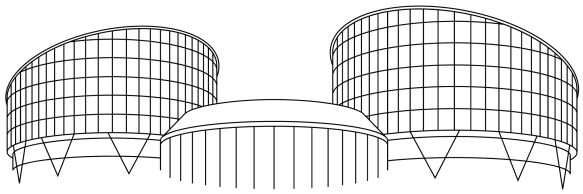

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF VETRENKO v. MOLDOVA

(Application no. 36552/02)

JUDGMENT

STRASBOURG

18 May 2010

FINAL

04/10/2010

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

In the case of Vetrenko v. Moldova,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Giovanni Bonello,
Ljiljana Mijović,
David Thór Björgvinsson,
Ledi Bianku,
Mihai Poalelungi, *judges,*

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 27 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 36552/02) 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 Vilen Vetrenko ("the applicant"), on 17 August 2002.

2. The applicant, who had been granted legal aid, was represented by Ms N. Mardari and Mr F. Nagacevschi, lawyers 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 in order to make self-incriminatory statements and was then convicted on the basis of such statements, that he had been unlawfully arrested and that he had not been given, at the beginning of the investigation, access to the lawyer chosen by him. He essentially complained of the alleged unfairness of the criminal proceedings against him, including the domestic courts' failure to give sufficient reasons for convicting him.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 9 January 2007 a Chamber of that Section decided to give notice of the application 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 1975 and lives in Chişinău.

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

1. The murder of M.

7. According to the prosecution, M. was invited to a bar on 19 May 1997 by several persons, including R. M. and U., her former neighbours, and the applicant, in whose apartment R. M. and U. rented a room.

8. In the bar they all consumed alcohol and then added a soporific to M.'s glass, after which she fell asleep. R. M. took M., U. and the applicant in his car to a remote area. R. M. and the applicant took M. out of the car and tried to strangle her with a cord. When this failed they tied her limbs and threw her into a well, where she drowned.

9. On 1 June 1997 S. P., a police officer, reported that he was trying to locate T., who could have information regarding M.'s whereabouts. Officer S. P. proposed indentifying the person(s) offering M.'s apartment for sale in order to find T.

10. On 3 June 1997 T., one of M.'s neighbours, made a written statement, giving details about M.'s murder as allegedly told to her by U. She named R. M., U. and S. as perpetrators of the crime. She also mentioned her intention to move to Tashkent, Uzbekistan, where her grandmother lived. On 4 June 1997 officer S. P. filed a report on a conversation with T. in which he reported that T. had stated that the applicant had also been involved in the crime. On 5 June 1997 T. was interviewed by investigator G. and confirmed the events as described in the officer's report. She declared that U. had told her about the details of the crime on 20 May 1997. She did not mention the applicant's name or that he had participated in any manner in the crime.

2. The applicant's arrest and alleged ill-treatment

11. On 4 June 1997 the police found the applicant at his friends' address and told him that he owed them money. He was requested to follow them to the police station, where he was arrested. He was then informed that he, R. M. and U. were suspected of having murdered M.

12. According to the applicant, immediately after his arrest he told the investigator all the details about the murder of M. which he had found out from R. M., including the place where the body had been left. He had not reported the crime earlier for fear of R. M.'s retaliation. However, he was

then ill-treated for six hours by the investigators to make him own up to the crime: he was allegedly nearly asphyxiated several times with a gas mask. He was also verbally abused and threatened with more serious forms of ill-treatment.

13. In the evening of 4 June 1997 the applicant made a self-incriminating statement in the presence of a State-appointed lawyer and two witnesses. That lawyer allegedly never participated in the proceedings after the confession had been made. In his statement the applicant described the manner of M.'s murder and the place where her body had been left. He stated that he and R. M. had attempted to strangle M. with a cord, and then tied her up and threw her into a well. No mention was made of hitting M. or causing other injuries to her. The confession was filmed. Before the filming of the confessions, a medical expert was requested to verify the presence of any signs of ill-treatment on the applicant's body. He found no such signs. The applicant expressly stated that he had not been ill-treated. He later declared in court that the filming of his confession had been rehearsed with the investigator, that it was a farce and that he had been warned about further ill-treatment if he were to deny his previous confessions.

14. The applicant was offered the opportunity to sign the minutes of the interview, first before making any statements in order to confirm that he had been read his rights and then at the end of the interview to confirm what he had stated. However, he refused to sign in both places. He later explained this refusal as a last attempt to resist unlawful pressure.

15. The second part of the confession made on the same day involved going to the well where the victim's body had been deposited and filming his confession there. He refused to sign this confession.

16. On 5 June 1997 the applicant made another statement, which was essentially the same as that made the day before. He was allegedly threatened with further ill-treatment if he were to deny his earlier confessions.

17. A forensic report was also drawn up on 5 June 1997, concluding that M. had died from drowning and that her body had a number of bruises on it, caused by repeated hitting, as well as marks on her hands and legs from the cord with which she had been tied. No sign of strangulation was found on her neck. The expert established that M. had died “several days before the report was filed”.

18. In the afternoon of 5 June 1997 the applicant was allowed to call his mother and on 6 June 1997 he declared, in her presence and in the presence of the investigator, that he was innocent. He also mentioned a person with whom he had been held in the same cell at the police station who could confirm that he had been returned to the cell in a poor general state after ill-treatment by the police. However, he was told by both the investigator and his lawyer that the courts would not believe such statements. He allegedly mentioned his ill-treatment and the possible testimony of his cellmate in his

complaints to the courts and the prosecutors but these were not followed up. His former cellmate was apparently not questioned. In all his subsequent interviews the applicant maintained his innocence and explained that he had found out about some of the details of the murder, including the place where the body had been deposited, from R. M., who had taken him to the well after the murder.

19. The applicant's new lawyer allegedly noted, on 12 October 1997, that there were no signatures on the minutes of the interview, contrary to the law. On 28 October 1997 signatures appeared on the minutes and the applicant was allegedly forced to sign. He refused and the last-minute intervention of his mother prevented the investigators from ill-treating him further. As a result of her intervention the investigators had to write in the minutes that the applicant had refused to sign. He was allegedly prevented from writing in the minutes the date of 28 October 1997 as the date when he had refused to sign, contrary to Article 124 CCP (see below). On 31 October 1997 the applicant complained about this fact to the prosecution, but to no avail. The minutes of the interview with the applicant of 4 June 1997 were signed by the investigator in charge of the case, G. The statement concerning the applicant's refusal to sign the minutes was countersigned by investigator D., who took charge of the case at a later date.

20. For several months in 1998 he was allegedly detained in inhuman conditions in the cellar of the police inspectorate.

21. In a statement to the police, T.'s sister mentioned Tashkent as a place where their relatives lived.

3. The first set of proceedings (1998-1999)

a. The judgment of the Chişinău Regional Court

22. On 16 December 1998 the Chişinău Regional Court acquitted the applicant of the charge of murder and convicted R. M. The court found, *inter alia*, that it had not been established that the applicant had participated in the crime. It had been established, however, that he had failed to report it when he was told about it by R. M., which was a criminal offence. The court also found that the confessions made by the applicant in the first two days of his detention could not be used as a basis for convicting him because they contradicted other evidence in the case (his refusal to sign the confessions, which raised doubts about their truthfulness; the fact that as from 6 June 1997 and throughout the proceedings he had denied having killed M.; and his alibi, two persons, including I. M., who also lived in the applicant's apartment at the time of the events, having confirmed that he had returned home at about 11 p.m. on the night of the murder). The court convicted the applicant of failing to report the crime committed by R. M., but ordered his release on the basis of an amnesty applicable to lesser crimes.

b. The judgment of the Court of Appeal

23. On 4 November 1999 the Court of Appeal upheld the lower court's judgment. The court noted that another person, S., was also suspected of having helped R. M. to murder M. and that his case had been disjoined because he was in hiding. The court also noted that, apart from the self-incriminating statement made by the applicant on 4 and 5 June 1997, there was nothing in the file proving his involvement in the crime.

c. The judgment of the Supreme Court of Justice

24. On 21 December 1999 the Supreme Court of Justice quashed those two judgments, finding that the courts had exceeded their competence and had accepted, without giving valid reasons, the applicant's claim that he had not participated in the crime. A re-hearing of the case was ordered.

4. The second set of proceedings (2001-2002)

a. The judgment of the Chişinău Regional Court

25. On 21 September 2001 the Chişinău Regional Court convicted the applicant of participation in the murder of M. and sentenced him to 16 years' imprisonment.

26. The court referred to the evidence in the case: witnesses testified to having seen R. M., U., S. and the applicant with M. in a bar on the night of her disappearance. Witness T. testified about the intentions of R. M. and U., who had spoken to her about their plan, to kill M. and sell her apartment. Witness M.E. and I.A. testified about R. M. and U.'s actions to obtain the documents necessary for the sale of M.'s apartment. Witness M.N. stated that she had witnessed S. invite M. to a bar on the day of her disappearance.

27. During a search of the applicant's apartment some of the documents relating to the sale of M.'s apartment had been found. The record of the search did not specify whether the documents were found in the room rented by R. M. and U. or in another place. One relevant document was found during a personal search of R. M.

28. The court referred to the applicant's confession and the version of the prosecution, according to which the applicant and R. M. had attempted to strangle M., and, having failed to do so, had thrown her into a well. The court found that the evidence, in addition to his confessions, proved his guilt. It was established that R. M. and U. had fraudulently obtained various documents from M. with the intention of selling her apartment. Moreover, R. M. had never confessed and the applicant's confessions had been made before the authorities had known the details such as the place where the body was found and the manner of the killing. These circumstances were later confirmed when the applicant showed them that place and when the experts recovered the body in his presence. The forensic report confirmed

the types of injuries inflicted as coinciding with the description of the murder given by the applicant.

29. Besides, there had been no evidence that the applicant had been ill-treated, as proved by the medical examination carried out before his first interview. Moreover, the applicant had declared, in the presence of a lawyer, that he had not been ill-treated. The court considered that his refusal to sign the confession was a means of avoiding criminal responsibility.

All of the above proved the applicant's guilt.

30. In his appeal, the applicant declared that he had found out the details about the murder from R. M., who had taken him to the crime scene on the day after the murder. He claimed that he had been ill-treated by the police in order to own up to the crime. The judgment did not specify the date of the murder and there was evidence confirming that M. had died later than the prosecution maintained. The applicant also submitted that, before being questioned as an accused, he had told the police all the details about the murder which he had found out from R. M. This contradicted the court's finding that the police had not had any details about the murder before the applicant's interview as a suspect. He refused to sign both confessions but could not offer further resistance due to fear of ill-treatment. He referred to evidence in his criminal file that on the morning of 4 June 1997 his relatives had concluded a contract with a lawyer for his representation but that the investigator had refused to allow that lawyer to represent him. He was then provided with another lawyer whom he did not trust and who did not protect his rights, but was in agreement with the investigator. In addition, the presence of a medical expert and witnesses at the first interview was not a common practice and the expert had not been warned, according to the law, of his criminal responsibility for making false statements. The unusual presence of so many persons at the very first interview only confirmed that the investigator had known that the applicant's will had been broken as a result of ill-treatment and he had agreed to “confess”. The investigator needed to create a very strong appearance of lack of ill-treatment which would be difficult to rebut. The court had failed to even mention the statement of I. M., which constituted an alibi for the applicant because it confirmed that he had returned home much earlier than R. M. and U.

b. The judgment of the Court of Appeal

31. On 5 February 2002 the Court of Appeal upheld the first-instance court's judgment. The court found that the guilt of R. M. and of the applicant had been fully proved by the witness statements of T., the police officer who reported on T.'s statements and the results of the forensic report. The court referred to the applicant's confession and the version of the prosecution, according to which the applicant and R. M. had attempted to strangle M. and after they failed to do so had thrown her into a well.

The applicant's withdrawal of his earlier statements was considered a means of avoiding criminal responsibility.

32. In his appeal in cassation the applicant reiterated his arguments made earlier and added that U. had testified that he had been back home at 11 p.m., as confirmed by I. M., thus providing him with an unchallenged alibi. Witness T. did not mention his name in her statement. The ill-treatment applied to him (making him wear a gas mask and blocking the access of air until he lost consciousness from suffocation) could not have left marks on his body. He referred to the findings of the forensic report, which contradicted his statements and the version of the prosecution, according to which he and R. M. had attempted to strangle M. That report did not find any marks of strangulation but found multiple injuries, which confirmed that M. had been hit repeatedly. The date of the murder had not been established: the residual quantity of the soporific in M.'s blood was small, confirming that she had taken it a long time before her death. In addition, the expert declared that she had died several days before the report was drawn up (on 5 June 1997), which excluded the date of 19 May 1997 as the date of the murder. Another expert submitted in 1998 that M. had died a week before the report of 5 June 1997, which also challenged the prosecution's version that M. had been murdered on 19 May 1997. The applicant drew the court's attention to his refusal to sign the confessions, which cast doubt on their genuine character. He invoked Articles 3, 5 and 6 of the Convention.

c. The judgment of the Supreme Court of Justice

33. On 16 April 2002 the Supreme Court of Justice upheld the judgment of 21 September 2001. The court found that the guilt of the accused had been fully proved. It referred to the prosecution's version of events, according to which the applicant and R. M. had attempted to strangle M. It also referred to the confession made by the applicant on 4 June 1997 in the presence of a lawyer, according to which he and R. M. had taken M. to a well and hit her repeatedly but because she had not died, they had thrown her into the well, where she drowned. The forensic report confirmed the manner of M.'s killing and the injuries on her body corresponded to the applicant's statements. In addition, witnesses confirmed the accused's intentions to sell M.'s apartment and the relevant documents were found in the apartment in which all the accused lived.

34. The court found that there was no evidence of ill-treatment, the applicant having made his confessions in the presence of his lawyer and a number of other persons.

II. RELEVANT DOMESTIC LAW

35. The relevant provisions of the Code of Criminal Procedure (in force at the time of the events) read as follows:

> "Article 55
>
> ... Evidence obtained in violation of the present Code or not properly examined during the court hearing cannot constitute the basis of a court conviction or of other procedural documents.
>
> Article 62
>
> ... The initial interview of an accused in custody shall be made only in the presence of a defence counsel, chosen or appointed *ex-officio*.
>
> Article 115
>
> The minutes of an investigation procedure shall be filed during that procedure or immediately thereafter. ...
>
> After the end of the interview the audio or video recording shall be reproduced in full for the interviewee. ... The audio or video recording shall end with a declaration by the interviewee confirming the correctness of the recording.
>
> Article 124
>
> If the accused ... refuses to sign the minutes of the investigation procedure, a note on that shall be made in the minutes, signed by the author of the minutes.
>
> Anyone who refuses to sign the minutes shall be given the possibility to explain the reasons for the refusal, which shall be noted in the minutes".

THE LAW

36. The applicant complained under Article 6 § 1 of the Convention that the criminal proceedings against him had not been fair. The relevant part of Article 6 § 1 of the Convention reads:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

37. He also complained under Article 6 § 3 of the Convention that he had not had the proper services of a lawyer during his first days of detention. The relevant part of Article 6 § 3 of the Convention reads:

> "...3. Everyone charged with a criminal offence has the following minimum rights:

...(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ... ”

I. ADMISSIBILITY

38. In his initial application the applicant also complained of a violation of his rights guaranteed under Articles 3 and 5 of the Convention. However, in his observations on the admissibility and merits he asked the Court not to proceed with the examination of these complaints, because they were outside the Court's competence *ratione temporis*. The Court finds no reason to examine any of these complaints.

39. The applicant also complained of a violation of Article 6 § 2 of the Convention since he was convicted despite the absence of any evidence of his guilt. Having examined the materials in the case-file, the Court considers that this complaint is manifestly ill founded.

40. The applicant complained of a violation of Article 6 § 3 of the Convention. He submitted that the lawyer (C. S.) hired by his mother on the first day of his arrest (4 June 1997) was not allowed to see him on that day. When the lawyer finally saw him, he did not ask for time to discuss with the applicant in private or to understand the case, but went directly to the interview and did not make sure to check whether the applicant had been ill-treated or threatened with ill-treatment.

41. The Court notes that the events complained of took place before the Convention entered into force in respect of Moldova on 12 September 1997. However, the Court recalls that the criminal proceedings conducted before a court are concluded by the final decision, which embodies any defects by which they may be affected (see, for instance, *Klimentyev v. Russia* (dec.), no. 46503/99, 21 June 2005). Therefore, the manner in which the applicant's interview in the present case was conducted may be taken into account in examining the fairness of the proceedings as a whole, which continued until well after the date of ratification.

The Court notes that the applicant did not submit evidence that C. S. had asked to see the applicant on 4 June 1997 and that this had been refused, or that C. S. had acted unprofessionally on 5 June 1997. The documents in the file confirm that the applicant was assisted by a State-appointed lawyer on the first day of his arrest and by a lawyer chosen by his mother on the next day. There is nothing in the file to prove that the performance of those two lawyers was of such a low standard as to compromise the fairness of the proceedings as a whole. Therefore, this complaint should be rejected as manifestly ill founded.

42. The Court considers that the applicant's complaint under Article 6 § 1 of the Convention raises questions of fact and law which are sufficiently serious that their determination should depend on an examination of the

merits, and no other grounds for declaring them inadmissible have been established. The Court therefore declares this complaint 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 complaint.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

A. The submissions of the parties

1. The applicant's submissions

43. The applicant submitted that he had been convicted on the sole basis of the self-incriminating statements made by him as a result of ill-treatment on 4 and 5 June 1997. He did not sign those statements, thus expressing his disagreement with what he had been forced to say at the interview. No minutes were taken at the time of the events, and the applicant was later compelled to sign the minutes in October 1997. When he refused, investigator D. noted that the applicant had refused to sign. That investigator took charge of the case after the interviews of 4 and 5 June 1997 and therefore did not have the authority to sign anything on those minutes. The fact that investigator D. signed the minutes instead of the investigator who had originally conducted the interview proved that the minutes had not been signed on 5 June 1997, contrary to what had been stated in those minutes.

44. Moreover, the medical expert and the witnesses who had participated in the interview were never heard in court. The courts did not establish with certitude the date of M.'s death. The only expert report that was made on M.'s body found that she had died “several days earlier” than the day the report was drawn up, on 5 June 1997. This could not be understood to mean “16 days earlier”, and therefore M. could not have been murdered on 19 May 1997 as submitted by the prosecution. While the expert that had compiled the report on 5 June 1997 later died in an accident and could not be questioned as to the meaning of the phrase “several days earlier” which he had used, the courts rejected, without giving any reasons, the applicant's requests for an additional expert analysis in order to determine more precisely the date of M.'s death.

45. The courts remained silent on the alibi provided for the applicant by two different witnesses, according to which he returned home right after the events at the bar, at approximately 11 p.m., while R. M. and U. returned much later. Moreover, none of the witnesses, including T., mentioned the applicant's name, which appeared only in a report written by a police officer

who referred back to T.'s statement. In any event, none of the domestic courts analysed the discrepancy between T.'s statement and the officer's account of her earlier statement. No cross examination of the applicant and T. was held in order to determine whether T. had actually said anything about the applicant. The Government's suggestion that she simply forgot or omitted to mention the applicant's name in her subsequent interview was a new argument which had never been examined by the domestic courts and was thus irrelevant. The authorities had, moreover, not taken sufficient measures to ensure that T. was found and heard in court, given that in her interview of 3 June 1997 she mentioned her intention to leave for Tashkent, Uzbekistan, where her grandmother lived. There was no evidence of any attempt to verify whether she had moved to that city, even though T.'s sister also mentioned Tashkent as a place where their relatives lived. Nor was M. D. heard, even though she had initially been interviewed and had given details about the crime, as heard from T. She did not mention the applicant's name, but named R. M., U. and S. as the perpetrators of the crime.

46. The lawyer present during the interviews with the applicant on 4 and 5 June 1997 was provided to the applicant by the prosecutor and did not do anything to defend the applicant's rights. The lawyer joined the interview without attempting to have a confidential meeting with the applicant. The applicant's self-incriminating statement was contradicted by objective evidence and the proper procedure had not been followed in that the applicant was not allowed to note the date on which he had been asked to sign the minutes of the interview.

47. The courts did not give sufficient reasons for their judgments. Some of the reasons that were given contradicted the facts of the case: the courts' finding that the applicant had told the investigator details about the murder and the place where the corpse was eventually found disregarded that most of those details had already been reported on 4 June 1997 by the police officer after her conversation with T., and that the applicant had found out additional details from R. M. himself and had informed the police of those details.

2. The Government's submissions

48. The Government submitted that the domestic courts had adopted reasoned judgments after examining all the evidence in the file and fully assessing the circumstances of the case. In their view, the Court could not take the place of the domestic courts by re-examining evidence, but was concerned only with the fairness of the trial as a whole.

49. The fact that T.'s statements differed from those of the police officer who reported on her conversation with her was irrelevant, since both reported essentially the same facts. Even though the police officer registered her report on 4 June 1997, she had written it on 22 May 1997 after speaking with T., who could have omitted certain facts eleven days later when she

was officially interviewed on 3 June 1997. In any event, it was not the Court's task to determine whether a particular witness statement had been correctly attached to the file as evidence but only to examine the fairness of the proceedings under Article 6 of the Convention. The fact that T. later disappeared and could not be found in order to testify in court was not in itself a circumstance requiring the rejection of her initial statements. This did not raise an issue under Article 6 of the Convention (see *Doorson v. the Netherlands*, 26 March 1996, § 80, *Reports of Judgments and Decisions* 1996-II).

50. The applicant's request for another medical report to be carried out in order to determine the date of M.'s death was rejected by the courts since a number of expert reports had been carried out in the case and there was no need for another one. In any event, the determination of the exact date of M.'s death would not have affected the outcome of the proceedings or the sentence in any manner.

51. The Government conceded that the courts had not examined the video cassette recording of the applicant's interviews on 4 and 5 June 1997. However, that did not raise an issue under Article 6 of the Convention, since there was sufficient evidence that the applicant had not been ill-treated. The courts found that all the pieces of evidence in the case were consistent with each other and with the applicant's statements. They adopted judgments based on the facts of the case and having followed exactly the procedural requirements of the criminal proceedings.

B. The Court's assessment

1. General principles

52. The Court reiterates that the effect of Article 6 § 1 is, *inter alia*, to place a "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence, without prejudice to its assessment or to whether they are relevant for its decision, given that the Court is not called upon to examine whether arguments are adequately met (see *Perez v. France* [GC], no. 47287/99, § 80, ECHR 2004-I, and *Buzescu v. Romania*, no. 61302/00, § 63, 24 May 2005). Nevertheless, although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, 19 April 1994, §§ 59 and 61, Series A no. 288, and *Burg and Others v. France* (dec.), no. 34763/02, ECHR 2003-II). The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain* and *Hiro Balani v. Spain*, judgments of 9 December 1994, § 29 and § 27, respectively, Series A nos. 303-A and

303-B, respectively, and *Helle v. Finland*, 19 December 1997, *Reports* 1997-VIII, § 55).

53. For instance, in *Ruiz Torija v. Spain* (cited above, §§ 29 and 30) the Court found that the failure of the domestic court to deal with the applicant's contention that the court action against her had been time-barred amounted to a violation of Article 6 of the Convention. In *Grădinar v. Moldova* (no. 7170/02, § 117, 8 April 2008) the Court found a violation of Article 6 since "the domestic courts chose simply to remain silent with regard to a number of serious violations of the law noted by the lower court and to certain fundamental issues, such as the fact that the accused had an alibi for the presumed time of the murder."

Similar failures to give sufficient reasons resulted in findings of violations of Article 6 of the Convention in *Hiro Balani* (cited above, §§ 27 and 28), *Suominen v. Finland* (no. 37801/97, §§ 34-38, 1 July 2003), *Salov v. Ukraine* (no. 65518/01, § 92, ECHR 2005-VIII (extracts)), *Popov v. Moldova (no. 2)* (no. 19960/04, §§ 49-54, 6 December 2005), *Melnic v. Moldova* (no. 6923/03, §§ 39-44, 14 November 2006) and other similar cases.

2. Application of these principles to the present case

54. The Court notes that the applicant raised several serious arguments challenging the only three pieces of evidence which arguably linked him to the crime. He pointed, for instance, that the search at his apartment had not indicated that the relevant documents had been found in his room (as opposed to that rented from him by R. M., whose guilt had been proved by various types of evidence), that S. P.'s statement only reproduced what T. had allegedly said to her (while T. herself never mentioned the applicant's name) and that there were circumstances which seriously challenged the genuine character of his "confessions" (most importantly, his refusal to sign them, despite them being "voluntary", both before making the statements and after the statements were recorded, and the clear discrepancy between what he had "confessed" and what objective expert reports subsequently found concerning the attempted strangulation). He finally relied on his alibi for the night of the murder.

55. The Court reiterates that it is not its role to re-examine the facts of a case which has been dealt with by the domestic courts or to act as a "fourth-instance court" and decide on an applicant's guilt or innocence. Rather, its concern is to verify whether the proceedings as a whole complied with the requirements of Article 6 of the Convention. As it recalled in paragraphs 52 and 53 above, one of the requirements of Article 6 is for the domestic courts to deal with the most important arguments raised by the parties and to give reasons for accepting or rejecting such arguments. Even though the extent to which the courts should give reasons may vary depending on the particular circumstances of the case, a failure to deal with a serious argument or a

manifestly arbitrary manner of doing so is incompatible with the notion of a fair trial.

56. In the present case, the Court considers that the applicant's arguments mentioned in paragraph 54 above could not be regarded as being insignificant or not capable of influencing the outcome of the proceedings. However, it does not see in the domestic courts' judgments a proper analysis of these arguments raised by the applicant. The one exception was the judgment of the Supreme Court of Justice, which addressed the discrepancy between the self-incriminating statement concerning an attempt to strangulate M. with a cord and the findings of the expert, who had found no signs of strangulation on M.'s body. However, while the Supreme Court of Justice apparently tried to deal with this clear discrepancy, it chose to simply rephrase the applicant's statement from what it expressly said (an attempt at strangulation) to something better corresponding to the findings of the expert (signs of severe beating, which had never been mentioned in the applicant's statement, see paragraphs 13 and 33 above). The Court considers that this tempering with evidence (by significantly amending the applicant's statements) was not only arbitrary but also did not answer the applicant's argument that there was a serious contradiction between his statements and objective evidence found which, together with his refusal to sign those statements, challenged their genuine character. Answering the applicant's arguments in this respect was even more important in the light of the fact that this was one of the reasons for which the courts had acquitted him in the first round of the proceedings (see paragraph 22 above).

57. Moreover, just as in *Grădinar*, cited above, in the present case the domestic courts failed to deal with the applicant's alibi for the presumed night of M.'s murder, even though that alibi had been accepted by two courts in the first round of proceedings (see paragraphs 22 and 23 above). There was no explanation for this omission, which concerned one of the strongest arguments put forward by the defence and thus required a proper analysis. Similarly, even though there was a discrepancy between what T. declared to the police (not mentioning the applicant, but another person S.) and what S. P. reported as having been told by T. (mentioning the applicant), the investigators and the courts did not question T. again in this respect during her interview on 5 June 1997 to dispel any doubts, but simply preferred to rely on S. P.'s hearsay evidence, to the detriment of that provided by the original witness.

58. The Court finds that, while heavily relying on the self-incriminating statements made by the applicant and failing to address his serious challenge to the genuine character of those statements, even re-phrasing those statements so as to avoid contradictions with objective evidence, the domestic courts chose simply to remain silent with regard to certain fundamental issues, such as the fact that he had an alibi for the presumed time of the murder. The Court could not find any explanation for such

omissions in the domestic courts' decisions (see *Grădinar*, cited above, § 117). This is striking, given that two courts acquitted the applicant in the first round of proceedings (see paragraphs 22 and 23 above) and since, in the absence of any new evidence mentioned in the courts' judgments, they convicted the applicant in the second round of proceedings, disregarding circumstances which had earlier led to his acquittal (see *Salov*, cited above, § 91). Therefore, the domestic courts did not give sufficient reasons for their judgments.

59. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 224,297 euros (EUR) for both pecuniary and non-pecuniary damage caused to him by his unlawful conviction and his detention for many years, as well as the fact that he had lost any chance of a normal life and reasonable earning and had been defamed in the eyes of all those who had known him. He referred to *Ilaşcu and Others v. Moldova and Russia* [GC] (no. 48787/99, ECHR 2004-VII) as a precedent of the Court's making similar awards for illegal conviction and prolonged unlawful detention.

62. The Government submitted that the applicant could not claim any damage since he had not adduced any evidence thereof. The reference to the case of *Ilaşcu and Others* was irrelevant since that case concerned a conviction by courts which could not be considered competent to convict the applicants, while the applicant in the present case had been convicted by a lawfully constituted and competent court.

63. The Court considers that the applicant must have been caused stress and anxiety as a result of his conviction based on insufficient reasons. It further considers that where non-pecuniary damage is claimed for violations of the sort established in the present case it is very difficult, if not impossible, for an applicant to adduce any evidence of his personal suffering. At the same time, it considers that the amount claimed is excessive. Based on the materials in its possession, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, together with any

value-added tax that may be chargeable (see *Popovici v. Moldova*, nos. 289/04 and 41194/04, § 90, 27 November 2007).

64. The Court also considers that where, as in the instant case, an individual has been convicted following proceedings that have entailed breaches of the requirements of Article 6 of the Convention, a retrial or the reopening of the case, if requested, represents in principle an appropriate way of redressing the violation (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV, and *Popovici*, cited above, § 87).

B. Costs and expenses

65. The applicant claimed EUR 2,275 for legal assistance, including EUR 718 for legal assistance before the domestic courts. 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 31.15 hours at a rate of EUR 50 per hour, as well as receipts of payments made to lawyers in the domestic proceedings.

66. The Government submitted that the applicant had failed to provide evidence that he had in fact paid for legal assistance, since by the date of submitting his claims he had not paid anything to his lawyer. Given the legal assistance provided by the Council of Europe, no additional legal assistance was required. The legal fees paid during the domestic proceedings were not accompanied by a contract with the relevant lawyers and were thus vague and uncertain.

67. The Court reiterates that under its case-law an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were also reasonable as to their quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

68. Regard being had to all of the information in its possession, the complexity of the case and the parties' submissions, the Court considers it reasonable, given the amount granted under the Council of Europe's legal aid scheme, to award him the additional sum of EUR 650 for the proceedings before this Court.

C. Default interest

69. 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* unanimously admissible the complaint under Article 6 § 1 of the Convention, and the remainder of the application inadmissible;

2. *Holds* by four votes to three that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* by four votes to three
   (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 5,000 (five thousand euros) in respect of non-pecuniary damage and EUR 650 (six hundred and fifty euros) for costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Nicolas Bratza President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Judges Bratza, Garlicki and David Thór Björgvinsson is annexed to this judgment.

N.B.
T.L.E.

JOINT DISSENTING OPINION OF JUDGES BRATZA, GARLICKI AND DAVID THÓR BJÖRGVINSSON

1. While we have voted in favour of the admissibility of the applicant's complaint under Article 6 § 1 of the Convention, we are unable to share the view of the majority of the Chamber that there has been a violation of that provision.

We note at the outset that, although dissatisfied with the outcome of the criminal proceedings against him, the applicant does not complain about unfairness in the procedures before the Chişinau Regional Court, the Court of Appeal or the Supreme Court of Justice: he was legally represented in all three courts and it is not suggested that there was any breach of the principle of equality of arms or that the applicant was unable, through his counsel, to present such arguments or submissions as he wished. The majority's finding that the criminal proceedings against the applicant were unfair is based exclusively on the alleged inadequacy of the reasons given by the Regional Court in convicting the applicant on his retrial and those given by the appellate courts in upholding his conviction. We consider that, in concluding that Article 6 was violated in the present case, the majority of the Chamber have strayed beyond the Court's proper supervisory function and, contrary to what is asserted in the judgment, have assumed the role of a "fourth instance" tribunal.

2. In reaching their conclusion, the majority place reliance on the judgment of the Chamber in *Grădinar v. Moldova* (No. 7170/02, 8 April 2008), where the Court similarly found a violation of Article 6 on the grounds of the insufficiency of the reasons given by the appellate courts to support the applicant's conviction. It is said that, as in the *Grădinar* case, the domestic courts in the present case remained silent with regard to certain fundamental issues in the case, including the applicant's alibi which had led to his previous acquittal.

Despite their superficial similarity, there exists a fundamental distinction between the two cases. In the *Grădinar* case, as in this, the Supreme Court had quashed the lower courts' judgments acquitting the applicant's husband of murder and a full rehearing of the case had been ordered. On the retrial, the applicant's husband was once again acquitted by the trial court but the judgment was quashed by the Court of Appeal, which convicted him on the basis of the same evidence and without rehearing any of the principal witnesses in the case. His conviction was subsequently upheld by the Supreme Court. It was this failure of the two appellate courts to give sufficient reasons for reversing the factual conclusions of the trial court which was at the heart of the Court's finding of a violation of Article 6. In marked contrast, the applicant in the present case was convicted of murder on his retrial after a full rehearing of the evidence in the case and his conviction was upheld by both the Court of Appeal and the Supreme Court.

The majority's finding is based not, as in *Grădinar*, on the failure of the appellate courts to give sufficient reasons for reversing the trial court's conclusion on the evidence before it, but on the alleged failure of the trial and appellate courts on the retrial of the applicant to give sufficient reasons for departing from the assessment of the evidence by the original trial court.

3. We consider that this is to go too far. While the procedural guarantees of fairness in Article 6 § 1 of the Convention undoubtedly require that a tribunal conduct a proper examination of the submissions, arguments and evidence before it, it is for the tribunal itself to assess the extent to which they are relevant for its decision. As is correctly emphasised in the judgment, the Article cannot be understood as requiring a detailed answer to every argument advanced or detailed reasons to be given for accepting or rejecting the evidence before it. Still less can Article 6 be understood as requiring, in a case such as the present, where there has been a retrial of an applicant, that reasons are given by the tribunal for reaching a different assessment of the evidence before it, or a different conclusion on that evidence, from that of the original trial court. The Strasbourg Court will in principle be justified in intervening only in a case where the assessment of the evidence before the domestic courts, or the reasons given for the conclusions reached on that evidence, are manifestly unreasonable or otherwise arbitrary.

The grounds relied on in the judgment for finding that Article 6 was violated are, in our view, very far from establishing any such arbitrariness on the part of the domestic courts.

4. It is argued in the first place that the domestic courts failed properly to analyse or respond to "several serious arguments of the applicant challenging the only three pieces of evidence which arguably linked the applicant to the crime", namely the relevant documents found in the search of the applicant's apartment; S. P.'s statement as to what T. had allegedly said to him about the involvement of the applicant; and the confessions of the applicant himself.

5. This argument illustrates the difficulty faced by the Court when it assumes the role of a court of appeal and seeks to substitute its own view for that of the national courts as to which of the arguments advanced before them called for an answer. As to the first of these elements, it is said that, while noting that the incriminating documents had been found in the apartment which the applicant shared with his co-defendant, R. M., the Regional Court omitted to mention that the record of the search of the apartment did not specify whether the documents were found in the room rented by R. M. or elsewhere in the apartment. However, there is nothing in the material before the Court to indicate what reliance, if any, was placed by the applicant at his trial on this element of the evidence. Certainly, it does not appear from the judgments of the appellate courts, that it was made a

central part of the applicant's appeals to the Court of Appeal or the Supreme Court.

6. As to the second element, it is true that T.'s statement incriminating the applicant appeared only in S. P.'s report of his interview with T. and not in T.'s own statement. However, it is also true that S. P. was called as a witness at the retrial and that he confirmed his account of what T. had told him on 4 June 1997. Complaint is made in the judgment of the fact that the domestic courts "preferred to rely on S. P.'s hearsay evidence to the detriment of that provided by the original witness" and that no steps had been taken to question T. again during her interview of 5 June 1997 to dispel any doubts about the alleged discrepancy between the two accounts. But, again, it is unclear whether any objection at trial was taken by the applicant to the admission of S. P.'s evidence; nor does it appear what, if any, reliance was placed at the trial or on appeal on the alleged inconsistency between the two statements.

7. As to the applicant's confession statements, it is beyond dispute that the domestic courts examined the applicant's principal claim that the statements were not made voluntarily. The Regional Court expressly found the statements to have been voluntary, noting that the forensic medical expert had discovered no physical injuries on the applicant, that when questioned by the police inspector the applicant had stated in the presence of a lawyer and witnesses that there had been no coercion whatsoever and that he had given the statements without any constraints. The judgment asserts that there was a "serious contradiction" between the statements and the objective evidence which cast doubt on the genuineness of the statements and that the Supreme Court had "tampered" with the applicant's statements in order to circumvent this contradiction. It is not in our view the role of this Court to reach an independent assessment of the existence or the seriousness of the alleged contradiction; still less do we feel justified in drawing the conclusion that the Supreme Court tampered with evidence by significantly amending the applicant's statement as alleged.

8. It is finally argued in the judgment that the domestic courts failed to deal with the applicant's alibi for the presumed night of M.'s murder. The alleged alibi witness was I. M., who also lived in the applicant's flat at the material time. It appears that I. M. did not give evidence, his alibi being included in a written statement before the Regional Court. It is true that the domestic courts on the retrial of the applicant did not make reference to the alibi or explain why it had been discounted. However, we note that, although the alibi was claimed by the applicant to be "unchallenged", it was clearly inconsistent with the applicant's own confession statements, which were accepted by the domestic courts as valid. In these circumstances, we find no basis for concluding that the failure to refer to the alibi is indicative of any arbitrariness on the part of the domestic courts.

9. We are, for these reasons, unpersuaded that the applicant has established such deficiencies in the domestic courts' assessment of the evidence, or in the reasons given for their judgments, to give rise to a violation of Article 6 § 1 of the Convention.