of 12 March 2004 the Chief of the Prison wrote to the Prosecutor's Office that the foreign detainees had been moved to a bigger cell. He also informed him that at that moment 1500 prisoners were detained in the prison, the capacity of which was 1480 places.

In a letter of 17 May 2004 the Vice-President of the Buiucani District Court informed the Government Agent about the case of T.S. who has been awarded compensation on the basis of Law 1545.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention about the conditions of detention.

2. He also complains under Article 8 about the interference with his correspondence by the prison authorities. In particular he complains about the censorship of the correspondence with his lawyer, with the Prosecutor's Office, with the Information Office of the Council of Europe in Chişinău and with the Court. He also complains about his mother's correspondence not reaching him.

3. He further complains that his right to family life is breached because he is not allowed to be visited by his wife and his daughter.

4. The applicant complains under Article 13 of the Convention taken together with Articles 3 and 8 that Moldovan legislation does not provide for effective remedies.

5. The applicant also complains under Article 1, 14 and 18 of the Convention.

THE LAW

A. The Government's Objection

The Government submit that the applicant has not exhausted remedies available to him under Moldovan Law, as required by Article 35 § 1 of the Convention. In particular they submit that the applicant could have, but did not make use of the provisions of Article 6 of the old Code of Criminal Procedure, Article 7 of the Code of Civil Procedure and Article 38 of the Law on Pre-Trial Detention (see above) in respect of his complaints under Articles 3 and 8 of the Convention. He also could have, but did not make use of the provisions of Article 17 of the Law on Pre-Trial Detention (see above), in respect of his complaints under Article 3 of the Convention regarding cigarette smoke.

1. General principles

The Court recalls that the purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Consequently, States are dispensed from answering for their acts before an international body before they have had the opportunity to put matters right through their own legal systems (see, for example, the *Remli v. France* judgment of 23 April 1996, *Reports of*

Judgments and Decisions 1996-II, p. 571, § 33, and *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

Under Article 35 § 1 of the Convention normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, § 66).

Furthermore, the Court recalls that in the area of exhaustion of domestic remedies the burden of proof is on the Government to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof is satisfied, it falls to the applicant to show that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement (see, for example, the *Akdivar and Others* judgment cited above, p. 1211, § 68, and *Selmouni v. France* cited above, § 76).

2. Application of these principles to the present case

(a) The complaints concerning the applicant's conditions of detention, correspondence with his mother and contacts with his wife and daughter

(i) Article 6 of the old Code of Criminal Procedure, Article 7 of the Code of Civil Procedure and the Convention

The Government submit that it was open to the applicant to apply to a court in accordance with Article 6 of the old Code of Criminal Procedure and Article 7 of the Code of Civil Procedure. In any event, if the domestic law did not provide for relief, the applicant was entitled to rely directly on the provisions of the Convention. In support of their submissions, the Government submitted a copy of a letter addressed to the Ministry of Justice by the President of the Tighina District Court (see the “Domestic Law” part).

The applicant submits that the remedies invoked by the Government were not effective. The poor conditions of detention in Moldovan prisons are due to the lack of sufficient public funding and the deficiency of the State's policy in that respect. He submits that for the improvement of the conditions, the prison needs money for structural repairs, adequate food and the continuous supply of electricity and water. The State also needs to implement an adequate penal policy in order to reduce the number of

prisoners. Any court action would be futile because no court has the power to oblige the Parliament to allocate more money to prisons or to elaborate a new penal policy. Therefore a hypothetical possibility to go to court would prove to be totally ineffective.

The Court notes that Article 6 of the old Code of Criminal Procedure guaranteed the right to liberty in terms somewhat similar to those of Article 5 of the Convention. In the present case, however, the applicant does not complain about any breach of his right to liberty. Accordingly, the Court is not convinced that under this Article an individual could request the improvement of his or her conditions of detention or the cessation of an interference with his or her Article 8 rights.

As regards Article 7 of the Code of Civil Procedure, it is noted that it institutes a general principle according to which the courts are obliged to examine the complaints brought before them. The Government suggest that the applicant could have brought an application before the domestic courts while relying directly on the provisions of the Convention. The Court notes that the applicant did bring an application based directly on the provisions of the Convention; in his application to the Râşcani Disctict Court of 1 September 2003, the applicant relied expressly on Article 8 of the Convention However, his application was dismissed without any examination (see above). Accordingly, this remedy proved to be ineffective.

(ii) Article 38 of the Law on Pre-Trial Detention

The Government submit that the applicant could also have complained to a prosecutor in accordance with Article 38 of the Law on Pre-Trial Detention. In support of this submission the Government rely on a case in which following the Prosecutor's Office initiative, five foreign detainees from Prison No. 3 were moved to a bigger cell (see the "Domestic Law Part"). The Government also rely on the case of T.S. (see the "Domestic Law" part).

The applicant submits that this remedy was not effective for the reasons invoked by him in respect of Article 6 of the old Code of Criminal Procedure and Article 7 of the Code of Civil Procedure. He argues that the case of T.S. is different from his case because T.S. did not request the improvement of his conditions of detention while he was still being detained, but instead sought compensation after being released, for illegal detention.

As regards the applicant's complaints in respect of the conditions of detention the Court notes that in a letter addressed to the Prosecutor General's Office on 25 August 2003 containing mostly complaints under Article 8 of the Convention, the applicant also complained about an alleged breach of his rights provided for by Article 3 of the Convention (see the Facts); however, the Prosecutor's Office did not react in any way in response to that complaint. At the same time, as regards the letter addressed

by the Prosecutor's Office to the Chief of the Prison in respect of the foreign detainees, it appears that that letter was not a reaction to a complaint lodged by the detainees in question but that the Prosecutor's Office wrote it of its own motion. Moreover, from the reply given by the Chief of the Prison, it appears that the prison was overcrowded both before the problem of the foreign detainees was solved and after. The Court notes that such problems as overcrowding (admitted by the Chief of the Prison in his letter to the prosecutor) and insufficiency of food (admitted in the Government's observations) were apparently of a structural nature and did not concern only the applicant's personal situation. The Government have not demonstrated that the prosecutor could redress the applicant's situation, given the admitted economic difficulties of prisons in Moldova. Moreover, even assuming that the prosecutor could redress the applicant's situation, it does not appear either from the Government's submissions, or from the domestic legislation that he had the power to grant adequate financial compensation for non-pecuniary damage to the applicant.

As far as the applicant's complaints under Article 8 are concerned, the Court notes that on 30 June 2003 the applicant and his cellmates complained to the Public Prosecutor's Office about the prison's policy of interfering with their correspondence, the denial of the right to be visited by relatives and other persons and the denial of the right to have telephone conversations. Since the Public Prosecutor's Office dismissed their complaints the applicant and his co-detainees challenged the refusal in the court. In its decision of 23 October 2003 the court ruled *inter alia* that the detainees could not bring such general claims before the prosecutor and that they could complain only about specific problems. The Court of Appeal dismissed the applicant's appeal without giving any assessment to the reasons invoked.

As regards the case of T.S. invoked by the Government, the Court notes that T.S. was awarded compensation on the basis of Law No. 1545 and not on the basis of Article 38 of the Law on Pre-Trial Detention. The Court also notes that according to Article 4 of Law No. 1545, the law is applicable only to persons who have been acquitted or in respect of whom the criminal investigation has been discontinued (see the “Domestic Law” part) which is not the case of this applicant.

Consequently, the Court is not satisfied that the remedy under Article 38 of the Law on Pre-Trial Detention was effective.

(iii) Article 17 of the Law on Pre-Trial Detention

In accordance with Article 17 of the Law on Pre-Trial Detention, the applicant could have, but did not, lodge a written request to be removed to a non-smoking cell. The Government argues that there have been cases when following such requests detainees have been removed to other cells.

The Court notes that Article 17 refers to the detainees' right to personal security. It does not appear clearly either from the text of the law, or from any domestic case-law, that the right to personal security includes the right not to inhale cigarette smoke. However, the Court is ready to assume that under this Article the applicant could have requested to be transferred to a non-smoking cell. The Government admitted in their observations that the prison authorities were aware of the applicant's disease. The seriousness of the applicant's condition was later brought again to the prison authorities' attention by the requests made by the applicant for medical assistance on at least two occasions admitted by the Government (see above); however, the prison authorities chose to place the applicant in a general cell with smokers and to keep him there even after his submitting requests for medical assistance. Having seen that the prison authorities were aware of his disease but had taken no action, it is understandable if the applicant formed the belief that he could not hope to obtain satisfaction through lodging a formal request (see *mutatis mutandis Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, § 56).

Moreover, while the Government submitted that there were cases when detainees were transferred to other cells in similar circumstances, they have failed to give any specific example of such cases or to prove that there were non-smoking cells in the prison.

Accordingly the Court considers that the remedy under Article 17 was not effective.

(b) The complaints concerning the interference with the applicant's correspondence with his lawyer, the Prosecutor's Office, the Information Centre of the Council of Europe and the Court

Since these complaints are in any event inadmissible as being manifestly ill-founded (see below), the Court does not consider it necessary to reach any conclusion on the issue whether or not domestic remedies have been exhausted by the applicant.

(c) The applicant's failure to challenge the order of remand

The Government submit that the applicant could also have, but did not, challenge the order of remand.

The Court notes that the applicant does not complain about his right to liberty. His complaints relate to the conditions of detention, freedom of correspondence and the right to have contact with his family.

3. Conclusion

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

B. Alleged violation of Article 3 of the Convention

The applicant complains under Article 3 of the Convention about his conditions of detention in the Remand Centre No. 3 of the Ministry of Justice *(Izolatorul Anchetei Preliminare Nr. 3)*, between 18 October 2002 and 15 November 2002, and between 4 April 2003 and 13 December 2003.

Article 3 provides:

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

The applicant argues that in view of the overcrowding, the sanitary conditions, the ventilation and the heating, the opportunities for recreation, the health care and the quality of food served, the conditions of detention in the remand centre amounted to inhuman and degrading treatment both during the first period of detention and during the second period of detention.

In support of his statements the applicant sent the Court pictures allegedly taken in cell number 16, in which he had been detained between April and November 2003.

The Government argues that the applicant could not have had a camera in the prison because it is forbidden for detainees to have cameras. Moreover, the Government submit that the pictures cannot be considered by the Court as evidence since in the Remand Centre No. 3 there are no views that look like the ones in the pictures.

In view of their position on the facts, the Government consider that the conditions of detention, both during the first period of detention and during the second period of detention, did not amount to inhuman and degrading treatment.

In support of their submission the Government have forwarded to the Court a twelve minute video filmed on an unspecified date.

In his comments the applicant objects that there is no date indicated in the Government's video and that the images of cell number 16 in the video were taken in such a way as to preclude the viewer from noting its resemblance with the images from the pictures sent by him.

In the light of the parties' observations, the Court considers that this part of application 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.

C. Alleged violation of Article 8 of the Convention in respect of the censorship of the applicant's correspondence

The applicant complains that the prison authorities censored his correspondence with his lawyer, the prosecutor's office and the Information Office of the Council of Europe in Chişinău. He also submits that on 13, 14 and 15 December 2003, while being transferred to another prison, the prison authorities searched all his personal belongings and during the search they examined and censored his correspondence with the Court. He also submits that the prison authorities intercepted the correspondence with his mother. Finally, the applicant complains that he could not have visits from his wife and daughter.

Article 8 of the Convention provides:

> "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."

1. Correspondence with his lawyer, the prosecutor's office, the Information Office of the Council of Europe and the Court

The Government submit that the letters from the prosecutor's office and from the applicant's lawyer were not addressed to the applicant only, but to the chief of the prison too.

As to the envelope received from the Information Office of the Council of Europe, the Government submit that it was not written on the envelope that the sender was the Information Office of the Council of Europe. Moreover, the envelope arrived at the prison in a bad state and the prison officer made a note on it to that effect.

As regards the examination of the correspondence with the Court, the Government admit that the applicant's belongings were searched during his transfer to another prison; however, they deny that any correspondence with the national or international human rights protection bodies was censored. The searches of the detainees' belongings are a measure provided by the Code of Execution of Criminal Sanctions and have the purpose of precluding the smuggling of prohibited objects and substances into the detention facility.

The applicant submits that the searches and the examination of the applicant's correspondence with the Court cannot be considered necessary in a democratic society.

The Court notes that while it is true that the letters from the applicant's lawyer and from the prosecutor's office bore prison stamps on them, those

letters were addressed to the chief of the prison too. Accordingly, the prison authorities were entitled to open them. Consequently, this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

As regards the letter sent to the applicant by the Information Office of the Council of Europe, the Court notes that the prison stamp was applied on the envelope and not on its content. Accordingly, there is no indication that the envelope was opened by the prison authorities. It follows that this part of the complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

As far as the alleged examination of the applicant's correspondence with the Court during the searches of 13, 14 and 15 December 2003 are concerned, the Court recalls that it has previously held that the protection of "correspondence" provided by Article 8 of the Convention cannot be invoked if the documents referred to had already reached their addressee and no longer constituted "correspondence" within the technical meaning of the term (see, *L. v. Finland*, no. 25651/94, Dec., 8 June 1999). The fact that others than the addressee took cognizance of the letters does not therefore necessarily constitute an interference with the applicant's right to correspondence, the more so, since there is no indication and no evidence that the correspondence with the Court was read by the prison authorities during those searches. It follows that this part of complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Correspondence with his mother

As far as the correspondence with the applicant's mother is concerned, the Government submit that in accordance with Article 18 of the Law on Pre-Trial Detention, a remand prisoner can correspond with his or her relatives and with other persons only on the basis of a written authorisation given by the person or by the authority in charge of his or her case. That person or authority can impose a justified limitation on the detainee's correspondence, in the interest of justice or in the interest of security and order within the detention facility. The remanded person's letters are checked by the prison authority.

The applicant did not have an authorisation to correspond or to have telephone conversations with his relatives or with other persons because of the socially dangerous character of his acts and in the interests of justice.

In cases when a remanded person receives letters from his relatives or from other persons and those persons do not have the necessary authorisation, the letters are returned to the sender. This happened to the letter sent to the applicant by his mother.

The applicant submits that the prison authorities did not inform either him or his mother about the need to lodge a request in order to obtain an

authorisation to correspond. Moreover, in his particular case, the prohibition on corresponding with his mother was not necessary in a democratic society.

The Court considers that this part of the application 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.

3. Contacts with his wife and daughter

The Government submit that the applicant received visits on three occasions from his mother. They do not deny the applicant's allegation that he could not receive visits from his wife and daughter.

The applicant has not commented on the Government's submission.

The Court considers that this part of the application 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.

D. Alleged violation of Article 13 of the Convention

The applicant argues that he did not have an effective remedy before a national authority in respect of the breaches of Articles 3 and 8 of the Convention and alleges a violation of Article 13, which provides:

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

The Court considers that this part of the application 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.

E. Alleged violation of Articles 1, 14 and 18 of the Convention

In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application is

manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint concerning his conditions of detention;

Declares admissible, without prejudging the merits, the applicant's complaint concerning his right to correspondence with his mother;

Declares admissible, without prejudging the merits, the applicant's complaint concerning his right to have contacts with his wife and daughter;

Declares admissible, without prejudging the merits, the applicant's complaint under Article 13 of the Convention taken together with Article 3 and 8;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President