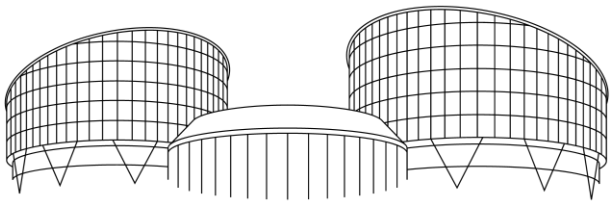

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF I.D. v. MOLDOVA

(Application no. 47203/06)

JUDGMENT

STRASBOURG

30 November 2010

FINAL

11/04/2011

This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.

In the case of I. D. v. Moldova,

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

Nicolas Bratza, *President*,
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Mihai Poalelungi, *judges*,

and Lawrence Early, *Registrar*,

Having deliberated in private on 9 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 47203/06) 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 I.D. ("the applicant"), on 12 November 2006. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Ms T. Petrusin, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that he had been ill-treated by the police, detained in inhuman and degrading conditions of detention and that he was not provided with proper medical care, in breach of Article 3 of the Convention. He also complained under Article 13 of the Convention taken in conjunction with Article 3 of the Convention that he had not had an effective domestic remedy against the poor conditions of detention.

4. The application was allocated to the Fourth Section of the Court. On 13 July 2009 the President of that Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

5. The applicant and the Government each filed written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, Mr I. D., is a Moldovan national who was born in 1977 and is currently detained in Cricova prison.

7. On 13 October 2003 the applicant was arrested on charges of theft. The next day an investigating judge ordered his detention for a period of ten days.

8. During detention the applicant was allegedly beaten on a regular basis by police officers with a view to extracting confessions. According to the applicant, he was beaten all over his body with rubber batons, administered electric shocks, suspended on a metal bar and suffocated.

9. During the seventh day of his detention he was taken to the office of B.R. and L.C. where he was cuffed and raped with a bottle. One of the police officers was photographing him during this time.

10. On 24 October 2003 the applicant was taken to a judge for the prolongation of his detention. The judge ordered the applicant's examination by a doctor.

11. The same day the applicant was visually examined by a forensic doctor who found numerous bruises on his body and limbs and concluded that they could have been caused by a blunt object with a limited surface, possibly in the circumstances indicated by the applicant.

12. On an unspecified date the applicant complained to the Prosecutor's Office about his ill-treatment at the hands of the police.

13. On 2 May 2006 the Prosecutor General's Office dismissed the applicant's complaint. The applicant's appeal was dismissed by the Prosecutor General's Office on 27 February 2007.

14. In the meantime the applicant was detained in four different detention facilities of the Ministry of Interior Affairs and the Ministry of Justice.

15. Between the date of his arrest and 23 October 2004 the applicant was detained in the DGCCO detention facility. He was then transferred to the Botanica Police Station where he was detained for twenty-three days. Between November 2004 and December 2005 the applicant was detained in Prison no. 13. Subsequently he was transferred to the Soroca Prison where he was detained until 6 February 2006. Between 6 February and October 2006 the applicant was again detained in Prison no. 13 in Chişinău. After that he was transferred to the Cricova Prison, where he is detained to date.

16. According to the applicant the conditions of detention in all the detention facilities amounted to inhuman and degrading treatment. In respect of the DGCCO detention facility the applicant did not describe the conditions of detention but only made reference to the Court's *Ostrovar*

v. Moldova judgment (no. 35207/03, 13 September 2005) in which the conditions were described. As to the Botanica Police Station, the applicant submitted that the conditions were similar to those in the DGCCO detention facility with the exception that the cells were in the basement and were not equipped with windows. In respect of his first detention in Prison no. 13, the applicant submitted that an important aspect had been his frequent transfer from one cell to another, which, in his view, amounted of itself to inhuman and degrading treatment. Moreover, the cells were overcrowded, poorly lit and humid. The prisoners were not provided with bedding and had no laundry facilities. As to the conditions in the Soroca prison, the applicant submitted that the cells were overcrowded and humid. In respect of the Cricova prison, the applicant complained about the conditions there for the first time in his observations on the admissibility and merits of the case in January 2010 and only about the period between October and December 2006 when he had been detained in an overcrowded cell with no heating. The Government disputed the applicant's description of his conditions of detention.

17. During his second detention in Prison no. 13 the applicant suffered from haemorrhoids and a urinary tract disorder. On 13 September 2006 he underwent surgery to his anus by an independent doctor of his choice. According to the applicant, he had to bear the costs of the surgery and medication. After approximately two weeks he was transferred from hospital back to Prison no. 13 where the cell was not appropriately equipped for a person in his state of health. He had to climb to the upper berth several times a day, which contributed to post-surgery complications. He was not provided with an enema, the toilet in the cell lacked a rim and he was unable to take care of his personal hygiene.

18. According to the medical documents provided by the parties it appears that following complaints by the applicant about pain in the region of his bladder and difficulty in urinating he was seen by two independent urologists in October 2006 who recommended a medical examination of his kidneys, prostate and urinary tract. The investigation was conducted in a prison hospital in December 2006 and, according to the medical documents in the Court's possession, the applicant was found to be healthy.

II. RELEVANT DOMESTIC LAW

Domestic remedies invoked by the Government

19. In *Drugalev v. the Ministry of Internal Affairs and the Ministry of Finance* (final judgment of the Chişinău Court of Appeal of 26 October 2004), three years after being released from detention on remand, the applicant claimed and obtained compensation of 15,000 Moldovan lei

(MDL) (approximately 950 euros (EUR)) for having been held in inhuman and degrading conditions for approximately six months. The case was examined by only two instances, since the judgment of the Chisinau Court of Appeal was not challenged before the Supreme Court of Justice and the overall length of the proceedings was approximately 1 year and 5 months. The court based its award on Articles 2 and 3 of the Convention.

20. In *Ciorap v. the Ministry of Finance*, the applicant initiated court proceedings claiming compensation for the damage caused to him as a result of his ill-treatment upon his arrest, the failure to investigate his complaint about ill-treatment, the failure to give him medical treatment while in detention and inhuman conditions of detention. On 19 January 2007 the Buiucani District Court found in favour of the applicant and awarded him MDL 30,000 for non-pecuniary damage. On 21 June 2007 the Chişinău Court of Appeal upheld the appeal of the Ministry of Finance and reduced the amount of compensation to MDL 3,000.

21. In *Ipate v. the Ministry of Finance*, the applicant initiated court proceedings claiming compensation for inhuman and degrading conditions of detention in Prison no. 13 in 2006 and for the prison administration's failure to register his hunger strike declaration. On 16 December 2008 the Centru District Court dismissed the applicant's complaint about the poor conditions of detention but upheld the other complaint. The applicant was awarded MDL 350 for non-pecuniary damage.

22. In *Gristiuc v. the Ministry of Finance*, the applicant initiated civil proceedings claiming compensation for inhuman and degrading conditions of detention in Prison no. 13 between 2000 and 2003. On 19 November 2008 the action was finally upheld by the Supreme Court of Justice and the applicant was awarded MDL 10,000 for non-pecuniary damage.

THE LAW

23. The applicant complained under Article 3 of the Convention that he had been ill-treated by the police during his arrest and detention. He also complained that the conditions of his detention between his arrest and October 2006 amounted to inhuman and degrading treatment and about the authorities' failure to provide him with appropriate medical care while in detention. Article 3 of the Convention reads as follows:

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

24. The applicant argued that he had no effective remedies to complaint about the poor conditions of detention and alleged 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 ...."

I. ADMISSIBILITY OF THE COMPLAINTS

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

25. The applicant contended that the conditions of his detention in the DGCCO detention facility, the Botanica Police Station, Prison no. 13 and Soroca Prison amounted to inhuman and degrading treatment.

26. The Government submitted that the applicant had not exhausted all the domestic remedies available to him. In particular, they maintained that he did not make use of the provisions of the Constitution and the Civil Code to claim compensation for the alleged poor conditions of detention. Moreover, he could have invoked directly Article 3 of the Convention. In support of their submission the Government relied on the case-law of the domestic courts (see paragraphs 19-22 above).

27. The Court recalls that the object of the six month time-limit under Article 35 is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with within a reasonable time and that past decisions are not continually open to challenge. In cases where there is a continuing situation, the six-month period runs from the cessation of the situation (*B. and D. v. the United Kingdom*, no. 9303/81, Commission decision of 13 October 1986, Decisions and Reports (DR) 49, p. 44). The concept of a "continuing situation" refers to a state of affairs which operates by continuous activities by or on the part of the State so as to render the applicant a victim (see, *Montion v. France*, no. 11192/84, Commission decision of 14 May 1987, DR 52, p. 227, and *Hilton v. the United Kingdom*, no. 12015/86, Commission decision of 6 July 1988, DR 57, p. 108). Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of (see, *D.P. and J.C. v. the United Kingdom* (dec.), no. 38719/97, 26 June 2001).

28. In *Koval v. Ukraine* ((dec.), no. 65550/01, 30 March 2004) and in *Mikhaniv v. Ukraine* ((dec.), no. 75522/01, 20 May 2008) where the applicants were also detained in several different detention facilities the Court held that each period of detention referred to specific events which occurred on identifiable dates and that therefore they could not be construed as a "continuing situation". The Court concluded that the six-month period envisaged by Article 35 § 1 of the Convention must be counted from the date on which each particular period of detention ended.

29. A different approach was taken by the Court in *Guliyev v. Russia* (no. 24650/02, 19 June 2008) where it considered two different periods of detention to amount to a "continuing situation" because the main characteristic of both periods of detention was the severe overcrowding in the cells.

30. In the present case the Court notes that there were common characteristics in the description given by the applicant regarding the conditions of his detention throughout the entire period of his detention, such as poor material conditions. At the same time, the Court notes that the main negative feature of each period of detention was different. In particular, the applicant put emphasis on his very frequent transfers from one cell to another when describing his first detention in Prison no. 13 and submitted that that fact of itself amounted to a violation of his rights guaranteed by Article 3 of the Convention. When referring to his second detention in Prison no. 13 the applicant focused on the alleged insufficient medical assistance. In such circumstances, the Court concludes that each period of detention referred to specific events which occurred on identifiable dates and cannot therefore be construed as a "continuing situation".

31. The Court notes that the application was lodged with the Court in November 2006. There is nothing to suggest that the applicant was in any way impeded by the authorities from complaining before that date regarding his detention in the DGCCO detention facility, the Botanica Police Station, his first period of detention in Prison no. 13 and in Soroca Prison. Consequently the complaint in so far as it refers to these periods has been lodged more than six months after the alleged breach took place and must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention. A similar approach must be taken in respect of the complaint concerning the conditions in Cricova prison which was introduced more than four years after the alleged breach took place (see paragraph 16 above).

32. In so far as the conditions of the applicant's second detention in Prison no. 13 are concerned the Court will examine whether the applicant had at his disposal domestic remedies which he should have exhausted before complaining to the Court.

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

34. The assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application

was lodged with the Court (*Prodan v. Moldova*, no. 49806/99, § 39, ECHR 2004-III (extracts)).

35. Having examined the case-law of the domestic courts invoked by the Government, the Court notes that at the time of the introduction of the present application only the judgment in the case of *Drugalev* had been adopted by the domestic courts. It does not appear that *Drugalev* formed part of a consistent policy of the domestic courts offering real remedies against breaches of Article 3 of the Convention on account of poor conditions of detention to persons whose detention had come to an end. The Court considers, therefore that the Government have not shown that an effective remedy was available in theory and in practice at the relevant time. Accordingly, the complaint under Article 3 of the Convention cannot be declared inadmissible for non-exhaustion of domestic remedies and the Government's objection must be dismissed.

B. The complaint under Article 3 of the Convention concerning inadequate medical assistance during detention

36. The applicant submitted that he was not provided with appropriate medical care. The Government denied this contention.

37. The Court notes that the applicant was allowed to have surgery by an independent surgeon of his choice; he was later allowed to be examined by two independent urologists and a medical examination was carried out in a prison hospital in accordance with their recommendation. The applicant failed to adduce evidence in support of his allegation that he was in need of medical treatment which was not provided to him or that he had to bear the cost of his treatment. The mere statements by the applicant in the absence of any supporting documents are not sufficient for the Court to accept the allegation. In so far as the applicant's allegations that the prison cell in which he was detained after his surgery was not suitable for his condition, the Court will examine this allegation together with the complaint concerning the conditions of detention in Prison no. 13.

38. Accordingly, the Court concludes that the complaint concerning the alleged inadequate medical assistance is manifestly ill-founded and therefore inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

C. The rest of the complaints

39. As to the rest of the complaints, the Court considers that they raise questions of fact and law which are sufficiently serious for their determination to depend on an examination of the merits, and that no grounds for declaring them inadmissible have been established. The Court therefore declares the rest of the application admissible. In accordance with

its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider their merits.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S ILL-TREATMENT BY POLICE

40. The Government declared that they were unable to provide a plausible explanation for the injuries sustained by the applicant in custody and that they were ready to concede that there had been a breach of the applicant's rights guaranteed by Article 3 of the Convention.

41. The Court refers to its case-law in *Buzilov v. Moldova* (no. 28653/05, 23 June 2009) where, in similar factual circumstances, it found breaches of Article 3 of the Convention. In the light of the above case-law and in view of the Government's clear acknowledgement of a breach, the Court concludes that there has been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF POOR CONDITIONS OF DETENTION

42. The Government argued that in Prison no. 13, all the cells were equipped with electricity, toilets and sinks. The equipment and the sewage system were in good working order. According to the Government, the conditions of detention in this prison did not attain the minimum threshold of severity to trigger a violation of Article 3 of the Convention.

43. The applicant disagreed with the Government and submitted that the material conditions in Prison no. 13 were very poor. The cells were overcrowded, the natural lighting was very poor, there was no ventilation, the walls were damp and the air was humid. The inmates were not provided with bedding. Electricity in the cells was available only for four hours a day and the inmates had to spend twenty-three hours daily in their cells.

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

45. As to the conditions of detention in Prison No. 13 between February and October 2006, the Court recalls that in *Ţurcan v. Moldova* (no. 10809/06, §§ 35-39, 27 November 2007) it found a violation of Article 3 of the Convention in respect of the applicant's poor conditions of detention in the same detention facility between February and September 2006.

46. In such circumstances the Court considers that the hardship endured by the applicant during his detention went beyond the unavoidable level inherent in detention and reached a threshold of severity contrary to

Article 3 of the Convention. Accordingly, there has been a violation of Article 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

47. The applicant submitted that no effective remedies existed to contest his inhuman and degrading conditions of detention.

48. The Government reiterated their submissions concerning the non-exhaustion of domestic remedies (see paragraph 26 above).

49. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 of the Convention is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief.

50. The Court notes that the Government failed to submit evidence as to the existence of any effective domestic remedies (see paragraph 35 above). Accordingly, the Court considers that it has not been shown that effective remedies existed in respect of the applicant's complaint and that there has been a breach of Article 13 of the Convention in respect of the applicant's conditions of his detention in Prison no.13.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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. Pecuniary damage

52. The applicant claimed EUR 116,350 in respect of pecuniary damage, the amount representing his expenses for treatment of his diseases, the cost of the loss of his dwelling, partial loss of his earning capacity, inflation and the cost of rehabilitation treatment and psychological adaptation. The applicant argued that he contracted diseases while in detention and that his mother had to mortgage her house in order to pay for his surgery. She could not repay the debt and eventually lost her house.

53. The Government submitted that the applicant was not entitled to any compensation because there was no causal link between the breach found in the case and the alleged pecuniary damage claimed by the applicant.

54. The Court notes that the applicant did not submit any evidence to show the existence of a causal link between his claims under this head of just satisfaction and the breaches found above. Accordingly, the claim must be rejected as unsubstantiated.

B. Non-pecuniary damage

55. The applicant claimed EUR 200,000 in respect of non-pecuniary damage, arguing that he experiences feelings of anxiety and that it will take a long time for his health and social life to recover.

56. The Government disagreed and argued that the amount claimed was excessive in the light of the Court's case-law in similar cases.

57. Having regard to the violations found above and their gravity, the Court considers that an award for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis the Court awards him EUR 15,000.

C. Costs and expenses

58. The applicant also claimed EUR 2,000 for the costs and expenses.

59. The Government contested this amount and argued that it was excessive and unsubstantiated.

60. In accordance with its case-law, the Court must consider whether the costs and expenses claimed were actually and necessarily incurred by the applicant and are reasonable as to quantum (see *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII). It may have regard in that connection to such matters as the number of hours worked and the hourly rate sought (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI).

In the instant case, however, the applicant has not produced any evidence in support of his claims. The Court therefore decides not to award any sum under this head.

D. Default interest

61. 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

1. *Declares* by a majority the applicant's complaint regarding the poor conditions of detention before his second period of detention in Prison no. 13 inadmissible;

2. *Declares* unanimously the applicant's complaints regarding the poor conditions of his second period of detention in Prison no. 13, the absence of an effective remedy in this connection and his ill-treatment by the police admissible and the remainder of the application inadmissible;

3. *Holds* unanimously that there has been a violation of Article 3 of the Convention on account of the applicant's ill-treatment by the police;

4. *Holds* unanimously that there has been a violation of Article 3 of the Convention on account of the poor conditions of the applicant's second period of detention in Prison no. 13;

5. *Holds* unanimously that there has been a violation of Article 13 of the Convention taken together with Article 3 on account of lack of effective domestic remedies in respect of the poor conditions of the applicant's second period of detention in Prison no. 13;

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 15,000 (fifteen thousand euros) in respect of non-pecuniary damage, 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 amount 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 30 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Nicolas Bratza President