CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF DAVID v. MOLDOVA

(Application no. 41578/05)

JUDGMENT

STRASBOURG

27 November 2007

FINAL

27/02/2008

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 David 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 J. ŠIKUTA,
Mrs P. HIRVELÄ, *judges,*
and Mr T.L. EARLY, *Section Registrar,*

Having deliberated in private on 6 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 41578/05) 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 Gheorghe David ("the applicant"), on 31 October 2005. On 21 July 2007 he died. His sister, Ms Maria Vulpe, expressed her wish to pursue the application before the Court.

2. The applicant, who had been granted legal aid, was represented by Mr A. Postică, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that his detention had been unlawful and contended that there had been a violation of Article 5 §§ 1 and 4 of the Convention.

4. On 23 January 2007 the President of the Fourth Section of the Court decided to give notice of 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1943 and lived in Chişinău. He did not have a family and lived alone.

6. In 1987 the applicant was found guilty of criticising the Soviet authorities and of expressing the view that Moldova had been occupied by the Soviet Union and that it should reunite with Romania. On the basis of a medical report ordered by the Soviet courts, he was declared mentally unsound and sent for forced treatment in a psychiatric hospital in eastern Ukraine. He was held there for one year, after which he was released and obliged to continue out-patient treatment in Chişinău.

7. In 1990 the sentence against the applicant was quashed and he was acquitted.

8. On an unspecified date the applicant learned that he could obtain compensation for his illegal conviction and detention in a psychiatric hospital and that there was no time-limit for filing such an action.

9. In September 2004 he initiated civil proceedings against the Ministry of Finance, claiming compensation. He argued, *inter alia*, that after the forced medical treatment administered to him in 1987-1988 he had started to experience health problems, in particular he had lost his memory, had become emotionally frozen and unstable and therefore had been forced to live on a very small disability allowance.

10. During the proceedings the Ministry of Finance questioned his fitness to plead before courts in view of his medical background.

11. The applicant disagreed with the defendant, but fearing that his action would not be examined, agreed to submit to a medical examination in order to prove the contrary.

12. On an unspecified date the applicant underwent a medical examination by a specialised commission; however, the commission could not reach a conclusion. In a document dated 25 February 2004 it concluded that it would be impossible to reach a conclusion without a thorough examination of the applicant under conditions of hospitalisation.

13. On 14 March 2005 Judge V.G. of the Râşcani District Court examined the possibility of committing the applicant for an in-patient examination. As the applicant agreed to be hospitalised, the court ordered on the same date an in-patient medical examination to be conducted by the Central Psychiatric Hospital, Department of Judicial Investigations.

14. On 4 April 2005 the applicant went to the hospital, where, to his surprise, he was deprived of all his belongings and hospitalised together with persons of unsound mind with limited freedom of movement. According to him, the hospital was no longer heated in April, and since the clothes he was provided with were too thin for the season, he caught a cold and developed acute bronchitis. Two days after his hospitalisation he asked to be released in order to go home, change clothes and buy medicines for his cold. However, the doctors did not authorise him to leave the ward in which he was hospitalised.

15. It appears from the applicant's medical record that during his stay in the hospital he was not visited by anyone. According to him he could not

complain to anyone about his detention and could not even make a telephone call or complain by other means to persons outside the hospital.

16. He was seen by doctors for only several minutes per day, during the routine morning round. The rest of the day he was at the mercy of the paramedical staff who usually forced patients to carry out public utility work around the hospital. He was not obliged to work because of his age and poor physical condition.

17. On 29 April 2005 the applicant was released from the hospital. According to him, it took a long time to recover but he preferred not to complain immediately for fear of adverse consequences. He submitted that he feared being placed in detention again or that the results of the examination would be falsified.

18. On 16 May 2005 the psychiatric hospital issued a report in which it concluded that the applicant was suffering from a mental condition, but that his reasoning was unaffected and that he was fit to plead before courts.

19. On 9 June 2005 the applicant lodged a criminal complaint with the Prosecutor's Office of the Centru District, asking it to prosecute the doctors who had held him in detention against his will. He described the conditions in which he had been detained and named two doctors who had refused his requests to be allowed to leave the hospital. He argued that those doctors had committed an offence under Article 166 of the Criminal Code – illegal deprivation of liberty – and asked for compensation.

20. On 30 June 2005 the Prosecutor's Office dismissed the applicant's complaint. The applicant challenged the dismissal before the Centru District Court.

21. On 21 July 2005 Judge A.B. of the Centru District Court upheld the applicant's appeal and found, *inter alia*, that the Prosecutor's Office had failed to clarify the conditions under which the in-patient medical examination was initially intended to be carried out, and also the conditions in which it had in fact been carried out. The Prosecutor's Office had also failed to examine the applicant's written request by which he had expressed his consent to be hospitalised and the manner of hospitalisation to which he had consented. Judge A.B. ordered a new investigation into the applicant's complaint.

22. On 12 October 2005 the Prosecutor's Office dismissed the applicant's complaint, again without giving any new arguments. It only stated that the instructions of the Centru District Court had been followed, but that this did not influence the initial decision not to institute criminal proceedings. The applicant again challenged the dismissal.

23. On 9 November 2005 Judge A.B. of the Centru District Court dismissed the applicant's appeal, finding that his detention had been carried out in accordance with the court order of 14 March 2005.

II. RELEVANT DOMESTIC LAW

24. The Code of Civil Procedure provides for only one possibility for a person to be submitted to a psychiatric examination against his or her will. Chapter 28 of the Code deals with the proceedings intended to limit the legal capacity of a person. According to Article 302 such proceedings can be initiated by the State, by a prosecutor or by the family of a person of unsound mind or who makes abusive use of alcohol or drugs. Article 305 provides that a judge examining an action to limit a person's legal capacity can order the person concerned to undergo a psychiatric medical examination. If the person does not comply with the order, the judge can decide, during a hearing at which a psychiatrist is present, to oblige the person to undergo a psychiatric examination despite his or her opposition.

25. Section 11 of the Law on Psychiatric Assistance provides that a person can be hospitalised in a psychiatric hospital for treatment against his or her will only in accordance with the provisions of the Criminal Code or in accordance with the provisions of section 28 of that law. In both cases, except for reasons of urgency, the hospitalisation must be ordered on the basis of a decision taken by a commission of psychiatrists.

Section 28 of the same law sets out the reasons which can be relied upon for hospitalising a person for treatment against his or her will. It provides that a person suffering from a mental disorder can be hospitalised against his or her will, before a court judgment for that purpose has been issued, when the mental disorder is particularly serious and constitutes a risk to himself or herself or to others, when the mental disorder is of such a nature that the person is incapable of meeting his or her vital needs alone, and if left untreated, the mental disorder could cause serious harm to the health of the individual concerned.

Pursuant to section 32 of the law the compulsory hospitalisation for treatment of a person in accordance with section 28 must be decided by a court. The hospital must apply to the court for permission, indicating in the application the reasons for which the hospitalisation is sought and attaching a copy of the decision of a commission of psychiatrists. Pursuant to section 33, the court examining the application must take a decision within three days from the date on which the application was lodged and the person concerned has the right to participate in the hearing. If the person's condition is serious and he or she cannot come to the court, the judge is obliged to hold the hearing at the hospital. The judgment issued at the end of the hearing constitutes the basis for compulsory hospitalisation.

Section 39 of the same law provides, *inter alia*, that a patient hospitalised in a psychiatric hospital with his consent can leave the hospital upon his or her request. On the other hand, a patient hospitalised against his or her will can leave the hospital only upon the decision of a commission of psychiatrists or on the basis of a court judgment.

THE LAW

26. The applicant complained under Article 5 § 1 of the Convention that his detention in the psychiatric hospital had been arbitrary. Article 5 § 1 reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) 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;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

27. The applicant also complained under Article 5 § 4 that he did not have an effective remedy under domestic law to challenge his detention. Article 5 § 4 of the Convention 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

28. The Court notes at the outset that the applicant died after lodging the present application and that his sister has expressed her wish to continue the proceedings before the Court (see paragraph 1 above). It has not been disputed that the applicant's sister is entitled to pursue the application on his behalf and the Court sees no reason to hold otherwise (see *mutatis mutandis* *Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports* 1997-II, § 35).

29. The Government argued that the applicant did not complain immediately about the doctors' refusal to release him. According to them, it

was open to him to do so during his detention. The administration of the hospital was under a duty to forward any such complaint to the authority concerned within twenty-four hours.

30. In so far as this submission could be considered to be an objection concerning the applicant's failure to exhaust domestic remedies, the Court observes that the object of the applicant's hospitalisation was to determine his fitness to plead in court proceedings. In these circumstances, it cannot be held against him that he did not bring, for example, *habeas corpus* proceedings to secure his release pending the doctors' determination on his fitness to plead. In addition, it was not disputed in the criminal proceedings which he brought subsequent to his release that he had clearly expressed his wish to leave the hospital shortly after his hospitalisation on 4 April 2005. Therefore, the onus should have been on the doctors to invoke the necessary legal provisions to override the applicant's wish to leave the hospital. In such circumstances, the Court considers that the applicant's complaints cannot be declared inadmissible for non-exhaustion of domestic remedies.

31. Since the applicant's complaints raise questions of fact and law which are sufficiently serious for their determination to depend on an examination of the merits and since no other grounds for declaring them inadmissible have been established, the Court declares the application 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 the application.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

32. The applicant maintained, *inter alia*, that his detention had not fallen within the scope of any of the exceptions to the rule of personal liberty listed in sub-paragraphs (a) to (f) of Article 5 of the Convention. Nor did his detention have an adequate legal basis in Moldovan law, given the circumstances in which he had been detained.

33. The Government argued that the applicant's detention fell to be examined under Article 5 § 1 (e) of the Convention, namely as a "lawful detention of ... persons of unsound mind". According to them, his hospitalisation was lawful as it had been recommended by a commission of doctors (see paragraph 12 above) and ordered by a court. Moreover, the applicant had agreed to be hospitalised and he did not immediately complain about the doctors' refusal to release him.

34. It is undisputed between the parties that the applicant agreed initially to be hospitalised in the Central Psychiatric Hospital. It is also common ground that after hospitalisation he was not free to leave the hospital and, as noted above, had expressed the wish to return home.

35. In so far as the Government can be considered as claiming that, by agreeing to be hospitalised, the applicant waived his right to liberty, the

Court reiterates that the fact that a person initially agreed to enter an institution does not prevent him or her from relying on Article 5 if he or she subsequently wishes to leave (see *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, § 65). Accordingly, the Court considers that the applicant's continued detention from the moment he expressed his wish to leave the hospital amounted to a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention.

36. The Court notes that Article 5 § 1 of the Convention contains an exhaustive list of permissible grounds of deprivation of liberty set out in sub-paragraphs (a) to (f). Consequently, no deprivation of liberty will be lawful unless it falls within one of the grounds set out in those sub-paragraphs (see *Witold Litwa v. Poland*, no. 26629/95, § 49, ECHR 2000-III).

37. The Government have not invoked any ground other than sub-paragraph (e) to justify the applicant's detention. It is in fact common ground that the deprivation of liberty in issue was not covered by sub-paragraphs (a), (b), (c), (d) or (f) of Article 5 § 1 of the Convention. The Court sees no reason to hold otherwise. It must accordingly ascertain whether or not the applicant's detention was justified under sub-paragraph (e) of Article 5 § 1 of the Convention.

38. The Court recalls that in *Guzzardi v. Italy* (judgment of 6 November 1980, Series A no. 39, § 98), it explained the reason for the existence of the exception to the right to liberty set out in sub-paragraph (e) as being to make provision for the detention of vulnerable groups for their own protection and/or for the protection of others.

39. "Persons of unsound mind" is the vulnerable group on which the Government have relied in the present case. The Court reiterates that an individual cannot be considered to be "of unsound mind" for the purposes of Article 5 § 1 and deprived of his liberty unless the following three minimum conditions are satisfied: he must be reliably shown to be of unsound mind; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depends upon the persistence of such a disorder (see *Luberti v. Italy*, judgment of 23 February 1984, Series A no. 75, § 27).

40. It appears from the facts of this case that none of the above conditions was met in the applicant's case. The court order of 14 March 2004 was aimed exclusively at establishing the applicant's fitness to plead in civil proceedings he had filed against the State, and not to protect him or others. Accordingly, his forced detention from the moment in which he made it known that he wanted to leave the hospital was contrary to the very essence of the exception provided for in sub-paragraph (e) of Article 5 § 1 (see paragraph 38 above). Moreover, even leaving aside this key aspect, it is noted that none of the three conditions set out in the preceding paragraph appears to have been met.

41. In the light of the above, the Court considers that the applicant's detention as from the moment he expressed his wish to leave the hospital, did not fall within the ground set out in sub-paragraph (e) of Article 5 § 1 and thus was unlawful and arbitrary. Accordingly, there was a violation of Article 5 § 1 of the Convention.

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

42. The applicant further complained under Articles 5 § 4 of the Convention that he had not have an effective remedy to challenge his detention.

43. Having regard to its above finding under Article 5 § 1 and to its finding in respect of the non-exhaustion issue (see paragraph 30 above), the Court considers that it is not necessary to examine separately whether, in this case, there has also been a violation of Article 5 § 4 of the Convention (see *Gajcsi v. Hungary*, no. 34503/03, § 24, 3 October 2006).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage suffered as a result of the breach of his Convention rights. He argued that he had experienced anxiety, frustration and a feeling of injustice. His suffering was considerably intensified in view of his previous experience with the Soviet justice system, which had confined him to a psychiatric institution as punishment for his political views and declarations.

46. The Government contested the amount claimed by the applicant and argued that there was no proof that he had suffered any damage. They asked the Court to dismiss the applicant's claim.

47. Having regard to the violation found above and its gravity, especially in view of the particularly vulnerable position of the applicant, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis,

the Court awards the applicant's sister, being his legal successor, EUR 4,000.

B. Costs and expenses

48. The applicant made no claim under this head.

C. Default interest

49. 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 § 1 of the Convention;

3. *Holds* that there is no need to examine separately the complaint under Article 5 § 4 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant's sister, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage to be converted into the currency of the respondent State at the rate applicable on 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

T.L. EARLY
Registrar

Nicolas BRATZA
President