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

FOURTH SECTION

CASE OF CASTRAVET v. MOLDOVA

(Application no. 23393/05)

JUDGMENT

STRASBOURG

13 March 2007

FINAL

13/06/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Castravet v. Moldova,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 20 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 23393/05) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Andrei Castraveţ ("the applicant"), on 27 June 2005.

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

3. The applicant complained under Article 5 of the Convention that his detention on remand was unreasoned and that he could not confer in private with his lawyers.

4. The application was allocated to the Fourth Section. On 8 September 2005 the President of that Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1946 and lives in Chişinău.

7. On 25 May 2005 the applicant was arrested by the Centre for Fighting Economic Crime and Corruption (CFECC) on charges of embezzlement. He had completed his University studies, did not have a criminal record, was employed and had a permanent domicile.

8. On 27 May 2005 the investigating judge of the Buiucani District Court, issued a warrant for his remand in custody for 10 days. The reasons given by the court for issuing the warrant were that:

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

9. The applicant appealed against this decision arguing *inter alia* that the suspicion against him was groundless, that he did not have any intention of absconding or obstructing the investigation in any way and that he was ready to co-operate with the investigation body.

10. On 1 June 2005, the applicant's appeal was dismissed by a panel of three judges of the Chişinău Court of Appeal.

11. On 3 June 2005 the Buiucani District Court prolonged the applicant's detention on remand for a further 30 days. The court reasoned that detention was necessary because:

> "[the applicant] is suspected of having committed a very serious offence, there is a risk that he may put pressure on witnesses or put himself out of the reach of law-enforcement authorities; and there is a continuing need to isolate him from society".

12. The applicant appealed against this decision and submitted the same arguments as advanced in his first appeal.

13. On 9 June 2005 the Chişinău Court of Appeal dismissed the applicant's appeal without relying on any new arguments.

14. The applicant's detention on remand was prolonged on the same grounds until 11 October 2005, when he was released from detention.

15. The applicant was detained in the remand centre of the CFECC. The room used for meetings between lawyers and detainees had a glass partition to keep them separated.

II. RELEVANT NON-CONVENTION MATERIAL

A. Detention on remand

16. The relevant domestic law concerning detention on remand was set out in the Court's judgment in *Sarban v. Moldova*, no. 3456/05, § 52, 4 October 2005.

B. Confidentiality of lawyer-client communications in the CFECC remand centre

17. It appears from the photographs submitted by the Government that in the lawyer-client meeting room of the CFECC detention centre, the space for detainees is separated from the rest of the room by a door and a window. The window appears to be made of two plates of glass joined together. Both plates have small holes pierced with a drill; however the holes do not coincide so that nothing can be passed though the window. Moreover, there is a dense green net made either of thin wire or plastic between the glass plates, covering the pierced area of the window. There appears to be no space for passing documents between the lawyer and his client.

18. The domestic courts have ruled on complaints about lack of confidentiality in the CFECC lawyer-client meeting room in the cases of *Modârcă* (application no. 14437/05) and *Sarban* (cited above). On 2 November 2004 a judge of the Buiucani District Court ordered the CFECC authorities to remove the glass partition separating lawyers from their clients; however, the CFECC authorities refused to comply with the court order. On 3 December 2004 the same judge revoked the decision of 2 November 2004 arguing that in the meantime she had been informed by the CFECC authorities that there were no recording devices mounted in the wall separating the lawyers from their clients and that the wall was necessary in order to ensure the security of the detainees.

On 15 February 2005 Mr Sarban's lawyer complained again to the Buiucani District Court under Article 5 § 4 of the Convention that he could not confer with his client in conditions of confidentiality. On 16 February the same judge from the Buiucani District Court dismissed the complaint without examining it and referred to her previous decision of 3 December 2004.

19. Between 1 and 3 December 2004 the Moldovan Bar Association held a strike, refusing to attend any procedures regarding persons detained in the remand centre of the CFECC until the administration had agreed to provide lawyers with rooms for confidential meetings with their clients. The demands of the Bar Association were refused (see *Sarban*, cited above, § 126).

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

C. Recommendation Rec(2006) 2 of the Committee of Ministers to member states on the European Prison Rules

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

> “23.1 All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice. ...
>
> 23.4 Consultations and other communications including correspondence about legal matters between prisoners and their legal advisers shall be confidential. ...
>
> 23.6 Prisoners shall have access to, or be allowed to keep in their possession, documents relating to their legal proceedings.”

THE LAW

22. The applicant complained that his detention on remand had not been based on “relevant and sufficient” reasons. The material part of Article 5 § 3 reads:

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

23. The applicant also complained under Article 8 of the Convention that conversations with his lawyer were conducted through a glass wall and were overheard or possibly even recorded and that the authorities had failed to provide proper conditions for private discussions with his lawyer. The Court, which is master of the characterisation to be given in law to the facts of the case (see *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, § 44), decided to examine the

problem raised by the applicant under Article 5 § 4 of the Convention and to obtain the parties' submissions thereon.

The relevant part of Article 5 § 4 reads:

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

I. ADMISSIBILITY OF THE COMPLAINTS

24. The Government have not raised any formal objections concerning the admissibility of the application. They did, however, submit in their observations on the merits of the case that the applicant did not complain to the administration of the detention centre about any breaches of his rights. That demonstrated, in the Government's view, that the applicant did not consider that his rights had been violated.

25. Insofar as this statement can be considered an objection regarding the applicant's failure to exhaust domestic remedies, the Court notes that other detainees from the same remand centre brought proceedings to complain about the lack of lawyer-client confidentiality, but that the complaint was rejected as unfounded by a court on 3 December 2004 and on 16 February 2005 (see paragraph 18 above). In view of that decision and of the similarities between the complaints, it was reasonable for the lawyer representing the applicant to consider that launching a similar complaint would have had no prospects of success. Accordingly, the objection should be dismissed.

26. Having regard to the submissions and to the materials submitted by the parties, the Court considers that the applicant's complaints raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits and no grounds for declaring them inadmissible have been established. The Court therefore declares these complaints admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

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

A. The submissions of the parties

27. The Government submitted that the applicant's detention was necessary because he was suspected of having committed a serious offence. The criminal case against him was very complex and if released he could have destroyed evidence, influenced witnesses or fled.

28. The applicant complained that the decisions ordering his detention on remand were not based on relevant and sufficient reasons but only on declarative and stereotyped grounds. Moreover, the courts had failed to assess the arguments put by his defence, both in the appeal applications and orally during the hearings.

B. The Court's assessment

29. Article 5 of the Convention is, together with Articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of an individual (see, for example, its link with Articles 2 and 3 in disappearance cases *e.g. Kurt v. Turkey*, judgment of 25 May 1998, *Reports of Judgments and Decisions* 1998-III, § 123) and as such its importance is paramount. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty (see e.g *Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports* 1997-II, § 41; *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II, § 46; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 461, ECHR 2004-VII).

30. The presumption is in favour of release. As established in *Neumeister v. Austria* (judgment of 27 June 1968, Series A no. 8, p.37, § 4), the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until conviction, he must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable (*McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...).

31. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

32. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify the continued detention (*Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 52).

33. Article 5 § 3 of the Convention cannot be seen as authorising pre-trial detention unconditionally provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short,

must be convincingly demonstrated by the authorities (*Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004).

34. The existence of a reasonable suspicion is not disputed in the present case. However, the Court notes that as in *Sarban v. Moldova* (cited above, at §§ 11 and 14) the reasons relied upon by the domestic courts in their decisions to remand the applicant in custody and to prolong his detention (see paragraphs 8 and 11 above) were limited to paraphrasing the reasons for detention provided for by the Code of Criminal Procedure, without explaining how they applied in the applicant's case. Accordingly, the Court does not consider that the instant case can be distinguished from *Sarban* in what concerns the relevance and sufficiency of reasons for detention.

35. Since the reasons for detention were not relevant and sufficient, the Court does not deem it necessary to continue the *Labita* test (see paragraph 31 above) and see whether the competent national authorities displayed “special diligence” in the conduct of the proceedings.

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

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

A. The submissions of the parties

37. The Government expressed their disagreement with the Court's examination of this complaint under Article 5 § 4 of the Convention, arguing that the applicant had complained under Article 8 of the Convention. They pointed to the fact that in *Sarban v. Moldova*, the Court had examined a similar complaint under Article 8 of the Convention.

38. They also argued that the glass partition separating the applicant from his lawyer did not hinder the applicant from presenting an effective defence and relied on *Kröcher and Möller v. Switzerland* (application no. 8463/78, report of the Commission of 16 December 1982, DR 34, pp. 52-53, § 60), in which the Commission held that the fact that the applicant in that case was separated from his lawyer by a glass partition did not undermine his rights guaranteed by the Convention.

39. According to the Government, the applicant had not adduced any evidence to prove that the glass partition could create any obstacle to his conferring with his lawyer in conditions of confidentiality or to the transmission of documents between them.

40. They argued that the glass partition did not influence in any way the normal acoustics of the meeting room and that no listening or recording devices had been installed in that room. The glass partition was necessary for security reasons and for preventing the commission of other offences.

According to the Law on Advocacy, lawyers could not be searched and it was therefore necessary to separate them from their clients. The fact that it did not pose any problem from the standpoint of confidentiality and that there were no interception devices in the wall had been accepted by the Buiucani District Court in its judgment of 3 December 2004 (see paragraph 18 above).

41. The Government argued that no evidence had been presented by the applicant to show that the glass partition was an obstacle to the transmission of documents between the lawyer and his client. According to the relevant domestic law, the correspondence of detainees with their lawyers could not be censored and had to be delivered within 24 hours.

42. In reply to the Government's submissions, the applicant argued that the glass partition in the lawyer-client meeting room of the CFECC detention centre created a barrier to confidentiality, because he and his lawyer had to raise their voices in order to hear each other. Their shouting would have made it easier to intercept or record their conversation, and also created a risk that their discussion would be overheard by the guards through the door. It also made it impossible to read texts together or pass documents between them. For this reason, the applicant's lawyer did not have the application form for the Court signed by his client, but only the power of attorney. According to him, he did not want the Government to find out the contents of his application to the Court before its communication. The CFECC investigation officer read the power of attorney, and only after that allowed the applicant to sign it.

43. He submitted that it was impossible for him to prove that the conversations between him and his lawyer had been intercepted, because such interceptions were secret. However, he presented examples of several instances when the CFECC administration had become aware of the content of communications between detainees and their lawyers which took place in the CFECC meeting room. The truthfulness of these submissions was disputed by the Government.

In *Sarban v. Moldova* (cited above), one of the applicant's lawyers had a meeting with Mr Sarban on 18 February 2005 in the CFECC lawyer-client meeting room. During the meeting his client complained to him about the conditions of detention, namely that his three co-detainees were constantly smoking in the cell. After the lawyer had left the CFECC premises, Mr Sarban was asked by the administration why he had complained to the lawyer about the conditions of detention.

In the case of *Modârcă v. Moldova* (cited above), the applicant's lawyer complained that during a meeting with his client in the CFECC room for lawyer-client meetings, he was instructed by his client to go to a particular address and look for a set of documents. He went there immediately after the meeting, but found that the CFECC officers had been there several minutes before him and had taken the documents in question.

Mr Modârcă's lawyer also complained that during another meeting with his client in the CFECC room for lawyer-client meetings, the latter had insulted a member of the prison staff. After the lawyer had left, Mr Modârcă was invited by the CFECC administration to account for the expressions used in the conversation with his lawyer. The administration did not explain how it came to know the contents of the discussion.

44. As to the Government's submission that it was necessary to separate lawyers from their clients in order to prevent the passing of contraband, the applicant argued that so far there had been no known cases of objects being smuggled by lawyers into the Remand Centre No. 3 of the Ministry of Justice, where there was no glass partition. The Government did not comment on this statement in their last observations.

B. The Court's assessment

45. Insofar as the Government's objection to the examination of this complaint under Article 5 § 4 of the Convention is concerned, the Court repeats that it is master of the characterisation to be given in law to the facts of the case (see paragraph 23 above). Since the applicant was in essence complaining that due to the glass partition in the lawyer-client meeting room he could not confer in private with his lawyer about issues related to the proceedings concerning his right to liberty, the Court considers that Article 5 § 4 is the more appropriate Article in this instance.

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

> “(a) Article 5 § 4 of the Convention entitles an arrested or detained person to institute proceedings bearing on the procedural and substantive conditions which are essential for the “lawfulness”, in Convention terms, of their deprivation of liberty (see, among many others, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 34-35, § 65).
>
> (b) Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see, for instance, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3302, § 162, and *Włoch v. Poland,* no. 27785/95, § 125, ECHR 2000-XI, both with reference to *Megyeri v. Germany*, judgment of 12 May 1992, Series A no. 237-A, p. 11, § 22).
>
> (c) The proceeedings must be adversarial and must always ensure “equality of arms” between the parties. In case of a person whose detention falls within the ambit of Article 5 § 1(c) a hearing is required (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II; *Assenov and Others*, cited above, § 162, with references to *Schiesser v. Switzerland*, judgment of 4 December 1979, Series A no. 34, p. 13, §§ 30-31; *Sanchez-Reisse v. Switzerland*, judgment of 21 October 1986, Series A no. 107,

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

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

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

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

48. The Court's task in the present case is to decide whether the applicant was able to receive effective assistance from his lawyer so as to satisfy these requirements.

49. One of the key elements in a lawyer's effective representation of a client's interests is the principle that the confidentiality of information exchanged between them must be protected. This privilege encourages open and honest communication between clients and lawyers. The Court recalls that it has previously held that confidential communication with one's lawyer is protected by the Convention as an important safeguard of one's right to defence (see, for instance, *Campbell v. the United Kingdom*, judgment of 25 March 1992, Series A no. 233, § 46 and Recommendation Rec(2006)2 (see paragraph 21 above)).

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

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

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

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

53. The Court notes that the problem of alleged lack of confidentiality of lawyer-client communications in the CFECC detention centre was a matter of serious concern for the entire community of lawyers in Moldova for a long time and that it had even been the cause of a strike organised by the Moldovan Bar Association (see paragraph 19 above). The Bar's requests to verify the presence of interception devices in the glass partition was rejected by the CFECC administration (see paragraph 20 above), and that appears to have contributed to the lawyers' suspicion. Such concern and protest by the Bar Association would, in the Court's view, have been sufficient to raise a doubt about confidentiality in the mind of an objective observer.

54. The evidence of *Şarban* and *Modârcă* (see paragraph 43 above) is far from proving that surveillance was carried out in the CFECC meeting room. However, against the background of the general concern of the Bar Association, such speculation might be enough to increase the concerns of the objective observer.

55. Accordingly, the Court's conclusion is that the applicant and his lawyer could reasonably have had grounds to believe that their conversation in the CFECC lawyer-client meeting room was not confidential.

56. Moreover, the Court notes that, contrary to the Government's contention to the effect that the applicant and his lawyer could easily exchange documents, the pictures provided by the Government (see paragraph 17 above) show that this was not the case because of the lack of any aperture in the glass partition. This, in the Court's view, rendered the lawyer's task even more difficult.

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

their clients detained in the CFECC, the Court is now persuaded that the existence of the glass partition prejudices the rights of the defence.

58. The Government referred to the case of *Kröcher and Möller v. Switzerland* in which the fact that the lawyer and his client were separated by a glass partition was found not to violate the right to confidential communications. The Court notes that the applicants in that case were accused of extremely violent acts and were considered very dangerous. However, in the present case the applicant had no criminal record (see paragraph 7 above) and was prosecuted for a non-violent offence. Moreover, it appears that no consideration was given to the character of the detainees in the CFECC detention centre. The glass partition was a general measure affecting indiscriminately everyone in the remand centre, regardless of their personal circumstances.

59. The security reasons invoked by the Government are not convincing, in the Court's view, since visual supervision of the lawyer-client meetings would be sufficient for such purposes.

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

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

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. Article 41 of the Convention provides:

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

A. Damage

63. The applicant claimed 4,000 euros (EUR) for non-pecuniary damage. He argued that he had suffered severe mental anguish.

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

65. The Court considers that the applicant must have been caused a certain amount of stress and anxiety as a result of the violations of his right to liberty and security under Articles 5 § 3 and 5 § 4 of the Convention.

Deciding on an equitable basis, it awards the applicant the total sum of EUR 2,500.

B. Costs and expenses

66. The applicant's lawyer claimed EUR 2,400 for representation costs and EUR 85 for translation fees.

67. Insofar as the translation fees are concerned, the applicant submitted a copy of a receipt proving the payment of EUR 85 to an authorised translator for the translation of observations from Romanian to French.

68. As regards the representation fees, the applicant sent the Court a copy of a contract between him and the lawyer, according to which the hourly fee was EUR 75. He attached to the contract a detailed time-sheet according to which the lawyer had spent 32 hours on the case. He also submitted a copy of a receipt proving the payment of EUR 418 to his lawyer, representing the first instalment, which according to the terms of the contract had to be paid on the date of signing the contract.

69. The applicant argued that the amount claimed for costs and expenses was within the limits of the fees recommended by the Moldovan Bar Association. He submitted a copy of a document concerning the recommended fees issued by the Bar Association on 29 December 2005.

70. The Government did not contest the amount claimed for translation expenses. However, they disagreed with the amount claimed for representation calling it excessive and unreal in the light of the economic situation of the country and of the average monthly salary. They disputed the number of hours spent by the applicant's lawyers and the hourly fees charged by them.

71. The Court recalls that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-...).

72. In the present case, regard being had to the itemised list submitted by the applicant, the above criteria and the complexity of the case, the Court awards the applicant EUR 2,000.

C. Default interest

73. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, and EUR 2,000 (two thousand euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President