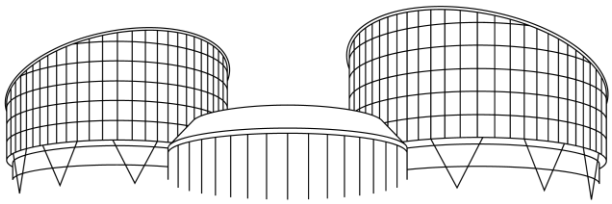

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF I.G. v. MOLDOVA

(Application no. 53519/07)

JUDGMENT

STRASBOURG

15 May 2012

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 I.G. v. Moldova**,**

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

Josep Casadevall, *President,*
Corneliu Bîrsan,
Egbert Myjer,
Ineta Ziemele,
Nona Tsotsoria,
Mihai Poalelungi,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 17 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 53519/07) 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 a Moldovan national, Ms I.G. ("the applicant"), on 6 October 2007. The President of the Section acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr A. Postica and Ms D. Straisteanu, lawyers practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that she had been a victim of a breach of Articles 3 and 8 of the Convention on account of the State's failure to conduct a proper investigation into her allegation of rape committed against her when she was fourteen years old. The applicant also complained that there had not been any effective remedies available to her as required by Article 13 of the Convention in respect of the above breaches and that she had been subjected to discriminatory treatment contrary to Article 14 of the Convention taken together with Articles 3 and 8 of the Convention.

4. On 13 July 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born on 10 December 1989 and lives in Bilicenii Vechi. At the time of the events complained of, she was fourteen years and eight months old.

6. On the evening of 21 August 2004 V.R. invited the applicant and one of her friends to accompany him out for the evening. V.R. was twenty-three years old at the time and lived in the same neighbourhood as the applicant's grandmother, whom the applicant visited often. The applicant and V.R. had known each other for many years and had met before on different occasions.

7. Towards the end of the evening the applicant and V.R. went by car to a bar/nightclub in a neighbouring village. At the bar, the applicant and V.R. were joined by V.V., V.D. and another girl, A.S. The applicant sat together with V.R. and his friends. V.R. bought a bottle of vodka and encouraged the applicant to drink with them. Initially, the applicant refused to drink but then she yielded to peer pressure and consumed approximately 100 ml of vodka. According to the applicant, V.R. had threatened her with violence and with not driving her back home if she did not drink. When later questioned, V.R. disputed that he had made such threats. After they had finished the drinks, they all left the bar and V.R. drove everyone home. When they approached V.D.'s house, V.D. and A.S. asked V.R. to wait for them, promising to be back in half an hour.

8. V.R. and the applicant were left alone in the car. V.R. parked the car near V.D.'s house and asked the applicant to move to the backseat with him. The applicant later explained in a statement she gave to a prosecutor that when she had stood up she had felt dizzy and had had to support herself by leaning against the car. V.R. disputed that and submitted that the applicant had not appeared to be intoxicated. The applicant further submitted that while sitting on the backseat, V.R. had attempted to kiss her on the lips, but she had moved away, telling him that she was not willing to have sex and that she was afraid of what her parents would think. V.R. had assured the applicant that no one would find out, while getting closer and pressing his body against her, thereby pinning her down. He had used one of his hands to hold the applicant's arms while removing her clothes with the other hand. In her statement to the prosecutor the applicant indicated:

> "... I did not want to have sexual intercourse with V.R. but because I had drunk vodka I felt weak, I could not move or physically resist him. V.R. took off my jeans, pants, t-shirt and bra, [and] penetrated me... I felt pain... I had not had sexual intercourse before and until that moment with V.R. I was a virgin... because it was dark in the car I did not see that I was covered in blood..."

9. V.R. disputed the above description of the events when questioned by the prosecutor and submitted that the applicant had immediately accepted his proposal that she have sex with him and had removed her clothes by herself. He also submitted that she had confessed to him to having previously had sex with his brother and that he had not been aware of her age.

10. The applicant stated that after the rape took place, V.R. had threatened to kill her should she tell anyone that he had had sex with her. The applicant recalled that the act had lasted for approximately 10 minutes. The applicant had then put on her clothes and shortly afterwards V.D. and A.S. had returned to the car. V.R. had driven the applicant home and had repeated his threat. V.R. disputed the allegation that he had made threats.

11. Later that day (22 August 2004) the applicant told her mother that she had been raped by V.R. On the same day the applicant's mother went to V.R.'s house. He admitted having had sex with the applicant and promised to marry her after she graduated from school. However, two days later the applicant's mother learned that V.R. was responsible for making another girl pregnant and that he was about to marry her. The applicant's mother therefore made a complaint on the applicant's behalf at the Singerei District Police Station on 25 August 2004, alleging rape. On 26 August 2004, the Singerei District Prosecutor's Office opened a criminal investigation into the crime of rape of a minor. The criminal offence is set out in Article 171 paragraph 2 subparagraph (b) of the Criminal Code of the Republic of Moldova.

12. The case was assigned to V.C., a prosecutor at the Singerei District Prosecutor's Office. He ordered a medical forensic examination of the applicant. The examination was conducted on the same day and concluded that there had been a "rupture of the hymen, which could have been caused in the circumstances described by a straight, blunt object, possibly an erect penis". No traces of blood or semen were found due to the applicant's delayed examination.

13. On 26 August 2004 the prosecutor questioned the applicant and her mother and on 1 September 2004 V.R. was questioned.

14. On 1 September 2004, as a result of the applicant's complaint and the findings of the forensic medical expert, V.R. was charged with the crime of rape of a minor. On 14 September 2004 the prosecutor ordered an additional forensic medical examination of the applicant. The additional forensic report issued on 17 September 2004 reached similar conclusions to those of the previous forensic examination, but, in addition, it found no bruises or injuries present on the applicant's body.

15. In the meantime, on 1 September 2004, V.V. was questioned as a witness. He stated that on the evening of 21 August 2004 he had gone together with V.R., the applicant, V.D. and a girl named A.S. to a bar/nightclub in a nearby village. V.V. confirmed that the applicant had

drunk alcohol and danced. After they had finished the first bottle of vodka, another one had been ordered. He did not know whether the applicant had also drunk from that bottle and had not seen whether she had been unsteady on her feet upon leaving the bar. After leaving the bar, V.R. had driven him home and had then left together with the applicant, V.D. and A.S. V.V. had not known where they were headed.

16. On 26 October 2004 a confrontation between the applicant and V.R. was carried out. The parties maintained their positions. In particular, the applicant insisted that the sexual intercourse had been non-consensual, while V.R. insisted on the contrary. They also disputed whether V.R. had threatened the applicant and whether V.R. had been aware of the applicant's age.

17. On 26 November 2004 the prosecutor in charge of the case requested a prolongation of the time allowed for the investigation of the case from his superior. He enumerated the actions carried out so far and indicated that it was necessary to prolong the time allowed for the investigation until 31 January 2005 in order to question several more witnesses. It appears that the request was approved on the same date by A.B., a senior prosecutor within the same prosecutor's office.

18. On 1 December 2004 another prosecutor within the same prosecutor's office, C.C., cleared V.R. of the charge of rape of a minor. The Prosecutor stated in his decision that:

> "... taking into account the findings of the forensic medical expert and the statements of the suspect, as well as the statements of the witnesses and of the victim, I conclude that V.R.'s actions did not constitute the elements of the crime set out by Article 171 paragraph 2 subparagraph (b) of the Criminal Code of the Republic of Moldova. Therefore I clear V.R. of all charges against him".

19. In the same decision, C.C. ordered the continuation of the criminal investigation without giving any further details.

20. Between 3 and 6 December 2004 the investigation of the case continued and the same prosecutor questioned several more witnesses, including the applicant's cousins, her classmates and neighbours.

21. On 19 January 2005 A.B. annulled the decision of 1 December 2004 as illegal. In his decision he stated that "the decision of 1 December 2004 was not based on a thorough examination of all the circumstances of the case, specifically of the fact that at the time of the sexual intercourse the victim, who was a minor, was intoxicated and could not control her actions". Moreover, the prosecutor stated that after the adoption of the decision new facts had been discovered which confirmed V.R.'s guilt. The case was assigned to prosecutor V.C.

22. On 25 January 2005 V.R. was again charged with the crime of rape of a minor. The criminal investigation ended on 31 January 2005 and the file was sent to the Singerei District Court.

23. Having heard the witnesses and looked through the evidence before it, the court delivered its judgment on 10 February 2006. The court rejected V.R's claim that he had not known the applicant's age on the basis of the evidence given regarding his knowledge of her age. However, the court also rejected the applicant's claim that she had been so intoxicated as to have been unable to control her actions, reasoning that according to one of the witnesses she had not consumed more than 50 ml of vodka and that she had described the incident in detail. The court concluded that the sexual intercourse had been mutually consensual on the basis of the fact that there had been no signs of physical violence on the applicant's body, as confirmed by the forensic expert reports. The court therefore amended the criminal charges against V.R. on its own motion, finding him criminally liable for sexual intercourse with a person under the age of sixteen committed under the influence of alcohol, in contravention of Article 174 of the Criminal Code of the Republic of Moldova. The charge of rape against V.R. was dismissed by the court. V.R. was given a suspended sentence of three years' imprisonment.

24. Both the applicant (through her mother as legal guardian) and the prosecutor separately appealed against the judgment of the Singerei District Court. V.R. did not appeal.

25. The applicant argued that the first-instance court had failed to take into account her vulnerability, due to intoxication with alcohol and her young age, and had only looked into the issue of consent from the perspective of corroborative evidence of resistance.

26. The prosecutor lodged his appeal on 1 March 2006, making similar arguments to those in the applicant's appeal.

27. On 11 April 2007 the Bălţi Court of Appeal rejected the applicant's appeal, arguing that the applicant's right to appeal was limited by Articles 276 and 401 of the Code of Criminal Procedure of the Republic of Moldova ("the CCP"). The court explained that according to those articles the victim of a crime could lodge an appeal only if criminal proceedings had been initiated upon his/her prior complaint *(la plângerea prealabilă*). As the offence of rape was not one of the offences which could only be prosecuted upon the victim's complaint, the applicant was not included in the category of people having the right to appeal a court's judgment.

The Court of Appeal also dismissed the prosecutor's appeal, annulled the judgment of the Singerei District Court and ordered the termination of the criminal prosecution against V.R. The court considered in the first place that the annulment of the decision of 1 December 2004 on 19 January 2005 had been unlawful because "only a hierarchically superior prosecutor, i.e. the Prosecutor General and his inferiors" had the right to do that. Moreover, in the opinion of the Court of Appeal, there had been no legal grounds to annul the decision of 1 December 2004 because: (a) there had been no elements of rape in V.R.'s actions; and (b) according to Article 63 (2)(3) of the CCP a

person can only be considered a suspect for the purpose of that article for three months. The court finally ruled that because the decision of 1 December 2004 had been declared valid, any further prosecution of V.R. would be in breach of the principle of *ne bis in idem* and thus contrary to Article 4 of Protocol No. 7 to the Convention.

28. Since the applicant had been refused the right of appeal against the first-instance court's decision in her case, her lawyer wrote to the General Prosecutor's Office requesting that an appeal on points of law be lodged before the Supreme Court of Justice. The General Prosecutor's Office failed to lodge such an appeal. In their letter of 16 August 2007 replying to the applicant's lawyer, the General Prosecutor's Office admitted that the prosecutor had missed the two-month deadline set by Article 422 of the CCP to appeal against the decision of the Bălţi Court of Appeal. As a result, all proceedings in respect of V.R. were terminated and the final decision in the case concerning the applicant's allegation of rape became prosecutor C.C.'s decision of 1 December 2004.

29. The applicant sought psychological help after the conclusion of the proceedings before the Bălţi Court of Appeal. During July – August 2007 she was seen by a psychiatrist from Memoria, a local non-governmental organisation working in this field. An excerpt from the applicant's medical file issued on 18 August 2007 describes her as suffering from post-traumatic stress disorder caused by the sexual assault, the failure of the courts to render an effective conviction and the humiliation to which she had been publicly subjected due to the domestic proceedings in her case.

II. RELEVANT DOMESTIC LAW

30. The relevant parts of the Criminal Code read at the material time as follows:

Article 171. Rape

"Rape, or sexual intercourse committed by use of physical or psychological compulsion on [a] person or by taking advantage of the victim's impossibility to defend herself or to freely consent, is punishable with imprisonment from 3 to 5 years.

Rape:

committed repeatedly

committed knowingly on a minor

... - ... (g),

is punishable with imprisonment from 5 to 15 years.

..."

Article 174. Sexual intercourse with a person under the age of 16

"Sexual intercourse, homosexual acts, or lesbian acts, with a person who is certainly known to be under the age of 16, are punishable with imprisonment for up to 5 years."

The relevant parts of the Code of Criminal Procedure read as follows:

Article 52. The competence of the prosecutor within the criminal investigation

"(1) In criminal investigations, the prosecutor:

...

(8) may annul decisions issued by the investigating body that are illegal and unreasoned;

..."

Article 401. Individuals that may lodge an appeal

"(1) An appeal may be lodged by:

(a) the public prosecutor, with respect to the criminal and civil aspects of a case;

(b) the defendant, with respect to the criminal and civil aspects of the case...;

(c) the victim, with respect to the criminal aspect of the case if the criminal proceedings were initiated upon her/his prior complaint in accordance with the law;

..."

On 20 May 2008 the last paragraph of the above provision was declared unconstitutional by the Constitutional Court and from then on victims of any kind of offence could lodge appeals.

Article 452. Extraordinary appeals

(1) The Prosecutor General, as well as [the parties], may lodge an extraordinary appeal before the Supreme Court of Justice [against] any final judgment after the exhaustion of ordinary remedies.

(2) The Prosecutor General may make an extraordinary appeal in favour of the defendant against a final judgment, even if ordinary remedies were not used.

Article 453. Grounds for an extraordinary appeal

(1) Final judgments of conviction [or] acquittal [...] may be challenged by an extraordinary appeal in order to correct errors of law [...], in the following cases:

...

(e) when the Constitutional Court has acknowledged as unconstitutional the provisions of a law applied to the case;

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3, 8, 13 AND 14 OF THE CONVENTION

31. The applicant complained that the Moldovan authorities had not investigated her allegations of rape effectively. In her view, that had amounted to a violation of the State’s positive obligations to protect the individual’s physical integrity and private life and to provide effective remedies in this respect. She also argued that the requirement of corroborative evidence of resistance had violated her right to non-discrimination on the basis of her sex. Articles 3, 8, 13 and 14 of the Convention, on which the applicant relied, read as follows:

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 8 § 1

“Everyone has the right to respect for his private ... life ...”

Article 13

“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.”

Article 14

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

A. Admissibility

32. The Government submitted that on 20 May 2008, before the date of the introduction of the completed application form in the present case, the Constitutional Court of Moldova had declared unconstitutional the provisions of Article 401 of the CCP, which had limited the ability of victims of crimes to lodge appeals in criminal proceedings. According to the Government, after this decision of the Constitutional Court, the applicant could have challenged the decision of the Bălți Court of Appeal of 11 April 2007 by lodging an extraordinary appeal, as provided for by Articles 452 and 453 of the CCP. As the applicant had not availed herself of that opportunity, her application had to be declared inadmissible for failure to exhaust domestic remedies.

33. The applicant disagreed with the Government and submitted, in the first place, that her application had been introduced with the Court on 6 October 2007. The completed application form had been submitted within the time-limit set by the Court, namely on 15 May 2008 – which had been five days before the adoption of the Constitutional Court's decision on 20 May 2008 and three weeks before its publication in the Official Gazette on 6 June 2008. The applicant therefore argued that no remedies in domestic law had been available to her at the time of lodging her application with the Court.

34. The Court reiterates that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court. However, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (*Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX).

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

36. Even assuming that this is an exceptional case in which the applicant was required to exhaust a remedy which became available after the introduction of her application with the Court, it is noted that according to Article 452 of the CCP it was not open to the applicant to lodge an extraordinary appeal with the Supreme Court because ordinary remedies had not been exhausted. The Court therefore concludes that the application cannot be declared inadmissible for non-exhaustion of domestic remedies and, accordingly, the Government's objection is dismissed.

37. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

38. The applicant submitted that she had felt mistreated by the manner in which her case had been examined. As there had been no physical evidence of assault, the criminal justice system had been more inclined to believe the perpetrator, showing no concern for the need to protect her as a minor. The domestic authorities had failed to effectively assess the issue of consent by a minor and had therefore fallen short of the positive obligation to enact criminal law provisions effectively punishing sexual assault against minors. At the age of fourteen she had been victimised twice: first by the sexual assault inflicted on her; and then by the domestic proceedings, which had only intensified her feelings of humiliation, anguish and frustration without rendering an effective conviction. The applicant also submitted that she had been subjected to discriminatory treatment on the ground of her sex.

39. The Government disagreed with the applicant and argued that the case had been investigated properly and, unlike in *M.C. v. Bulgaria* (no. 39272/98, ECHR 2003-XII), the applicant had been able to put questions to the witnesses and had participated in a confrontation with V.R. Moreover, unlike in the Bulgarian case, V.R. had even been convicted by the first-instance court for the offence of having sexual intercourse with a minor. The Government finally disputed the allegation that the applicant had been subjected to discriminatory treatment.

40. The Court reiterates that the obligation of the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports* 1998-VI; *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 73-75, ECHR 2001-V; and *E. and Others v. the United Kingdom*, no. 33218/96, 26 November 2002).

41. In a number of cases, Article 3 of the Convention was found to give rise to a positive obligation to conduct an official investigation (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII). Such a positive obligation cannot be considered, in principle, to be limited solely to cases of ill-treatment by State agents (see, *mutatis mutandis*, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, ECHR 2002-I).

42. On that basis, the Court considers that States have positive obligations inherent in Article 3 of the Convention to enact criminal-law

provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution (see, *mutatis mutandis*, *M.C. v. Bulgaria*, cited above, §§ 149-153).

43. Turning to the facts of the present case, the Court notes that after the conclusion of the court proceedings, prosecutor C.C.'s decision of 1 December 2004 discharging V.R. of the accusations against him ended up as the final determination in the case concerning the applicant's allegation of rape (see paragraph 28 above). The Court notes that this decision was adopted without some important investigative measures having been conducted. In particular, since the central task in this case was to determine whether the sexual intercourse had been consensual, it was imperative to form an opinion concerning each party's credibility. That could have been done by questioning people known to the applicant and V.R., such as friends, neighbours, teachers and others who could have shed light on the trustworthiness of their statements. However, none of the above has been done before the adoption of the decision of 1 December 2004. The Court further notes that two individuals (V.D. and A.S.) out of three who had been with the applicant and V.R. immediately before and after the alleged rape have not been questioned. Finally, the Court considers that the investigating authorities could have also sought an opinion from a specialised psychologist.

44. The Court attaches particular weight to the fact that the prosecutors in charge of the case admitted themselves that the investigation had not been completed on 1 December 2004. In particular, it is noted that on 26 November 2004 prosecutor V.C. considered that the investigation was not yet complete, as he intended to question several more witnesses, and therefore requested one more month to complete it. The request was accepted by V.C.'s superior. However, only a few days later, on 1 December 2004, for reasons best known to the Singerei District Prosecutor's Office, another prosecutor, C.C., issued the decision exonerating V.R. of the charge of rape without questioning any further witnesses or conducting any other investigative measures. Nevertheless, it appears that even C.C. did not consider the investigation to be completed, because he ordered its continuation in the very text of the decision of 1 December 2004.

45. In view of the above, the Court, without expressing an opinion on the guilt of V.R., finds that the investigation of the applicant's case fell short of the requirements inherent in the State's positive obligations to effectively investigate and punish all forms of rape and sexual abuse. The Court thus finds that in the present case there has been a violation of the respondent State's positive obligations under Article 3 of the Convention. In view of this conclusion it also holds that no separate issue arises under Articles 8, 13 and 14 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage. She submitted that she had suffered severe shame, anguish and distress. After the conclusion of the proceedings which had cleared V.R. of all charges, she had also been seen as a liar, which had caused her additional distress.

48. The Government disputed the amount claimed by the applicant and reiterated their position that there had been no violation in the present case. Alternatively, they considered that a finding of a violation would in itself constitute sufficient just satisfaction in the present case.

49. Having regard to the violations found above, the Court considers that an award of just satisfaction for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 10,000.

B. Costs and expenses

50. The applicant also claimed EUR 19,200 for costs and expenses incurred before the Court. The applicant submitted relevant documents in support of her claims.

51. The Government objected and argued that the amount was excessive.

52. The Court awards EUR 2,000 for costs and expenses.

C. Default interest

53. The Court considers it appropriate that the default interest rate 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 procedural violation of Article 3 of the Convention;

3. *Holds* that no separate issue arises under Articles 8, 13 and 14 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, and EUR 2,000 (two thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into Moldovan lei at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada	Josep Casadevall
Registrar	President