CONSEIL DE L'EUROPE

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

FOURTH SECTION

CASE OF POPOVICI v. MOLDOVA

(Applications nos. 289/04 and 41194/04)

JUDGMENT

STRASBOURG

27 November 2007

FINAL

02/06/2008

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 Popovici v. Moldova,

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

Sir Nicolas BRATZA, *President,*
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
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 two applications (nos. 289/04 and 41194/04) 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 Petru Popovici ("the applicant") on 28 November 2003 and 12 October 2004.

2. The applicant was represented by Mr V. Nagacevschi, acting on behalf of "Lawyers for Human Rights", a non-governmental organisation based in Chişinău. The Moldovan Government ("the Government") were represented by Mr V. Grosu, the Government Agent.

3. The applicant alleged, in particular, a violation of Article 3 on account of inhuman and degrading conditions of detention; a violation of Article 5 on account of unreasoned pre-trial detention; a violation of Article 13 on account of a lack of effective remedies against inhuman and degrading conditions of detention; a violation of Article 6 on account of unfair criminal proceedings; and a breach of the presumption of innocence.

4. On 26 September 2006 the Court decided to join the applications and to communicate them to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Petru Popovici, known as Micu ("the applicant"), is a Moldovan national who was born in 1962. He is presently serving a life sentence in Rezina prison.

1. Background to the case

6. In 2000 and 2001 the applicant and a group of ten other persons were accused of being members of a criminal gang and of having committed numerous offences, including ten murders and thirteen attempted murders. The applicant was arrested and placed in detention on 12 November 2001.

7. On 22 October 2002 seven members of the gang were finally convicted by the Supreme Court and sentenced to terms of imprisonment varying between ten years and life sentences. The applicant and three other co-accused (R., S. and G.D.) were tried separately.

8. The applicant was charged with founding and heading the criminal gang. In his capacity as founder and head of the gang he was charged with the attempted murder of five persons; the murder of three persons; the unlawful deprivation of liberty of three persons and possession of firearms. He was also charged in his personal capacity with use of false documents; possession and use of firearms; blackmail; theft and possession of drugs.

9. During the proceedings before the first-instance court the prosecution dropped the charges concerning two attempted murders.

2. The interview of the Secretary of the Superior Council of Security of Moldova

10. In March 2003 the Secretary of the Superior Security Council of Moldova, Mr Valeriu Gurbulea, gave an interview to a Russian language newspaper in which he declared, *inter alia*:

> *"Людьми главы самой крупной преступной группировки - Мику - предпринимались самые энергичные попытки его освобождения из под стражи, и только личное вмешательство Президента пресекло эти попытки."*

> "The men of the leader of the most important criminal gang, Micu, made very energetic attempts to get him released from detention, and only the personal involvement of the President cut short those attempts."

3. The applicant's acquittal

11. On 7 October 2003 the Chişinău Court of Appeal acquitted the applicant of all the charges for lack of evidence. The Court of Appeal

acquitted the applicant of all the charges and ordered his release from custody. It also acquitted co-accused G.D., but convicted co-accused R. and S. In its judgment the court stated, *inter alia*:

> "...
>
> [The applicant] is accused of, between January 1998 and February 2000, together with R. and S., founding a criminal gang and heading it....
>
> In his capacity as founder and head of the criminal gang, he is accused of the murder of three persons, attempted murder of five persons, deprivation of liberty of three persons and purchase and possession of firearms. He is also accused of purchase and possession of firearms and drugs in his personal capacity at the time of his arrest on 12 November 2001, use of false documents, blackmail and theft."
>
> Both during the investigation and the court proceedings [the applicant] pleaded his innocence.

Concerning the charge of founding and heading the criminal gang, the court stated:

> "[The applicant]'s indictment is of a declarative nature and is based on suppositions but not on any convincing evidence. The prosecutor did not adduce any new evidence during the [court] proceedings.
>
> The co-accused R. and G.D. and the [seven persons convicted by the Supreme Court on 22 October 2002] did not make any statements during the investigation which would incriminate [the applicant] in founding and heading the criminal gang..., purchasing firearms, ammunition and cars, renting apartments and financing the gang.
>
> The charges against [the applicant] are based on the statements of S. [co-accused] to the effect that [the applicant], C., L.V., L.P., and G.D. [alleged members of the criminal gang] are [the applicant]'s men and that [the applicant] would have had an interest in the murder of Gr. [victim of an attempted murder in respect of which the charges against the applicant had been dropped]; that R. [co-accused] had told him that [the applicant] had paid money [for a murder]; that L.V. [convicted by the Supreme Court on 22 October 2002] had told him that [the applicant] could not return to the city because of Gr. and that G.D. [co-accused] could execute any order given by [the applicant].
>
> These [hearsay] statements were not confirmed by R. [co-accused] or L.V. [convicted by the Supreme Court on 22 October 2002] either at the investigation stage or during the proceedings.
>
> Moreover, R. [co-accused] stated that the money [for a murder] was paid by another person, Pa., but not by [the applicant].
>
> It had not been established that [the applicant] participated in meetings of the criminal gang, in the planning of the murders, or that he had had contact by telephone with the members of the criminal gang.

None of the witnesses interrogated in respect of this head of charge [founding and heading a criminal gang] as well as in respect of the charges concerning murders and attempted murders, had made any statements that would incriminate [the applicant].

According to section 17 § 3 of the Criminal Code, the founders and the heads of criminal gangs bear responsibility for all the offences committed by the gang. In the present case, the investigation body itself cast doubt on [the applicant]'s status as founder and head of the criminal gang by only charging him with three murders out of a total of ten and with five attempted murders out of a total of thirteen.

Having before it such a declarative indictment, which is based on suppositions and with no evidence having been adduced during the proceedings in support of the indictment, the court finds itself incapable of convicting [the applicant].”

As to the charges concerning the murders, attempted murders, the deprivation of liberty and the possession of firearms in the applicant's capacity as founder and head of the criminal gang, the Court of Appeal found as follows:

“... It was not proved that [the applicant] was involved in the alleged offences either as an executor, instigator or accomplice.

During the hearing the prosecutor dropped the charges against [the applicant] concerning the attempted murder of Gr. and J. while considering that there was no evidence to support those charges. At the same time he maintained the charges in respect of other co-accused, thus again casting doubt on [the applicant]'s responsibility for organising the murders and attempted murders.

In such circumstances, [the applicant] cannot be convicted either for being the organiser of the deprivation of liberty of Gr., D. and C. ... or for possession of firearms ... in the capacity as founder of the criminal gang.”

In so far as the charge concerning possession and use of false documents was concerned, the court stated, *inter alia*, that:

“[the applicant] is also accused of obtaining false identity documents and of using them to travel to Ukraine.

Both during the investigation and the court proceedings [the applicant] pleaded his innocence....

During his interrogation of 27 November 2000, the accused B.G. [the head of the State authority which allegedly issued false identity papers to the applicant] did not incriminate [the applicant]. Only on 18 April 2001, after the criminal proceedings against him [B.G.] had been discontinued, did he submit that [the applicant] had obtained a false identity card and passport.

In such circumstances, the court has doubts about the truthfulness of B.G.'s declarations.

Moreover, the prosecution failed to produce any of the documents allegedly forged by [the applicant] such as a birth certificate, military card, marriage certificate or other documents necessary for obtaining an identity card and a passport.

Nor have the false identity card and passport been presented to the court.

[the applicant]'s signature does not appear on the application form lodged with the passport authority for the purpose of issuance of passport no. 49001072 ...”

As to the charge of blackmail the Court of Appeal stated, *inter alia*, the following:

“[The applicant] is accused of, between 1998 and 2000, together with G.V. and B.I., extorting 200,000 Moldovan lei (MDL) from C. ...

[The applicant] denied having extorted money from C....

[The applicant]'s guilt was not confirmed for the following reasons:

During the hearing C. was interrogated and confronted with J. He declared that ... in 1998 he borrowed 5,000 United States dollars (USD) from J. Then he met G.V. and [the applicant]. The latter told him to repay the debt as soon as possible.

Later G.V., together with B.I. and Ca., started to pay him [C.] visits and to threaten him and to take money from him... He [C.] believes that [the applicant] was their leader. [The applicant] told him to repay the debt. C. declared that it was not [the applicant] who had sent the bandits to him but J.

J. declared that he lent C. USD 6,000 and that C. did not pay it back for a long time. He sold his claim to G.V. for approximately USD 1,800. During the investigation he was forced to make statements incriminating [the applicant], under threat of reprisals by the police...

It does not follow from the declarations made by C. and J. that [the applicant] threatened anyone or extorted money.

Moreover, by an order of 21 May 2003... the criminal case against G.V. and B.I. concerning the extortion of money from C. had been discontinued for lack of evidence.

By an order of 28 July 2003 the prosecutor quashed the order to discontinue the case...

Accordingly, there is another criminal case pending against other persons in respect of the alleged blackmail...”

Concerning the theft charge, the Court of Appeal found, *inter alia*:

“[The applicant] is accused of, in August 1999, together with other unidentified persons, overtly stealing C.E.'s car...

[The applicant] denied his guilt and declared that he did not know C.E.

The evidence adduced by the prosecutor does not confirm [the applicant]'s guilt...

C.E. declared to the court that the car... was registered in his name when he worked as a cashier for company S. After the death of his uncle ... who was the head of the

company... the uncle's partner requested that he [C.E.] bring the car back to the company. He brought the car, but kept a set of documents for himself...

Once he took the car and travelled abroad with it. After his return, R. told him that [the applicant] told him to bring back the car.

After a while he was stopped by another car... Two persons assaulted him and took his car. They went to a restaurant together, where [the applicant] asked him why he had taken the car and they both agreed to sell it. C.E. argues that his uncle left him the car, but that no documents were issued to that effect.

It was not confirmed that [the applicant] dispossessed C.E. of the car. It was not established who the persons who assaulted C.E. were.

In assessing C.E.'s depositions, the court considers that he is interested in the outcome of the case, since he has claims over the car. Moreover, the Botanica District Court found in a judgment of 30 January 2002 that it was company S. which was the owner of the car and not C.E.

It is not possible to rely on C.E.'s statements alone for the purpose of convicting [the applicant]....”

As to the charge concerning the possession (in his personal capacity) of firearms and drugs during his arrest in a pharmacy, the Court of Appeal stated, *inter alia*, the following:

“...[the applicant] pleaded not guilty and ... argued that he did not have any firearms or drugs on him during his arrest...

... The [six] police officers ... who participated in [the applicant]'s arrest in November 2001 declared that they had found a pistol on him ... and a bag of drugs.

Witness G.F. declared that ... when she entered the pharmacy, [the applicant] was already on the floor. She saw a pistol and a bag of powder. [The applicant] was shouting that the pistol had been planted by the policemen three minutes earlier. She heard two gun shots.

Witness B.I. declared that ... when she came to work the pharmacy was surrounded. [The applicant] was seated on a chair. She saw a pistol on the floor. She did not see where the bag [of drugs] had come from.

Witness E.A. declared that ... she was at her place of work in the pharmacy. Two armed persons entered the pharmacy and ordered everybody to lie down. When she was in the corridor, she heard two gunshots. When she entered the main room, she saw a crowd and a pistol on the ground. [The applicant] was shouting that nothing was to be put in his pockets.

Witness L.A. declared that she was at work and that she heard noise. The police entered the pharmacy and ordered everybody to lie down. When [the applicant] was lying down, she heard shouts and two gunshots coming from outside.

Witness I. declared that ... she was at work. She heard noise. She saw a man on the floor and a gun near him. She heard gunshots as she was going to the main room.

The court has carefully examined the video-audio recording and noted that during the arrest [the applicant] was shouting that no guns or other objects were to be put in his pockets.

The video-audio recordings were not made in accordance with the law.

The video film is not continuous and on occasion the camera is directed away from [the applicant]. During the search, only [the applicant]'s head was filmed, but not the objects which were taken from his pockets.

... the witnesses to the arrest declared that they had not seen a bag [of drugs]. Witnesses L. and I. declared that the gunshots had gone off when [the applicant] was on the floor.

According to the ballistic report ... it appears that the gunshots came from [the applicant]'s pistol.

No witness declared that the shots were fired by [the applicant], and in any event it would have been impossible for him to have fired, because when the gunshots were heard, he was in the [main room of the pharmacy], according to witnesses L. and I.

The court considers that the testimonies of the police officers who arrested [the applicant] have no probative value, since they were involved in his arrest...

Since there are doubts in respect of [the applicant]'s guilt, and since any doubts should be interpreted in favour of the accused, he should be acquitted..."

12. The prosecution appealed against this judgment on the basis of the same accusations and the same arguments in favour of the applicant's conviction.

4. The applicant's administrative arrest and detention

13. On the same date, 7 October 2003, at the door of the court room, the applicant was arrested by officers from the General Directorate for Fighting Corruption and Organised Crime and Corruption of the Ministry of Internal Affairs ("GDFOCC") and placed in detention.

14. The next day, 8 October 2003, the applicant was taken to the Centru District Court, where he was convicted and sentenced to thirty days' administrative arrest for disobeying a police officer, forcible resistance of police officers on duty and insulting a police officer, contrary to Articles 174 § 1, 174 § 5 and 174 § 6 of the Code of Administrative Offences respectively. It appears that the applicant was not assisted by a lawyer during the administrative proceedings.

15. On 13 October 2003 the applicant's lawyer lodged an appeal against the conviction, in which he argued that the applicant had not committed any administrative offence. He did not complain of the fact that the applicant was not assisted by a lawyer during the administrative proceedings.

16. On 22 October 2003 the Chişinău Court of Appeal heard the applicant's appeal in his absence and in the absence of his lawyer and dismissed it as unfounded. Meanwhile, the applicant was detained in the detention centre of the Ministry of Internal Affairs in Chişinău. According to him, the conditions of detention were inhuman and degrading. He submitted a detailed description of the conditions of detention and argued that the same description could be found in the 2001 report of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning Moldova. The Government disputed the applicant's allegations about the conditions of detention.

5. The applicant's continued pre-trial detention

17. On 6 November 2003, after the expiry of the thirty-day period of administrative detention, the applicant was not released but arrested again on charges of a new offence of blackmail.

18. On 9 November 2003 the Buiucani District Court issued an order for the applicant's remand in custody for ten days. The court's reasoning was the following:

> "[The applicant] is suspected of having committed an offence which is punishable by more than two years' imprisonment, has been previously convicted and might try to avoid criminal responsibility. His release could impede the discovery of the truth".

19. The applicant appealed and asked to be given access to the criminal case file; however, he was only given a copy of the complaint lodged by the alleged victim.

20. On 14 November 2003 the Chişinău Court of Appeal dismissed the applicant's appeal.

21. On 17 November 2003, contrary to the submissions of the applicant and his lawyer, a meeting between them took place in the presence of an investigator.

22. On 18 November 2003 the applicant's lawyer complained about this to a judge and asked him to find a violation of the relevant domestic law and of Article 8 of the Convention. He also asked the court to issue an order to the investigating authority to the effect that the meetings with his client be held in conditions of confidentiality.

23. On 24 November 2003 a judge from the Buiucani District Court upheld the lawyer's complaint by finding a violation of the domestic legislation governing the conduct of criminal investigations and guaranteeing the confidentiality of lawyer-client meetings. The court ordered the investigating authority to ensure conditions of confidentiality for the applicant and his lawyers.

24. It appears that the applicant's pre-trial detention was periodically renewed on the basis of the same grounds as in the decision of 9 November 2003 (see paragraph 18 above) and that he was detained until 1 March 2004,

when the Supreme Court of Justice examined the appeal lodged by the Prosecutor's Office against the judgment of acquittal of 7 October 2003.

25. He was detained in the detention centre of the GDFOCC. According to him, the conditions of detention were similar to those in which he had been detained following his administrative arrest except that he had been detained in solitary confinement. He submits that the conditions of detention in that facility have also been described in the CPT report mentioned above. The Government disputed that the conditions of detention were as described by the applicant.

26. It appears that the new criminal proceedings against the applicant ended with the final judgment of the Supreme Court of 23 February 2006, by which the applicant was found guilty of blackmail and sentenced to seven years' imprisonment.

6. *The appeal proceedings against the applicant's acquittal of 7 October 2003*

27. On 1 March 2004 a panel of three judges of the Supreme Court, composed of Judges M. Plămădeală, V. Timofti and S. Furdui, examined the appeal lodged by the Prosecutor's Office against the applicant's acquittal. The appeal was examined in the applicant's absence, although his lawyers were present.

28. In their pleadings, the defence essentially endorsed the reasons given by the first-instance court in its judgment of 7 October 2003 acquitting the applicant.

In so far as the charges concerning the founding and heading of a criminal gang and the offences allegedly committed in the applicant's capacity as head of that gang, the defence submitted, *inter alia*, that the hearsay statements made by the co-accused, S., had no probative value since their alleged source denied having made such declarations. Moreover, S.'s declarations were based on his own suppositions, as he himself had admitted during his interrogation.

The defence also argued that there was no evidence that the applicant had attended the meetings of the criminal gang or had been involved in the planning of the murders or that he had even had telephone contact with any of the members of the gang.

The applicant's innocence was also confirmed, according to the defence, by the fact that he was not charged with all the offences committed by the criminal gang, which normally should have been the case had the prosecution genuinely believed him to be the head of the gang. In this connection the defence relied, exactly as the first-instance court had done, on the provisions of section 17 of the Criminal Code, which stated that the head of a criminal gang bears responsibility for all the offences perpetrated by the gang. The defence also relied on the fact that the prosecution had dropped the charges relating to two attempted murders.

In so far as the charge concerning the use of false documents was concerned, the defence submitted essentially the same arguments which had been used by the first-instance court for the applicant's acquittal. Besides that, the defence also argued that it was obvious from a video recording that the main witness, B., (the clerk who had allegedly issued the false passport), and who had allegedly recognised the applicant's photograph, had been shown by a police officer which photograph to pick out.

As to the charge concerning the theft of a car, blackmail and the possession of drugs, the defence used essentially the same arguments as used by the first-instance court in its acquittal judgment.

29. The Supreme Court of Justice upheld the prosecutor's appeal, and found the applicant guilty of all the offences as charged, with the exception of possession of a pistol during his arrest on 12 November 2001 and possession of firearms in his capacity as head of the criminal gang (see below).

As to the charge concerning two attempted murders (of F. and Po.), the court endorsed the prosecution's version of the facts according to which the applicant, R. and S., together with other members of the criminal gang, had elaborated a plan to do away with their rival, F. For that purpose, a group of three members of the gang had waited for the victim near his house. Mistakenly, the person who was supposed to carry out the killing had fired at F.'s bodyguard. The bodyguard had been wounded and F. had managed to escape. The court used the following evidence to find the applicant guilty:

> "... [Co-accused] S. stated that F. was preventing [the applicant] from returning to the city...
>
> [Co-accused] R. stated [during the proceedings which ended with the judgment of the Supreme Court of 22 October 2002, in which seven members of the criminal gang were convicted] that L.V. [one of the participants in the attempted murder of F. and Po.] had good relations with a leading figure in the criminal world named Micu and that L.V. asked him to kill F. since he was a nuisance to Micu...."

In so far as the charges concerning the murder of G. and the illegal deprivation of liberty of his bodyguards (D. and C.) were concerned, the court accepted the prosecution's version of the facts according to which [the applicant], G.D., R., S., O., L.V., L.P. and several other persons had devised a plan to murder a gang leader named G. For that purpose a group of seven persons, dressed in police uniforms, shoved G. and his bodyguards into a minivan. They drove them outside the city, where they killed G. The court used the following evidence to find the applicant guilty:

> "...[Co-accused] S. declared that [co-accused] R. had told him that [the applicant] had given him USD 30,000 for the murder of G....
>
> The participation [of the applicant] and his role as organiser in the murder of G. and in the illegal deprivation of liberty of D. and C. are confirmed by [co-accused] S., who

declared during the proceedings that his testimonies during the investigation stage were true and that he maintained them...

[Co-accused] S. stated that he was introduced to [the applicant]'s men L.V. and L.P. by G.D., who was close to [the applicant].

S.E. [a member of the criminal gang convicted on 22 October 2002] had told [co-accused] S. that G. should be abducted ... because he was a nuisance to the criminal activity of [the applicant]....

[Co-accused S. also declared that] for G.'s murder USD 30,000 were paid and that the money was brought by G.D. (a person close to [the applicant]). [Co-accused] R. told him that [the applicant] had provided the money....

During the confrontation between [co-accused] S. and O., in the presence of lawyers, the former declared that [co-accused] R. had told him that G. should be abducted in order for [the applicant] to 'deal with him'....

The evidence in the court's possession is indicative of the fact that [the applicant] ordered the murder of G. and paid for it through [co-accused] G.D.

[The applicant] and G.D. organised the illegal deprivation of liberty of G., D. and C."

As to the charge concerning the murder of R. and G.I. and the attempted murder of C.V., the court accepted the version of the facts presented by the prosecution, namely that the applicant, S., R., G.D. and L.I. had devised a plan to murder the gang leader R. For that purpose they also involved O., L.V., C.O. and C.S. In the evening of 10 February 2000, after following R.'s car, one of the accused (L.V.) fired at the car from a machine gun and killed R. and his bodyguard G.I. The other bodyguard, C.V., was wounded. The court used the following evidence to find the applicant guilty:

"...During the confrontation between [co-accused] S. and O., in the presence of lawyers, the former declared that he had received USD 2,500 from G.D. for the murder of R....

...During his interrogation, which was video recorded, [co-accused] S. declared that G.D. was the one who had had a fight with P.A., who was [friends] with the L. brothers and [the applicant]....

...[co-accused] S. declared that G.D. was part of [the applicant]'s team and that he could not order [the applicant] to do anything....

[Conclusion] [the applicant] organised the murder of R. and G.I. ... and the attempted murder [of C.V.].

In so far as the charge concerning the possession of firearms in his capacity as founder and head of the criminal gang, the court concluded that this charge should not be treated separately but as part of the charge concerning the founding and heading of the criminal gang.

As to the charge concerning possession of a gun in his personal capacity at the time of his arrest in a pharmacy on 12 November 2001, the court dismissed the testimonies of the policemen, who declared that the gun and a bag of heroin had been found in his pocket, and concluded that the guilt of the applicant had not been established, since according to the witnesses he could not have fired the gun in the corridor of the pharmacy as at that time he had been lying in the main room of the pharmacy.

At the same time, the court found the applicant guilty of possession of 0.08 grams of heroin which were allegedly in his pocket together with the gun, according to the same declarations of the policemen. The court argued, *inter alia*, that:

> "...According to the minutes of the search of 12 November 2001, which was video recorded, a bag of drugs was found in [the applicant]'s pocket...
>
> According to the report... the packet contained 0.08 grams of heroin..."

In so far as the charge concerning the use of false documents was concerned, the court found that in 1999 the applicant obtained an identity card and a passport with a false identity. The court stated, *inter alia*, that:

> "[Co-accused] S. declared that he maintained his statements made during the investigation...
>
> [Co-accused] S. also declared that in 1999 he had obtained a passport with a false identity. At the same time, [the applicant] had also obtained false documents.
>
> B. [the clerk who had allegedly issued the false passport] identified [co-accused] S. as being the person who had asked him to make a false passport for [the applicant]....
>
> It follows from the minutes of the confrontation between B. and [the applicant], with the participation of a lawyer, that B. identified [the applicant] and confirmed that [the applicant] ... obtained a passport with a false identity...
>
> ... S. identified [the applicant]... and confirmed that he knew him...
>
> It appears ... that there were two applications for identity papers, one bearing the name of [the applicant] and another bearing the name of S.I.B.
>
> According to the expert's report ... the signatures on both applications belong to the same person... the pictures on the both applications are of the same person but were taken at different times...
>
> The use of the false identity papers by [the applicant] is confirmed by the ... fact that he travelled by aeroplane from Bucharest to Kiev using a passport bearing the name S.I.B."

As to the charge concerning the blackmail of C., the court found that between 1998 and 2000, the applicant and two other persons extorted MDL 200,000 and other goods from C. It was also found that C. owed USD 5,000 to a businessman named J., who declared during the

proceedings that he had sold the debt to one of the persons who allegedly later extorted money from C. with the applicant. In convicting the applicant, the court relied solely on the declarations of C., who accused the applicant of blackmail. It did not give any assessment of the statements of J., or of the statements in the applicant's defence.

In so far as the charge concerning the theft of a car was concerned, the court found that in 1999, following a dispute between a private company and one of its former employees concerning proprietary rights over a car, the applicant organised the theft of the car. In particular, the victim (the former employee) was stopped and assaulted by two men and his car was taken away. The applicant denied any involvement in the offence and argued that he had never seen the victim of the alleged offence before the hearing. In convicting the applicant, the court relied solely on the declarations of the victim.

The Supreme Court concluded that on the basis of all the evidence adduced in support of the charges against the applicant, it could be deduced that he was the founder and leader of the criminal gang. It therefore found the applicant guilty of founding and heading a criminal gang and held that:

> "...The fact that some offences (murders and attempted murders) have not been imputed to one of the founders of the criminal gang [the applicant], cannot serve as a reason for acquitting him...."

30. The judgment of the Supreme Court contained no reference to the findings of the first-instance court in respect of the evidence and the applicant's guilt. Nor did it contain any reference to the submissions of the defence made before it.

31. The applicant was convicted and sentenced as follows:

For founding and heading a criminal gang – to twenty-four years' imprisonment;

For attempted murder in his capacity as founder and head of the criminal gang – to eighteen years' imprisonment;

For murder in his capacity as founder and head of the criminal gang – to life imprisonment;

For illegal deprivation of liberty in his capacity as founder and head of the criminal gang – to four years' imprisonment;

For possession of false identity papers – to three years' imprisonment;

For theft of a car – to twelve years' imprisonment;

For blackmail – to thirteen years' imprisonment;

For possession of drugs – to two years' imprisonment

On the basis of the principle of absorption of the lesser punishment into the greater punishment, he received a final sentence of life imprisonment.

7. The dissenting opinion of Judge S. Furdui

32. One of the members of the panel of the Supreme Court which convicted the applicant disagreed partially with the opinion of the majority and wrote a dissenting opinion. He stated, *inter alia*:

> "The evidence presented by the prosecution is not sufficient to prove [the applicant]'s guilt in respect of the offences [enumerated below]. ... The court has not established the role, the degree and the manner [of involvement] of [the applicant] in:
>
> - the founding and heading of the criminal gang;
>
> - the commission of the murders;
>
> - the commission of the attempted murders;
>
> - the illegal deprivation of liberty;
>
> - the possession of drugs;
>
> Nor has it established the nature of the [structure of the] criminal relationship between him and the rest of the convicted persons.
>
> [The applicant]'s accusation in respect of the above offences relies in essence on the declarations of [co-accused] S. The latter did not incriminate [the applicant] as being a co-participant in the commission of the offences by the criminal gang. His declarations do not confirm the facts and the circumstances which result from the totality of the evidence from the case file in respect of [the applicant]. They represent suppositions or are based on hearsay statements, which in their turn have not been confirmed by the alleged sources.
>
> It is important to note that the court gave different assessments of similar evidence concerning the possession of a gun and the possession of drugs during [the applicant]'s arrest in a pharmacy on 12 November 2001....
>
> I express my conviction that it was not correct to sentence [the applicant] to life imprisonment without hearing evidence from him in person, in the circumstances in which he was acquitted [by the judgment of 7 October 2003] and was remanded in custody [prior to his conviction by the Supreme Court]. This is all the more so since the judgment of the Supreme Court is final and there is no appeal against it.
>
> In the light of the above, I believe that ... the provisions of Article 6 of the Convention were disregarded..."

II. RELEVANT NON-CONVENTION MATERIAL

A. Domestic Law and Practice

33. Section 17 of the Criminal Code in force at the material time read as follows:

> "...
>
> The founders and the heads of a criminal gang are responsible for ... all the offences committed by the criminal gang.
>
> ..."

34. Article 449 of the Code of Criminal Procedure reads as follows:

> "After examining an appeal on points of law *(recurs)* [in respect of certain offences there is only one level of appellate jurisdiction *(recurs)*, rather than two levels (*apel* followed by *recurs*), before a final judgment is delivered], the court shall adopt one of the following decisions:
>
> ...
>
> 2) allow the *recurs*, set aside the judgment entirely or partially and adopt one of the following solutions:
>
> a) order the acquittal of the accused person and the termination of the criminal proceedings in his or her respect;
>
> b) re-examine the case and adopt a new judgment;
>
> c) order a re examination of the case by the first-instance court if the Supreme Court of Justice allows the *recurs* and it is necessary to examine new evidence."

According to Article 451 the procedure of re-examination is regulated by Article 436 of the Code. The latter Article states that after the setting aside of a judgment in *recurs*, the re-examination shall be carried out in accordance with the general rules of examining a criminal case.

35. In a letter dated 12 August 2006 addressed by a Deputy Prosecutor General to the President's Office, it was stated, *inter alia*, that due to lack of funds the Moldovan prisons were not sufficiently provided with meat, fish and dairy products.

B. Materials from the CPT

36. The relevant findings of the CPT, (unofficial translation) read as follows:

Visit to Moldova of 20-30 September 2004

“

4. Conditions of detention.

a. Institutions of the Ministry of Internal Affairs

41. Since 1998, when it first visited Moldova, the CPT has serious concern for the conditions of detention in the institutions of the Ministry of Internal Affairs.

The CPT notes that 32 out of 39 EDPs have been subjected to “cosmetic” repair and that 30 have been equipped with places for daily walks. Nevertheless, the 2004 visit did not allow the concern of the Committee to be alleviated. In fact, most recommendations made have not been implemented.

42. Whether one refers to the police stations or EDPs visited, the material conditions are invariably subject to the same criticism as in the past. Detention cells had no access to daylight or a very limited access; artificial light – with rare exceptions – was mediocre. Nowhere did the persons obliged to spend the night in detention receive mattresses and blankets, even those detained for prolonged periods. Those who had such items could only have obtained them from their relatives...

45. As for food ... in the EDPs the arrangements made were the same as those criticised in 2001 (see paragraph 57 of the report on that visit): generally three modest distributions of food per day including tea and a slice of bread in the morning, a bowl of cereal at noon and tea or warm water in the evening. Sometimes there was only one distribution of food per day. Fortunately, the rules for receiving parcels have been relaxed, which allowed detainees with relatives outside to slightly improve these meagre daily portions.

...

47. In sum, the material conditions remain problematic in the police stations; they remain disastrous in EDPs, continuing in many aspects to amount, for the detainees, to inhuman and degrading treatment.”

Visit to Moldova of 10-22 June 2001:

“B. Establishments visited

... - EDP of Chişinău Police Inspectorate[1]

... b. remand centres (EDPs)

53. In its report on the 1998 visit (paragraph 56), the CPT was forced to conclude that material conditions of detention in the remand centres (EDPs) visited amounted in many respects to inhuman and degrading treatment and, in addition, constituted a significant risk to the health of persons detained. While recognising that it was not possible to transform the current situation in these establishments overnight, the CPT

[1] Follow-up visit.

recommended a certain number of immediate palliative measures to guarantee basic conditions of detention that respect the fundamental requirements of life and human dignity.

54. Unfortunately, during the 2001 visit, the delegation found barely any traces of such palliative measures, in fact quite the opposite. For example, the renovation and reconstruction of the cells of the EDP of the Department for the fight against organised crime and corruption in Chişinău (reopened in 2000), which were supposed to reflect the CPT's 1998 recommendations, turned out to have had quite the contrary effect. All the conceptual and organisational shortcomings highlighted by the CPT at the time had been faithfully reproduced: cells without access to natural light, artificial lighting of low intensity and permanently switched on, inadequate ventilation and furnishings consisting exclusively of platforms without mattresses (although certain prisoners did have their own blankets). A similar conclusion can be drawn about the new section of the Bălţi EDP set aside for administrative detainees.

55. One can only regret that in their efforts to renovate these premises - which under the current economic circumstances deserve praise - the Moldovan authorities have paid no attention to the CPT recommendations. In fact, this state of affairs strongly suggests that, setting aside economic considerations, the issue of material conditions of detention in police establishments remains influenced by an outdated concept of deprivation of liberty.

56. Turning to the other EDPs visited across Moldova, with very few exceptions the delegation observed the same types of disastrous and insalubrious material conditions. A detailed description is superfluous, since it has all been highlighted already in paragraphs 53 to 55 of the report on the 1998 visit.

In Chişinău EDP, these conditions were exacerbated by serious overcrowding. At the time of the visit, there were 248 prisoners for 80 places, requiring nine persons to cram into a cell measuring 7 m² and between eleven and fourteen persons into cells of 10 to 15 m².

57. The delegation also received numerous complaints about the quantity of food in the EDPs visited. This normally comprised tea without sugar and a slice of bread in the morning, cereal porridge at lunch time and hot water in the evening. In some establishments, food was served just once a day and was confined to a piece of bread and soup. ...

... Concerning the issue of access to toilets in due time, the CPT wishes to stress that it considers that the practice according to which detainees comply with the needs of nature by using receptacles in the presence of one or several other persons, in a confined space such as the EDP cells which also serve as their living space, is in itself degrading, not only for the individual concerned but also for those forced to witness what is happening. Consequently, the CPT recommends that clear instructions be given to surveillance staff that detainees placed in cells without toilets should – if they so request – be taken out of their cell without delay during the day in order to go to the toilet.

59. The CPT also recommends that steps be taken to:

- reduce the overcrowding in Chişinău EDP as rapidly as possible and to comply with the official occupancy level;

- supply persons in custody with clean mattresses and clean blankets;

- authorise persons detained in all EDPs to receive packages from the outset of their custody and to have access to reading matter.

In the light of certain observations made, particularly in the EDP of the Chişinău Police Inspectorate, the CPT also reiterates its recommendation concerning strict compliance, in all circumstances, with the rules governing separation of adults and minors."

C. Materials of the German courts

37. One of the applicant's co-accused, G.D., who was also sentenced to life imprisonment, G.D., escaped from Moldova and currently resides in Germany. On an unspecified date the Moldovan authorities requested the German authorities to extradite him in view of serving the sentence. The application for extradition was examined by the German courts and a final verdict was adopted by the Supreme Court of the Land of Thuringia in a judgment of 25 January 2007.

The court decided to reject the application for extradition on grounds of serious suspicion that the proceedings leading to G.D.'s conviction had not complied with the basic rules of fairness. In particular, the court found that the applicant and other co-accused were subjected to torture and pressure in order to confess to the offences imputed to them or to incriminate other co-accused. In finding the above, the court relied on witness testimonies to the effect that G.D. had signs of violence on his body during the court hearings. The allegations of ill-treatment were consistent with reports of German and International bodies specialised in the protection of human rights. The court relied, *inter alia*, on a report of the German Government concerning the Republic of Moldova, in which it was stated that the Moldovan justice system lacked independence from the Government and that ill-treatment and torture by police was a wide spread practice in Moldova. The court also relied on several other reports from Amnesty International and UN and EU bodies specialised in the prevention of torture with similar allegations concerning Moldova. The court also noted that the judge of the Court of Appeal who acquitted G.D. (see paragraph 11 above) was subsequently dissmissed.

The court also expressed concern about G.D.'s conviction by the Supreme Court of Moldova in his absence but only on the basis of the documents in the file and expressed the view that there were no guarantees that if extradited to Moldova, G.D. would not be subjected to inhuman treatment.

THE LAW

38. The applicant complained under Article 3 of the Convention about being detained in inhuman and degrading conditions between 7 October 2003 and 1 March 2004. Article 3 of the Convention reads as follows:

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

39. He also complained under Article 5 § 3 of the Convention that the courts did not give relevant and sufficient reasons for his pre-trial detention. The relevant 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."

40. The applicant also complained under Article 5 § 4 that during the proceedings concerning his remand he and his lawyers had had no access to the materials in his criminal file on the basis of which the courts ordered his detention and that on 17 November 2003 an investigator had been present during their meeting. He also complained that the judges who ordered and extended his pre-trial detention were not independent and impartial. Article 5 § 4 of the Convention reads:

> "4. 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."

41. The applicant complained under Article 6 § 1 that he had not been assisted by a lawyer during the proceedings before the first-instance court and that neither he nor his lawyer had been present at the hearing of his appeal by the Court of Appeal in the administrative proceedings against him. He also complained that the criminal proceedings against him, which ended with the final judgment of the Supreme Court of Justice of 1 March 2001, had not been fair. The relevant part of Article 6 § 1 of the Convention, reads:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

42. The applicant complained under Article 6 § 2 of the Convention that his right to be presumed innocent had been breached. Article 6 § 2 reads as follows:

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

43. The applicant finally complained under Article 13 of the Convention that he had not had an effective remedy in respect of the alleged breach of Article 3 of the Convention. Article 13 reads as follows:

"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."

I. ADMISSIBILITY OF THE COMPLAINTS

A. The complaint under Article 5 § 4 of the Convention concerning the alleged lack of access to the materials of the criminal file

44. In his initial application, the applicant complained under Article 5 § 4 of the Convention that he and his lawyers had not had access to the materials of the criminal file relied upon by the domestic courts in order to detain him pending trial. However, in his observations on the admissibility and merits, he asked the Court not to proceed with the examination of this complaint. The Court finds no reason to examine it.

B. The complaint under Article 5 § 4 of the Convention concerning the confidentiality of meetings between the applicant and his lawyer during the remand proceedings

45. The Government agreed that on 17 November 2003 an investigator had been present during the lawyer-client meeting. However, they argued that this problem had been resolved by the domestic courts on 24 November 2003 (see paragraph 23 above) and that accordingly the applicant had lost his victim status.

46. The applicant submitted that while the Buiucani District Court ruled in his favour and ordered that the situation be remedied, it did not expressly find a violation of the Convention and did not afford him compensation.

47. The Court notes in the first place that the Buiucani District court fully upheld the lawyer's request and ordered that confidentiality of lawyer-client meetings be ensured (see paragraph 23 above). Moreover, it appears that the applicant did not ask for any compensation in his application of 18 November 2003 (see paragraph 22 above). In such circumstances, the Court accepts that in the present case the applicant received adequate redress from the domestic courts and that he can no longer claim to be a "victim" of a violation of Article 5 § 4 within the meaning of Article 34 of the Convention.

C. The complaint under Article 5 § 4 of the Convention concerning the lack of independence and impartiality of the judges who ordered and extended the applicant's pre-trial detention

48. Referring to Mr Gurbulea's statement to the effect that he (the applicant) had been held in detention only due to the President's personal involvement (see paragraph 10 above), the applicant argued that the judges who had examined his *habeas corpus* requests had lacked independence and impartiality. The applicant submitted that there were no reasons to believe that Mr Gurbulea had not been telling the truth in his interview and submitted that the manner in which the subsequent criminal proceedings had taken place was proof of that.

49. The Court notes with concern the statement made by Mr Gurbulea, who was a very high-ranking official at the time of the events and who is presently the Prosecutor General of Moldova. However, in the circumstances of the present case and in view of the lack of any direct proof of the President's involvement in the remand proceedings, the Court cannot but declare this complaint manifestly ill-founded and therefore inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

D. The complaint under Article 6 § 1 of the Convention concerning the unfairness of the administrative proceedings against the applicant

50. The applicant submitted that the administrative proceedings against him had been unfair because he had not been assisted by a lawyer on 8 October 2003 in the proceedings before the Centru District Court. He also argued that the appeal against the judgment of 8 October 2003 had been heard by the Court of Appeal in his and his lawyer's absence.

51. In so far as the complaint that his lawyer was not present before the first instance court is concerned, the Court notes that the applicant failed to raise it in his appeal (see paragraph 15 above). Accordingly, it must be declared inadmissible under Article 35 §§ 1 and 4 for failure to exhaust domestic remedies. As to the second complaint, the Court notes that the applicant raised it for the first time on 1 May 2006, that is, more than six months after the end of the administrative proceedings against him. Accordingly, it must also be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

E. The rest of the complaints

52. The Court considers that the rest of 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 other

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 the complaints.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

53. The applicant submitted that the conditions of his detention, both during his administrative detention in the remand centre of the Ministry of Internal Affairs and during his detention in the remand centre of the GDFOCC, were inhuman and degrading. According to him, the cells were dark because the windows were covered by metal plates and the electric light was always on. The cells were not provided with ventilation. There were no mattresses, pillows, blankets or bed linen. The inmates were denied the opportunity of a daily walk. There was no means of maintaining hygiene in the cell. There was no shower and the inmates did not receive sufficient food. Because of the State's inability to provide adequate food, the prisoners were exceptionally allowed to receive food from their families. However, in the applicant's case the legal provisions were applied very strictly and he was not allowed to receive parcels from his family. Moreover, the cell in the remand centre of the Ministry of Internal Affairs was severely overcrowded.

In support of his submissions, the applicant relied on the Court's judgment in the case of *Becciev v. Moldova* (no. 9190/03, 4 October 2005), in which a breach of Article 3 was found in respect of the conditions of detention in the remand centre of the Ministry of Internal Affairs. In so far as the conditions in the remand centre of the GDFOCC were concerned, he relied on the findings of the CPT and on the letter of a Deputy Prosecutor addressed to the Office of the President of Moldova (see paragraph 34 above).

54. The Government disputed all the allegations concerning the poor conditions of detention in both detention centres and argued that the conditions of detention had not amounted to inhuman and degrading treatment.

55. The Court recalls that the general principles concerning conditions of detention have been set out in *Ostrovar v. Moldova* (no. 35207/03, §§ 76-79, 13 September 2005).

56. It notes that during his administrative detention, the applicant was indeed detained in the same detention facility as the applicant in *Becciev*. It appears that Mr Becciev was detained there between February and April 2003, while the applicant in the present case was held there between October and November 2003. Since the Court was not presented with any information by the Government concerning any improvement in the conditions of detention in the detention centre between April and October 2003, the Court will assume that the conditions remained

unchanged. The Court further recalls that in *Becciev* it found that the conditions of detention reached the threshold of severity contrary to Article 3 of the Convention (see *Becciev*, cited above, § 47). In the present case, the Court does not see any reason to depart from that finding and concludes therefore that the conditions of detention during the applicant's administrative detention amounted to inhuman and degrading treatment and that there was therefore a violation of Article 3 of the Convention.

57. In so far as the conditions of detention in the GDFOCC remand centre are concerned, the Court notes that their description by the applicant is to a very large degree consistent with that of CPT (see paragraph 35 above). Moreover, it notes that the insufficiency of food in the Moldovan prisons was also confirmed by a Deputy Prosecutor General (see paragraph 35 above). In such circumstances and in view of the fact that the applicant had been detained in the GDFOCC remand centre for almost four months, the Court considers that the conditions of detention amounted to a violation of Article 3 of the Convention.

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

58. The applicant argued that the reasons invoked by the domestic courts for detaining him pending trial were general and formulaic and could not therefore be considered as relevant and sufficient for the purpose of Article 5 § 3 of the Convention.

59. The Government submitted that the applicant's detention was necessary because he was suspected of having committed a serious offence and if released he could have fled.

60. The Court refers to the general principles established in its case-law on Article 5 § 3 of the Convention regarding, in particular, the need for relevant and sufficient reasons for depriving someone of his or her liberty (see, among others, *Castravet v. Moldova*, no. 23393/05, §§ 29-33, 13 March 2007, and *Sarban v. Moldova*, no. 3456/05, §§ 95-99, 4 October 2005).

61. In the present case, the domestic courts, when ordering the applicant's detention and the extension thereof, cited the relevant law, without showing the reasons why they considered the allegations that the applicant could abscond or obstruct the investigation to be well-founded. Thus, the circumstances of this case are similar to those in *Becciev*, §§ 61-62 and *Sarban*, §§100-101, both cited above, in which this Court found violations of Article 5 § 3 of the Convention on account of insufficient reasons given by the courts for the applicants' detention. Since the Government presented no reasons for distinguishing this case from the above cases, the Court considers that the same approach should be adopted in the present case.

62. In the light of the above, the Court considers that the reasons relied

on by the Buiucani District Court and by the Chişinău Court of Appeal in their decisions concerning the applicant's pre-trial detention and its extension were not "relevant and sufficient".

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE FAIRNESS OF THE CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

64. The applicant argued that the proceedings leading to his conviction and sentencing had been unfair and arbitrary. He submitted, in particular, that the Supreme Court of Justice had convicted him in his absence; that the Supreme Court had not examined the arguments of the defence and had ignored the findings of the first-instance court; that there had been no sufficient evidence to find him guilty of any of the accusations and that the findings of the Supreme Court had been arbitrary; that the statements incriminating him by other co-accused had been obtained illegally by the use of torture and pressure by police. The applicant drew the Court's attention to the judgment of the Supreme Court of the Land of Thuringia (see paragraph 37 above) concerning the applicant's co-accused G.D. in which it was found, *inter alia*, that the applicant's co-accused were subjected to ill-treatment by the police in order to extract confessions and statements incriminating each other and that courts in Moldova were not independent from the Government. He also pointed to the lack of reasons in the judgment of the Moldovan Supreme Court. He finally accused the Supreme Court of having falsified a piece of evidence and of wrongly applying the domestic law.

65. The Government disputed the applicant's submissions and argued that the criminal proceedings in his respect had been fully compatible with the requirements of Article 6 of the Convention. They argued that the retrial of the case by the Supreme Court and the reversal of the Court of Appeal's judgment in the applicant's absence had been fully compatible with the principles of fairness and the domestic legislation because, *inter alia*, the applicant had refused to attend the hearing of the Supreme Court. According to them, the Supreme Court had given sufficient reasoning for finding the applicant guilty in respect of all the charges and had submitted detailed reasons in respect of each charge on which he was found guilty.

66. The Court reiterates that the manner of application of Article 6 to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein. Where a public hearing has been held at first instance, the absence of such a hearing may be justified at the appeal stage by the special features

of the proceedings at issue, having regard to the nature of the domestic appeal system, the scope of the appellate court's powers and to the manner in which the applicant's interests were actually presented and protected before the court of appeal, particularly in the light of the nature of the issues to be decided by it (see *Botten v. Norway*, judgment of 19 February 1996, *Reports* 1996-I, p. 141, § 39).

67. According to the Court's case-law, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6 § 1, although the appellant was not given the opportunity to give evidence in person before the appeal or cassation court. Moreover, even if the court of appeal has full jurisdiction to examine both points of law and of fact, Article 6 § 1 does not always require a right to a public hearing or, if a hearing takes place, a right to be present in person (*ibid*).

68. However, the Court has held that where an appellate court is called upon to examine a case as to the facts and the law and to make a full assessment of the question of the applicant's guilt or innocence, it cannot, as a matter of fair trial, properly determine those issues without a direct assessment of the evidence given in person by the accused – who claims that he has not committed the act alleged to constitute a criminal offence (see the *Ekbatani v. Sweden* judgment of 26 May 1988, Series A no. 134, p. 14, § 32).

69. Accordingly, in order to determine whether there has been a violation of Article 6 in the instant case, an examination must be made of the role of the Supreme Court of Justice and the nature of the issues which it was called upon to examine.

70. The Court notes that in the instant case the scope of the Supreme Court's powers, sitting as an appellate court, is set out in Article 449 of the Code of Criminal Procedure. According to Article 449 (see paragraph 34 above), the Supreme Court, sitting as an appellate court, could give a fresh judgment on the merits and it did so. According to Articles 451 and 436 of the Code of Criminal Procedure, the effect of this was that the proceedings in the Supreme Court were full proceedings governed by the same rules as a trial on the merits (see paragraph 34 above).

71. However, having quashed the decision to acquit the applicant reached at first instance, the Supreme Court determined the criminal charges against the applicant, convicted him on almost all charges and sentenced him to life imprisonment, without hearing evidence from him in person and without producing evidence in his presence at a public hearing with a view to adversarial argument.

72. Having regard to what was at stake for the applicant, the Court does not consider that the issues to be determined by the Supreme Court when convicting and sentencing him - and, in doing so, overturning his acquittal by the Court of Appeal - could, as a matter of fair trial, have been properly

examined without a direct assessment of the evidence given by the applicant in person and by certain witnesses. Indeed, this appears also to have been contrary to Articles 451 and 436 of the Code of Criminal Procedure.

73. The Government argued that the applicant refused to attend the hearing before the Supreme Court on 1 March 2004. Such a waiver on the part of the applicant - in so far as it is permissible - must be established in an unequivocal manner (see, *mutatis mutandis*, the *Oberschlick v. Austria (no. 1)*, judgment of 23 May 1991, Series A no. 204, § 51). However, in the present case the Government did not adduce any evidence in support of their submission.

74. In the light of the above the Court considers that there has been a violation of Article 6 § 1. In the circumstances, it does not consider it necessary to examine, additionally, whether other aspects of the proceedings in the Supreme Court of Justice did or did not comply with that provision.

75. There has therefore been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

76. The applicant argued that the declaration of Mr Gurbulea, to the effect that he was the head of a criminal gang, before his being convicted, amounted to a breach of his right to be presumed innocent.

77. According to the Government, Mr Gurbulea's statement was not susceptible of being interpreted as accusing the applicant of being the head of a criminal organisation, because the name Micu had been used as the name of the criminal organisation but not as the applicant's name. Had Mr Gurbulea wanted to refer to the applicant, he would have used the name Petru Popovici. The Government paraphrased Mr Gurbulea's statement in the following way: “The representatives of the largest criminal gang – MICU - made very energetic attempts to release Petru Popovici from detention”. They argued that this was the correct meaning of the impugned statement.

78. The Court recalls that the presumption of innocence enshrined in Article 6 § 2 of the Convention is one of the elements of a fair criminal trial required by Article 6 § 1. It will be violated if a statement of a public official concerning a person charged with a criminal offence reflects the opinion that he is guilty before he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards the accused as guilty. In this regard the Court emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of an offence (see *Daktaras v. Lithuania*, no. 42095/98, § 41, ECHR 2000-X).

79. The Court notes that it is undisputed between the parties that the applicant was known to the public by the name of Micu. Having carefully examined the original statement of Mr Gurbulea and its English translation (see paragraph 10 above) the Court concludes that both of them clearly suggest that Mr Gurbulea had regarded the applicant as guilty of being the head of a criminal organisation. However, even assuming that the name Micu had been used as the denomination of the criminal organisation but not as the applicant's name, as suggested by the Government, the result remains the same. A statement that a criminal organisation bears one's name constitutes an implicit accusation that the initial bearer of the name (the person) is somehow involved with the gang. Otherwise there would simply be no reason for the gang to bear his name. Accordingly, Mr Gurbulea's statement was clearly a declaration of the applicant's guilt which, firstly, encouraged the public to believe him guilty and, secondly, prejudged the assessment of the facts by the competent judicial authority. There has therefore been a breach of Article 6 § 2 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 3

80. The applicant argued that there was no remedy under domestic law to request an immediate end to a violation of Article 3 on the grounds of the poor conditions of his detention. He submitted that the poor conditions of his detention were due to insufficient funding of the prison system by the State and that no court or prosecutor could order the parliament to increase the budget.

81. The Government argued that the applicant could have complained to a prosecutor or initiated court proceedings by relying directly on the provisions of the Convention.

82. The Court recalls that in *Ostrovar v. Moldova* (no. 35207/03, § 112, 13 September 2005), it found a violation of Article 13 on the ground that there were no effective remedies against the inhuman and degrading conditions of detention in Moldova. It notes that the period of detention of Mr Ostrovar partially coincided with that of the applicant in the present case and that the Government relied on the same arguments as in *Ostrovar*. In such circumstances, the Court does not consider it possible to depart from its findings in *Ostrovar*. There has accordingly been a violation of Article 13 of the Convention, taken in conjunction with Article 3 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant claimed 150,000 euros (EUR) in respect of the non-pecuniary damage suffered as a result of the breach of his Convention rights. He argued that he had experienced mental and physical suffering, anguish and distress. He also asked the Court to make a consequential order to the Government for his immediate release from detention.

85. 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.

86. Having regard to the violations found above and their gravity, the Court considers that an award for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 8,000.

87. In so far as the request for a consequential order is concerned, the Court considers that where, as in the instant case, an individual has been convicted following proceedings that have entailed breaches of the requirements of Article 6 of the Convention, a retrial or the reopening of the case, if requested, represents in principle an appropriate way of redressing the violation (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV).

B. Costs and expenses

88. The applicant also claimed EUR 10,845 for costs and expenses incurred before the Court. He submitted a detailed time-sheet indicating the time spent by his lawyer on the case and an itemised list of other expenses linked to the examination of the case. He also submitted a copy of a contract between him and his lawyer and a receipt proving the payment by the applicant to the lawyer of the entire amount claimed.

89. The Government disagreed with the amount claimed for representation and disputed, *inter alia*, the number of hours spent by the applicant's lawyer on the case and the hourly rate charged by him. They also argued that the claims were excessive in view of the economic situation in Moldova.

90. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession, the above criteria and the complexity of the case, the Court considers it reasonable to award the applicant the sum of EUR 7,500 for costs and expenses.

C. Default interest

91. 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 complaints under Article 5 § 4 of the Convention concerning the confidentiality of meetings between the applicant and his lawyer during the remand proceedings and concerning the lack of independence and impartiality of the judges who ordered and extended the applicant's pre-trial detention inadmissible;

2. *Declares* the complaint under Article 6 § 1 of the Convention concerning the unfairness of the administrative proceedings against the applicant inadmissible;

3. *Declares* the remainder of the application admissible;

4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant's conditions of detention;

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

6. *Holds* that there has been a violation of Article 6 § 1 of the Convention on the ground of lack of a hearing before the Supreme Court of Justice;

7. *Holds* that it is not necessary to examine separately the applicant's other complaints under Article 6 § 1 of the Convention;

8. *Holds* that there has been a violation of Article 6 § 2 of the Convention;

9. *Holds* that there has been a violation of Article 13 of the Convention, taken together with Article 3 of the Convention;

10. *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 8,000 (eight thousand euros) in respect of non-pecuniary damage and EUR 7,500 (seven thousand five hundred 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;

11. *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