CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF OSTROVAR v. MOLDOVA

(Application no. 35207/03)

JUDGMENT

STRASBOURG

13 September 2005

FINAL

15/02/2006

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 Ostrovar v. Moldova,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 25 August 2005,

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

PROCEDURE

1. The case originated in an application (no. 35207/03) 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 Vitalie Ostrovar ("the applicant"), on 28 October 2003.

2. The applicant was represented by Mr Vitalie Nagacevschi, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr Vitalie Pârlog.

3. The applicant complained, in particular, about his conditions of detention, about the breach of his right to correspondence with his mother and to have contacts with his wife and daughter and about not having an effective remedy in respect of the violations of his rights guaranteed by Article 3 and Article 8 of the Convention.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court).

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 22 March 2005, the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1), the Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1974 and lives in Chişinău. He is the former senior assistant to the prosecutor of the Centru District of Chişinău.

1. Background

9. On 24 July 2002 the applicant was arrested by the Moldovan Secret Services on charges of bribe-taking. Later the charges were modified to corruption (*trafic de influenţă*).

10. On 15 August 2002 the Chişinău Regional Court ordered the remand of the applicant for a period of thirty days. The remand was later prolonged by the decisions of the Buiucani District Court of 2 September 2002 and 10 October 2002.

11. On 15 November 2002 the Court of Appeal ordered the applicant's release from detention.

12. On 4 April 2003 the applicant was convicted by the Court of Appeal and sentenced to ten years' imprisonment. He was immediately put in detention. The applicant appealed against that decision. The outcome of the proceedings is unknown to the Court.

2. The applicant's conditions of detention in the Remand Centre No. 3 of the Ministry of Justice

13. The applicant's complaints regarding the conditions of detention relate to two periods of detention served in the Remand Centre No. 3 of the Ministry of Justice *(Izolatorul Anchetei Preliminare Nr. 3)*, namely between 18 October 2002 and 15 November 2002, and between 4 April 2003 and 13 December 2003.

(a) The applicant's submissions

14. The applicant claims to have been detained in a 25 m² cell together with at times more than twenty people. There were twenty metal bunk-beds, with no mattresses or covering and it was not always possible to have access to a bed because of overcrowding. After lodging his application with the Court, he was transferred to a smaller cell of 15 m², where he claims to have had to take turns in sleeping, because of overcrowding, and where the conditions were allegedly considerably worse than before.

15. Smoking inside the cells was not prohibited by the internal regulations of the prison, and because of lack of alternative smoking facilities, the inmates had to smoke inside the cells. The applicant suffered from asthma and the prison administration was aware of this since he had

been arrested and brought to prison immediately after undergoing asthma treatment in hospital, where he was arrested. Because of the exposure to cigarette smoke the applicant suffered many asthma attacks, which usually happened two or three times a day.

16. There was no adequate medical assistance. Although there were medical personnel in the penitentiary, their ability to help was limited because of lack of medication. The applicant asked the prison doctor on many occasions for medical assistance, but he was refused. He was told that the prison did not have the necessary medication. Because of the lack of medication he had to endure the attacks and wait for them to pass, being obliged to sit in a vertical position. His attacks became more frequent and started to last longer. While the prison doctor knew that the applicant suffered from asthma, he gave his permission for the applicant to be placed in a cell with smokers. The applicant had to rely entirely on the supply of medication from his family.

17. His situation was worsened by the fact that the cell's window was closed by shutters and there was no fresh air coming through it. Moreover, the cell was not provided with a ventilation system, and was therefore very damp.

18. Because of lack of heating and insulation the cell was very cold during the winter and very hot during the summer.

19. The shutters on the windows prevented daylight from coming in. Nevertheless, the prison administration limited the electricity supply to the cells to only six hours per day; therefore the inmates had to live in darkness and had great difficulty in preparing food.

20. Water was provided to the cell for only ten hours per day, sometimes less. Access to warm water was limited to only once in fifteen days. There were no facilities for washing and drying clothes. The inmates had to dry their clothes in the cell.

21. Because of poor medical assistance and bad hygienic conditions, the cells were infected with bed bugs, lice and ants. The inmates were exposed to infectious diseases like tuberculosis, skin and respiratory infections.

22. The toilet was situated at 1.5 metres from the dining table and was permanently open. It was impossible to prevent the bad smell because of the lack of adequate water supply and lack of cleaning products.

23. There was no library in the prison and the inmates did not have access to newspapers or other publications. There were no appropriate facilities for recreation and exercise.

24. The food served to the inmates was of a very bad quality. It consisted of boiled water with a bad smell and was almost inedible. The applicant submitted that the Government spent 2.16 Moldovan Lei (MDL) (the equivalent of 0.14 euros (EUR) at the time) for one detainee's food per day, while the price of a loaf of bread was more than MDL 3.

(b) The Government's submissions

25. The applicant was detained in cell no. 16 with a surface of 28.4 m², designed for fourteen detainees, and in cell no. 138 of 19.3 m², designed for ten detainees.

26. In accordance with Article 17 of the Law on Pre-Trial Detention, the applicant could have asked the prison authorities to be removed to another cell with non-smokers.

27. The detainees were provided with medical assistance in accordance with the law. When a prisoner needed medical assistance that could not be provided by the prison doctors, he could be taken to a regular hospital. The prison was provided with medication by the State; however, in cases when the prison lacked certain medication, the detainees had the right to receive it from their relatives. Since the applicant was provided with all the necessary medication, no medical report prescribing other medication was drafted.

28. The prison authorities were aware of the applicant's asthma. According to the Government, the prison register stated that the applicant requested medical assistance only twice, on 2 September and 5 November 2003. In their observations of 31 May 2004, the Government stated that on 5 November 2003 a doctor consulted him and prescribed medication. The Government did not present to the Court a copy of the prison register.

In their supplementary observations on the merits of 10 May 2005, the Government stated that medical assistance and medication were provided to the applicant on both days that he requested them. The Government provided a copy of a hand-written report of 13 May 2004, in which a prison doctor informed the chief medical doctor of the prison that the applicant had been examined by him on those dates and that medication had been provided to him.

29. Ventilation of the cells was effected by opening the windows and fanlights during the detainees' exercise period and by the common ventilation system.

30. Heating was provided by the prison's own heating system which used natural gas and coal.

31. The cells had access to daylight, and electricity was provided continuously.

32. The cells were permanently provided with tap water, and accordingly the inmates enjoyed an adequate level of hygiene. The Government also stated that the detainees had access to warm water.

33. The toilets were separated from the rest of the cell by a wall in order to ensure the privacy of the detainees.

34. The cells were equipped with radio sets, sometimes with television sets.

35. The applicant enjoyed the right to a daily walk outside for one hour with the possibility of exercising.

36. The detainees were provided with free food in accordance with the norms provided by the Government and the quality of food was satisfactory. The prison was provided on a daily basis with bread, vegetable oil, vegetables, tea and sugar. Because of insufficient funding, the provision of meat, fish and dairy products was not always possible. However, the detainees were allowed to receive once a month a parcel with food from their families. Moreover, the detainees had the right to buy food from the prison shop at least once a month, and to spend up to MDL 18 (the equivalent of EUR 1.2 at the time).

37. There was no intention to humiliate or to debase the applicant and the prison authorities did not undertake any action in order to humiliate him.

3. Alleged interference with the applicant's correspondence

(a) The applicant's submissions

38. The letters sent to him by his mother did not always reach him. In support of this submission the applicant sent the Court a receipt of a registered letter with acknowledgement of receipt sent to him by his mother on 1 October 2003, which never reached him.

(b) The Government's submissions

39. According to Article 18 of the Law on Pre-Trial Detention, detained persons needed a written authorisation from the body in charge of their cases in order to be able to correspond with their families. The applicant did not have an authorisation to correspond with or communicate by telephone with his relatives because of the seriousness of the offence he was charged with and in the interests of justice.

4. Alleged denial to the applicant of contact with his wife and daughter

(a) The applicant's submissions

40. The applicant also submits that he was precluded from seeing his wife and his daughter and that he could not have telephone contact with them.

41. On 30 June 2003 the applicant together with other cellmates lodged a complaint with the Prosecutor General, in which the applicant complained *inter alia* about the ban on receiving visits, including long term visits, from his family and other persons. The prisoners asked the Prosecutor General to order the prison authorities to allow them have long term visits, telephone conversations and other kinds of contact with their relatives.

42. On 7 July 2003, the Prosecutor General's Office informed the applicant that his complaint had been forwarded to the Prosecutor's Office of Chişinău.

43. On 25 August 2003 the applicant and his cellmates wrote a new letter to the Prosecutor General's Office complaining about the lack of reply from the Prosecutor's Office of Chişinău to their letter. The prisoners repeated their complaints about the ban on visits by relatives and on telephone conversations with them and complained about an alleged breach of Article 3 of the Convention.

44. On 28 August 2003 the applicant received a letter from the Prosecutor's Office of Chişinău dated 9 August 2003 by which his complaints about the ban on visits were dismissed. In particular it stated: "...all the rights of remanded persons are provided for by Article 16 of the Law on Pre-Trial Detention. Such rights as telephone conversations and long or short term visits by relatives or other persons are not provided for in that law. The fact that these rights are not expressly forbidden does not mean that they are guaranteed".

45. On 1 September 2003 the applicant and his cellmates challenged the Prosecutor's refusal of 9 August 2003 before the Râşcani District Court. Relying on Article 8 of the Convention and on domestic legislation, they complained about the prison authority's and prosecutor's denial of their right to have visits, including long term visits, from their relatives, telephone conversations and other kinds of contact with relatives and other persons. They asked the court to oblige the prosecutor to solve their problem. They also asked the court to hear the case in their presence.

46. On 11 September 2003 the Prosecutor General's Office wrote the applicant a letter dismissing the complaints.

47. On 3 November 2003 the applicant and his co-detainees lodged a supplementary application with the Râşcani District Court asking it to examine their application of 1 September 2003. They argued that in accordance with the Code of Criminal Procedure, the Court was obliged to examine their application within ten days of receipt. The court's failure to comply with that deadline constituted a breach of their right to an effective remedy under Article 13 of the Convention.

48. In the meantime, on 23 October 2003, judge V.M. from the Râşcani District Court examined the applicant's and his cellmates' application of 1 September 2003 in their absence and dismissed it. The court considered that the application had a general character and did not refer to any specific events. The court issued a decision with the application number 13-69/03 dated 23 October 2003.

49. On the same date, the same judge from the Râşcani District Court examined an application of other detainees from Cricova prison concerning alleged abuses by police during a prison riot and dismissed it. The court's decision had exactly the same application number and the same date as the decision in respect of the applicant and his cellmates.

50. On 29 January 2004 the Râşcani District Court informed the applicant and his co-detainees that their application had been dismissed on 23 October 2003.

51. On 4 March 2004 the applicant and his co-detainees wrote a letter to the Râşcani District Court and asked for a copy of its decision of 23 October 2003.

52. On 10 March 2004 the applicant and his co-detainees appealed against the decision of 23 October 2003 to the Chişinău Court of Appeal. In their appeal application they stated *inter alia* that the Râşcani District Court had examined their case in their absence and that it had not even sent them a copy of its decision.

53. On 26 March 2004 the Râşcani District Court sent the applicant and his cellmates a copy of its decision of 23 October 2003 which referred to the riot at Cricova prison.

54. On 14 April 2004 the applicant and his cellmates sent a new letter to the Râşcani District Court and informed it that the decision sent to them on 26 March 2004 did not refer to their case and asked for a copy of their decision. The Court does not have information as to whether the applicant and his cellmates received a reply to this letter.

55. On 28 June 2004 the Chişinău Court of Appeal examined the applicant's appeal against the decision of the Râşcani District Court and dismissed it by a final judgment. In its judgment the Court of Appeal indicated that the applicant and his lawyer had been present at the hearing. However, the facts and the law part referred to the Cricova prison riot and did not have any connection with the applicant's case.

(b) The Government's submissions on the facts

56. The Government submit that according to Article 19 of the Law on Pre-Trial Detention, a detained person needed a written authorisation from the investigation body in charge of his case in order to be able to receive visits from family or from other persons.

57. They claim, and the applicant does not deny, that he received visits from his mother on 30 May 2003, 12 November 2003 and 12 December 2003.

II. RELEVANT NON-CONVENTION MATERIAL

1. Acts of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

58. The relevant parts of the CPT's report concerning the visit to Moldova between 11 and 21 October 1998 read as follows:

"77. Prisoners were accommodated primarily in five buildings. Buildings I, II and VII for the most part accommodated remand prisoners. Male juveniles were held in a section of building III, the basement of which was reserved for prisoners in transit. Women had a separate detention area, situated in Building V. Sentenced prisoners were scattered among the various buildings, except for the buildings housing the detachment of convicted prisoners employed as workers, situated in Building VIII. It should also be noted that all prisoners sentenced to life imprisonment were accommodated in the basement of Building II.

...

80. In contrast, in all the other detention areas, living conditions of the vast majority of the prison population left a considerable amount to be desired. In most of the cells, the living space per prisoner was well below the minimum standard set and the cramming in of persons had reached an intolerable level. For example, in Buildings I and II, up to 16 people were accommodated in cells of 24 m², 24 people had to share a cell of 32 m², and 29 people were packed into a cell of 52 m². In the juveniles' section in Building III, 12 young people were placed in a cell of 21 m² and 16 in a cell of 23 m². In addition, the delegation observed that cells of 8 m² to 9 m² accommodated up to four people.

Furthermore, in these cells access to natural light was very limited, artificial lighting was mediocre, and the air polluted and rank. For prisoners still under investigation (i.e. over 700 prisoners), the situation was even worse, their cells being virtually totally without access to natural light because of the thick external metal blinds covering the windows. By force of circumstances, the equipment was reduced to the bare minimum, comprising metal or bunk beds which were extremely rudimentary and in a poor state, and a table and one or two benches. Furthermore, in many cells, there were not enough beds and prisoners had to share them or sleep in turns. In addition, the bedding was in a bad condition; the very small stocks of mattresses, blankets and sheets was not enough and many prisoners without family or resources had to sleep just on the bed frame.

The cells had a sanitary annex, a real source of infection. Above the Asian toilet was a tap which served both as a flush and as a source of water which prisoners could use to freshen up or wash. Moreover, this area was only partially partitioned by a small low wall less than one metre high, which meant that it was not possible to preserve one's privacy.

The state of repair and cleanliness in the cell blocks, overall, was also of considerable concern. In addition, many of the cells were infested with cockroaches and other vermin and some prisoners also complained that there were rodents.

To sum up, the living and hygiene conditions for the vast majority of the prison population were execrable and, more particularly, constituted a serious health risk.

81. The three transit cells in use at the time of the visit in Building III deserve particular mention. The situation in terms of living space in the cells was without a doubt the worst seen. Up to 18 prisoners were crammed into cells of 18 m². Half of the surface was taken up by a two level wooden platform (without mattress and blankets) completely blocking the window. In addition, the artificial lighting was mediocre and the atmosphere there was suffocating. As the remaining surface of the cell was filled up with the detainees' belongings and an Asian toilet, the detainees had

no other choice but to pile onto the two levels of the platform. A number of detainees had been accommodated in these intolerable conditions for three to four months.

82. As regards washing facilities for prisoners, they had weekly access to the showers. However, the number of showers was notoriously inadequate for the male population (23 showers for approximately 1400 detainees, and moreover, its functioning was unreliable). In addition, prisoners who were not in a position to receive the basic washing necessities from their families were totally left without because of the lack of soap and towels in the prison.

83. The material conditions described above were further aggravated by another major inconvenience. Prisoners had to put up with very loud and repetitive music which was ongoing throughout the day and broadcast by loud speakers in the yard from 6 o'clock in the morning to 10 o'clock at night. The reason given for this measure was to ensure that the various categories of prisoners had no contact with each other. Many prisoners complained about this situation and the delegation was able to see for itself how obtrusive it was. For example, in many of the cells it was virtually impossible to hold a conversation.

...

98. The health care staff in prison No. 3 comprised nine full-time doctors, assisted by seven assistants, 11 nurses and a psychologist. The nine doctors were as follows: one doctor in charge of the prison medical service, two general practitioners, two pneumologists, a psychiatrist, a dermatologist, a radiologist and a dentist. In addition to providing a consultation facility, the medical staff was responsible for an infirmary with a capacity of 70 beds, although in reality, this area accommodated 200 patients, primarily patients suffering from tuberculosis.

The medical team could at a pinch be considered sufficient. However, such is not the case for the team of assistants and nurses."

59. The relevant parts of the CPT's report concerning the visit to Moldova between 10 and 22 June 2001 read as follows:

"69. The visited penitentiary establishments were severely affected by the country's economic situation. The budget ceiling for spending on the prison service under the 2001 Finance Act had been set at 48.7 million Lei (approximately 4.2 million Euros) or 38,9% of the resources needed per year. As a result, prisons suffered from severe shortages from every standpoint. For example, the daily budget for feeding a prisoner was 2.16 Lei, just 38.8% of the current statutory norm. Prisons also suffered form cuts in electricity, water and heating, not to mention the unavailability of medicines necessary for treating prisoners.

In their letter of 5 November 2001, the Moldovan authorities refer to the efforts made at the beginning of 2001 by the Department of Prison Administration to obtain humanitarian aid from international organizations and individuals, in order to resolve the most urgent problems of the prison system (2.3 million Lei have been obtained in this way).

The CPT recognizes the laudable efforts made by the Moldovan prison administration and these deserve to be supported. Nevertheless, the Committee has already recalled on several occasions that there are certain basic necessities of life that

must, in all circumstances, including in a serious economic situation, be assured by the state in respect of persons for which it is responsible. Nothing can ever exempt the state from this responsibility.

As a consequence, the CPT calls upon the Moldovan authorities, at the highest political level, to take without delay the necessary measures in order that all prisons in Moldova may adequately assure the basic necessities of life for all detainees.

...

78. The description of Prison No. 3 in Chişinău in paragraph 77 of the report on the 1998 visit is still valid. As previously indicated, this establishment suffered from severe overcrowding: 1,892 prisoners (mainly remand prisoners), including 127 women and 122 juveniles, for 1,480 places.

82. For example, the follow-up visit to Prison No. 3 in Chişinău revealed positive changes which the CPT welcomes. It particularly approves of the removal of the heavy blinds covering the windows of cells looking onto the interior of the establishment. It is also planned to replace the blinds on the windows looking onto the street with an alternative arrangement that will let in sufficient natural light.

...

...Major repairs had also been made to the heating with, in particular, the installation of a new boiler, while the prison's central showers had been completely renovated (three shower rooms were operational and a fourth was being repaired) with the help of former prisoners and prisoners' families. This made it possible for male prisoners to take a shower, with hot water, every ten days. In certain buildings, moreover, repair work on the electrical system and painting of the corridors had been completed. A few cells were currently undergoing refurbishment.

That said, the appalling living conditions and state of hygiene in buildings I, II and III, including the transit cells, described in paragraphs 80 and 81 of the previous report, had not changed (except as far as access to natural light is concerned). Indeed, the acute overcrowding in these buildings exacerbated matters still further. In the few cells viewed that were properly equipped and fitted out, this was due to the prisoners themselves, who had been able to procure what was needed from their families.

...

87. The absence of organised activity programmes was a common feature of the establishments visited. This was undoubtedly a consequence of the economic situation and overcrowding, but also of the restrictive legislation governing the categories of prisoners accommodated there. Only a minute fraction of the prison population had work: some sixty in Bender and Chişinău and twenty-seven in Cahul. The majority of these prisoners formed part of the workforce allocated to the various prison duties. Other forms of activity were almost non-existent. It should be noted, however, that some efforts had been made in Prison No. 3, following the CPT's recommendations. For example, the outdoor exercise areas had been equipped with modest sports facilities. In this context, management plans to fit out two sports halls as soon as possible deserve particular support. Improvements had also been made to the juvenile detention regime: a television room had been provided and a few activities organised, such as music, singing and group discussions/debates. However, these early attempts

to meet the needs of young persons remain an isolated example. In the other establishments, they were left entirely to their own devices.

...

92. The follow-up visit to Prison No. 3 showed that compared with 1998 (see paragraph 98 of the report) the situation regarding health staffing levels had deteriorated. In particular, the number of nurses had fallen (from eleven to eight) added to which, two of these posts were vacant. The number of doctors and medical assistants remained the same, 9.5 and 7 respectively, but the post of head doctor was vacant. Such a team is not sufficient to meet the needs of almost 2,000 prisoners, a significant number of which were in the prison hospital (149), particularly as far as the care staff is concerned (medical assistants and nurses). The number of complaints received concerning access to medical staff and medical care is therefore hardly surprising.

...

95. As indicated in the preliminary remarks, the supply with necessary medication was problematic in the visited establishments. The detainees mostly depended on their families or on non-governmental organisations in order to obtain the necessary medication (for example, Pharmaciens sans Frontières at Prison No. 3)...

98. From the standpoint of medical confidentiality, medical examinations and consultations did not take place in appropriate conditions in any of the establishments. As a rule, everything took place in the custody areas at cell doors (through the hatch), in the presence of guards. If prisoners had to be treated in a consultation room, guards were also in attendance. The situation in Prison No. 3, in the so-called "procedure" room in the infirmary, was particularly undignified. Treatment was administered through a closed door with bars, with an opening measuring 37 cm². The patients concerned then had to present the relevant part of the body, be it forearm or buttocks, in full view of other prisoners and staff.

99. There also needs to be a review of access to a doctor and a medical assistant. The delegation observed that when they were doing their daily rounds, the medical assistants only had minimal contact with prisoners, and always in the presence of guards. As a result, it proved very difficult to request consultations, which had to be done through guards. Many complaints were received about the considerable delays in gaining access to care staff and the barriers erected by guards. The CPT recommends that this situation be remedied.

100. There are several indicators to suggest that the situation regarding tuberculosis, already a matter of concern in 1998, is deteriorating. For example, in Prison No. 3, there has been a constant increase in the number of recorded active cases, from 54 in January 2000 to 121 in June 2001. Moreover, according to statistics supplied, tuberculosis accounts for 42% of the deaths in prison.

121. The CPT notes the improvements made in Prison No. 3 to the conditions in which visits take place, with the refurbishment of the booths used for short visits and rooms fitted out for convicted prisoners' long visits. Nevertheless, the visiting areas remain insufficient, given the capacity of the establishment. ... The CPT invites the Moldovan authorities to develop the facilities for visits in the establishments visited at the earliest possible opportunity."

60. In paragraph 87 of its report concerning the visit to Azerbaijan between 24 November and 4 December 2002, the CPT recommended that prison authorities should offer a minimum of 4 m² per prisoner.

2. Relevant domestic law

61. The relevant provision of the Constitution of the Republic of Moldova reads as follows:

Article 30

"(1) The State shall ensure the privacy of letters, telegrams and other postal dispatches, of telephone conversations and of the use of other legal means of communication".

62. This principle is restricted in relation to detainees. Specific provisions relating to the privacy of prisoners' correspondence were set out in the Code for the Execution of Criminal Sentences.

63. The relevant provisions of the Code for the Execution of Criminal Sentences read as follows:

Article 14

"(1) A convicted prisoner shall enjoy rights established in the legislation on the execution of criminal sanctions in accordance with the nature of the sanction and the restrictions of any of his rights imposed upon him by the sentencing court.

(2) A convicted prisoner shall be entitled:

(c) to receive and send mail, and to submit explanations, proposals and complaints in his language, and, if necessary, to use the services of an interpreter."

Article 73

"(1) A convicted prisoner shall be entitled to receive and send an unlimited number of letters and telegrams.

(2) A convicted prisoner's outgoing and incoming correspondence ... shall be subject to censorship. A petition addressed to an ombudsman by a detained person shall not be verified by the prison administration and shall be transmitted to the addressee within twenty-four hours (as amended by Law no. 18-XIV of 14 May 1998).

(4) A convicted prisoner's proposals, requests and complaints addressed to an hierarchically higher legal authority shall be dispatched to such authority within three days."

64. The relevant provisions of the Law on Pre-Trial Detention No. 1226-XIII read as follows:

Article 16. The rights of remanded prisoners

"1. Remanded prisoners have the right to:

d) to be visited by their lawyer, relatives and other persons;

f) to correspond with their relatives and with other persons, to send complaints, requests and letters to public authorities and to public servants in accordance with the provisions of Article 18;"

Article 18. Correspondence, complaints and requests

"(1) Remanded prisoners can correspond with their relatives and with other persons on the basis of a written authorisation by the person or the authority in charge with their case. Letters written or received by the remanded persons are sent to the addressees or handed by the prison authority to the remanded persons within three days."

65. By virtue of Law No. 206-XV of 29.05.2003 which entered into force on 18 July 2003 the following was added at the end of the first sentence:

"who can limit the correspondence in the interest of the criminal investigation or in the interest of justice, as well as in the interest of security and order in the detention facility."

66. By virtue of the same law the words "within three days" were replaced with "within twenty-four hours".

Article 19

"(1) The administration of the remand centre allows the remanded person to have contact with his or her relatives or other persons, if the contact is authorised by the investigating body charged with the remanded person's case. As a rule, the remanded person has this right once a month. The length of a meeting shall be from one to two hours."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

67. The applicant complained under Article 3 of the Convention about the conditions of detention in the Remand Centre No. 3 of the Ministry of Justice *(Izolatorul Anchetei Preliminare Nr. 3)*. Article 3 reads as follows:

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

A. Submissions of the parties

68. The applicant argued that in view of the overcrowding and the inadequacy of the sanitary conditions, ventilation, heating, opportunities for recreation, health care and food, the conditions of detention in the remand centre amounted to inhuman and degrading treatment during both his first and second periods of detention.

69. In support of his statements the applicant sent the Court pictures allegedly taken in cell number 16, in which he had been detained between April and November 2003. The pictures show a heavily overcrowded cell with detainees lying on the floors and under bunk beds. The whole surface of the floor is covered with mattresses of different colours and with people sleeping on them. One can see three to four people sharing one bunk bed. There are approximately 18-20 people in the cell. The walls are dirty and appear to be damp. Because of the lack of storage space, the cell is full of lines with clothes and towels hanging on them. It appears that it is hot in the cell since all the detainees are half naked. There is a small window which is closed by thick bars and shutters. A detainee has his back covered with a rash.

70. The Government argued that the applicant could not have had a camera in the prison because it was forbidden for detainees to have cameras. Moreover, the Government submitted that the pictures could not be considered by the Court as evidence since in the Remand Centre No. 3 there were no scenes of the type shown in the photographs.

71. Referring to their submissions on the facts, the Government considered that the conditions, during both the first and the second periods of detention, did not amount to inhuman and degrading treatment. They submitted that the findings of the CPT in their 1998 and 2001 reports (see paragraphs 58 and 59 above) were not relevant because the situation had improved since.

72. In support of their submission the Government forwarded to the Court a twelve minute video filmed on an unspecified date. The video starts with images of a pile of coal and wood. Then it shows a boiler room with a functioning boiler. It later shows cell number 138 in which the applicant was allegedly detained. There are no detainees in the cell and it looks clean. The beds have mattresses on them and there are no lines on the walls. There is a sink and a toilet which is separated from the rest of the cell by a brick wall which looks new and different from the rest of the walls because it is unrendered. There is a television set in the cell. Images of ventilation pipes in a corridor appear on the video. The video continues with a presentation of the recreation room. One half of the room has metal bars and wire nets instead of a ceiling and one can see the sky through them. It appears that fresh air and rain are passing through the open part of the ceiling. In the part of the room that has a solid roof, there is a training bicycle and some lifting

weights. The video also shows a leisure room with a television and a few books. The video then continues with images of cell number 16, in which the applicant was allegedly detained. It is possible to see a sink with running water and some bunk beds. The video ends with an image of the door of the medical care office.

73. In his comments the applicant objected that there was no date indicated in the Government's video. He further argued that the piles of coal and wood did not prove that there was heating in the prison as the video did not show any radiators in the cells. Had there been any radiators in the cells, they would have been shown in the film. The ventilation pipes from the corridor did not prove that there was any ventilation in the cells in which the applicant was detained. Had there been any ventilation in those cells, the video would have shown it. The images showed bed linen of different colours, which is indicative of the fact that it was not the prison authorities who provided the detainees with it, but then the detainees had brought it themselves from home. The television set from the cell was also the property of some detainee, but not of the prison. The number of bunk beds confirmed the allegation of overcrowding. It was obvious that before shooting the film the cells had been "prepared". Thus, there was perfect order in the cells and there were no any objects or food on the table. The beds were freshly made and untouched which did not look real since the detainees were always kept in the cells and they always sat on their beds. The applicant stated that the images of cell number 16 in the video were taken in such a way as to preclude the viewer from noting its resemblance with the images from the pictures sent by him. When filming the toilet, the walls were not included so that the mould could not be seen. The sports room was not usable in the winter because it was outdoors. The viewer could see that there were very few books in the library. As to the shutters on the windows, the applicant stated that they had probably been taken off for purposes of shooting the video.

74. As regards the medical assistance provided to the applicant the Government argued that the applicant could not claim to be a victim of insufficient medical treatment since in August 2002 he did not observe the doctor's advice and left the hospital before the end of the treatment. Referring to a report of 13 May 2004 (see paragraph 28 above) the Government argued that he was afforded medical assistance on the only two occasions he asked for it, and that he did not contract any infectious disease while in detention. The Government also argued that he was kept in a cell with smokers because he did not request to be removed to another cell.

75. According to the applicant, he left the hospital in August 2002 because he was arrested there and taken directly into detention. He also argued that during his detention he asked for medical assistance in writing on nine occasions, and it was provided to him only once, in the prison corridor, in front of the door of his cell. The doctor only prescribed some

medication without providing it to him. The Government deliberately omitted to attach to their observations copies of his written requests for medical assistance. Insofar as the report of 13 May 2004 was concerned (see paragraph 28 above), the applicant argued that it was written a long time after the alleged events took place. He also submitted that he orally requested to be transferred to a non-smoking cell, but there were no non-smoking cells in the prison.

B. The Court's assessment

76. Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV).

77. To fall within the scope of Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

78. The Court has considered treatment to be "inhuman" when, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" when it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, for example, *Kudla v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). In considering whether a particular form of treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object was to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see, for example, *Raninen v. Finland*, judgment of 16 December 1997, *Reports of Judgments and Decisions*, 1997-VIII, pp. 2821-22, § 55, and *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

79. The State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things,

providing him with the requisite medical assistance (see, *Kudla v. Poland* cited above, § 94). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions and the duration of the detention (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II and *Kalashnikov v. Russia*, no. 47095/99, § 102, ECHR 2002-VI).

80. The applicant complains about the conditions in which he was detained in the Remand Centre No. 3 of the Ministry of Justice between 18 October 2002 and 15 November 2002, and between 4 April 2003 and 13 December 2003. The findings of the CPT, in particular in their 1998 and 2001 reports (see paragraphs 58 and 59 above), provide at least to some degree a reliable basis for the assessment of the conditions in which he was imprisoned (see, for another example of the Court's taking into account the reports of the CPT, *Kehayov v. Bulgaria*, no. 41035/98, § 66, 18 January 2005). While the Court does not discount that some improvements may have taken place lately, it is unlikely that the situation changed much between June 2001 and October 2002, since the Government have not shown that there was any increase in public funding of the prison system or that any significant change in the State's policy in this respect took place. Had there been any significant improvements, the Government could have pointed them out, the more so as the applicant expressly invoked the CPT reports in his application.

81. The Court notes that the parties have sent in support of their submissions some photographs and a video allegedly showing the conditions of detention from the cells in which the applicant was detained. Since it is impossible to ascertain when and in what circumstances these images were created, the Court does not consider it possible to take them into consideration.

82. It is noted that the two cells in which the applicant was detained measured 25 m² and 15 m² (according to the applicant) and 28.4 m² and 19.3 m² (according to the Government). According to the information provided by the Government, which was not contested by the applicant, the cells were designed for 14 and 10 inmates respectively. Accordingly, the cells were designed to provide between 1.78 and 2.02 m² and between 1.5 and 1.93 m² for each inmate. The Court considers that such accommodation cannot be regarded as attaining acceptable standards. In this connection it recalls that the CPT has stated in a report, drafted following a visit to Azerbaijan between 24 November and 4 December 2002, that 4 m² per prisoner was an appropriate and desirable guideline for a detention cell (see paragraph 60 above).

83. Despite the fact that the cells in which the applicant was detained were designed for a specific number of inmates, as indicated by the Government, the applicant submitted that the actual number of inmates in the first cell was at times higher than twenty and that after being transferred

to the second cell, he had to take turns in sleeping. The Government did not contest this allegation nor did they submit any evidence to the contrary.

84. In these circumstances the Court does not find it of crucial importance to determine the exact number of inmates in the cells during the periods concerned. It is, however, persuaded that the cells were overpopulated, something which in itself raises an issue under Article 3 of the Convention (see *Kalashnikov v. Russia*, cited above, § 97).

85. The Court further notes that the Government do not deny that the applicant was kept in a cell with prisoners who were permitted to smoke in the cell. At the same time it is an undisputed fact that the applicant was suffering from asthma and that the prison authorities were aware of his condition but did not take any steps to separate him from smokers. In its decision on admissibility of 22 March 2005 the Court held, in respect of the Government's contention that the applicant should have requested a transfer to a non-smoking cell, that that remedy was not effective. Accordingly, the Court considers that the Government did not fulfil their obligation to safeguard the applicant's health and instead allowed him to be exposed to cigarette smoke, which was dangerous in view of his medical condition, particularly, since the applicant was kept in the cell twenty-three hours a day.

86. The quality of medical assistance provided in the prison, the number of requests for medical assistance made by the applicant, and the number of medical consultations enjoyed by him are disputed between the parties (see paragraphs 16, 27 and 28 above). However, the Court notes that the applicant's submissions are consistent with the findings of the CPT (see paragraphs 58 and 59 above). In their observations on admissibility the Government stated that there was a record of regular medical visits in the prison register. They did not, however, provide a copy of this document to the Court. In the absence of such a contemporaneous record, the Court is not satisfied that it has been proven that the applicant received the regular medical attention he requested. This conclusion is reinforced by the fact that the Government submitted contradictory statements in respect of the number of times the applicant enjoyed medical assistance (see paragraph 28 above).

87. It is undisputed by the Government that the toilet was situated at a distance of 1.5 metres from the dining table and smelt bad due to the lack of cleaning products. The Government did not contest the allegations that the detainees had access to a shower only once in fifteen days, that the cells were infected with vermin, and that the inmates were exposed to infectious diseases like tuberculosis, skin and respiratory infections.

88. As to the food, it appears from both the applicant's and the Government's submissions that the detainees were not provided with sufficient protein since meat, fish and dairy products were not always available.

89. Having regard to the cumulative effects of the conditions in the cell, the lack of full medical assistance, the exposure to cigarette smoke, the inadequate food, the time spent in detention and to the specific impact which these conditions could have had on the applicant's health, the Court considers that the hardship the applicant endured appears to have exceeded the unavoidable level inherent in detention and finds that the resulting suffering went beyond the threshold of severity under Article 3 of the Convention.

90. The Court therefore finds that the conditions of detention of the applicant were contrary to Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

91. The applicant complained that the prison authorities intercepted his correspondence with his mother and that he could not have visits from his wife and daughter. Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Correspondence with his mother

1. Submissions of the parties

92. The Government submitted that in accordance with Article 18 of the Law on Pre-Trial Detention (see paragraph 64 above), a remanded prisoner could correspond with his or her relatives and with other persons only on the basis of a written authorisation given by the person or authority in charge of his or her case. That person or authority could impose a justified limitation on the detainee's correspondence, in the interest of justice or in the interest of security and order within the detention facility. The remanded prisoner's letters were checked by the prison authority.

93. The Government considered that the provisions of Article 18 of the Law on Pre-Trial Detention were accessible and formulated with sufficient precision to enable a person to regulate his or her conduct in an appropriate way. They recalled that the applicant used to work as a prosecutor, and therefore should have been aware of the provisions of Article 18, and that in any event he had been informed about all his rights and obligations provided by the Code of Criminal Procedure.

94. The applicant did not have an authorisation to correspond with his relatives or with other persons because of the socially dangerous character of his acts and in the interests of justice.

95. The Government also submitted that the correspondence with his mother was not the only way of maintaining ties with the outside world since he had also received visits from his family (see paragraph 57 above).

96. The applicant submitted that the prison authorities did not inform either him or his mother about the need to lodge a request in order to obtain an authorisation to correspond. Neither did they issue a reasoned decision to restrict the applicant's right to correspondence. Moreover, in his particular case, the prohibition on corresponding with his mother was not necessary in a democratic society.

2. The Court's assessment

97. An interference will contravene Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and furthermore is "necessary in a democratic society" in order to achieve the aim (see the following judgments: *Silver and Others v. the United Kingdom*, 25 March 1983, Series A no. 61, p. 32, § 84; *Campbell v. the United Kingdom*, 25 March 1992, Series A no. 233, p. 16, § 34; *Calogero Diana v. Italy*, 15 November 1996, *Reports* 1996-V, p. 1775, § 28; *Petra v. Romania*, 23 September 1998, *Reports* 1998-VII, p. 2853, § 36).

98. The expression "in accordance with the law" not only necessitates compliance with domestic law, but also relates to the quality of that law (*Halford v. the United Kingdom* judgment of 25 June 1997, *Reports* 1997-III, p. 1017, § 49). The Court recalls that domestic law must indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities so as to ensure to individuals the minimum degree of protection to which citizens are entitled under the rule of law in a democratic society (*Domenichini v. Italy* judgment of 15 November 1996, *Reports* 1996-V, p. 1800, § 33).

99. It is clear that there was an "interference by a public authority" with the exercise of the applicant's right to respect for his correspondence. In their submissions, the Government referred to Article 18 of the Law on Pre-Trial Detention (see paragraph 64 above) as being the legal ground for the interference with the applicant's correspondence with his mother.

100. The Court is satisfied that this provision met the requirement of accessibility. However, the same is not the case in respect of the requirement of foreseeability. The provision did not draw any distinction between the different categories of persons with whom the prisoners could correspond. Also it did not lay down any principles governing the grant or refusal of authorisation, at least until 18 July 2003, when the provision was amended (see paragraph 65 above). It is also to be noted that the provision

failed to specify the time-frame within which the restriction on correspondence could apply. No mention was made as to the possibility of challenging the refusal to issue an authorisation or as to the authority competent to rule on such a challenge (compare to *Calogero Diana v. Italy*, cited above, §§ 32-33).

101. In the light of the foregoing considerations, the Court concludes that Article 18 of the Law on Pre-Trial Detention did not indicate with reasonable clarity the scope and manner of the exercise of discretion conferred on the public authorities in respect of restrictions on prisoners' correspondence. It follows that the interference complained of was not "in accordance with the law" within the meaning of Article 8.

102. The Court therefore finds that there has been a violation of Article 8 of the Convention in respect of the applicant's right to correspond with his mother.

B. Contacts with wife and daughter

1. Submissions of the parties

103. In their observations of 31 May 2004 on the admissibility and merits, the Government did not deny the applicant's allegation that he could not receive visits from his wife and daughter. They only stressed that according to Article 19 of the Law on Pre-Trial Detention (see paragraph 66 above), an authorisation was needed for receiving visits. In their supplementary observations on the merits of 10 May 2005 the Government submitted that such visits were not accorded because the applicant's wife did not formally request them. In any event, the Government argued that since the applicant had the right to receive visits from his mother, he did have contact with the outside world. When referring to the interference in accordance with Article 19 of the Law on Pre-Trial Detention, the Government submitted that it was in accordance with the law, pursued a legitimate aim of preserving public order and preventing crime and was necessary in a democratic society.

104. The applicant argued that his wife orally asked the first instance court to authorise her to visit her husband, but the court refused. The fact that the applicant complained to the prosecutor and later instituted proceedings in which he challenged the ban on visits is proof of that. In any event, the interference did not have a legitimate aim and was not necessary in a democratic society.

2. The Court's assessment

105. Any detention which is lawful under Article 5 of the Convention entails by its very nature a limitation on private and family life. However, it

is an essential part of a prisoner's right to respect for family life that the prison authorities assist him in maintaining contact with his close family (see, for example, *Messina v. Italy (no. 2)*, no 25498/94, § 61, ECHR 2000-X). At the same time, the Court recognises that some measure of control over prisoners' contacts with the outside world is called for and is not of itself incompatible with the Convention (see, for example, *mutatis mutandis*, the *Silver and Others v. the United Kingdom*, cited above, § 98).

106. In view of the dismissal of the requests lodged by the applicant with the Prosecutor's Office and the domestic courts in which he demanded the right to receive visits from his family (see paragraphs 41-55 above), the Court considers that there was an interference with the applicant's right to have contacts with his wife and daughter. The Court is ready to accept that the interference was based on Article 19 of the Law on Pre-Trial Detention.

107. For similar reasons as in the case of Article 18 (see paragraphs 100-101 above), the Court is not satisfied that this provision met the requirement of foreseeability. Accordingly, it considers that Article 19 of the Law on Pre-Trial Detention does not indicate with reasonable clarity the scope and manner of exercise of discretion conferred on the public authorities in respect of restrictions on prisoners' contacts with family and other persons and that therefore the interference complained of was not "in accordance with the law".

108. The Court therefore finds that there has been a violation of Article 8 of the Convention in respect of denial to the applicant of contact with his wife and daughter.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

109. The applicant argued that he did not have an effective remedy before a national authority in respect of the breaches of Articles 3 and 8 of the Convention and alleges a violation of Article 13, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...."

A. Submissions of the parties

110. The Government disputed that the applicant did not have an effective remedy and referred again to the remedies which had already been declared non-effective by the Court in its decision of 22 March 2005.

111. The applicant affirmed the position expressed in his observations on admissibility of 10 September 2004, that there were no effective remedies against the inhuman and degrading conditions of detention in Moldova.

B. The Court's assessment

112. As regards Article 13 taken together with Article 3, the Court notes that the Government failed to submit evidence as to the existence of any effective domestic remedies (see the decision on admissibility of 22 March 2005). Accordingly, the Court considers that it has not been shown that effective remedies existed in respect of the applicant's complaints and that there was a breach of Article 13 of the Convention in respect of the applicant's conditions of detention.

113. Insofar as Article 13 taken together with Article 8 is concerned, the Court recalls that Article 13 cannot be interpreted as requiring a remedy against the state of domestic law, as otherwise the Court would be imposing on Contracting States a requirement to incorporate the Convention (see *Appleby and Others v. the United Kingdom*, no. 44306/98, § 56, ECHR 2003-VI). In so far, therefore, as no remedy existed in domestic law in respect of the quality of Articles 18 and 19 of the Law on Pre-Trial Detention, the applicant's complaint is inconsistent with this principle. In these circumstances, the Court finds no breach of Article 13 of the Convention taken together with Article 8.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. 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

115. The applicant claimed EUR 9,000 for non-pecuniary damage, of which EUR 5,000 was claimed for the breach of his right not to be detained in inhuman and degrading conditions, EUR 2,000 for the breach of his right to correspond with his mother and EUR 2,000 for the breach of his right to have contacts with his wife and daughter. Insofar as Article 13 of the Convention is concerned, the applicant submitted that a finding of a violation would be sufficient just satisfaction for him.

116. The applicant submitted that the conditions in which he was detained caused him feelings of frustration, uncertainty and anxiety which could not be compensated solely by a finding of a violation. Referring to the breach of his right to correspond with his mother, the applicant stated that he undoubtedly suffered damage as a result of the fact that he could not communicate with her about his needs in respect of medication and that he was in permanent distress because he did not know how long his reserves of

medication would last. As regards the contacts with his wife and daughter, he was running the risk of losing his family and it was difficult not to see his only child for such a long period.

117. The Government disagreed with the amounts claimed by the applicant. They argued that the amount claimed for the violation of Article 3 of the Convention was excessive. As regards the amounts claimed in respect of the violations of Article 8, they submitted that the finding of a violation would constitute sufficient just satisfaction.

118. The Court notes that the applicant, who was suffering from asthma, was detained for a period of over nine months in overcrowded cells together with smokers for twenty-three hours per day, without appropriate medical care, without appropriate food and in inappropriate sanitary conditions. Moreover, while being dependent on his family for the supply of medication, he was also deprived of the possibility of corresponding with his mother and of seeing his wife and daughter. In such circumstances, the Court considers that the applicant must inevitably have suffered frustration, uncertainty and anxiety which cannot be compensated solely by a finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

119. The applicant also claimed EUR 2,940 for the costs and expenses incurred before the Court.

120. The Government did not agree with the amount claimed, stating that it was excessive. According to the Government, the amount claimed by the applicant was too high in the light of the average monthly wage in Moldova and the official fees paid by the State to *pro bono* lawyers. The Government also contested the number of hours spent by the applicant's representative on the case.

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

122. In the present case, regard being had to the itemised list submitted by the applicant, the above criteria and the work done by the applicant's lawyer, the Court awards the applicant EUR 1,500.

C. Default interest

123. 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. *Holds* unanimously that there has been a violation of Article 3 of the Convention;

2. *Holds* unanimously that there has been a violation of Article 8 of the Convention, in respect of the applicant's right to correspond with his mother;

3. *Holds* unanimously that there has been a violation of Article 8 of the Convention, in respect of the denial to the applicant of contact with his wife and daughter;

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

5. *Holds* unanimously that there has been no violation of Article 13 of the Convention, taken together with Article 8 of the Convention;

6. *Holds* unanimously
   (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 3,000 (three thousand euros) in respect of non-pecuniary damage, and EUR 1,500 (one 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;

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

Done in English, and notified in writing on 13 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President