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. 14462/03
by Valentina PENTIACOVA and Others
against Moldova

The European Court of Human Rights (Fourth Section), sitting on 4 January 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application lodged on 30 April 2003,

Having deliberated, decides as follows:

THE FACTS

The applicants, Valentina Pentiacova, Nichifor Avasiloaie, Nicolaie Bugan, Alexandru Bulgac, Vladimir Caranfil, Ion Ceban, Chiril Cebotari, Valeriu Cerniavschi, Mihail Chircu, Galina Chiriacova, Tamara Ciorba, Alina Condrat, Tatiana Costina, Olesea Frija, Natalia Ghetmacenco, Mihail Grozov, Maria Gudumac, Adriana Hristiniuc, Natalia Iacovenco, Ana Istratieva, Maria Lozinschi, Ana Lungu, Diana Maliavca, Petru Meriacri, Tudor Meriacri, Iacob Mocanu, Veaceaslav Muşchei, Victor Neagov, Iacob Ninescu, Ion Nicolaev, Mihai Nicolaev, Constantin Novac, Eugenia

Paşcova, Ghenadie Petrea, Eduard Porumb, Eduard Pritula, Nicolae Pruteanu, Ion Puşcaş, Maria Serbu, Mariana Solomon, Chiril Spirliev, Rita Stoian, Gavriil Tofan, Anatol Ţoncu, Dumitru Tulbu, Ion Vacari, Ion Vartic, Dumitru Zlatov and Victor Zorilă are Moldovan nationals, who live in the Republic of Moldova. Adriana Hristiniuc is the daughter of Andrei Hristiniuc, who was a patient of the Spitalul Clinic Republican haemodialysis section for about two years, but who died on 11 July 2004. Ana Lungu is the widow of Gheorghe Lungu, who was a patient of the SCR haemodialysis section for about ten years, but who died on 25 April 2003. Ion Vacari is the widower of Lidia Vacari, who was a patient of the SCR haemodialysis section, but who died on an unspecified date. They are represented before the Court by Mr Vladislav Gribincea, acting on behalf of "Lawyers for Human Rights", a non-governmental organisation based in Chişinău. The respondent Government are represented by their Agent, Mr V. Pârlog, Ministry of Justice.

A. The circumstances of the case

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

1. Background

All the applicants (except Adriana Hristiniuc, Ana Lungu and Ion Vacari, see above) are suffering from chronic renal failure (a gradual and progressive loss of the ability of the kidneys to excrete waste, concentrate urine, and conserve electrolytes) and consequently they need haemodialysis (a medical procedure that uses a machine to filter waste products from the bloodstream and to restore the blood's normal constituents).

They are all disabled on account of their disease and receive State disability allowances which vary between 60 Moldovan Lei (MDL) and MDL 450.

The applicants have their haemodialysis done at a Chişinău hospital called *Spitalul Clinic Republican* (the "SCR"), where approximately one hundred patients are treated. The applicants submit that before 1997 the expense of their haemodialysis was covered entirely by the hospital. Between 1997 and 2004 the hospital's budget was reduced and only strictly necessary procedures and medication were provided free to them. From 1 January 2004 the situation became more or less identical to that existing before 1997, with the exception of the frequency of haemodialysis sessions (see below).

There are four more hospitals in the Republic of Moldova that perform haemodialysis - another hospital in Chişinău called *Spitalul de Urgenţă* (the "SU"), and hospitals in Bălţi, Cahul and Comrat. The applicants submit that, unlike the SCR, the SU was financed from the budget of the Chişinău

Municipality and therefore always provided its patients with all the necessary medication free. They also argue that there are administrative barriers presenting the applicants who do not live in Chişinău from receiving treatment at the SU. As to the other three hospitals, the applicants submit that the quality of the haemodialysis treatment provided by them is inferior to that of the SCR.

2. The parties' submissions as to what is necessary for haemodialysis treatment and as to what is available at the SCR

According to the parties, the following are necessary for haemodialysis treatment: a haemodialysis package, heparin, physiological saline, syringes, CaCl (10%), glucose (10-40%), euphylin 2.4%, alcohol and vitamins. There are also some medications and accessories which are necessary in some cases, namely riboxin, antibiotics, plaster, gauze and blood.

According to the applicants, before 1 January 2004 the hospital provided them free with the haemodialysis procedure and some basic medication and accessories such as the haemodialysis package, heparin, physiological saline, syringes and CaCl (10%). They had to pay for the rest of the necessary medication. In 2002, the applicants were allegedly told by the hospital authorities that the haemodialysis unit at the SCR might close due to insufficient financing from the State budget. The applicants were forced to protest before the Ministry of Finance and in front of the President's residence, and consequently the hospital continued to provide them with haemodialysis, but, as previously, without full coverage.

After 1 January 2004 the hospital started to provide them free with almost all the necessary medication. The hospital does not provide them, however, with a drug called Eprex, which operates to raise the haemoglobin level, or with calcium, Amonosteril and Ketosteril. In order to increase their level of haemoglobin, the applicants are usually given blood transfusions. Before 1 January 2004 the applicants were not provided with free blood by the hospital. After that date the hospital started to provide free blood, but the applicants still have to wait until it becomes available. Since they sometimes need blood urgently, they have to buy it. The applicants also submit that no medical investigation for the determination of anaemia status is performed at the SCR and that the doctors only establish the existence of anaemia.

According to the Government, before 1 January 2004 the treatment of the applicants was carried out in accordance with the provisions of Law no. 267 of 3 February 1999 on the minimum of medical assistance guaranteed by the State (see below). In accordance with that law, the applicants received only the strictly necessary medication free. They had to buy the rest of the medication prescribed by their doctors. Haemodialysis treatment has never been stopped and has never been refused to anybody. According to the official documents provided by the Government, in 2003 the haemodialysis

section of the SCR received MDL 5,685,729 (the equivalent of 354,000 euros (EUR) at the time) from the State budget.

On 1 January 2004 a new medical insurance system was implemented in Moldova and in accordance with the new legislation the applicants started to receive all the necessary medication free (see below). If a patient needs some particular medication not provided by the State, then the doctor recommends that the patient buys it. According to a directive of the Ministry of Health of 12 March 2004, the State spends MDL 322 (the equivalent of EUR 20 at the time) for one day of hospitalisation, MDL 688 (the equivalent of EUR 44 at the time) for a haemodialysis of the first degree and MDL 1,207 (the equivalent of EUR 78 at the time) for a haemodialysis of the second degree.

According to the applicants, in the USA, Canada and EU countries, renal failure patients receive nine hours of haemodialysis in three sittings per week. The same practice was followed in Moldova before 1997. After 1997 the practice changed and the patients started to receive eight hours of haemodialysis in two sittings per week. "Only applicants that are in bad physical condition or ill are allowed to undergo the third haemodialysis permanently".

The Government submitted a document from the haemodialysis section of the SCR according to which, in July 2003, twenty-six applicants underwent two haemodialysis sessions per week; four applicants underwent three sessions per week and the rest two or three haemodialysis sessions per week. According to the Government, the number of haemodialysis sessions is determined in each case by the doctors, who consider the gravity of the disease, the presence or absence of complications and the results of laboratory investigations.

In their application lodged on 30 April 2003 the applicants submitted that there were twenty haemodialysis machines at the SCR which were all old and in a bad technical condition. In their observations of 1 September 2004 they submitted that before their application was lodged with the Court half of the haemodialysis machines were in bad technical condition; however, they had been replaced after the application was lodged with the Court on 30 April 2003. They also stated: "In 2001 the majority of the haemodialysis machines performed dialysis on an acetate basis. After the application was lodged with the Court, the number of machines that performed haemodialysis on a bicarbonate basis increased. Today the majority of the applicants are undergoing bicarbonate-based haemodialysis. The bicarbonate-based haemodialysis is much better assimilated by most of the applicants."

The Government submit that before December 2003 there were twenty haemodialysis machines, eleven of which were new and the rest of which were old. In December 2003 the old machines had become unusable

because of the shelf-life provision in their documentation and accordingly they had been replaced with new machines of German origin.

According to the applicants, before the application was introduced, the water used for haemodialysis was not distilled. "After the application was lodged with the Court a water-filtration system was purchased and installed. After the new system was installed, they began to feel much better...."

The Government submit that a contract has been signed with a German company and in the next five years the number of haemodialysis machines will double.

According to the applicants, many of them live in the provinces and have to travel to Chişinău each time they need the treatment. Although there is no legal obligation in this respect, there is a practice according to which the local authorities cover the travel expenses for persons suffering renal failure who have to go to Chişinău for haemodialysis. The applicants submit that this practice is usually followed and most of them get reimbursed. However, there are cases when these expenses are not covered and it is too expensive for the applicants to pay themselves.

According to the Government, the obligation to cover the transportation expenses of invalids of the first and second degrees is provided for in Section 41 of the Law 821 on the protection of invalids (see below). The Government submitted copies of the payment rolls proving the payment of all the travel expenses and the applicants did not make any comment on them.

3. Letter from the SCR doctors

On 24 May 2003 the applicants sent the Court a copy of a letter addressed to them and to several Chişinău newspapers by the doctors of the SCR's haemodialysis section, together with a chart setting out the expenses of each patient. The letter was signed by the medical staff of the Haemodialysis section of the SCR but not by the applicants. The chart was drawn up on 16 May 2003 and bore the signatures of all the patients of the haemodialysis section of the SCR. The applicants' representative admitted that all the applicants had signed the chart.

According to the letter signed by thirty-two doctors, there was a media campaign led by some Chişinău newspapers and news agencies after the present application was lodged with the Court. The doctors stated that the information presented by the newspapers was erroneous and misleading. They submitted that the situation of renal failure patients from the SCR had been over-dramatised for political reasons related to the forthcoming local elections and that it did not reflect reality. The doctors argued that the death rate of renal failure patients had diminished tenfold in comparison with the 1980s and that State financing of haemodialysis had increased threefold in the last two years. "We understand that the state of the country's economy is not perfect for one to have everything; and that is how it is in the case of

health protection". The doctors contradicted the statement made by the applicants' representatives in various newspaper articles according to which all the haemodialysis machines were old. According to the doctors, eight machines were brand new. They also disagreed that the situation of the patients of the SCR was worse than that of the patients of the SU. They argued that their patients were provided with free basic services and medication in exactly the same conditions as patients from other hospitals, and that it was a general practice in Moldova that doctors would ask the patients to buy supplementary medication not covered by the "legal guaranteed minimum". The doctors also referred to the death of Gheorghe Lungu and stated that he had been their patient for ten years. According to them, in 1995 he had had both his kidneys removed and in the last year of his life he had suffered terminal chronic renal failure and arthritis-like tuberculosis.

The submitted chart contained information as to the coverage of the applicants' expenses for services/medication and for travel expenses. According to the chart, from the total number of forty-nine applicants who were patients of the SCR, three applicants (Chiril Cebotari, Tamara Ciorba and Ion Puşcaş) had the services and medication not covered by the hospital paid for by the local authorities of their hometowns. Another three applicants (Galina Chiriacova, Natalia Iacovenco and Victor Neagov), in addition to the services and medication covered by the hospital, also had the rest partially covered by the local authorities of their hometowns. Only four applicants (Maria Lozinshi, Constantin Novac, Gavriil Tofan and Eduard Pritula) did not have their travel expenses covered by the local authorities, and three of those had been without cover for only two months.

4. The alleged consequences of the scarcity of funds

In their application submitted on 30 April 2003 the applicants argued that their disability allowance was insufficient to pay for the medication necessary for the haemodialysis which was not provided free by the State. According to them, the minimum weekly expense associated with the haemodialysis amounted to MDL 100 per person. Therefore they could not afford the procedure. They submitted that many of them were forced to undergo the procedure without all the necessary medication and were caused unbearable pain and suffering. According to them, there were cases of patients who refused to undergo the procedure for lack of money, and died.

According to the applicants, "as a result of the reduced number of haemodialysis sessions ... the level of microelements in the blood decreases significantly and that causes headaches, vomiting, sickness, cramps..."

The applicants submit that the scarcity of funds made the death rate among renal failure patients higher than in other countries. They invoke the case of Gheorghe Lungu, an applicant who died in 2003. According to

them, the death rate in the USA is 5.5 deaths per 100 patients per year while at the SCR the death rate before 2004 was 7-10 and 8-11 deaths. "The increased death rate was determined by the inadequacy of haemodialysis and by the poor anaemia status. By improving the quality of haemodialysis, the death rate significantly decreased after August 2003, when the new haemodialysis machines and the water filtration system were installed".

According to the Government, in the last four to five years there have been no deaths due to the insufficiency of haemodialysis. The Government contests the death rate invoked by the applicants, arguing that the applicants had failed to give the names of the persons who had allegedly died because of insufficient or improper medical care. As to the case of Gheorghe Lungu, the Government submitted that he had survived for ten years without kidneys and that he had died in 2003 of chronic arthritis-like tuberculosis and terminal renal failure. The Government submitted an autopsy report in support of their argument and the applicants did not comment on it.

5. Video submitted by the Government

The Government submitted a fifteen minute video, filmed on 4 May 2004 in the haemodialysis section of the SCR. The tape contains a brief presentation of the haemodialysis section and interviews with a doctor from that section; a patient who had undergone haemodialysis at the SCR for one year; a patient who had undergone haemodialysis at the SCR for ten years and an applicant in the present case; a patient who had undergone haemodialysis at the SCR for five years; and a patient who had undergone haemodialysis at the SCR for four years.

The doctor made a brief presentation of the haemodialysis section and stated in particular that the section had ninety-eight patients and that nobody has ever been refused haemodialysis treatment.

Three of the patients stated that they received two haemodialysis sessions per week, but that they could receive a third session if need be. The fourth patient answered that he received two haemodialysis sessions per week.

All the patients stated that they had never been refused a haemodialysis treatment; that they received all the necessary medication free; that their transportation expenses were covered and that they had never been discriminated against.

Three of the patients stated that they sometimes used to spend the night at the hospital and that in those cases they were provided with free food. The fourth patient stated that he never needed to spend the night at the hospital.

All the patients stated that they had never been maltreated by the hospital personnel and that they considered that the State took proper care of them.

The applicants' representative submits that the interviewer asked the patients leading questions aimed at obtaining answers convenient to the Government. He also argues that the video shows the present situation of

the haemodialysis section and that it does not refer to the situation prior to 2004.

B. Relevant domestic law and practice

The Constitution of the Republic of Moldova provides in Article 36:

> "(2) The minimum level of health care protection provided by the State shall be free."

Law no. 267-XIV of 3 February 1999, on the legal minimum of medical assistance guaranteed by the State, provides:

> "Section 1. In accordance with the Constitution, the State guarantees to provide the population of the Republic of Moldova with the minimum level of health care, hereinafter 'the guaranteed minimum', in conformity with the Annex attached to the present law.
>
> Section 2. (1) The guaranteed minimum shall be provided by all public health-care institutions.
>
> (2) The guaranteed minimum shall be provided to all the citizens of the Republic of Moldova.
>
> (3) Foreign citizens and stateless persons shall be provided with health care within the guaranteed minimum in the limits provided for in Section 4 (c).
>
> Section 4. – The guaranteed minimum shall comprise:
>
> ...
>
> c) urgent medical assistance at the pre-hospitalisation and hospitalisation stage, when the patient's life is endangered by his or her state of health.
>
> Section 5. The financing of the guaranteed minimum, in accordance with the State budget law for the current year, shall be carried out by the Government and the local authorities.
>
> Section 6. Medical services over and above the guaranteed minimum shall be paid for by the individual patient, and the money obtained shall remain at the disposal of the health-care institutions..."

Law no. 821 of 24 December 1991 on the social protection of invalids provides:

> "Section 41. Invalids of the first and second degree, invalid children and persons accompanying invalids of the first and second degree or an invalid child shall be compensated for their travel expenses (except taxis) by the local administration organs."

According to Annex 3 (8) of Law no. 1463-XV of 15 November 2002, in the State budget for 2003 MDL 5 million was allocated for the treatment of patients suffering renal failure.

Law no. 1585 of 27 February 1998, on compulsory medical insurance, entered into force on 1 January 2004 and provides:

> "Section 1. (1) Compulsory medical insurance is a system of health protection based on insurance premiums and on funds created for this purpose. The system of compulsory medical insurance offers the citizens of the Republic of Moldova equal possibilities for obtaining necessary and quality medical assistance.
>
> (2) Compulsory medical insurance is realised by means of contracts concluded between insured persons and the insurer...."

The Government sent the Court four letters in which the Presidents of the Court of Appeal, the Bălţi District Court and the Orhei District Court, stated that if renal failure patients brought actions concerning insufficient medical care, their courts would examine them. They also stated that no similar cases had been examined by their courts. The President of the Briceni District Court stated that his court had examined a case in which a hospital was obliged to pay compensation to a renal failure patient; however the letter did not state what the compensation was for and no copy of the relevant judgment was attached to it.

It appears from the parties' submissions that after the new law on medical insurance entered into force on 1 January 2004 the situation of the haemodialysis patients improved considerably in respect of the supply of free medication. In December 2003 half of the haemodialysis machines from the SCR which were old were replaced with new ones. On an unspecified date after the application was introduced with the Court a new system of filtration of water was purchased and installed in the SCR haemodialysis section.

COMPLAINTS

1. In their application, the applicants complain about the failure of the State to provide all the medication necessary for haemodialysis at public expense and about the poor State financing of the haemodialysis section of the *Spitalul Clinic Republican*. They also allege that on account of the insufficient financing some of them were forced to have two instead of three haemodialysis sessions per week. Accordingly, they argue that their right to life under Article 2 of the Convention has been breached.

In their observations of 1 September 2004, they ask the Court to find a violation of Article 2 of the Convention in respect of the Government's failure "to take appropriate legislative steps to safeguard the lives of the applicants and to supply the free haemodialysis treatment which the Government had undertaken to make available for the applicants". They further state that the Government undertook legislative steps aimed at safeguarding their lives; however, the quality of the laws enacted by the

State was unsatisfactory, since they did not state with sufficient clarity the number and the quality of haemodialysis sessions and the drugs which the applicants were entitled to receive at public expense.

In a letter of 29 September 2004 the applicants' representative stated that the applicants complained only about the quality of the law in respect of the period after 1 January 2004.

2. The applicants argue that before 1 January 2004 the State provided them with only a very basic level of medication. The remaining medication, which was not indispensable for the haemodialysis but the lack of which led to physical pain and suffering, was not covered by public funds. As a result, many applicants who could not afford to pay for that medication had to undergo the haemodialysis without it. According to the applicants, this amounted to a violation of Article 3 of the Convention.

The applicants also argue that the fact that the local authorities did not always compensate them for their transportation expenses amounted to inhuman and degrading treatment.

They submit that the state of uncertainty as to the likelihood of future financing of haemodialysis causes them suffering incompatible with Article 3 of the Convention.

The applicants also argue that the decrease in the number of haemodialysis sessions per week, in the case of several applicants, caused them intense suffering and therefore amounted to a breach of Article 3 of the Convention.

3. The applicants complain under Article 6 of the Convention that Moldovan law did not provide for interim measures to be taken by courts. In this context they argue that, even if they could have brought an action against the Ministry of Finance, the proceedings would have lasted for at least six months and the courts would not have been able to adopt any interim measure obliging the Ministry of Finance to make the payments necessary for haemodialysis.

4. The applicants complain under Article 1 of Protocol No. 1 to the Convention about being forced to spend their own money on their treatment and transportation.

5. The applicants complain under Article 8 of the Convention that because of the insufficient State financing of the renal failure treatment they are obliged to spend most of their families' money on their treatment, which impairs their family lives.

6. The applicants complain under Article 14 of the Convention taken together with Articles 2, 3 and 13, and Article 1 of Protocol No. 1 to the Convention. They submit that the patients from the SU receive better care simply because that hospital is financed from the local rather than the State budget. They also argue that there are administrative barriers making it difficult to the patients who do not live in Chişinău to receive treatment at the other Chişinău hospital.

7. The applicants complain under Article 13 of the Convention taken together with Articles 2, 3, 6, 8 and 14, and Article 1 of Protocol No. 1 to the Convention, that Moldovan legislation does not provide an effective remedy for their problem.

THE LAW

A. Exhaustion of domestic remedies

The Government submit that the applicants have not exhausted remedies available to them under national law, as required by Article 35 § 1 of the Convention. They submit that it was open to the applicants to file a judicial complaint in accordance with the Code of Civil Procedure if they considered that their Convention rights had been infringed. They argue that the Convention is incorporated into Moldovan legislation and that individuals can rely directly on its provisions before the national courts. In support of their statements the Government sent the Court copies of letters from four domestic courts in which the presidents of those courts assured the Government Agent that in case of an action by renal failure patients against the State the courts would examine it (see "Relevant Domestic Law and Practice"). The Government also invoke a case decided by the Briceni District Court in which a hospital was ordered to reimburse travel expenses to a renal failure patient (see "Relevant Domestic Law and Practice").

The applicants agree that there was a case when a renal failure patient was able to recover his transportation expenses. They argue, however, that there is no remedy available under national law against their main problem which is the insufficiency of State funding for haemodialysis. According to them, it is not the hospital authorities who are responsible for the difficult situation of renal failure patients, but the Moldovan Parliament, which does not provide sufficient funds in the annual Budget Act. The applicants conclude that, under the principle of the separation of powers, the domestic courts are not invested with the power to order the Parliament to adopt or to amend laws.

Since the application is 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 applicants.

B. Alleged violation of Article 8 of the Convention

In their initial application the applicants submitted a complaint under Article 8 of the Convention claiming that they were obliged to spend most of their families' money on their treatment, which had impaired their family lives. Article 8 provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and 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."

In their observations submitted to the Court on 1 September 2004, the applicants' representative asked the Court to discontinue the examination of the complaint under this Article, without giving any explanation.

However, the Court reiterates that it is master of the characterisation to be given in law to the facts of the case and that it does not consider itself bound by the characterisation given by an applicant or a government. By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by those appearing before it and even under a provision in respect of which the Commission had declared the complaint to be inadmissible while declaring it admissible under a different one. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see the *Powell and Rayner v. the United Kingdom* judgment of 21 February 1990, Series A no. 172, p. 13, § 29).

In the light of the above the Court considers it necessary to examine the complaints concerning insufficient State financing of haemodialysis and the local authorities' failure to cover the applicants' travelling expenses in the light of the right to respect for private life under Article 8 of the Convention.

Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference since it may also give rise to positive obligations inherent in effective "respect" for private and family life. While the boundaries between the State's positive and negative obligations under this provision do not always lend themselves to precise definition, the applicable principles are similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole, and in both contexts the State enjoys a certain margin of appreciation (*Zehnalová and Zehnal v. the Czech Republic* (dec.), no. 38621/97, ECHR 2002-V).

The Court has previously held that private life includes a person's physical and psychological integrity (*Niemietz v. Germany*, judgment of 16 December 1992, Series A no. 251-B, § 29). While the Convention does not guarantee as such a right to free medical care, in a number of cases the Court has held that Article 8 is relevant to complaints about public funding to facilitate the mobility and quality of life of disabled applicants (see, *Zehnalová and Zehnal*, cited above, and *Sentges v. the Netherlands* (dec.) no. 27677/02, 8 July 2003). The Court is therefore prepared to assume for the purposes of this application that Article 8 is applicable to the applicants' complaints about insufficient funding of their treatment.

The margin of appreciation referred to above is even wider when, as in the present case, the issues involve an assessment of the priorities in the context of the allocation of limited State resources (see, *mutatis mutandis*, *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3159, § 116, and *O'Reilly and Others v. Ireland* (dec.), no. 54725/00, 28 February 2002, unreported). In view of their familiarity with the demands made on the health care system as well as with the funds available to meet those demands, the national authorities are in a better position to carry out this assessment than an international court. In addition, the Court should also be mindful of the fact that, while it will apply the Convention to the concrete facts of this particular case in accordance with Article 34, a decision issued in an individual case will nevertheless at least to some extent establish a precedent, valid for all Contracting States (*Sentges v. the Netherlands*, cited above).

The Court considers that the core problem in the present case reflected in the numerous complaints is the alleged insufficient public funding for the treatment of the applicant's medical condition. In support of their claims the applicants compare the amount of public expenditure on renal failure treatment in Moldova with that in some industrialised countries like the USA, the United Kingdom, Australia and Israel. The Court sees no reason to question the applicants' assertion that they have no means to pay for the cost of the medication not provided free by the State and that the medication and in some cases a third haemodialysis session per week is of great importance for their fight with the disease. However, it notes that the applicants' claim amounts to a call on public funds which, in view of the scarce resources, would have to be diverted from other worthy needs funded by the taxpayer.

While it is clearly desirable that everyone should have access to a full range of medical treatment, including life-saving medical procedures and drugs, the lack of resources means that there are, unfortunately, in the Contracting States many individuals who do not enjoy them, especially in cases of permanent and expensive treatment.

In the present case the Court notes that the applicants had access to the standard of health care offered to the general public both before and after the implementation of the medical care system reform. It thus appears that they were provided with basic medical care and basic medication before 1 January 2004, and have been provided with almost full medical care after that date. The Court by no means wishes to minimise the difficulties apparently encountered by the applicants and appreciates the very real improvement which a total haemodialysis coverage would entail for their private and family lives. Nevertheless, the Court is of the opinion that in the circumstances of the present case it cannot be said that the respondent State failed to strike a fair balance between the competing interests of the applicants and the community as a whole.

Bearing in mind the medical treatment and the facilities provided to the applicants and the fact that the applicants' situation has considerably improved after the implementation of the medical care system reform in January 2004, the Court considers that the respondent State cannot be said, in the special circumstances of the present case, to have failed to discharge its positive obligations under Article 8 of the Convention. As to the problem concerning the non-reimbursement of all their travelling expenses, the Court, assuming that the applicants exhausted domestic remedies, notes that the Government produced copies of payment rolls recording the payment of those expenses to all the applicants and that the applicants failed to make any comment on them. Moreover, the applicants sent the Court a copy of a judgment of the Briceni District Court, by which Eduard Pritula was awarded money for his travel expenses, to be paid by the local authorities.

It follows that the complaint under Article 8 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Alleged violation of Article 2 of the Convention

The applicants complain that the failure of the State to cover the cost of all the medication necessary for their haemodialysis, and the poor financing of the haemodialysis section of the SCR, violated their right to life guaranteed by Article 2 of the Convention, which in so far as relevant provides:

> "1. Everyone's right to life shall be protected by law. (...)"

The Court recalls that the first sentence of Article 2 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-III, § 36). It cannot be excluded that the acts and omissions of the authorities in the field of health care policy may in

certain circumstances engage their responsibility under Article 2 (see *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V).

Moreover, an issue may arise under Article 2 where it is shown that the authorities of a Contracting State put an individual's life at risk through the denial of health care which they have undertaken to make available to the population generally (see *Cyprus v. Turkey* [GC], no. 25781/94, § 219, ECHR 2001-IV and *Nitecki v. Poland* (dec.), no. 65653/01, 21 March 2002).

Turning to the facts of the instant case, the Court notes that the applicants have failed to adduce any evidence that their lives have been put at risk. They claim that a number of patients have died in recent years and cite the case of Gheorghe Lungu, but they have not adduced any evidence that the cause of death was the lack of any specific drug or the lack of appropriate medical care. The Court notes that chronic renal failure is a very serious progressive disease with a high rate of mortality, not only in Moldova but throughout the world. The fact that a person has died of this disease is not, therefore, in itself proof that the death was caused by shortcomings in the medical care system.

In any event, as regards the issue of the State's positive obligations, the Court has examined the issue under Article 8 of the Convention and sees no reason to reach any different conclusion under Article 2 of the Convetion.

Accordingly, the Court concludes that the complaint under Article 2 of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

D. Alleged violation of Article 3 of the Convention

The applicants complain that they have been subjected to inhuman and degrading treatment on account of the failure of the State to provide them with all the necessary medication free and its failure to provide all of them with three haemodialysis sessions per week. They rely on Article 3 of the Convention, which provides:

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

Having regard to its finding in respect of Article 8 of the Convention, the Court considers that no separate issue requiring examination arises under Article 3 of the Convention.

E. Alleged violation of Article 13 of the Convention

The applicants argue that they have no effective remedy before a national authority in respect of the breaches of the Convention complained of and allege 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 notwithstanding that the violation has been committed by persons acting in an official capacity."

As the Court has consistently held (see, among other authorities, *Powell and Rayner v. the United Kingdom*, judgment of 12 February 1990, Series A no. 172, pp. 14-15, § 33, and *Abdurrahman Orak v. Turkey*, no. 31889/96, § 97, 14 February 2002), Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. Its effect is thus to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. Article 13 is therefore applicable only in respect of grievances which can be regarded as arguable in terms of the Convention.

However, the applicants have not raised any arguable grievances in the instant case as the Court has held that all their complaints are inadmissible as being manifestly ill-founded (see above).

It follows that this complaint must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

F. Alleged violation of Article 14 of the Convention taken in conjunction with Article 2 and Article 3 of the Convention

Relying on Article 14 of the Convention taken together with Articles 2 and 3 of the Convention, the applicants submit that they have been discriminated against. Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Court recalls that Article 14 does not forbid every difference in treatment in the exercise of the rights and freedoms recognised by the Convention (see the *Belgian linguistic* case (merits), judgment of 23 July 1968, Series A no. 6, p. 34, § 10). It safeguards persons (including legal persons) who are "placed in analogous situations" against discriminatory differences of treatment; and, for the purposes of Article 14, a difference of treatment is discriminatory if it "has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see, amongst many authorities, the *Rasmussen v. Denmark* judgment of 28 November 1984, Series A no. 87, § 35 and § 38). Furthermore, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in

law; the scope of this margin will vary according to the circumstances, the subject-matter and its background (*ibid.*, § 40).

The applicants submit that the other Chişinău hospital which has a haemodialysis section (the SU) is better financed and thus its patients benefit from better health care and do not have to pay for all their medication.

According to the applicants' submissions, there are administrative barriers preventing patients who do not live in the city of Chişinău from moving to that hospital. The Court notes from the applicants' personal data that eleven applicants out of forty-nine live in Chişinău, and yet have not moved, or at least have not stated before the Court their wish to move, to the other Chişinău hospital.

Moreover, the Court notes that the applicants have not submitted any evidence to show that the other Chişinău hospital was in fact better financed or that its patients received better treatment.

Accordingly, this complaint must be declared inadmissible as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

G. Alleged violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention

In their initial application the applicants submitted complaints under Article 6 and Article 1 of Protocol No. 1 to the Convention; however, in their observations of 1 September 2004 they informed the Court that they did not wish to pursue those complaints. Accordingly, the Court will not examine them.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President