



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

SECOND SECTION

CASE OF SAVCA v. THE REPUBLIC OF MOLDOVA

(Application no. 17963/08)

JUDGMENT

STRASBOURG

15 March 2016

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 Savca v. the Republic of Moldova,

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

Işıl Karakaş, *President*,

Julia Laffranque,

Nebojša Vučinić,

Valeriu Griţco,

Ksenija Turković,

Jon Fridrik Kjølbro,

Stéphanie Mourou-Vikström, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 9 February 2016,

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

PROCEDURE

1. The case originated in an application (no. 17963/08) 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, Mr Corneliu Savca (“the applicant”), on 7 April 2008.

2. The applicant was represented by Mr A. Postica and Mr V. Vieru, lawyers practising in Chisinau. The Moldovan Government (“the Government”) were represented by their Agent, Mr L. Apostol, Permanent Representative of the Republic of Moldova to the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been unlawfully detained in inhuman and degrading conditions of detention in the absence of any reasonable suspicion that he had committed an offence and without relevant and sufficient grounds for detention.

4. On 7 July 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in Chisinau.

6. At the time of the events in question, the applicant was a high-ranking police officer. On 26 March 2008 he was arrested on suspicion of being part

of a criminal gang specialised in the smuggling of heroin through Moldova to the European Union. His arrest took place as a result of the seizure of a large quantity of heroin in Chişinău. He was indicted with the offence of circulating large quantities of narcotics, an offence provided for in Article 217/1 of the Criminal Code and punishable with seven to twenty years of imprisonment.

7. On 5 September 2008 the criminal investigation into the circumstances of the case was completed and the case was referred to a trial court for determination.

8. On 21 October 2009 the applicant was found guilty of having committed other offences than that for which he had been put in detention on remand and sentenced to five years and nine months' imprisonment. The offences of which the applicant was found guilty concerned negligence, abuse of power and aiding and abetting in the commission of an offence. On 21 June 2010 the judgment was set aside by the Chisinau Court of Appeal and the applicant was released from detention. The proceedings are still pending.

9. Between his arrest and his sentencing the applicant was detained on remand. A detention warrant was issued every month and the reasons given for prolonging his detention were the same throughout the entire period: the applicant had been accused of a serious criminal offence punishable by more than two years' imprisonment and there was a risk he might abscond or hinder the investigation. All of the applicant's *habeas corpus* requests were dismissed.

10. The applicant was detained in two detention facilities. Between his arrest and 17 November 2008 he was detained in solitary confinement at the detention facility of the Centre for Fighting Economic Crime and Corruption (CFECC) and between 17 November 2008 and 21 June 2010 he was held in Prison no. 13. According to the applicant, the conditions of detention in Prison no. 13 were tantamount to inhuman and degrading treatment. In particular, the cells were dirty and overcrowded. In the cell in which the applicant was detained, each inmate had only 2.5 square metres of available space. The food was of a very poor quality, the inmates smoked, and he was held along with detainees convicted of violent crimes who threatened him with violence on account of his status as a police officer. The inmates were not provided with bed linen and the cell was infected with vermin.

11. During his detention the applicant's state of health deteriorated and a panel of doctors diagnosed him with gastritis, duodenitis, pancreatitis, hepatitis and hypertension. They recommended he be hospitalised for in-patient treatment. The applicant was hospitalised between 7 October and 17 November 2008 in a prison hospital belonging to the Ministry of Justice but he refused treatment, asking instead to be treated in a military hospital

accredited by the Ministry of Healthcare. His request was rejected on grounds which were not communicated to the Court by the parties.

II. RELEVANT MATERIAL

A. Relevant domestic law and practice

12. The original wording of Article 25 of the Constitution of the Republic of Moldova – in force until 2 August 2001 – stated, insofar as relevant:

“(4) Detention on remand takes place on the basis of a warrant issued by a judge for a maximum period of 30 days. A detained person may challenge the legality of the detention warrant before a judge who shall be obliged to rule on the complaint by means of a reasoned decision. The period of detention on remand may be extended to a maximum period of six months, but in exceptional cases, and with the Parliament’s consent, to a maximum period of 12 months.”

13. On 23 December 1999 the Constitutional Court of Moldova issued decision Nr. 72, in which it interpreted the limitation of the duration of detention on remand provided for in the above article as referring only to the detention occurring during the investigation phase of criminal proceedings, not the trial phase. It therefore considered that detention lasting longer than six months – or longer than twelve months, in exceptional cases – was possible if the criminal investigation was complete and the case-file had been referred to a court for examination. One of the six judges disagreed with the majority and made a separate opinion in which he expressed the view that the twelve months deadline referred to all stages of the detention on remand and not only to the investigation phase of the proceedings.

14. On 12 July 2001 the wording of Article 25 of the Constitution was amended by Parliament. The amendment entered into force on 2 August 2001 and the new wording of Article 25 reads:

“(4) Detention on remand takes place on the basis of a warrant issued by a judge for a maximum period of 30 days. The lawfulness of the detention warrant may be challenged, in accordance with the law, before a hierarchically superior court. The period of detention on remand may be extended only by a court, in accordance with the law, to a maximum period of twelve months.”

The new text of Article 25 of the Constitution was not a subject of interpretation by the Constitutional Court.

15. According to Article 186 (3) of the Code of Criminal Procedure, the duration of detention on remand during the investigation phase of the criminal proceedings cannot exceed 6 months if the suspect is charged with an offence punishable with up to 15 years of imprisonment and 12 months if the suspect is charged with an offence punishable with up to 25 years of imprisonment.

16. According to Article 186(8) of the Code of Criminal Procedure, the duration of the detention on remand during the trial phase of the criminal proceedings cannot exceed 6 months if the suspect is charged with an offence punishable with up to 15 years of imprisonment and 12 months if the suspect is charged with an offence punishable with up to 25 years of imprisonment.

17. According to Article 186(9) of the Code of Criminal Procedure, after the expiry of the time-limits indicated in Article 186 (8), the duration of detention on remand during the trial phase of the criminal proceedings can be prolonged only in exceptional circumstances at the request of the prosecutor, by way of a reasoned decision by the investigating judge, each time by three months.

B. Relevant non-Convention material

18. The relevant parts of the Special Rapporteur's report on torture and other cruel, inhuman or degrading treatment or punishment compiled following his visit to Moldova from 4 to 11 July 2008 (The United Nations Human Rights Council, document A/HRC/10/44/Add.3, 12 February 2009) read:

“B. Conditions in places of detention

Institutions under the Ministry of Justice

30. Undoubtedly, progress has been achieved in improving conditions of detention. However, some of the institutions visited by the Special Rapporteur were heavily overcrowded. The authorities themselves pointed out that Institution No. 13 in Chişinău was severely overcrowded - on the day of the visit it held 931 persons with the official capacity being 600 (see also appendix). The Special Rapporteur was informed of Government plans to close down this institution.

31. Common problems at all pre- and post-trial prisons are the poor hygienic conditions, restricted access to health care and lack of medication as well as risk of contamination with tuberculosis and other diseases. Whereas the Special Rapporteur notes that the minimum norms regarding nutrition of detainees (Government Decision n. 609 of 29 May 2006) are checked on a daily basis and that, according to the financial plan of the Penitentiary Department, the food budget for 2008 had almost doubled in comparison to 2004 and is set to rise further, he also received consistent allegations regarding the poor quality and quantity of food. ...”

15. In its report for 2009 (page 117 – “Conditions of detention”), the Centre for Human Rights in Moldova (“the Human Rights Centre”, which also acts as the Moldovan Ombudsman) found, inter alia, that:

“Regarding personal hygiene, clothing and bedding, despite [the fact that] Government decision no. 609 (29 May 2006) concerning minimum daily food requirements and the issuing of items of personal hygiene provides for the issuing of soap to detainees for bathing and other sanitary-hygienic needs, this has remained unfulfilled during 2009.”

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20. In its report for 2010 (page 142 *et seq.* “Conditions of detention”) the Human Rights Centre found, *inter alia*, that:

“Failure to adhere to the statutory cell size (4 square metres per person) in the living blocks of the institution has become an unpleasant problem which now affects the prison system across the entire country. ...

The same situation was confirmed during a visit to Chişinău Prison no. 13 on 9 September 2010. In some cells the living space was not proportionate to the number of detainees. During the visit, eight detainees were being held in cell no. 38, which measured 24 square metres. This situation has been seen repeatedly during visits by the Centre’s staff to the Chişinău Pre-trial Detention Centre. Similar findings were made during visits to Rusca Prison no. 7 on 19 May 2010, where six detainees were being held in a cell measuring 15.5 square metres and to Cricova Prison no. 4, where (in living block no. 7) over twenty detainees were being held in a cell measuring 65 square metres.

Overcrowding comes directly within the Ombudsman’s remit as part of the National Mechanism for the Prevention of Torture, which on many occasions has recognised overcrowding in the country’s prisons. ...

... [T]he Prisons Department informed the Ombudsman that meat and fish products are provided [to detainees] whenever possible. At the same time, the authority stated that, owing to the difficult financial situation, during 2010 the detainees in Rezina Prison no. 17 received only 75% and 80% of their normal quotas of meat and fish products respectively. In this connection, the Minister of Justice provided information to the Ombudsman about the expenditure on prisoners’ food in 2010. The cost amounted to MDL 24.05 million, whereas the budgetary need for the same year was, according to the Ministry of Finance’s draft budget, MDL 29.05 million. The daily cost of feeding a detainee in 2010 was MDL 10.24, whilst the daily budgetary need was MDL 12.35. This statistic was often cited by prison authorities to justify why they were unable to provide detainees with meat and fish.

...

As regards sanitary conditions, lighting and ventilation problems continue to exist in the majority of living blocks in Moldovan prisons, with the exception of Taraclia Prison no. 1 and Rusca Prison no. 7.

The Republic of Moldova inherited old gulag-type prisons in dilapidated buildings, corresponding to former Soviet standards. The prisons do not conform to current national and international standards; however, the budget constraints upon the State do not allow for their reconstruction or renovation.

In the prisons, with the exception of Taraclia Prison no. 1, detainees are held in large-capacity cells insufficiently equipped for their daily needs, namely areas for sleeping, for everyday living and for sanitary equipment. Detainees are held in

extremely overcrowded, dark, damp and unventilated spaces full of cigarette smoke. In certain prisons the bunk beds essentially prevent daylight from reaching the living space.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

21. The applicant complained that he had been held in inhuman and degrading conditions during his remand in custody and after his conviction. He also complained that he had not been provided with appropriate medical care, contrary to Article 3 of the Convention, which reads:

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

A. Admissibility

1. The complaint under Article 3 of the Convention concerning conditions of detention

22. The applicant complained that his detention in solitary confinement between 26 March 2008 and 17 November 2008 in the CFECC detention facility had amounted to inhuman and degrading treatment under Article 3 of the Convention. He also complained that the material conditions of his detention in Prison no. 13, between 17 November 2008 and 21 June 2010, had likewise amounted to inhuman and degrading treatment.

23. The Court reiterates that the object of the six-month time-limit under Article 35 is to promote legal certainty by ensuring that cases raising issues under the Convention are dealt with within a reasonable time and that past decisions are not continually open to challenge. In cases where there is a “continuing situation”, the six-month period runs from the date of cessation of the situation. The concept of a “continuing situation” refers to a state of affairs in which there are continuous activities by or on the part of the State so as to render the applicant a victim. Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 72-79, 10 January 2012; *Olszewski v. Poland*, no. 21880/03, § 84, 2 April 2013).

24. In that latter context the Court recalls its findings in *Ananyev and Others v. Russia*, (cited above, §78) according to which a period of an applicant’s detention should be regarded as a “continuing situation” as long

as the detention has been effected in the same type of detention facility in substantially similar conditions. Short periods of absence during which the applicant was taken out of the facility for interviews or other procedural acts would have no incidence on the continuous nature of the detention. However, the applicant's release or transfer to a different type of detention regime, both within and outside the facility, would put an end to the "continuing situation". The complaint about the conditions of detention must be filed within six months from the end of the situation complained about or, if there was an effective domestic remedy to be exhausted, of the final decision in the process of exhaustion.

25. In *I.D. v. Moldova* (no. 47203/06, 30 November 2010), where the case involved the applicant's uninterrupted detention in several prisons, the Court was called upon to determine whether the applicant's detention amounted to a "continuing situation" for the purposes of determining compliance with the six-month time-limit. In that case the Court found that the principal negative feature of each period of detention was different and therefore concluded that each period of detention referred to specific events which had occurred on identifiable dates and could not therefore be construed as a "continuing situation" (see *I.D. v. Moldova*, cited above, § 30). As a result a part of the applicant's complaint under Article 3 was declared inadmissible for failure to comply with the six-month rule.

26. A different approach was adopted by the Court in *Haritonov v. Moldova* (no. 15868/07, § 24, 5 July 2011), where it considered that two different periods of detention amounted to a "continuing situation" because the complaints were similar and there was no emphasis put on any particular negative feature of his detention specific to a particular detention facility.

27. In the present case the Court notes that there were no characteristics common to the descriptions given by the applicant regarding the conditions of his detention in the two different detention facilities. The Court also notes that the principal negative feature of each period of detention was different. In particular, when describing his detention in the CFECC detention facility, the applicant complained about his solitary confinement and submitted that that fact in itself amounted to a violation of his rights as guaranteed by Article 3 of the Convention. When referring to his detention in Prison no. 13, the applicant focused on the poor material conditions and the overcrowding. In such circumstances, the Court concludes that each period of detention referred to specific events which occurred on identifiable dates and which cannot therefore be construed as a "continuing situation".

28. The Court notes that the applicant's complaint about his solitary confinement in the CFECC detention facility was lodged with the Court on 4 June 2009. There is nothing to suggest that the authorities in any way hampered the applicant in lodging a complaint before that date regarding his detention in that facility. Consequently, the complaint in so far as it refers to that period was lodged more than six months after the alleged breach took

place and must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

29. The Court furthermore considers that the applicant's complaint about the conditions of detention in Prison no. 13 raises questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no grounds for declaring it inadmissible have been established. The Court therefore declares it admissible.

2. The complaint under Article 3 of the Convention concerning lack of medical assistance

30. The applicant submitted that the refusal to hospitalise him in a military hospital accredited by the Ministry of Healthcare amounted to inhuman and degrading treatment. He submitted a copy of a document issued by the Ministry of Healthcare from which it appeared that the prison hospital in which he had been hospitalised lacked accreditation by that body and argued that he could not trust the medical personnel from that hospital, that being the case.

31. The Court notes that the applicant was hospitalised for several weeks in the prison hospital attached to the Ministry of Justice and that he refused treatment. The applicant did not adduce any evidence to prove that the doctors from that hospital were not licensed to practise medicine or that the treatment for his diseases was not available in that hospital.

32. In these circumstances, this part of the complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

33. The applicant submitted that the conditions of detention in Prison No. 13 had amounted to inhuman and degrading treatment.

34. The Government submitted that the conditions of detention in Prison No. 13 had not amounted to inhuman and degrading treatment and argued that the conditions in that prison had improved considerably since the Court found them to be in breach of Article 3.

35. The Court reiterates the general principles concerning conditions of detention set out in *Ostrovar v. Moldova* (no. 35207/03, §§ 76-79, 13 September 2005); *Idalov v. Russia* ([GC], no. 5826/03, § 91-95, 22 May 2012); *Ananyev and Others v. Russia* (cited above, § 148) ; and *Torreggiani and Others v. Italy* (nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, § 69, 8 January 2013).

36. The Court notes that poor conditions of detention in this particular detention facility were found to prevail in the years 2008, 2009 and 2010 by the United Nations Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment and by the Moldovan

Ombudsperson (see paragraphs 9-11 above). The Government adduced no evidence in support of their submission that considerable improvements in Prison no. 13 had taken place during recent years. In such circumstances, the Court considers that there are no reasons to depart from the conclusions reached in its previous judgments (see among recent authorities *Hadji v. Moldova*, nos. 32844/07 and 41378/07, § 20, 14 February 2012; *Silvestru v. the Republic of Moldova*, no. 28173/10, 13 January 2015; *Pisaroglu v. the Republic of Moldova*, no. 21061/11, 3 March 2015). The Court thus considers that the hardship endured by the applicant during his detention in Prison no. 13 went beyond the unavoidable level of hardship inherent in detention and reached the threshold of severity required by Article 3 of the Convention. Accordingly, there has been a violation of Article 3 of the Convention.

37. The Court notes with concern the recurring nature of the problems concerning the poor conditions of detention in Prison no. 13 in Chisinau. It notes that it has found violations of Article 3 of the Convention on many occasions in respect of this particular prison (see, *Shishanov*, § 127, cited above) and that regrettably, the problem continues to persist. It therefore urges the authorities to take appropriate measures in order to put an end to what seems to be a systemic problem.

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 3 OF THE CONVENTION

38. The applicant complained of a violation of his right to liberty and relied on Article 5 § 1 of the Convention which, in so far as relevant, reads:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;”

39. The applicant also complained of a violation of Article 5 § 3 of the Convention on account of the fact that the decision to remand him in custody had not been based on relevant and sufficient reasons. Article 5 § 3 of the Convention 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.”

A. Admissibility

40. The applicant complained under Article 5 § 1 of the Convention that his detention had not been based on a reasonable suspicion that he had committed a criminal offence. He also contended that his detention had been unlawful because it was contrary to Article 25(4) of the Constitution. Namely, he submitted that he had been detained on remand for over eighteen months, whilst such detention was limited to twelve months by that Article of the Constitution.

41. As regards the complaint concerning the absence of reasonable suspicion, the Court notes that it was lodged by the applicant for the first time in his observations on the admissibility and merits of the case in April 2015. At the same time, the Court notes that the applicant's detention on remand ended on 21 October 2009, when he was found guilty and sentenced. In this respect the Court recalls that detention on remand ends when the detained person is released and/or the charge against him or her is determined, even if only by a court of first instance (see, among other authorities, *Wemhoff v. Germany*, 27 June 1968, p. 23, § 9, Series A no. 7; *Labita v. Italy* [GC], no. 26772/95, § 147, ECHR 2000-IV; *Kalashnikov v. Russia*, no. 47095/99, § 110, ECHR 2002-VI; and *Solmaz v. Turkey*, no. 27561/02, §§ 23-24, 16 January 2007). There is nothing to suggest that the authorities in any way hampered the applicant in lodging a complaint regarding the lack of reasonable suspicion within six months after the termination of his detention on remand. Consequently the complaint must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

42. In so far as the complaint under Article 5 § 1 concerning Article 25 of the Constitution and the complaint under Article 5 § 3 are concerned, the Court notes that they raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no grounds for declaring them inadmissible have been established. The Court therefore declares them admissible.

B. Merits

43. The applicant complained that, contrary to Article 25(4) of the Constitution, he had been remanded in custody for a period exceeding twelve months. He argued that such a long detention was unlawful under domestic law, and was therefore contrary to Article 5 § 1 of the Convention.

44. The Government disagreed and submitted that Article 25(4) of the Constitution had been interpreted by the Constitutional Court in its judgment of 23 December 1999 (see paragraph 13 above) as referring only to the period of detention on remand during the investigation phase of the proceedings, i.e. before a criminal case is referred to a court for trial. Since in the applicant's case that period of detention had been shorter than twelve

months, the Government submitted that the detention was lawful under domestic law.

45. The Court reiterates that the “lawfulness” of detention under domestic law is the primary element to be considered, but is not always decisive. The Court must, in addition, be satisfied that the detention during the period under consideration was compatible with the purpose of Article 5 § 1, which is to prevent persons from being deprived of their liberty in an arbitrary fashion. The Court must moreover ascertain whether the domestic legislation itself is consistent with the Convention, including the general principles expressed or implied therein (*Baranowski v. Poland*, no. 28358/95, § 51, ECHR 2000-III, *Boicenco v. Moldova*, no. 41088/05, § 148, 11 July 2006).

46. On this last point, the Court stresses that where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention, a standard which requires that the law at issue be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Steel and Others v. the United Kingdom*, 23 September 1998, § 54, *Reports of Judgments and Decisions* 1998-VII).

47. In the present case the Court notes that, according to Article 25(4) of the Constitution, detention on remand must not last longer than twelve months. At the same time, the Court notes that the applicant was detained for more than eighteen months between his arrest on 26 March 2008 and his conviction on 21 October 2009.

48. The Government relied on a judgment of the Constitutional Court as a basis for its argument that Article 25(4) of the Constitution was to be interpreted as referring only to the investigation stage and not also to the trial stage. They therefore contended that the applicant’s detention for a period exceeding twelve months was thus lawful under domestic law and therefore consistent with Article 5 § 1 of the Convention.

49. As regards the judgment of the Constitutional Court of 23 December 1999 on which the Government have relied, the Court notes that it refers to the old wording of Article 25 (4) of the Constitution, which was no longer in force at the time when the applicant was detained. It is true that the new wording of that article resembles the old one to some extent and that it could be argued, on that account, that the interpretation applicable to the old wording should also be valid for the new one. At the same time, there are notable differences between the two texts. Specifically, the old wording allowed for a maximum duration of pre-trial detention of six months, which Parliament could extend to twelve months in exceptional cases only. The

new wording allows for a maximum duration of detention of twelve months in all circumstances, without the involvement of Parliament.

50. In the light of the fact that the wording of Article 25(4) has changed, the differences between the two texts, and the fact that no official interpretation has been given to the new wording of the article, the Court cannot accept the Government's position, according to which the new wording of Article 25 (4) of the Constitution is to be given exactly the same interpretation as the old one. In this respect the Court reiterates that it is primarily for the national authorities, above all the courts, to resolve problems of interpretation concerning domestic legislation, the Court's role being confined to determining whether or not the effects of that interpretation are compatible with the Convention (see, among other authorities, *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I).

51. That said, and given the clear wording of Article 25(4) of the Constitution as regards the maximum duration of the detention on remand, the Court considers that the legislation on the basis of which the applicant was detained on remand for a period of over eighteen months was not sufficiently clear and foreseeable in its application and thus did not meet the requirement of "lawfulness". It must be stressed, however, that this conclusion should not be understood as an obligation for the States to impose any particular time-limits on the duration of the detention on remand.

52. The above Court's conclusion concerning the lawfulness of the applicant's detention is further reinforced by the fact that the applicant's detention on remand during the trial phase of the proceedings lasted for thirteen and a half months (see paragraphs 7 and 8 above), while according to Article 186(8) of the Code of Criminal Procedure (see paragraph 16 above) it could not last longer than twelve months. It is true that Article 186(9) provides that, in exceptional cases, the detention can last more than twelve months. However, there is no indication as to what an exceptional case is, a fact which contributes even more to the lack of clearness and foreseeability.

53. There has, accordingly, been a violation of Article 5 § 1 of the Convention in this respect.

54. In the light of the above, the Court does not consider it necessary to examine separately the complaint under Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 32,194 euros (EUR) in respect of pecuniary damage and EUR 40,000 in respect of non-pecuniary damage suffered. In so far as the pecuniary damage is concerned, the applicant argued that EUR 3,327 represented the price of the foodstuffs and medication purchased for him by his family during his detention. The rest of the sum represented his lost earnings between 22 March 2008 and 22 March 2015.

57. The Government submitted that the applicant was not entitled to any compensation for pecuniary damage since such compensation had not been substantiated by the applicant and there was no causal link between the violation found in the case and the alleged pecuniary damage claimed. As to the amount claimed for non-pecuniary damage, the Government argued that it was excessively high.

58. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, in view of the breaches found in this case, it considers it appropriate to award the applicant compensation in respect of non-pecuniary damage. Deciding on an equitable basis, the Court awards the applicant EUR 12,000.

B. Costs and expenses

59. The applicant also claimed EUR 1,920 for costs and expenses incurred before the Court. The applicant submitted relevant documents in support of his claims.

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

61. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually incurred, were necessarily incurred and were also reasonable as to quantum (see the *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). Bearing in mind the above criteria, the Court awards the applicant EUR 1,500.

C. Default interest

62. 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

1. *Declares*, unanimously, the complaints concerning the conditions of detention in Prison no. 13, the lawfulness of the applicant's detention after 26 March 2009 and the lack of relevant and sufficient reasons for detention admissible and the remainder of the application inadmissible;
2. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention;
3. *Holds*, by 5 votes to 2 that there has been a violation of Article 5 § 1 of the Convention;
4. *Holds*, by 5 votes to 2 that there is no need to examine the complaint under Article 5 § 3 of the Convention;
5. *Holds*, by 5 votes to 2
 - (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 12,000 (twelve thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, and EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into the national currency of the respondent State 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;
6. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 March 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Işıl Karakaş
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) Concurring opinion of Judge Griţco;
- (b) Joint dissenting opinion of Judges Turković and Kjølbrot.

A.I.K.
S.H.N.

CONCURRING OPINION OF JUDGE GRITCO

1. I fully agree with the conclusions reached by the Chamber in the present case. Nevertheless, I would like to point out some additional details which I consider relevant for the finding of a violation in respect of the applicant's complaint under Article 5 § 1 of the Convention.

2. The key purpose of Article 5 is to prevent arbitrary or unjustified deprivations of liberty. Together with Articles 2, 3 and 4 of the Convention, Article 5 is in the first rank of the fundamental rights that protect the physical security of the individual and as such its importance is paramount (see *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-X). It is for this very reason that domestic legislation regulating deprivations of liberty must meet the highest standards of precision, clarity and foreseeability.

3. With that in mind, I note that the main dispute in respect of the applicant's complaint under Article 5 § 1 in the present case is whether the Moldovan legislation regulating pre-trial detention was precise enough as to allow the applicant understand – if need be, with appropriate advice – what was the maximum length of detention pending trial which could be imposed on him (see *Paladi v. Moldova* [GC], no. 39806/05, § 74, 10 March 2009).

4. According to the 2001 text of Article 25(4) of the Constitution, the duration of detention pending trial is limited to a maximum of twelve months. However, the Government argue that this Constitutional provision is applicable only to detention during the investigation stage of the criminal proceedings. In other words, the Government maintain that the 2001 text of Article 25(4) of the Constitution does not regulate what happens after the criminal case has reached the trial stage. In support of their position, the Government rely on the interpretation given by the Constitutional Court to the 1994 text of Article 25(4) of the Constitution in a 1999 decision and argue that that interpretation is also applicable to the new text of Article 25(4) of the Constitution adopted in 2001. They also let it be understood that the 2003 Code of Criminal Procedure is compatible with the 1999 interpretation by the Constitutional Court of Article 25(4) of the Constitution.

5. On the face of it, the Government's position could appear plausible if not for one problem. In particular, I refer to the case of *Boicenco v. Moldova* (no. 41088/05, 11 July 2006), a case in which the problem under Article 5 § 1 of the Convention concerned the applicability of the 2001 text of Article 25(4) of the Constitution to detention during the trial stage of the proceedings. In that case the Government did not argue that the 2001 text of Article 25(4) was not applicable to detention during the trial stage of the criminal proceedings and that that Article from the Constitution should have been interpreted in the light of the Constitutional Court's decision of 1999. The Court has therefore expressly ruled that the manner in which the

applicant's detention had taken place during the trial stage of the proceedings, had been contrary to the 2001 text of Article 25(4) of the Constitution and found a breach of Article 5 § 1 of the Convention. Moreover, it is worth noting that after the adoption of the *Boicenco* judgment, as admitted by the Government in their observations, changes have been made to the Code of Criminal Procedure in such a way as to make it compatible with the "uninterpreted" 2001 text of Article 25(4) of the Constitution.

6. Thus, I note that in *Boicenco* the Government did not contest the applicability of the 2001 text of Article 25(4) of the Constitution to the trial stage of criminal proceedings, whilst in the present case they had an opposite approach. In the presence of the above obvious inconsistency in the approaches taken by the Government in the two cases, I cannot but feel uncertain about the applicant's capability of understanding – if need be, with appropriate advice – what was the bearing of the 2001 text of Article 25(4) of the Constitution and thus what was the maximum length of detention pending trial which could be imposed on him. It is for this reason that I consider that the relevant domestic legislation falls short of the high standard of precision, clarity and foreseeability required of legislation regulating deprivations of liberty and I voted for a violation of Article 5 § 1 of the Convention.

JOINT DISSENTING OPINION OF JUDGES TURKOVIĆ AND KJØLBRO

1. In our view, the applicant's detention beyond a period of twelve months was not unlawful within the meaning of Article 5 § 1 of the Convention. Therefore, we voted against finding a violation of that provision. As the amount awarded in respect of non-pecuniary damage would have been significantly lower if the Court had found a violation of Article 3 of the Convention only, we voted against granting the applicant the award made by the Court under that head, even though we fully agree that he is entitled to compensation for the non-pecuniary damage sustained during the period of his detention in conditions violating Article 3.

2. The applicant was arrested on 26 March 2008 and held in pre-trial detention until his conviction at first instance on 21 October 2009 (a total of one year, six months and twenty-five days). The applicant's case was sent for trial on 5 September 2008. In other words, his detention during the investigation stage lasted for five months and ten days (from 26 March 2008 until 5 September 2008), and his detention during the trial stage lasted for one year, one month and sixteen days (from 5 September 2008 until 21 October 2009).

3. In the view of the majority, "the legislation on the basis of which the applicant was detained on remand for a period of over eighteen months was not sufficiently clear and foreseeable in its application and thus did not meet the requirement of 'lawfulness'" (see paragraph 51 of the judgment). The majority base their assessment on "the clear wording of Article 25(4) of the Constitution as regards the maximum duration of the detention on remand". According to the provision mentioned, the "period of detention on remand may be extended ... to a maximum period of twelve months" (see paragraph 14 of the judgment).

4. The applicant's pre-trial detention was ordered by a court and extended every month in accordance with domestic legislation (see paragraph 9 of the judgment). In other words, every month a judge assessed whether the conditions laid down in domestic legislation for holding the applicant in pre-trial detention were met.

5. The Constitutional Court, in a judgment of 23 December 1999 (see paragraph 13 of the judgment), interpreted the former Article 25(4) of the Constitution, according to which the "period of detention on remand may be extended ... to a maximum period of twelve months", as referring only to detention during the investigation phase of criminal proceedings, and not the trial phase.

6. Article 25(4) of the Constitution was amended in 2001 (see paragraph 14 of the judgment), and according to the wording of the new provision, the "period of detention on remand may be extended ... to a maximum period of twelve months".

7. We cannot but notice the similarities between the wording of the former and the present Article 25(4) of the Constitution as regards the maximum duration of detention on remand, and there is, in our view, no basis for saying that the Constitutional Court's judgment of 23 December 1999 – interpreting the earlier Article 25(4) of the Constitution as referring only to detention during the investigation stage – is not equally applicable to the new Article 25(4) of the Constitution. In our view, it is common practice that rulings of the highest courts, including constitutional courts, interpreting the Constitution may continue to have relevance and serve as precedents in interpreting the Constitution, even though the provisions of the Constitution may have been amended.

8. That being said, we cannot but notice that the legislature in Moldova on 12 March 2003, in full knowledge of the Constitutional Court's judgment of 23 December 1999 and after the adoption of the new version of Article 25(4) of the Constitution, adopted Article 186 of the Code of Criminal Procedure (see paragraphs 15-17 of the judgment). In our view, it can reasonably be presumed that the legislature in Moldova adopted Article 186 of the Code of Criminal Procedure on the assumption that it was in conformity with the Constitution, and the Court has not been provided with any information about any domestic case-law that might indicate that the legislature was wrong in its assessment of the constitutionality of the provision adopted.

9. Article 186(3) of the Code of Criminal Procedure provides that the maximum duration of detention on remand during the investigation stage of criminal proceedings is twelve months. In accordance with Article 186(8) of the Code of Criminal Procedure, the maximum duration of detention on remand during the trial phase of criminal proceedings is twelve months. Furthermore, Article 186(9) of the Code of Criminal Procedure provides that detention on remand during the trial phase of criminal proceedings may in exceptional circumstances be extended beyond twelve months.

10. Therefore, having regard to the clear wording of Article 186 of the Code of Criminal Procedure, the wording of Article 25(4) of the Constitution as applicable from 2 August 2001 and the wording of the former Article 25(4) of the Constitution as interpreted by the Constitutional Court in its judgment of 23 December 1999, we find it very difficult, if not impossible, to say that the legal basis for extending the applicant's detention beyond twelve months "was not sufficiently clear and foreseeable" (see paragraph 51 of the judgment). On the contrary, we find that the applicant's detention, including the period beyond twelve months, which was extended by a judge every month, had a clear legal basis and was lawful within the meaning of Article 5 § 1 of the Convention.

11. In our view, it is problematic that the Court finds the applicant's detention beyond a period of twelve months unlawful, when there is a clear legal basis in Article 186 of the Code of Criminal Procedure for extending

detention beyond twelve months. It is all the more problematic that the Court does so with reference to the wording of a provision of the Constitution that is very similar to an earlier provision that has been interpreted by the Constitutional Court. In practice, the Court is assessing the constitutionality of a law passed by the legislature, even though the issue of constitutionality was not put before the domestic courts before a complaint on that subject was lodged with the Court. This, in our view, runs counter to the principle of subsidiarity and the role of the Court in interpreting domestic legislation.

12. With the Court's assessment of domestic legislation and its autonomous interpretation of the wording of Article 25(4) of the Constitution, it may be feared that pre-trial detention in Moldova, irrespective of the nature of the crime and the complexity of the investigation and the criminal proceedings, may never exceed twelve months, which would, in practice, create significant difficulties for the judiciary in Moldova.

13. As we are of the view that the applicant's detention was lawful within the meaning of Article 5 § 1 of the Convention, the Court should, in our view, have proceeded to assess the applicant's complaint about the length of his pre-trial detention. However, as the majority have found that there is no need to examine the applicant's complaint under Article 5 § 3 of the Convention, we will abstain from expressing our view on this issue.