FOURTH SECTION

CASE OF CIORAP v. MOLDOVA

(Application no. 12066/02)

JUDGMENT

STRASBOURG

19 June 2007

FINAL

19/09/2007

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 Ciorap v. Moldova,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ, *judges*,
and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 29 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 14437/05) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Tudor **Ciorap** ("the applicant") on 5 December 2001.

2. The applicant, who was granted legal aid, was represented by Mr V. Iordachi from "Lawyers for Human Rights", a non-governmental organisation based in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Pârlog.

3. The applicant complained under Article 3 of the Convention (inhuman conditions of detention and force-feeding), under Article 6 § 1 (access to court in regard to his force-feeding), under Article 8 (censorship of correspondence, the right to meet his family in private) and under Article 10 (access to the internal regulations of the remand centre).

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 11 October 2005 a Chamber of that Section declared the application partly inadmissible and decided to communicate the remaining complaints to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Chişinău.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. The applicant worked for "Social Amnesty", an NGO specialising in offering legal help to persons deprived of their liberty. He claims that as a result of his activities he became the target of persecution. In two sets of proceedings he was charged with a number

of serious fraud offences. The applicant is a second degree invalid and has been diagnosed with "mosaic schizophrenia".

1. Conditions of detention

8. On 23 October 2000 the applicant was arrested. On 6 November 2000 he was transferred to the remand centre of the Ministry of Justice (also known as prison no. 3, subsequently re-named prison no. 13) in Chişinău. He spent certain periods of time in the Pruncul detainee hospital. He was convicted of a number of crimes but is still remanded on other charges.

9. According to the applicant, the conditions of detention were inhuman. In particular, he referred to the overcrowding in the cells (which occasionally meant 2-3 detainees for each $2m^2$ of space), accompanied by the fact that detainees with infectious diseases such as tuberculosis were kept together with other detainees, especially during hunger-strikes; the presence of parasitic insects; the lack of proper ventilation and access to daylight; the rudimentary sanitary conditions which left no room for privacy; the loud radio that was constantly on between 7 a.m. and 10 p.m. together with the very poor quantity and quality of food served. Before 27 May 2005 electricity and cold water were only available for several hours a day. The applicant described his food ration for one day as consisting of 100 grams of porridge with water twice a day and a soup consisting mostly of water for lunch, with an additional 400 grams of bread for the whole day. In support of his complaint regarding the overcrowding in the cell he gave the example of his transfer to cell no. 11 on 2 August 2001, which he shared with five other persons despite the fact that only two bunk beds were available. He claimed that he had to sleep on the floor due to the insufficiency of beds and had access only to electric light for six hours a day. Another example was his detention in cell no. 17a, which accommodated 10 persons in an area of $12m^2$.

10. The applicant referred to the report of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) for 2004 (see paragraph 47 below) and the report of the Ministry of Justice regarding the conditions of detention in prison no. 13 (see paragraph 43 below).

11. According to the applicant, he complained to various authorities about his conditions of detention. This was disputed by the Government. The applicant submitted replies from the Penitentiaries' Department and the Public Order Department at the Ministry of Internal Affairs, which dealt, *inter alia*, with the applicant's conditions of detention. In addition, he submitted copies of his complaints to the Government and the administration of prison no. 3, in which he also complained about the conditions of detention. In its letter of 29 December 2003 the Penitentiaries' Department conceded that prison no. 3 was "periodically overcrowded", which led to an increase in the spread of pediculosis and skin disease. The presence of parasitic insects was also confirmed, although no complaints had been received in this respect from detainees. In 2002-2003 a major disinfection had been carried out in the prison.

12. In a letter to the prison administration dated 17 February 2002 the applicant complained about the absence of beds in cell no. 72 where he was detained at that time, the detainees having to sleep on wooden shelves. He referred to the limited access to daylight and fresh air due to metal blinds covering the window and the presence of strong smells and damp, as well as the presence of parasitic insects, which prevented him from sleeping. In a letter dated 26 May 2002 the applicant complained about his transfer for ten days to

solitary detention cell no. 7 which was very damp and caused him to fear that he would contract tuberculosis. In addition, he had not been given food for three days and there were rodents in the cell. There was no furniture, except for a bed which was retracted into the wall during daytime, the applicant having to sit on the bare concrete floor. There was no window and he had electric light for only 5-6 hours a day, leaving him in total darkness for the rest of the time. He requested the visit of a doctor and his transfer to another cell. It appears that the applicant did not receive a reply to these two complaints and the Government have not commented on them. In his "hunger-strike diary" the applicant noted his transfer to cell no. 11 on 2 August 2001 and the presence of five more persons there.

13. According to a letter from the Ministry of Justice dated 25 November 2005, the applicant had been detained in cells nos. 2, 17a, 53, 70a, 84, 89 and 116 all measuring 8-12m^2. The number of detainees which those cells could accommodate was not specified and no details were given as to the number of detainees who had been actually detained in those cells together with the applicant. The only exception was cell no. 116, where the applicant was detained at the time of filing the observations (13 December 2005), which measured 10m^2 and in which one other person was detained. In a letter to another person detained in the same cell, no. 116, dated 30 November 2005, the Prosecutor General's Office stated that "all the persons detained in that cell have a bed and bed linen". The video recording submitted by the Government showed two bunk beds in the cell, one of which was placed across the toilet. According to the Government, electricity and cold water were permanently available and there was natural light in each cell. The applicant had the right to a bath every week. Food was given in accordance with the relevant Government regulations, including meat and fish "depending on availability". Detainees could buy food from the local shop and were allowed to receive parcels from the outside. In addition, the applicant had been treated on many occasions by various doctors as a result of his hunger-strikes and self-mutilation and he benefited from the better conditions in the prison hospital.

2. Force-feeding

(a) The applicant's force-feeding

14. The applicant began a hunger-strike on 1 August 2001 as a result of alleged violations of his rights and those of his family. Since no prosecutor came to discuss with him the alleged violations for two weeks, on the night of 14 August 2001 he cut his wrists and set fire to himself. He was treated and was subsequently force-fed a number of times. The applicant submitted his "hunger-strike diary", in which he noted the dates and manner of his force-feeding, his state of health during the relevant period and his transfers to various cells. The applicant wrote that he had requested to be given food intra-venously rather than by means of a stomach tube.

15. Following the applicant's complaint, on 13 September 2001, the duty doctor made a preliminary diagnosis: "right-sided inter-muscular inguinal hernia?" (*"hernie intermusculară inghinală din dreapta?"*). On 14 September 2001 a surgeon established the diagnosis: "abscess of the connection of the fore wall?" ("*abces de legătură a peretelui anterior?"*). Treatment was ordered but the applicant refused it. He submitted that, having refused treatment on 14 September 2001, he was transferred for a few days to a dark, cold and damp solitary confinement cell with no furniture.

16. The prison psychiatrist who examined the applicant several days after the incident of 14 August 2001 declared in court that he had found that the applicant had been perfectly aware of the consequences of his actions and had explained them as a last measure of protest against abuses of his rights. The doctor added that he had been pressured into signing an act declaring the applicant mentally ill, which he refused to do. In August – September 2003 the applicant underwent in-patient treatment after he had been diagnosed, *inter alia*, with mosaic psychopathy.

17. In an answer to the applicant's lawyer, the prison administration confirmed that on 3 August 2001 the applicant had begun a hunger-strike and was given a medical examination the same day. On 15 August 2001 he cut his veins and set fire to himself and was treated immediately. On 23 August the doctor found his state of health relatively satisfactory. On 24 August a doctor found that the applicant's health was deteriorating and ordered force-feeding. He was force-fed a total of seven times, including on 28 August, 3, 5, 6, 7 and 10 September 2001. On 14 September 2001 the applicant was transferred to a detainee hospital and he ended his hunger-strike on 4 October 2001. The feeding took place on the basis of Article 33 of the Law on pre-trial detention (see paragraph 40 below) and a special instruction (see paragraph 41 below). That instruction had not been published but it appears that the applicant had known its contents since he mentioned it in his "hunger-strike diary". The prison regulation was not published either but did not contain any provision regarding force-feeding. On 23 December 2003 a copy was exceptionally sent to the applicant.

18. According to documents submitted by the Government, the applicant was escorted to court hearings on 4 and 13 September 2001. The applicant noted in his "hunger-strike diary" that he had not been fed on 4 and 13 September 2001 since he had been brought to court on those dates. In response to the Court's request to submit all relevant medical documents concerning the applicant's force-feeding, including the results of any medical tests made, the Government submitted the following documents. Several types of medical investigations of the applicant's health took place after 11 September 2001, including blood and urine analyses, cardiac and other measurements. According to the register of visits by the duty doctor, the applicant's health was satisfactory during most of the period 1 – 21 August 2001. On 23 August 2001 the duty doctor found that the applicant's health was "relatively satisfactory" but considered that he was not sufficiently fit to participate in criminal investigation actions, having complained of general weakness and dizziness. On 24 August 2001 the duty doctor noted "Force-feeding was administered in accordance with the instruction (milk 800ml, sugar 50gr)". Similar remarks were made on 28 August 2001, 3, 5, 6, 7 and 10 September 2001. On a number of these dates, the duty doctor noted that the applicant's health had been "relatively satisfactory", while on 5 September 2001 it was "satisfactory". No indication of the nature of the food administered was noted for the dates 5-7 September 2001.

(b) Court proceedings regarding the applicant's force-feeding

19. In October 2001 the applicant lodged a complaint about the force-feeding and about the pain and humiliation caused by that process. He described the process as follows: he was always handcuffed, even though he never physically resisted force-feeding but simply refused to take food as a form of protest. The prison staff forced him to open his mouth by pulling his hair, gripping his neck and stepping on his feet until he could no longer bear the pain and opened his mouth. His mouth was then fixed in an open position by means of a metal mouth-widener. His tongue was pulled out of his mouth with a pair of metal tongs

which he claims left it numb and bleeding each time. A hard tube was inserted as far as his stomach through which liquidised food passed into his stomach provoking, on some occasions, sharp pain. When the metal holder was removed from his mouth, he bled, he could not feel his tongue and was unable to speak. The instruments used for his force-feeding were not fitted with single-use, soft protection layers to prevent pain and infection.

20. According to the witness statement made in court by C.S., a nurse who personally witnessed the applicant's force-feeding, the applicant had not always resisted force-feeding and no handcuffing had been necessary on such occasions, but it was a mandatory procedure, which she considered to be painful, but necessary to save lives. B.A., a generalist who personally force-fed the applicant, declared in court that occasionally the food introduced "did not correspond to the instruction".

21. V.B., a detainee in the same remand centre, gave evidence in court that he had seen blood on the applicant and on other detainees after they had been force-fed. The applicant requested to be fed milk or to be given vitamins through an intra-venous drip. He also submitted copies of decisions to place him in a solitary cell for periods of 10 days for hunger-strikes on 22 April and 15 October 1994, 19 and 28 July, 21 August, 31 October, 24 November and 4 December 1995. The latter sanction mentioned that the applicant "categorically continued to refuse to take food".

22. On 4 November 2001 the Centru District Court refused to examine the complaint because it did not comply with procedural requirements. On 18 February 2002 that court again refused to examine his complaint on the same ground. On 25 April 2002 the Chişinău Regional Court quashed that decision and ordered a re-hearing, finding that the applicant, as a detainee, could not fully observe the formalities and that the specific nature of his complaint warranted an examination of his case on the merits.

23. On 7 November 2002 the Centru District Court rejected his claim as unfounded. It focused on the lawfulness of force-feeding and qualified his refusal to eat as a violation of detention rules. On 30 April 2003 the Chişinău Regional Court upheld that judgment.

24. On 19 April 2003 the Supreme Court of Justice quashed the previous judgments and ordered a full re-hearing. The court noted that the lower courts had not established clearly whether medical necessity had been the basis for the force-feeding of the applicant.

25. On 9 October 2003 Article 33 of the Law on Remand (which had provided for the force-feeding of detainees on hunger-strike) was amended to expressly prohibit the force-feeding of detainees.

26. On 15 February 2005 the Centru District Court rejected his claims as unfounded. It found that the law (applicable at the time), which provided for the force-feeding of detainees who refused to eat, was not contrary to national or international human rights standards, aiming as it did at protecting the lives of such detainees. The applicant's force-feeding was based on medical necessity as established by the medical personnel and his handcuffing and other restrictive measures were necessary to protect him from danger to his health and life. The court found that in view of his resistance to force-feeding it was necessary to apply to him "special means, including handcuffs" and that it did not amount to inhuman or degrading treatment. The court did not deal with the witness statements of C.S., B.A. or V.B. (see paragraphs 20 and 21 above).

27. On 26 April 2005 the Chişinău Court of Appeal upheld that judgment, essentially repeating the reasons of the Centru District Court. The court noted that the witnesses heard

by the lower court had denied having tortured the applicant and that there was no evidence to support his claim.

28. The applicant appealed to the Supreme Court of Justice, relying, *inter alia*, on evidence of damage to his health as a result of force-feeding such as a broken tooth and an abdominal infection. He also relied on his inability to pay and mentioned his second-degree invalidity. The court refused to examine his appeal because the applicant had not paid court fees of 45 Moldovan lei (MDL) (the equivalent of 3 euros (EUR) at the time). He requested the court to waive those fees because he had no sources of income and could not afford to pay them. The court responded by a letter of 13 June 2005, explaining that his appeal:

> "does not correspond to the provisions of Articles 436, 437 of the Civil Procedure Code... According to Article 438 § 2 if the appeal does not correspond to the provisions of Article 437 or if the court fee has not been paid, the court returns it within 5 days under the signature of the president or the vice-president of the court. For these reasons we return your appeal for elimination of shortcomings. ..."

3. Access to court

29. The applicant's appeal in cassation lodged with the Supreme Court of Justice in respect of his force-feeding was not examined by that court for failure to pay the court fees (see paragraph 28 above).

30. The applicant had won court proceedings in 2003 and had received MDL 1,800. By a judgment of 1 July 2005 he was awarded MDL 5,000. However, this decision was appealed and the applicant did not receive any of that award in 2005. The applicant paid MDL 1,000 for the assistance of a lawyer during his detention. He was also compensated for lost mail by the postal authorities of France and the United Kingdom (EUR 55).

31. In several letters to the domestic authorities he claimed that the court fees and his other expenses had been paid by his relatives or friends. In a letter of 25 September 2003 he asked the prison administration to receive the compensation from the postal authorities and to transfer it to his lawyer.

32. The applicant initiated court proceedings requesting a court order to oblige the Government to provide him with the financial means for initiating various court proceedings. On 18 June 2004 the Supreme Court of Justice dismissed this complaint for failure to follow the extra-judicial dispute settlement procedure before initiating the proceedings.

4. Censorship of correspondence

33. The applicant further submitted copies of several letters, including from the Parliament (e.g., letter of 10 October 2002), the Ministry of Justice (11 October 2001), the Constitutional Court (18 September 2002), an Ombudsperson (23 August 2001), a psychiatric hospital (16 April 2002) as well as from law-enforcement agencies such as the prosecutor's office (11 July 2002) and non-governmental organisations such as "Amnesty International" (28 July 2003) and "Lawyers for Human Rights" (10 February 2003). Most of these letters bear prison stamps indicating the entry number and date. Occasionally, a handwritten instruction is given: "to be handed [to the applicant]" and/or by a note with his name and his cell number (including cell nos. 11, 13, 15, 20 and 72). Other letters bear the stamp only on the envelope. Some of the letters were addressed to the prison administration and the applicant, but all of the letters mentioned above were addressed to the applicant only.

5. Meetings with the applicant's relatives

34. The applicant submitted that except for a first visit by his family at the beginning of his detention, he communicated with them through a glass partition using an internal telephone. Such visits were limited to about two hours a month and no privacy was possible since five cabins for such visits were placed next to each other. All physical contact was excluded. Convicted persons were allowed much longer visiting times in separate meeting rooms without a glass partition. The applicant did not have such privileges because, although convicted of some offences, he was still on remand on other charges. He further stated that he had been denied visits by his family for long periods of time (up to a year).

35. The applicant requested better conditions for visits. On 21 August 2003 he asked for permission to have longer visits (see the preceding paragraph) from his girlfriend and his sister and noted that his conviction had become final on 28 May 2003. This request was refused on the basis of the "Statute of the remand centre".

36. He initiated court proceedings against the administration of the remand centre requesting the right to have better visiting conditions, notably to be able to meet his visitors in a separate room for a longer time and without the glass partition. The administration submitted that such visits were prohibited by the prison rules, which aimed at protecting the safety and order of the remand centre. On 25 December 2003 the Court of Appeal rejected the applicant's claim.

37. On appeal he added a request for more regular visits and invoked the fact that he was both a convict and a detainee on remand. He stressed the long period of time during which he had not had any physical contact with relatives and described how he missed such contact, given also that he could not contact them by telephone. The applicant insisted that he had obtained on numerous occasions the agreement of the judge in charge of his case for meetings with relatives, but that the prison administration allowed meetings only in the glass cabin. He noted that occasionally the internal telephone in the glass cabin had not worked and that he had had to shout to be heard by his relatives, which was an embarrassment since four other families had had to do the same. The applicant invoked Article 8 of the Convention.

38. The Supreme Court of Justice, in its final judgment of 21 April 2004, refused to examine the request for more regular visits as it had not been lodged with the first-instance court. It also rejected the main request for better visiting conditions, invoking the security of the detainees as the justification for the glass partition.

B. Relevant non-Convention material

1. Relevant domestic law and practice

39. The relevant provisions of the Code of Civil Procedure read as follows:

Article 85 Waiver of court fees

(1) The following are exempted from payment of court fees in civil proceedings:

(a) Plaintiffs in actions:

...

- regarding compensation for damage sustained as a result of bodily harm or other harm to health or as a result of death;
- regarding compensation for damage arising out of a crime; ...

(4) Depending on his or her financial situation, the person may be exempted by the judge (the court) from payment of court fees, either entirely or in part.

Article 437 Content of the application to the court

...

(2) Proof of payment of court fees is to be annexed to the application; the provisions of Articles 85 (4) and 86 do not apply."

40. The relevant provisions of the Law on pre-trial detention of 27 June 1997, in force until 9 October 2003, read as follows:

"Article 18 Correspondence - Lodging of complaints, requests and sending of letters

... "(2) Complaints, requests and letters from [persons detained awaiting trial] shall be subject to censorship by the prison authorities. Complaints, requests and letters addressed to the public prosecutor shall not be subjected to any control and shall be despatched to the addressee within twenty-four hours of their being filed.

Article 19 Authorisation of meetings

(1) The authorities of the remand centre shall authorise meetings of detainees with their relatives or other persons, with the written approval of the person or authority in charge of the case. Usually one meeting per month shall be authorised. The meeting may last from one to two hours.

...

(3) Authorised meetings shall take place under the supervision of the remand centre authorities. In the event of a violation of the rules, the meeting shall end.

Article 33 Manner of force-feeding

(1) A detainee who has refused to take food shall be subjected to force-feeding on the basis of a written report by the doctor in charge of that detainee.

(2) The following shall be force-fed:

(a) persons whose life is in danger as a result of their persistent refusal to take food;

...

(4) A person who refuses to take food shall be force-fed by medical personnel in the presence of at least two guards or other representatives of the authorities of the detention facility. Should it be necessary, such a person shall be restrained with handcuffs and held in the correct position by the guards.

(5) The duration of the procedure of force-feeding of the detainee, the calorific value of the food and the name and function of the person who fed the detainee shall be indicated in the latter's medical record.

(6) Should the health of a person refusing to take food improve, the force-feeding shall end. A detailed medical report shall be drawn up on the subject and the relevant entries made in the medical records. ..."

41. According to the *Instruction regarding the detention in prisons of persons refusing to take food and the manner of their force-feeding*, adopted in 1996 by the Ministry of Health and the Ministry of Justice on 15 August 1996 and coordinated with the Prosecutor General's Office, an "ill-founded" refusal to take food shall be considered a breach of the detention regime. A person found to be in breach shall be transferred, within 24 hours from the date of the actual refusal to take food, to a solitary confinement cell. A doctor shall determine the need to force-feed a detainee refusing to take food and the regime to be followed, in accordance with the detainee's somatic condition of the organism, and shall explain, before each feeding, the dangers associated with the refusal to eat. Should a detainee resist his force-feeding, he shall be handcuffed and held in the required position by two guards or other prison representatives who must always be present, and a mouth-widener shall be applied. Each instance of force-feeding shall be registered in the detainee's medical file, indicating the date, the composition of the food and its quantity. Should a detainee's condition improve, the force-feeding shall end and the reasons shall be given in the medical file.

42. On 24 October 2003 the Parliament adopted decision no. 415-XV, regarding the National Plan of Action in the Sphere of Human Rights for 2004-2008. The Plan includes a number of objectives for 2004-2008 aimed, *inter alia*, at improving the conditions of detention, including the reduction of overcrowding, improvement of medical treatment, involvement in work and reintegration of detainees, as well as the training of personnel. Regular reports are to be drawn up on the implementation of the Plan. On 31 December 2003 the Government adopted a decision on the Concept of reorganisation of the penitentiaries' system and the Plan of Action for 2004-2013 for the implementation of the Concept of reorganisation of the penitentiaries' system, both having the aim, *inter alia*, of improving the conditions of detention in penitentiaries. In addition, on 21 April 2004 the Government approved the creation of a Centre for technical and material assistance to the penitentiaries' system.

43. On an unspecified date the Ministry of Justice adopted its "Report on the implementing by the Ministry of Justice of Chapter 14 of the National Plan of Action in the sphere of human rights for 2004-2008, approved by the Parliament Decision no. 415-XV of 24 October 2003". On 25 November 2005 the Parliamentary Commission for Human Rights adopted a report on the implementation of the National Plan of Action. Both those reports confirmed the insufficient funding of the prison system and the resulting failure to implement fully the action plan in respect of the remand centres in Moldova, including prison no. 3 in Chişinău, in particular concerning the provision of sufficient space, food and bedding. The first of these reports mentioned, *inter alia*, that "as long as the aims and actions in [the National Plan of Action] do not have the necessary financial support ... it will remain only a good attempt by the State to observe human rights, described in Parliament Decision no. 415-XV of 24 October 2003, the fate of which is non-implementation, or partial implementation." On 28 December 2005 the Parliament adopted a decision no. 370-XVI "Concerning the results of the verification by the special parliamentary commission regarding the situation of persons detained pending trial in remand centre no. 13 of the Penitentiaries' Department whose cases are pending before the courts". The decision found, *inter alia*, that "the activity of the Ministry of Justice in ensuring conditions of detention does not correspond to the requirements of the legislation in force."

44. The relevant provisions of domestic law concerning the remedies available for complaints under Article 3 of the Convention have been set out in *Ostrovar v. Moldova* ((dec.), no. 35207/03, 22 March 2005) and *Boicenco v. Moldova* (no. 41088/05, §§ 68-71, 11 July 2006).

45. The relevant provisions of domestic law concerning detainees' correspondence, in addition to those mentioned in paragraph 40 above, have been set out in *Meriakri v. Moldova* ((striking out), no. 53487/99, §§ 17-24, 1 March 2005).

In addition, Article 301 of the new Code of Criminal Procedure reads as follows:

> "(1) Operational-investigative measures involving limitations to the right of inviolability of person, home or correspondence, telephone and telegraph conversations and other forms of communication, as well as other measures provided for by law shall be carried out with the authorisation of the investigating judge. ..."

2. *Reports of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*

46. In its Report on its visit to Moldova on 10-21 June 2001, the CPT found (unofficial translation):

> "61. The delegation drew attention to the issue of contacts with the outside world for persons deprived of their liberty. A considerable number of persons complained of the ban on corresponding with their relatives and receiving visits. It appeared that contact by detainees with the outside world was left to the total discretion of the police officers and/or persons in charge of the institutions, with a very restrictive attitude being taken in this respect.
>
> Concerning the suspects of crimes the CPT accepts that, in the interest of the investigation, some restrictions on visits may indeed be imposed for certain persons. However, these restrictions should be strictly limited to the specific needs of the case and should be applied for as short a time as possible. In no circumstances may visits to a detainee by

his family and friends be prohibited for long periods of time. If there is considered to be an ongoing risk of collusion, it is preferable to authorise visits under strict supervision; this approach should also cover correspondence with family and close friends.

...

The CPT recommends that the Moldovan authorities review the legal regulations and existing practice in this field, in the light of the observations formulated above."

47. In its report on the visit to Moldova on 20-30 September 2004, the CPT found (unofficial translation):

"50. The CPT delegation again heard repeated complaints from persons charged with and convicted of administrative offences concerning the refusal of permission for them to receive visits or have contact with the outside world in EDPs.

The CPT reiterates (see paragraph 61 of the report on the 2001 visit) that, where persons awaiting trial are concerned, if it is necessary in the interests of the investigation to place restrictions on visits for some of them, the restrictions should be strictly limited in time and applied for the shortest period possible. In no circumstances should visits to a detained person by family and friends be prohibited for a prolonged period. If there is thought to be an ongoing risk of collusion, it is better to allow visits under strict supervision. ...

55. The situation in the majority of penitentiaries visited, in view of the economic situation in the country, remained difficult and the delegation encountered a number of problems already identified during its visits in 1998 and 2001 in terms of physical conditions and detention regimes.

Added to this is the problem of overcrowding, which remains serious. In fact, even though the penitentiaries visited were not operating at their full capacity – as is the case of prison no. 3 in which the number of detainees was appreciably smaller than during the last visit of the Committee – they continued to be extremely congested. In fact, the receiving capacity was still based on a very unsatisfactory 2 m^2 per detainee; in practice, this was often even less.

73. Facilities for contact with the outside world left much to be desired. Although there was no restriction on parcels and letters, inmates were entitled only to brief visits totalling three hours every three months, which were in practice often reduced to one hour. What is more, visits took place under oppressive conditions in a room where prisoners were separated from visitors by a thick wire grille, with a guard stationed nearby at all times.

79. The follow-up visit to prison no.3 in Chişinău revealed an unsatisfactory situation. The progress noted was in fact minimal, limited to some running repairs. The ventilation system had been repaired primarily thanks to the financial support of civil society (especially NGOs), and the creation of places for daily recreation had been made possible only as a result of contributions by the detainees and their families.

The repair, renovation and maintenance of cells are entirely the responsibility of detainees themselves and of their families, who also pay for the necessary materials. They must also obtain their own sheets and blankets, the institution being able to give them only used mattresses.

In sum, the conditions in the great majority of cells in Blocks I-II and the transit cells continue to be very poor indeed. ...

Finally, despite the drastic reduction in overcrowding, the rate of occupancy of cells is still very high, not to say intolerable.

83. Except in the Lipcani Re-education Colony for Minors, where the efforts made in this respect are to be highlighted, the quantity and quality of detainees' food everywhere is a source of grave concern. The delegation was inundated with complaints regarding the absence of meat and dairy products. The findings of the delegation, regarding both the stocks of food and the menus, confirm the credibility of these complaints. Its findings also confirmed that in certain places (in Prison no. 3, ...), the food served was repulsive and virtually inedible (for instance, insects and vermin were present). This is not surprising given the general state of the kitchens and their modest equipment.

The Moldovan authorities have always claimed financial difficulties in ensuring the adequate feeding of detainees. However, the Committee insists that this is a fundamental requirement of life which must be ensured by the State to persons in its charge and that nothing can exonerate it from such responsibility. ..."

3. European Prison Rules

48. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies), insofar as relevant, reads as follows:

"Contact with the outside world

24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

24.3 National law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted.

24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

24.5 Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.

..."

THE LAW

1. Complaints

49. The applicant complained of violations of his right guaranteed by Article 3 of the Convention. Article 3 reads as follows:

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

50. He also complained about a violation of his rights guaranteed by Article 6 of the Convention as a result of the courts' refusal to examine his complaint about force-feeding due to his failure to pay court fees. The relevant part of Article 6 reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

51. The applicant complained of violations of his rights guaranteed by Article 8 of the Convention as a result of the censorship of his correspondence and the refusal to provide him with acceptable conditions for meeting with his visitors. Article 8 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."

52. The applicant finally complained under Article 10 of the Convention about the lack of access to the internal prison regulation. Article 10 reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

2. Scope of the case

53. The Court notes that in the operative part of its partial inadmissibility decision of 11 October 2005 regarding the present application it adjourned the examination of the applicant's complaints referred to above and of two additional complaints, namely regarding the fairness of the 2001 revision proceedings and the right to appear in person before civil courts. In fact, the Court found, in paragraph 5 of the decision, that those two complaints were inadmissible. They were not, accordingly, communicated to the Government. The Court observes that, notwithstanding the operative part of its decision of 11 October 2005, these two complaints were dealt with in that decision and that there is no further need to examine them here.

I. ADMISSIBILITY OF THE COMPLAINTS

54. The applicant complained that the conditions of his detention in prison no. 3 amounted to inhuman and degrading treatment contrary to Article 3 of the Convention (see paragraphs 9-12 above).

55. The Government disagreed and relied on evidence to the contrary (see paragraph 13 above). They argued that the applicant had not exhausted available domestic remedies in respect of the complaints under Article 3 of the Convention. They relied, in particular, on the case of *Drugalev v. The Ministry of Internal Affairs and the Ministry of Finance* case (referred to in *Boicenco*, cited above, § 68).

56. The Court recalls that an individual is not required to try more than one avenue of redress when there are several available (see, for example, *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, p. 12, § 23).

57. In so far as the remedy of a civil action to request an immediate end to the alleged violation is concerned, the Court has already found that the *Drugalev* case relied on by the Government did not constitute sufficient evidence that such a remedy was effective (*Holomiov v. Moldova*, no. 30649/05, § 106, 7 November 2006). The applicant's own complaint made to the courts regarding his force-feeding, relying expressly on Article 3 of the Convention, was examined over a period of almost 4 years (see paragraphs 19-28 above), which confirms once more the lack of any timely impact of civil actions in trying to obtain an immediate cessation of an alleged violation of Article 3 of the Convention.

58. Moreover, the applicant had expressly complained about his conditions of detention to the Penitentiaries' Department and the administration of the remand centre (see paragraph 11 above). The Government have not submitted that these were not effective remedies which the applicant was not required to exhaust.

In such circumstances, this complaint cannot be rejected for failure to exhaust available domestic remedies.

59. The Court considers that the applicants' complaints under Articles 3, 6, 8 and 10 of the Convention raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of their merits. No grounds for declaring them inadmissible have been established. The Court therefore declares these complaints admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of the complaints.

II. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

A. Conditions of detention

60. The applicant complained that the conditions of his detention in prison no. 3 amounted to inhuman and degrading treatment contrary to Article 3 of the Convention (see paragraphs 9-12 above).

61. The Government considered that the applicant had been detained in acceptable conditions (see paragraph 13 above). Any suffering which he may have sustained did not exceed the level normally associated with detention.

62. The Court recalls that 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). It has also found that the distinction between "torture" and "inhuman or degrading treatment" was intended to "attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering" (*Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, § 167).

The Court refers to further principles established in its case-law in respect of conditions of detention (see *Sarban*, cited above, §§ 75-77, 4 October 2005) and of force-feeding (see *Nevmerzhitsky v. Ukraine*, no. 54825/00, §§ 79-81, ECHR 2005-II (extracts)).

63. 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, for example, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

64. 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, *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions and the duration of the detention (see *Ostrovar v. Moldova*, no. 35207/03, § 80, 13 September 2005).

65. In the present case the parties disagreed as to the number of persons detained in the cell together with the applicant, the amount of personal space left to the applicant and even the cell numbers in which he had been detained. The Court notes that the parties agreed that the applicant had been detained in cell no. 17a (see paragraphs 9 and 13 above). According to the applicant, he had been detained there with ten other persons. This was not disputed by the Government, which merely noted that that cell measured $12m^2$ but gave no details as to the number of detainees kept in it. The Court concludes that each detainee in that cell had just over $1m^2$ of space, which is manifestly below an acceptable minimum.

66. While the Government disputed that the applicant had been detained in cell no. 11, the Court notes that some of the letters addressed to him were directed by the prison authorities to the applicant in cell no. 11 (see paragraph 33 above). The applicant also noted his transfer to cell no. 11 in his "hunger-strike diary" (see paragraph 12 above). The Court finds that the materials in the file provide sufficient indication that the applicant was detained in cell no. 11. The Government have not given any details regarding the size of that cell or the number of detainees which it could accommodate. The Court will,

accordingly, assume that the applicant's account is correct and that there were more detainees than beds in cell no. 11 on 2 August 2001 when he was transferred there following the start of his hunger-strike.

67. The Court notes that the above findings correspond to those made by the CPT in its report on its visit to Moldova in 2004: despite a drastic reduction of the number of detainees in prison no. 3, each detainee still had less than $2m^2$ of space (see paragraph 47 above). It further notes that the domestic authorities also conceded that that prison had occasionally been overpopulated (see paragraph 11 above). The Court doubts that the applicant could have had $5m^2$ of space as suggested by the Government throughout his five-year period of detention while other detainees had less than half that space. It notes that even the video submitted by the Government shows a capacity of four places in the cell in which the applicant was being detained at the moment of filming (see paragraph 13 above). The Court has already found that overpopulation in itself raises an issue under Article 3 of the Convention (see *Kalashnikov v. Russia*, no. 47095/99, § 97, ECHR 2002-VI and *Ostrovar v. Moldova*, no. 35207/03, § 84, 13 September 2005), especially when it lasts for long periods as in the case of the applicant, who was detained on remand for over five years in prison no. 3.

68. The Court also notes that the Penitentiaries' Department confirmed, in its letter of 29 December 2003, the presence of parasitic insects in prison no. 3 (see paragraph 11 above). The Government have not commented on this, nor on the applicant's complaint made in his letters of 17 February and 26 May 2002 regarding the presence of damp, the lack of beds, the presence of rodents and the lack of access to either daylight or electricity for up to 18 hours a day during the applicant's solitary detention for 10 days (see paragraph 12 above). The general statement that all cells had windows and ventilation does not suffice to rebut the specific allegations mentioned above.

69. The applicant's complaint regarding the quantity and quality of food served is consonant with the findings of the domestic authorities and the CPT (see paragraphs 43 and 47 above). In *Ostrovar v. Moldova* (cited above, § 88), the Court made a similar finding in respect of an applicant detained in the same prison partly during the same period as the present applicant. While noting the video film and other evidence of improvements in the present-day detention conditions, which are encouraging, the Court observes that the complaint refers to the period 2001 onwards.

70. In light of the above, the Court does not consider it necessary to deal with the other allegations made by the applicant since it finds that the conditions of his detention had been inhuman, in particular as a result of extreme overcrowding, unsanitary conditions and the low quantity and quality of food, as well as the prolonged period during which the applicant had been detained in such conditions.

71. There has, accordingly, been a violation of Article 3 of the Convention on account of the applicant's conditions of detention.

B. Force-feeding

1. Arguments of the parties

72. The applicant complained that he was force-fed in the absence of any medical necessity for this, and about the manner in which the force-feeding had been carried out. He submitted that the force-feeding had had a punitive character and had been primarily aimed at obliging him to stop his hunger-strike protest by subjecting him to severe pain and

degrading treatment (see paragraphs 14-18 above). Moreover, the manner in which it had been carried out caused him unnecessary pain and humiliation and did not offer sufficient protection to his health. As a result, he had suffered a broken tooth and had contracted an abdominal infection.

73. The Government disagreed. According to them, the applicant's force-feeding was based on a clearly established medical need, was ordered and carried out by qualified medical personnel and was authorised by law. The applicant's refusal to eat for 24 days had exposed his life to a real risk and it was the duty of the doctors to protect him. According to the Government, a healthy person's life was in danger after 30 days of starvation, while more vulnerable persons such as the applicant would be exposed to risk in a much shorter period.

74. In respect of the manner of feeding the applicant by force, in particular the use of handcuffs and other equipment, the Government noted that it had been made strictly necessary by the applicant's resistance and had been in accordance with the law in force at the relevant time and with various recommendations of international organisations. Moreover, the applicant's suicidal behaviour and his being diagnosed with "mosaic schizophrenia" (see paragraph 7 above) were additional factors making the restraints necessary. Finally, the applicant's abdominal infection had nothing to do with the force-feeding.

75. The applicant relied on the statement made in court by the prison psychiatrist who had examined him shortly after the incident of 14 August 2001 (see paragraph 16 above) and who had found him to be of sound mind.

2. The Court's assessment

76. The Court notes that in its previous case-law the Commission held that the "forced-feeding of a person does involve degrading elements which in certain circumstances may be regarded as prohibited by Article 3 of the Convention. When, however, ..., a detained person maintains a hunger-strike this may inevitably lead to a conflict between an individual's right to physical integrity and the High Contracting Party's positive obligation under Article 2 of the Convention – a conflict which is not solved by the Convention itself" (see *X v. Germany* (1984) 7 EHRR 152).

77. The Court reiterates that a measure which is of therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading (see *Jalloh v. Germany*[GC], no. 54810/00, § 69, ECHR 2006-...). The same can be said about force-feeding that is aimed at saving the life of a particular detainee who consciously refuses to take food. The Convention organs must nevertheless satisfy themselves that the medical necessity has been convincingly shown to exist (see *Herczegfalvy v. Austria,* judgment of 24 September 1992, Series A no. 244, p. 26, § 83). Furthermore, the Court must ascertain that the procedural guarantees for the decision to force-feed are complied with. Moreover, the manner in which the applicant is subjected to force-feeding during the hunger-strike must not trespass the threshold of the minimum level of severity envisaged by the Court's case law under Article 3 of the Convention (*Nevmerzhitsky*, cited above, § 94).

(a) As to the existence of a medical necessity to force-feed the applicant

78. The Court notes that the applicant went on hunger-strike on many occasions, including during the second part of 1995, when he had been on hunger-strike at least once a month (see paragraph 21 above). It was not submitted that on any of the previous hunger-strikes he had been force-fed, nor that his life and health had been in danger. Moreover, the two 10-day isolation ward periods applied to him on 24 November and 4 December 1995 (when he was also detained in prison no. 3) reflect the administration's position that not only was the applicant's life not in danger as a result of his hunger-strike but that he had to be held in harsher than normal conditions for a total of 20 days as a sanction (see paragraph 21 above).

79. The sanctions applied to the applicant in 1994-1995 confirm that the hunger-strikes were considered by the prison authorities to be violations of the rules and acts of disobedience towards the prison administration which required a serious response, including the solitary confinement of the applicant. The domestic courts also appear to have taken a similar view of the applicant's case (see paragraph 23 above) and the instruction on the basis of which the applicant had been force-fed had express provisions to that effect (see paragraph 41 above). Such an attitude is consonant with the applicant's claim that his force-feeding was not aimed at protecting his life but rather at discouraging him from continuing his protest.

80. The Court finds it strange that the applicant's condition was considered so serious as to require force-feeding on 3, 5, 6, 7 and 10 September 2001 while at the same time he was considered sufficiently fit to attend court hearings on 4 and 13 September 2001 (see paragraph 18 above). It also observes that, despite his alleged weakness as a result of his prolonged refusal to take food for 24 days, interrupted by seven force-feedings, and despite his abdominal infection, the applicant's condition was considered to be good enough for him to be allowed to continue his hunger-strike for another 24 days without any apparent need for force-feeding (see paragraph 17 above).

81. The Court notes the domestic courts' finding that there was sufficient evidence of a medical necessity to force-feed the applicant in order to save his life (see paragraphs 26 and 27 above). However, having examined the materials submitted by the Government at the Court's request, the Court does not see any evidence of a medical test or other investigation on the basis of which the duty doctor had decided to initiate the force-feeding (see paragraph 18 above). On the other hand, extensive tests were carried out after the end of the force-feeding. Indeed, the only reference attesting to the start of the force-feeding was a simple note of 24 August 2001 indicating that force feeding had taken place and the type and quantity of food that had been administered. No reasons were given for the decision to start the force-feeding procedure. Moreover, the applicant's health was each time assessed as "relatively satisfactory" or even "satisfactory" by the duty doctor (see paragraph 18 above), which is hardly compatible with a life-threatening condition requiring force-feeding.

82. The Court further observes that in accordance with Article 33(1) of the Law on pre-trial detention (see paragraph 40 above), as well as the instruction in accordance with which the applicant had been force-fed (see paragraph 41 above), a doctor should give reasons for force-feeding. No such reasons were given in the applicant's case. It follows that this basic procedural safeguard was not respected in the applicant's case.

83. In view of the lack of medical evidence that the applicant's life or health were in serious danger, it cannot be said that the authorities acted in the applicant's best interests in

subjecting him to force-feeding, which of itself raises an issue under Article 3 of the Convention (see *Nevmerzhitsky*, cited above, § 96). Moreover, in the light of the prison authorities' view that hunger-strikes were violations of prison order (see paragraphs 78and 79 above), the Court finds that there are sufficient grounds to accept the applicant's claim that his force-feeding was in fact aimed at discouraging him from continuing his protest.

(b) As to the manner of force-feeding the applicant

84. The applicant complained, moreover, about the excessively painful manner of his force-feeding, aimed at discouraging him from continuing his protest and at serving as a warning to others about the harsh treatment they could expect should they follow his example.

85. The Court is struck by the manner of the force-feeding in the present case (see paragraphs 19-21 above), including the unchallenged facts of his mandatory handcuffing regardless of any resistance, the causing of severe pain in order to force him to open his mouth and the pulling of his tongue outside of his mouth with metal tongs. The Court will assume that statement to be true, given also the unchallenged statement in court made by V.B. (see paragraph 21 above) about seeing blood on the applicant's clothes after his force-feeding.

86. In addition, a number of procedural guarantees prescribed by domestic law (see paragraphs 40 and 41 above) such as clarifying the reasons for starting and ending the force-feeding or noting the composition and quantity of food administered were not observed or only partly observed (see paragraph 18 above).

87. The Court finally notes that the applicant had requested to be given intra-venous drips instead of being force-fed and that he offered his family's assistance in bringing him the necessary drips (see paragraph 21above). He appears not to have received a reply to this request and neither the domestic courts nor the Government commented on this. It follows that there was a less intrusive alternative to force-feeding which was not even considered, despite the applicant's express request.

88. Even assuming that neither his broken tooth nor his abdominal infection had anything to do with the applicant's force-feeding, the Court concludes that the manner in which it was carried out had been unnecessarily painful and humiliating.

(c) Conclusion

89. In light of the above, the Court concludes that the applicant's repeated force-feeding, not prompted by valid medical reasons but rather with the aim of forcing the applicant to stop his protest, and performed in a manner which unnecessarily exposed him to great physical pain and humiliation, can only be considered as torture (see *Nevmerzhitsky*, cited above, § 98).

There has, accordingly, been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

90. The applicant complained that the refusal of the Supreme Court of Justice to examine his complaint regarding the force-feeding amounted to a violation of his right of access to court, guaranteed by Article 6 § 1 of the Convention.

91. The Government disagreed. They noted that the applicant had to pay MDL 45 (approximately EUR 3) in court fees. The applicant had sufficient resources to pay his lawyer MDL 1,000 and he had won a number of court actions, receiving over MDL 6,000 in damages (see paragraph 30 above). In addition, the applicant was allowed to work and to obtain revenue. Any money belonging to a prisoner was deposited on his personal account in the prison.

92. The applicant argued that he had spent all the money received on medication of a type that was not available in prison and on the litigation costs of his numerous court actions. He had not received the award made in 2005 (MDL 5,000) since the decision had been appealed and the case was still pending when his complaint regarding the force-feeding was before the Supreme Court of Justice. He was a second-degree invalid who spent a lot of time on treatment and could thus not hope to find work in prison. His invalidity pension was suspended during his detention and he had no revenue during his five-year period of detention.

93. The Court refers to the general principles established in its case-law concerning access to a tribunal within the meaning of Article 6 § 1 of the Convention and, more specifically, the requirement to pay court fees (see, among many authorities, *Kreuz v. Poland*, no. 28249/95, §§ 52-57, ECHR 2001-VI and the further references therein).

94. The Court notes that the relevant proceedings concerned the applicant's claim for damages. Accordingly, Article 6 § 1 applies under its civil head (see *Kreuz*, cited above, § 35).

95. In the present case, the Court notes that the applicant's complaint concerned the alleged damage to his health caused by the actions of the authorities. In accordance with Article 85 (1) of the Code of Civil Procedure ("the CCP", see paragraph 39 above), he should have been exempted from paying court fees due to the nature of his claim, regardless of his ability to pay. The Court notes that the applicant did not expressly rely on this ground for exempting him from the payment of court fees. However, it also notes that the text of Article 85 (1) of the CCP does not subject its application to a requirement of a formal request by the interested party. The Court considers that the domestic court should have examined his request for a court fee waiver also in the light of the nature of his complaint (as did the Chişinău Regional Court, see paragraph 22 above), given its express reference to Article 437 of the Code of Civil Procedure (which, in turn, refers to Article 85) in refusing to examine his case and given the seriousness of complaints made, referring as they did to alleged torture.

96. In view of the above, the Court considers that the applicant was denied access to a tribunal. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. Alleged censorship of correspondence

97. The applicant complained under Article 8 of the Convention about the alleged censorship of his correspondence.

98. The Government submitted that no censorship of the applicant's correspondence had taken place since this was against the law. When the law exceptionally allowed censorship, it required the prior authorisation of a court (see paragraph 45 above). Only letters addressed to the applicant *and* the prison administration were opened and read by the administration. None of the 580 letters addressed personally to the applicant was read. In

support of this submission the Government submitted a copy of several pages of the incoming mail register according to which a number of letters addressed to the applicant had been marked "sealed". In addition, the applicant twice signed forms confirming that on those two occasions he had received the letters in sealed envelopes. In addition, the Government suggested that some of the letters submitted by the applicant bearing a stamp and inscriptions could be fakes.

99. Under its case-law, the Court is required to verify whether there has been an interference with the applicant's rights under Article 8, whether such interference was "prescribed by law", pursued a legitimate aim under the second paragraph of that Article and was "necessary in a democratic society" (see, among many authorities, *Messina v. Italy (no. 2)*, no. 25498/94, § 63, ECHR 2000-X; *Ostrovar v. Moldova*, cited above, § 97). It will deal with each of these criteria in turn.

1. Whether there was an interference with the applicant's right to respect for his correspondence

100. The Court notes that a number of letters sent to the applicant in 2001-2003 from law-enforcement agencies, human rights organisations and even a psychiatric hospital bear either a prison stamp or other inscription (see paragraph 33 above). It also notes that all the letters mentioned above were addressed to the applicant alone. As for the alleged falsification of the letters, the Court notes that the Government did not identify which letters they suspected had been falsified and did not submit any evidence in this respect. There is therefore no reason for the Court to doubt the authenticity of the letters.

101. The Court concludes that, contrary to the Government's submissions, there is clear evidence in the file that at least some of the applicant's correspondence had been opened by the prison administration. There has, accordingly, been an interference with the applicant's right to respect for his correspondence.

2. Whether the interference was "prescribed by law"

102. The Court recalls that 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 of Judgments and Decisions* 1997-III, p. 1017, § 49). 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 they 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).

103. The Court notes that the applicant was not given access to the prison rules governing, *inter alia*, the manner of processing the applicant's correspondence until December 2003 (see paragraph 17 above). While both the old and the new legislation provided for the possibility to open detainees' correspondence under certain conditions, the Court observes that the procedure established by law had not been followed in the applicant's case. In particular, the Government have not submitted any evidence that a court had authorised the opening of any of the letters referred to above, which was an essential condition for the opening of correspondence (see paragraphs 45 and 98 above).

104. It follows that the opening of the applicant's correspondence without the authorisation of a court was in breach of domestic law and was therefore not "prescribed by law" within the meaning of Article 8 of the Convention. In view of this finding, the Court

does not consider it necessary to verify whether the interference was "necessary in a democratic society".

There has, accordingly, been a violation of Article 8 of the Convention in respect of the censorship of the applicant's correspondence.

B. The alleged failure to ensure acceptable conditions for meeting with the applicant's family

105. The applicant also complained that his right to meet his relatives and girlfriend had been severely restricted. In particular, he was not allowed to have any physical contact with them except on a few occasions and had to communicate with them through a glass partition. The fact that he had to sit in one of five glass cabins situated next to each other meant that privacy was impossible.

106. The Government submitted that the applicant did not have any family relationship with his wife and child since in 2002 he had applied for a divorce and custody of his son. All his requests to meet with his girlfriend and her child had been allowed, including meetings with them in a separate room and for long periods of time, as proved by the approvals of such meetings for various dates in 2004. In addition, the glass partition in the glass cabins designed for "short visits" was necessary for security reasons and did not prevent free communication between them.

107. The Court reiterates that any detention which is lawful for the purposes of Article 5 of the Convention entails by its nature a limitation on private and family life and that some measure of control over prisoners' contacts with the outside world is called for and is not in itself incompatible with the Convention (see *Van der Ven v. the Netherlands*, no. 50901/99, § 68, ECHR 2003-II). However, prisoners "continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty" (*Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 69, ECHR 2005-...). It is, moreover, 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 *Messina v. Italy (no. 2)*, cited above, § 61). Subject to necessary security measures, detainees should be allowed to meet not only their relatives but also other persons wishing to visit them (see paragraph 48 above). The Court finally reiterates that it is "an essential part of both private life and the rehabilitation of prisoners that their contact with the outside world be maintained as far as practicable, in order to facilitate their reintegration in society on release, and this is effected, for example, by providing visiting facilities for the prisoners' friends and by allowing correspondence with them and others" (*X. v. the United Kingdom*, no. 9054/80, D.R. 30 p. 113). It follows that the visits by the applicant's girlfriend and her daughter, as well as his sister, fell within the protection of Article 8 of the Convention.

108. The Court will verify compliance of the measures taken in respect of the applicant on the basis of its usual test (see paragraph 99 above).

1. Whether there was an interference with the applicant's rights under Article 8 of the Convention

109. While the Government have not submitted any evidence of their claim that meetings in a separate room had been allowed in 2003, the applicant for his part submitted one example as proof that a meeting with his girlfriend and his sister had been denied without reasons (see paragraph 35 above).

110. Moreover, during the proceedings which the applicant initiated before the domestic courts, none of the authorities involved submitted that the applicant had been allowed to

meet with his visitors in a separate room. Rather, they contended that such meetings were not allowed under the prison rules and that the glass partition was necessary for security reasons, an argument accepted by the courts (see paragraph 36 above).

111. The Court concludes that, at least during 2003, the applicant was denied meetings with his sister and girlfriend in a separate room and they had to meet in one of the glass cabins and he was separated from his visitors by a glass partition. There was, accordingly, an interference with the applicant's right to meet his visitors in conditions of privacy.

2. Whether the interference was "prescribed by law"

112. The Court notes that the Government have not referred to any legal act as the basis for installing a glass partition in the cabin for meetings between detainees and their visitors. The wording which could be considered as authorising such a measure, found in Article 19 (3) of the Law on detention on remand (see paragraph 40 above), reads: "[a]uthorised meetings shall take place under the control of the remand centre administration". The Court considers that that wording is very general and no further precision is provided by the prison rules, which simply repeat that wording.

113. No other official act appears to contain details of the meaning of the phrase, which would suggest that the administration of each remand centre was given a very wide discretion as to the specific manner of implementing the control over meetings. In rejecting the applicant's complaints, the prison administration relied on paragraph 53 (4) of the Statute of prison no. 13, a document which has not been submitted to the Court and was never mentioned by the domestic courts. In view of the above and given that the prison rules had not been published (see paragraph 17 above), there is cause to consider that the Statute of prison no. 13 (on the understanding that it is not the same document as the prison rules) was also not a publicly available document.

114. While the facts above strongly suggest that the interference with the applicant's rights had not been "provided by law" within the meaning of Article 8 § 2 of the Convention, the Court considers that it does not have to take a definitive view on this issue in view of its findings below.

3. Whether the interference pursued a legitimate aim

115. The Court considers that the limitations on the manner of maintaining contacts with the outside world, including the installation of physical barriers such as a glass partition, may pursue the legitimate aim of protecting public safety and preventing disorder and crime, within the meaning of the second paragraph of Article 8 of the Convention.

4. Whether the interference was "necessary in a democratic society"

116. The Court notes that the Government relied on security reasons as justification for the need to separate the applicant from his visitors by means of a glass partition. This was also the reason for the domestic courts' rejection of the applicant's complaint.

117. The Court observes that the domestic courts did not make any attempt to ascertain the nature of the security issues specifically in the applicant's case. The courts confined themselves to a perceived general need to preserve the safety of detainees and visitors. The Court notes that the applicant was accused of fraud (see paragraph 7 above). In the absence of any risk of collusion, re-offending or escaping, it can reasonably be considered that allowing the applicant to meet with his visitors would not have created a security risk. This

conclusion is reinforced by the fact that the applicant was allowed such visits on a number of occasions in 2004 (see paragraph 106 above) and it has not been claimed that the applicant's personality or other relevant circumstances obtaining in 2003 had drastically changed in 2004.

118. While there may well be cases where restrictions on a detainee's contacts with the outside world could be necessary, this was not so in the present case. The authorities did not adduce evidence of any threat posed by the applicant and subsequently confirmed that there was no such threat by allowing him to meet with his visitors in private in 2004. The fact that the courts permitted such meetings (see paragraph 37 above) also confirms this conclusion. On the other hand, the effect of the long period of time (at least one year in 2003) during which the applicant had not been able to have any physical contact with his visitors, the fact that he could only maintain a relationship with them by correspondence and by meeting with them in prison (see paragraph 37 above) and the physical barriers to free discussion created by the glass cabin cannot be ignored (see the findings of the CPT, paragraph 47 above, and the applicant's unchallenged claims regarding the lack of privacy in the five cabins situated next to each other, referred to in paragraph 105 above). In the absence of any demonstrated need for such far-reaching restrictions on the applicant's rights, the domestic authorities failed to strike a fair balance between the aims relied on and the applicant's rights under Article 8.

119. There has, accordingly, been a violation of Article 8 of the Convention in this respect also.

V. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

120. The applicant complained about the failure of the prison administration to give him access to the prison rules, a document which had not been published even though it concerned a number of his rights.

121. The Government disagreed and argued that Article 10 was not applicable. In any event, the applicant was sent a copy of the prison rules in December 2003 and was thus not a victim of a violation of his rights.

122. The Court considers that in the present case it does not have to decide on whether Article 10 could be interpreted as requiring the authorities to ensure the applicant's access to information such as the prison rules. To the extent that such information was vital for protecting the applicant's rights such as those guaranteed by Articles 3 and 8 of the Convention, the authorities' failure to give the applicant a copy of the prison rules has been taken into account when dealing with his complaints under those Articles.

Accordingly, the Court does not consider it necessary to examine this complaint separately.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

123. 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

124. The applicant claimed EUR 81,800 for non-pecuniary damage as a result of the alleged violations of his rights, including EUR 50,000 for the violation of Article 3, EUR 24,800 for the violation of Article 6 and EUR 7,000 for the violation of Article 8 of the Convention. He relied on the Court's case-law on the above-mentioned Articles.

125. The Government disagreed and argued that the applicant had failed to prove a violation of any Article of the Convention and to submit any evidence of non-pecuniary damage. They considered irrelevant the case-law relied on by the applicant since those cases had dealt with different situations and the awards made by the Court in those cases reflected the finding of a violation of a number of Articles of the Convention.

126. The Court recalls that it has found serious violations of Articles 3, 6 and 8 of the Convention in the present case, most importantly torture. Deciding on an equitable basis, the Court awards the applicant EUR 20,000 in compensation for non-pecuniary damage (see *Nevmerzhitsky*, cited above, § 145; *Holomiov*, cited above, § 155).

B. Costs and expenses

127. The applicant claimed EUR 3,136 for costs and expenses, which sum comprised EUR 3,000 for legal representation. In support of his claims he submitted a contract with his representative and an itemised list of hours worked on the case, confirming that the representative had worked 50 hours at a rate of EUR 60 per hour.

128. The Government contested the need to spend 50 hours on the case and noted that the applicant had been represented only after communication of the application to the Government. In addition, the amounts requested were unreasonably high and there was no evidence that the applicant had in fact paid them to his representative. Moreover, the representative was a member of a not-for-profit non-governmental organisation and should have worked for free.

129. 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, *Ostrovar v. Moldova*, cited above, § 121).

130. In the present case, regard being had to the itemised list submitted by the applicant, the above criteria, the complexity of the case and the work done by the applicant's lawyer, who represented the applicant only after the present case had been communicated, the Court awards EUR 2,000 for costs and expenses, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable (see *Nevmerzhitsky*, cited above, § 149).

C. Default interest

131. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

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

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant's force-feeding and the manner thereof;

4. *Holds* that there has been a violation of Article 6 of the Convention in respect of the refusal to examine the applicant's appeal in cassation due to his failure to pay court fees;

5. *Holds* that there has been a violation of Article 8 of the Convention as a result of the censorship of his correspondence;

6. *Holds* that there has been a violation of Article 8 of the Convention in respect of the conditions in which the applicant had to meet with his visitors in prison;

7. *Holds* that there is no need to examine separately the complaint under Article 10 of the Convention;

8. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 1,150 (one thousand one hundred and fifty euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (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;

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

Done in English, and notified in writing on 19 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI Nicolas BRATZA
Deputy Registrar President

CIORAP v. MOLDOVA JUDGMENT