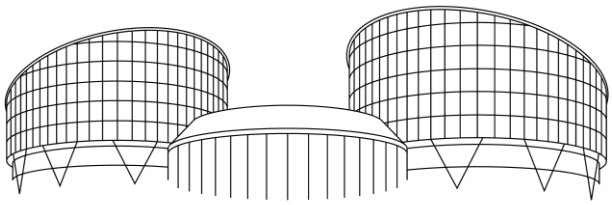

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MITROFAN v. THE REPUBLIC OF MOLDOVA

(Application no. 50054/07)

JUDGMENT

STRASBOURG

15 January 2013

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 Mitrofan v. the Republic of Moldova,

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

Josep Casadevall, *President*,
Alvina Gyulumyan,
Corneliu Bîrsan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Valeriu Grițco, *judges*,
and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 11 December 2012,

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

PROCEDURE

1. The case originated in an application (no. 50054/07) 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 Valeriu Mitrofan ("the applicant"), on 15 November 2007.

2. The applicant was represented by Mr A. Bivol, 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 detained in inhuman conditions and that the courts which convicted him did not examine the main arguments in his defence.

4. On 10 July 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Chişinău.

A. The applicant's detention and the criminal proceedings against him

6. At the time of the events the applicant was the head of a private high school (V.) and acting head of the Industrial and Construction College (C., a State-funded institution). In 2004 a criminal investigation was opened into fraudulent acts and abuse of power allegedly committed by the applicant. He was accused of having accepted money from two students for their studies at V. and failing to disclose those payments in the school's accounts.

7. On 24 September 2004 the applicant was arrested and remanded in custody on the basis of a warrant issued by the Centru District Court that day. On 30 September 2004 the Chişinău Court of Appeal overturned the lower court's decision, finding there was no reason to believe that the applicant would abscond or interfere with the investigation, noting that he had a fixed address, a family and an under-age child, and that he had undertaken to appear before the investigation authorities whenever summoned. He was released on the same day.

8. On 20 November 2006 the Grigoriopol District Court sentenced the applicant to three years' imprisonment for fraud. He was acquitted of all the other charges mainly owing to a lack of evidence that he had illegally accepted money from the students. On the same day he was arrested and placed in prison no. 13 in Chișinău.

9. On 8 February 2007 the Chișinău Court of Appeal partly quashed the first-instance court's judgment. The court found that the applicant had been negligent in admitting two new students to V. and accepting tuition fees from them, even though by order of 25 December 2003, the Ministry of Education had suspended V's licence and the applicant had been ordered to transfer all pupils to other educational institutions. The applicant was thus convicted under Article 329 (1) of the Criminal Code (see paragraph 19 below) and his custodial sentence was reduced by the appellate court to eight months.

10. In an appeal on points of law, the applicant argued that he could not be convicted of a violation of Article 329 (1) of the Criminal Code (see paragraph 19 below) because two elements of the crime set out therein had not been met, namely that it had to have been committed by a "public official" and that the damage caused as a result had to be "large-scale". Firstly, the conviction had been based on his alleged wrongdoing as head of V. As the head of a private institution, he could not be considered a

public official (*persoană cu funcţii de răspundere*), a notion expressly defined in Article 123 of the Criminal Code (see paragraph 19 below). He could not therefore be accused of negligence in carrying out any official duties by accepting pupils to study in his private school.

Secondly, the value of the alleged damage caused (3,020 Moldovan lei (MDL)) was less than the minimum MDL 10,000 required under Article 329 for large-scale damage, as defined in Articles 64 and 126 of the Criminal Code (see paragraph 19 below).

Finally, the applicant argued that he had admitted new pupils to his school because he had challenged the Ministry of Justice's order of 25 December 2003 in court, which in his opinion meant that the order had been suspended and thus had no legal effect pending the outcome of the litigation.

11. On 28 June 2007 the Supreme Court of Justice partly quashed the lower court's judgment. The court dealt with the applicant's arguments raised in his appeal on points of law as follows:

> "As concerns [the applicant's] arguments that he must be acquitted under Article 329 (1) of the Criminal Code because the elements of the crime were not present in his actions, these [arguments] are unsubstantiated and are contradicted by the material evidence; the accused's refusal to admit liability should not necessarily lead to his acquittal since there is pertinent and conclusive evidence which corroborates as a whole and proves with certainty his guilt in having committed the crime: contract no. ... of enrolling S.N. as a student ... concluded between L.G. and the head of [V.]; receipts for [cashing of] MDL 2,000 lei on 30 August 2004 and of MDL 1,000 and MDL 20 on 6 July 2004; [Ministry of Education] order of 25 December 2003 suspending the activity of the private education institutions founded by [V.]."

The court noted, however, that the lower courts had not taken into consideration the applicant's mitigating circumstances, such as the fact that he had no previous convictions and was well regarded in society. In the absence of any aggravating circumstances, the lower courts had incorrectly decided to imprison him. The court therefore ordered the applicant to pay a fine instead of giving him a custodial sentence. He was therefore released on the same day, after approximately seven months of detention in prison no. 13. Taking into account the fact that he had already served time in prison, he was dispensed from paying the fine.

B. Conditions of the applicant's detention

12. The applicant described the conditions in which he had been held for more than seven months in Chişinău Prison no. 13. The prison was situated in a 165-year-old building. He was detained in a cell measuring 26 square metres which he shared with between eleven and fourteen other detainees. The cell was unventilated, the only air coming in from several holes in a net covering the window. The cell was very cold in winter and very hot in

summer, the walls and ceiling were damp and the toilet was not separated from the rest of the cell. During the first five months of detention, the applicant was not issued with any bedding and had to sleep on a bare mattress. When bedding was finally provided, it was changed very rarely. The cell was never cleaned; his mattress was full of parasitic insects and he could not sleep as a result. The light was too weak in the cell for reading. Showers were only allowed once a week and the shower day did not coincide with the day of the week when fresh bedding was issued, which meant the continuous presence of parasitic insects. Food was inadequate and of poor quality; the portions did not conform to the standard decided upon by the Government, particularly in respect of meat, fish, eggs and dairy products.

13. The applicant made a total of forty-four complaints to various authorities about the conditions of his detention. He asked, *inter alia*, for the number of persons in cell no. 75 (in which he was being detained) to be reduced to no more than eight detainees instead of the fourteen who were held there at the time of making the complaint, so as to observe the statutory minimum requirement of 4 square metres of living space per detainee. The applicant also asked for an additional hour of exercise time for all the detainees in his cell in an attempt to improve the overcrowding situation. The applicant made six complaints between 19 March and 15 May 2007 about the lack of ventilation and access to fresh air aggravating the overcrowding. On 25 March 2007 he asked to be transferred to a non-smoking cell because he was subjected to passive smoking, which he argued was "a far more serious punishment than the eight months of imprisonment to which [he] had been sentenced". On 3 May 2007 he complained about the failure to provide adequate food as required by the relevant Government decisions, claiming, *inter alia*, that reduced quantities of sugar and bread had been distributed to detainees in his cell. The applicant asked for portion sizes to be checked periodically to ensure they were meeting the statutory minimum. On four occasions between 30 March and 28 May 2007 the applicant complained about the presence of parasitic insects and asked for fresh bedding to coincide with shower day so as to avoid the risk of continued infestation. On 12 May 2007 the applicant asked for various materials in order to carry out repairs to their cell (together with his cell mates), as the ceiling was dark and the paint was peeling off the walls.

14. The applicant received a total of five letters in response, informing him that he would only be transferred to another category of prison following the final determination of his criminal case. The responses, however, failed to address the majority of his complaints. The applicant stated that on 17 May 2007, after repeatedly complaining about the unventilated space, a window was opened in the corridor opposite his cell, providing more fresh air. On 7 June 2007, in reply to his request to be

allowed to use the prison library's reading room, he was informed by the relevant authorities that prison no. 13 had no such facility.

15. On 19 February and 26 March 2007 the applicant complained that he was being detained in a closed prison, despite having been sentenced to detention in a semi-open prison where, he submitted, he would have had a right to move freely within the prison area (as opposed to having one hour of exercise time in the closed prison).

16. On 2 July 2007 the prison doctor examined the applicant and informed him that he had been exposed to the risk of contracting tuberculosis. The doctor referred the applicant to a consultant and an eyesight specialist.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The relevant provisions of domestic law are set out in, among other authorities, *Ostrovar v. Moldova* (no. 35207/03, 13 September 2005); *Sarban v. Moldova* (no. 3456/05, 4 October 2005 and *Becciev v. Moldova* (no. 9190/03, 4 October 2005).

18. In addition, the relevant provisions of the Civil Code read as follows:

Article 1398: Grounds and general conditions of liability in tort

"1. A person who intentionally commits an unlawful act towards another shall compensate for any pecuniary damage caused, and, in cases provided for by law, shall also compensate for non-pecuniary damage caused by his acts or omissions.

2. Compensation for non-pecuniary damage caused by lawful acts in the absence of intent shall be paid only in the cases expressly provided for by law.

..."

Article 1422: Compensation for non-pecuniary damage

"1. If a person is caused non-pecuniary damage (mental or physical suffering) by acts which violate his or her personal moral rights, as well as in other cases provided for by law, the court shall have the power to order the person responsible to pay monetary compensation.

2. Compensation for any non-pecuniary damage shall be paid regardless of the existence and extent of any pecuniary damage caused.

3. Compensation for non-pecuniary damage shall also be paid in the absence of intent by the wrongdoer if the unlawful act was caused by unlawful conviction, illegal indictment, illegal detention or illegal imposition of an undertaking not to leave town, illegal administrative arrest or unpaid community work, and in other cases provided for by law."

19. The relevant provisions of the Criminal Code read as follows:

Article 64: Fines

"...2. ... A conventional unit of a fine shall be equal to MDL 20."

Article 123: Public official (*persoană cu funcţie de răspundere*)

"1. A public official is a person who, in an enterprise, institution, State or local public administrative body or a subdivision thereof, either permanently or temporarily, by law, appointment, election or assignment, has been entrusted with certain rights and obligations with a view to exercising the functions of a public authority, taking administrative decisions or organisational and economic measures."

Article 126: Very large-scale, large-scale, considerable and essential damage

"1. The value of ... the damage caused by a person or a group of persons shall be considered very large-scale or large-scale if, at the time the crime was committed, the monetary value of the damage exceeds 1,500 and 500 conventional units of a fine respectively."

Article 329: Negligent performance of duties

"1. Failure to perform or the improper performance of duties by a public official as a result of a negligent or careless attitude towards such duties, provided that such an action caused large-scale damage to the public interest or to the rights and legally protected interests of individuals or other legal entities, shall be punished by a fine of up to 500 conventional units or by imprisonment for up to three years..."

20. The relevant provisions of the Code of Criminal Procedure read as follows:

Article 414: Examination of an appeal

"... 5. The appellate court shall decide on each ground of appeal. ..."

Article 427: Grounds for appeals on points of law

1. The judgments of the appellate courts may be appealed against on points of law in order to rectify legal errors of the first-instance courts and appellate courts on the following grounds:

(6) ... the appellate court has not decided on all the grounds raised in the appeal or the judgment appealed against does not contain the reasons on which the conclusion is based ..."

21. Under Article 225 of the Enforcement Code (in force since 1 July 2005, as amended on 5 November 2010), the minimum living space for each detainee must be at least 4 square metres.

22. According to the Government, following the enactment of two amnesty laws (nos. 278 (16 July 2004) and 188 (10 July 2008)), as well as amendments to the Criminal Code (Law no. 194-XVI (29 June 2006), which had the effect of decriminalising certain less serious offences and prohibiting detention as a form of punishment for other types of offence), the overall number of detainees in Moldovan prisons decreased from 10,591 on 1 January 2004 to 6,335 on 1 December 2010. Moreover, more than 400 cases concerning the reduction of custodial sentences were pending before the domestic courts.

23. On 24 October 2003 Parliament adopted Decision no. 415-XV approving the National Human Rights Action Plan for 2004-2008. The plan included a number of objectives to be achieved over a four-year period and was aimed at improving conditions of detention, including reducing overcrowding, improving medical treatment, introducing detainees to employment and encouraging their social reintegration, as well as carrying out training for personnel. Regular reports were to be submitted regarding the implementation of the Action Plan.

By Government Decision of 31 December 2003 on the principles of reorganisation of the prison system, the Moldovan authorities implemented the 2004-2013 Plan of Action for the Reform of the Prison System, both having the aim, *inter alia*, of improving the conditions of detention in prisons.

On 23 December 2003 the Government published the Concept Paper for Prison System Reform and the Action Plan for 2004-2020 for achieving its objectives.

24. On an unspecified date the Ministry of Justice produced a report entitled the "Implementation by the Ministry of Justice of Chapter 14 of the National Human Rights Action Plan for 2004-2008, approved by Parliamentary Decision no. 415-XV of 24 October 2003". On 25 November 2005 the Parliamentary Commission for Human Rights also produced a report on implementation of the National Action Plan. Both reports confirmed the insufficient funding of the prison system and the resulting failure to fully implement the National Human Rights Action Plan in Moldovan prisons, including Chişinău Prison no. 13. The first of these reports stated, *inter alia*, that "as long as the objectives of [the National Human Rights Action Plan] do not have the necessary financial support ... it will remain only a good intention of the State to protect human rights as described in Parliamentary Decision no. 415-XV of 24 October 2003, the result of which is non-implementation, or partial implementation [of the Action Plan]."

25. The Government submitted copies of several judgments (*Drugalev v. the Ministry of Internal Affairs and the Ministry of Finance*; *Gristiuc v. the Ministry of Finance and the Prisons Department*; *Ipate v. the Prisons Department;* and *Ciorap v. the Ministry of Finance, the Ministry of Internal Affairs and the Prosecutor General's Office*), all cases in which the applicants had been compensated for ill-treatment and/or inhuman conditions of detention. In awarding compensation, the domestic courts relied on the Health Care Act (enacted on 28 March 1995), Article 1422 of the Civil Code (in the case of *Gristiuc*) and Article 1398 of the Civil Code (in the case of *Ipate*). In the cases of *Drugaliov* and *Ciorap* the courts found that domestic law did not provide any legal basis for awarding compensation and relied directly on the Convention and the Court's case-law.

26. In the "Conditions of Detention" chapter of its report for 2010 (page 142 et seq.), the Centre for Human Rights of Moldova (which also acts as the Moldovan Ombudsman) found, *inter alia*, that:

> "Failure to adhere to the statutory cell size (4 square metres per person) in the living blocks of the institution has become an unpleasant problem which now affects the prison system across the entire country. ...
>
> The same situation was confirmed during a visit to Chişinău Prison no. 13 in on 9 September 2010. In some cells the living space was not proportionate to the number of detainees. During the visit, eight detainees were being held in cell no. 38, which measured 24 square metres. This situation has been seen repeatedly during visits by the Centre's staff to the Chişinău Pre-trial Detention Centre. Similar findings were made during visits to Rusca Prison no. 7 on 19 May 2010, where six detainees were being held in a cell measuring 15.5 square metres and to Cricova Prison no. 4, where (in living block no. 7) over twenty detainees were being held in a cell measuring 65 square metres.
>
> Overcrowding comes directly within the Ombudsman's remit as part of the National Mechanism for the Prevention of Torture, which on many occasions has recognised overcrowding in the country's prisons. ...
>
> ... [T]he Prisons Department informed the Ombudsman that meat and fish products are provided [to detainees] whenever possible. At the same time, the authority stated that, owing to the difficult financial situation, during 2010 the detainees in Rezina Prison no. 17 received only 75% and 80% of their normal quotas of meat and fish products respectively. In this connection, the Minister of Justice provided information to the Ombudsman about the expenditure on prisoners' food in 2010. The cost amounted to MDL 24.05 million, whereas the budgetary need for the same year was, according to the Ministry of Finance's draft budget, MDL 29.05 million. The daily cost of feeding a detainee in 2010 was MDL 10.24, whilst the daily budgetary need was MDL 12.35. This statistic was often cited by prison authorities to justify why they were unable to provide detainees with meat and fish.
>
> ...
>
> As regards sanitary conditions, lighting and ventilation problems continue to exist in the majority of living blocks in Moldovan prisons, with the exception of Taraclia Prisons no. 1 and Rusca Prison no. 7.
>
> The Republic of Moldova inherited old gulag-type prisons in dilapidated buildings, corresponding to former Soviet standards. The prisons do not conform to current national and international standards; however, the budget constraints upon the State do not allow for their reconstruction or renovation.
>
> In the prisons, with the exception of Taraclia Prison no. 1, detainees are held in large-capacity cells insufficiently equipped for their daily needs, namely areas for sleeping, for everyday living and for sanitary equipment. Detainees are held in extremely overcrowded, dark, damp and unventilated spaces full of cigarette smoke. In certain prisons the bunk beds essentially prevent daylight from reaching the living space."

III. RELEVANT INTERNATIONAL MATERIAL

27. The relevant parts of the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Moldova between 14 and 24 September 2007 (CPT/Inf (2008) 39) read as follows (unofficial translation):

> "46. At the outset of the 2007 visit the Director of the Prisons Department of the Ministry of Justice provided the delegation with detailed information on measures already taken or planned with a view to reforming the Moldovan prison system and implementing the CPT's recommendations. One particularly welcome outcome of these measures was the reduction of the country's prisoner population. At the time of the 2007 visit the total number of prisoners stood at 8,033 (including 1,290 in pre-trial detention), compared to 10,591 in 2004. This positive trend can be attributed to recent legislative changes, including the entry into force in July 2005 of a new Execution of Sentences Code and amendments to both the Criminal Code and the Code of Criminal Procedure. As a result, there has been an increase in the number of conditional early releases, as well as a wider use of alternatives to imprisonment and a more selective application of pre-trial detention by the courts.
>
> Furthermore, the implementation of the 'Concept Paper for the Reform of the Prison System 2004-2013' has been supported by an increase in the budgetary allocation (from MDL 75.8 million in 2004, to MDL 166.1 million in 2007), as well as by an increasing contribution of foreign aid. This has enabled, *inter alia*, improved quality of food provided to prisoners and improved health care, as well as the execution of refurbishment works at several custodial facilities (e.g. Taraclia Prison no. 1, Rusca Prison no. 7 and Rezina Prison no. 17).
>
> Lastly, and above all, there has been a significant shift in mentality through improved staff recruitment and training procedures. The delegation was informed that the governors of many custody facilities had changed over the past year, following a competitive examination and probationary periods. Furthermore, new staff training programmes had been developed, placing particular emphasis on human rights issues (see also paragraph 100).
>
> 47. The CPT can only welcome the above-mentioned measures taken by the Moldovan authorities. Nevertheless, the information obtained by the Committee's delegation during the 2007 visit shows that much remains to be done. In particular, overcrowding continues to be a problem; despite the fact that all the institutions visited were operating well within their capacities, there was on average only 2 square metres of living space per detainee, rather than the standard of 4 square metres required by Moldovan legislation.
>
> The CPT is convinced that the only viable way to control overcrowding and achieve the standard of at least 4 square metres of living space per detainee is to implement policies designed to limit or adjust the number of persons receiving custodial sentences. In this connection, the Committee must stress the need for a strategy covering both admission to and release from prison to ensure that imprisonment really is the last resort. This implies, firstly, placing emphasis on non-custodial measures in the pre-trial period and, secondly, the adoption of measures which facilitate the social reintegration of persons who have been deprived of their liberty.
>
> The CPT trusts that the Moldovan authorities will continue their efforts to combat prison overcrowding and in so doing, will be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison

overcrowding and prison population inflation, as well as Recommendation Rec(2003)22 on conditional release (parole)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

28. The applicant complained of a violation of Article 3 of the Convention, alleging, in particular, that he had been detained in inhuman conditions. Article 3 reads as follows:

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

A. Admissibility

29. The Government submitted that the applicant had failed to exhaust available domestic remedies in respect of his complaint concerning the inhuman conditions of his detention. In particular, he had made "non-credible" and unfounded complaints but had neither asked for a criminal investigation to be opened against those responsible for ensuring appropriate conditions of detention, nor lodged a civil action to claim compensation.

30. The applicant disputed this argument, referring to the forty-four complaints he had made during his seven months of detention, all of which were very specific in nature (such as his complaints about overcrowding, unventilated spaces and inadequate food portions). Moreover, he had tried in vain to find alternative ways of improving the situation by asking for an extra hour of exercise time and for permission to use the prison library's reading room.

31. The Court observes 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*, 9 October 1979, § 23, Series A no. 32). It considers that the complaints made by the applicant while in detention (see paragraph 13 above) were serious and specific and constituted genuine attempts to obtain a remedy for the situation at hand.

32. The Court reiterates that it has examined on numerous occasions the issue of domestic remedies in respect of poor conditions of detention in Moldova (see *Sarban*, cited above, §§ 57-62; *Holomiov v. Moldova*, no. 30649/05, §§ 101-107, 7 November 2006; *Istratii and Others v. Moldova*, nos. 8721/05, 8705/05 and 8742/05, § 38, 27 March 2007; *Modarca v. Moldova*, no. 14437/05, § 47, 10 May 2007; and *Stepuleac v. Moldova*, no. 8207/06, § 46, 6 November 2007), and has concluded on

each occasion that the remedies suggested by the Government were ineffective in respect of individuals currently held in detention. In *Malai v. Moldova* (no. 7101/06, §§ 42-46, 13 November 2008), it found a violation of Article 13 of the Convention on account of the lack of effective domestic remedies in respect of inhuman and degrading conditions of detention, concluding that "it has not been shown that effective remedies existed in respect of the applicant's complaint under Article 3" concerning conditions of detention. The Court sees no reason to depart from that finding in the present case.

33. The Court finds, therefore, that the complaint cannot be declared inadmissible for non-exhaustion of domestic remedies and accordingly the Government's objection must be dismissed. It also notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

34. The applicant submitted that he had been held in inhuman conditions of detention for more than seven months (see paragraph 12 above). He had made forty-four complaints to the authorities concerning various aspects of his detention conditions, all of which were specific and referred to the applicable legal provisions. In addition, he had tried (albeit unsuccessfully) to improve his own detention conditions by asking the prison administration for additional daily exercise time and for permission to use the prison library's reading room. Finally, he submitted that his description of his conditions of detention was consistent with the findings made by the CPT in prison no. 13 (formerly prison no. 3).

35. The Government submitted that the applicant's description of the conditions of his detention had been inaccurate. Cell no. 75 in prison no. 13 (in which he had been held) had access to daylight, was well lit and was ventilated. The prison rules prohibited smoking outside designated areas and cells were regularly disinfected by the Preventive Medicine Centre. The applicant had access to literature in the prison library, even though there was no separate room reserved for reading. Moreover, over the time he was detained conditions of detention had improved in Moldova, as noted by the CPT during its visits. Additional resources had been allocated from Government funds to carry out repairs of 165 cells in various prisons throughout the country and an agreement had been signed between the Ministry of Justice and the Ombudsman to harmonise national legislation and practices with international human rights standards.

36. The Court reiterates, with respect to conditions of detention, that the State must ensure that a person is detained in conditions which are compatible with respect for 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 (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).

37. In the present case, the Court notes that the applicant made specific complaints concerning the size of cell no. 75 in prison no. 13, as well as the number of detainees held in that cell (between eleven and fourteen in a cell measuring 26 square metres – see paragraph 12 above). Despite the fact that the Government had all the information at their disposal, they limited themselves to general statements concerning the surface area of the cell and the number of detainees held therein and did not provide any documentary evidence to contradict the applicant's submissions in respect of the alleged overcrowding. Moreover, in his complaints to the prison authorities the applicant mentioned the same number of detainees in his cell as referred to in the present application. The Government did not contradict the applicant's claim that he had not received a reply to his complaints concerning overcrowding.

38. The Court therefore accepts the applicant's description as accurate. It follows that he had between 1.85 and 2.36 square metres of living space in his cell, which is substantially below the statutory minimum of 4 square metres per detainee (see paragraph 21 above). Moreover, he spent up to twenty-three hours a day in his cell and was not allowed additional daily exercise time or to use the library's reading room, since the prison did not have one (see paragraph 14 above). The Court concludes that the applicant was detained in extremely overcrowded conditions. It has already found on numerous occasions that severe overcrowding in prison cell may lead to violations of Article 3 of the Convention (for a detailed analysis of the applicable principles concerning overcrowding specifically, see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 143-148, 10 January 2012).

39. The applicant also complained that he had had to sleep on a mattress infested by parasitic insects and that his bedding had been changed very rarely. He also complained about the inadequate quantity and quality of food provided to him. While he did not provide any evidence to support these claims, he submitted copies of his complaints in that respect (see paragraph 13 above), and in the absence of replies to the contrary, the Court will again accept the applicant's statements as true.

40. It is also clear from the findings of the national Ombudsman that, as recently as 2010, the prison system still received inadequate funds to ensure even the minimum food levels required by the relevant Government decisions (see paragraph 26 above).

41. The Court therefore concludes that the applicant was detained in overcrowded conditions, suffered as a result of the presence of parasitic insects in his cell and did not receive even the minimum level of food required by the relevant Government decision. There has accordingly been a violation of Article 3 of the Convention in the present case.

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

42. The applicant complained of a violation of Article 6 of the Convention because the domestic courts had failed to deal with his strongest arguments and had convicted him under a provision of the Criminal Code which had clearly been inapplicable to his case. The relevant part of Article 6 reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

43. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

44. The applicant submitted that he had been convicted under Article 329 of the Criminal Code (see paragraph 19 above), which he argued was clearly inapplicable to his case for two separate reasons. Even though he had expressly relied on these two reasons before the domestic courts, none of the courts had given a clear explanation as to why either argument had been insufficient for excluding the application of Article 329 to his case. However, such an explanation had been of vital importance as, had the courts decided to accept either of his two arguments, the applicant's conviction under Article 329 would have been impossible.

45. The applicant added that, despite the Government's assertion that settled judicial practice had developed interpreting the relevant provisions of the law, removing the need for the courts to repeat the reasons for rejecting his arguments each time, no specific examples of such practice had been annexed to the Government's observations. On the contrary, the commentary on the Criminal Code, written by esteemed law professors and

high-ranking judges and produced by the applicant before the Court, stated that "[f]rom the wording of Article 329, negligence in office may be defined as a public official's failure to perform or the improper performance of his or her official duties". In his view, this supported his argument that, in receiving payments from students to enrol them at his private high school, he could not have been performing duties as a public official and could therefore not have been negligent in carrying out any official duties for the purposes of Article 329.

(b) The Government

46. The Government submitted that, in accordance with the principle of subsidiarity, it was for the domestic courts to examine the evidence in a specific case and determine a person's guilt or innocence. The applicant had essentially sought to reopen domestic proceedings via his complaint to the Court, and had hoped to obtain a different interpretation by the Court from that made by the domestic courts of a specific provision of Moldovan law.

47. In any event, the courts did not have to give reasons in respect of the applicant's arguments, which had been dealt with several times before in previous case-law and had not been distinguishable on their facts so as to require the courts to arrive at a different conclusion. The applicant had been able to submit his arguments to the courts and had been able to use the services of a lawyer.

2. The Court's assessment

(a) General principles

48. 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 adduced by the parties, 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 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*, 9 December 1994, § 29, Series A no. 303-A*; Hiro Balani v. Spain*, 9 December 1994, § 27, Series A no. 303-B; and *Helle v. Finland*, 19 December 1997, § 55, *Reports of Judgments and Decisions* 1997-VIII).

49. In *Ruiz Torija v. Spain* (cited above, §§ 29-30) the Court found that the domestic court's failure to deal with the applicant's contention that the court action brought against him had been time-barred amounted to a violation of Article 6 of the Convention. Similar failures to give sufficient reasons resulted in findings of violations of Article 6 of the Convention in *Hiro Balani* (cited above, §§ 27-28); *Suominen v. Finland* (no. 37801/97, §§ 34-38, 1 July 2003); *Salov v. Ukraine* (no. 65518/01, § 92, ECHR 2005-VIII); *Popov v. Moldova (no. 2)* (no. 19960/04, §§ 49-54, 6 December 2005); and *Melnic v. Moldova* (no. 6923/03, §§ 39-44, 14 November 2006).

(b) Application of these principles in the present case

50. The Court reiterates that it is not its primary task to interpret domestic law and even less so to decide on the guilt or innocence of a person convicted by the domestic courts. However, it will examine whether the proceedings as a whole complied with the requirements of Article 6 of the Convention, including the obligation to give reasons for the judgments given. In this latter connection it reiterates that "a court may consider it unnecessary to respond to arguments which are clearly irrelevant, unsubstantiated, abusive or otherwise inadmissible owing to clear legal provisions or well-established judicial practice in respect of similar types of arguments" (see *Fomin v. Moldova*, no. 36755/06, § 31, 11 October 2011).

51. In the present case, the applicant raised two specific arguments before the domestic courts: that by admitting students to his private school he could not have been performing duties as a public official and that, in any event, the damage allegedly caused was on a much smaller scale than the minimum required for Article 329 to become applicable. The Court points out that it is not its task to examine whether these two arguments were well-founded. It confines itself to observing that in the applicant's case these submissions were relevant: had the domestic courts decided that either of the two arguments were well-founded, they would have been obliged to dismiss the case against the applicant since the elements set out in Article 329 would not have been met (see, *mutatis mutandis*, *Ruiz Torija*, cited above, § 30).

52. The Government referred to the existence of well-established case-law concerning both arguments raised by the applicant, which in their submission had made it unnecessary for the courts to give a specific response in this particular case. However, the Government did not cite any examples of such case-law, even though the applicant pointed this out in his observations. In the absence of any evidence of such case-law or of any other customary rule or legal text contradicting the applicant's position, including the commentary on the Criminal Code produced by the applicant (see paragraph 45 above), it could not be said that the courts were able to

remain silent in response to his two arguments because they had already been answered before.

53. In the Government's opinion, the applicant's aim was to obtain the Court's own interpretation of the relevant domestic legal provisions. The Court has no intention of interpreting the domestic law or of verifying whether the domestic courts' interpretation was correct. Yet it cannot but conclude that no interpretation has been given by the domestic courts in the present case, except for a statement that "...these [arguments] are unsubstantiated and are contradicted by the material in the case file". This statement is so general that it could be inserted into any judgment, without providing any additional details or reasons specific to that judgment. In the present case, the courts made no analysis of how the applicant, being accused of enrolling pupils at his private school, had acted in any official capacity or why the damage caused (see paragraph 10 above) had been sufficient to trigger the application of Article 329, which only applies to large-scale damage (that is, at least MDL 10,000).

54. The domestic courts' failure to give a response to the two serious arguments raised by the applicant also appears to conflict with their obligation to examine each argument raised in an appeal, as expressly set out in the Code of Criminal Procedure (see paragraph 20 above). Moreover, the Court of Appeal's failure to give any specific reasons as to the applicability of Article 329 prevented the applicant from appealing in an effective way against his conviction (see *Suominen*, cited above, §§ 37 and 38).

55. In the light of the above-mentioned considerations, the Court considers that the applicant did not have the benefit of fair proceedings (see *Suominen*, cited above, § 38 and *Fomin*, cited above, § 34). There has, accordingly, been a violation of Article 6 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

56. The applicant complained that he did not have an effective domestic remedy in respect of his complaints under Article 3 of the Convention. He relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

57. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

58. The applicant referred to his numerous unsuccessful complaints made to the domestic authorities in an attempt to improve his conditions of detention. Moreover, the Moldovan legislation did not authorise a court or any other administrative body examining a complaint to order the immediate improvement of a prisoner's conditions of detention, which depended on the allocation of resources from the State budget.

59. The Government argued that it was open to the applicant to claim compensation for any alleged violation of Article 3 in a civil action.

60. 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.

61. In the present case, for the same reasons as those which have led to the dismissal of the Government's objection concerning exhaustion of domestic remedies (see paragraphs 31-33 above), the Court finds that there has been a violation of Article 13 of the Convention due to the absence of effective remedies in respect of complaints concerning conditions of detention in Moldova.

62. There has therefore been a breach of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 20,000 euros (EUR) in compensation for the damage caused to him as a result of the violation of his rights under Articles 3, 6 and 13 of the Convention. He suffered particularly because it was the first time he had been in prison and because of the poor conditions of his detention, as well as being surrounded by thirteen reoffenders in his cell, fearing for his life and health.

65. The Government argued that the amount claimed was excessive in view of the Court's case-law.

66. Having regard to the nature of the violations found above, 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 the applicant EUR 5,000.

B. Costs and expenses

67. The applicant claimed EUR 4,000 for legal costs. He submitted an itemised list of hours worked on the case (fifty-six hours at an hourly rate ranging between EUR 30 and EUR 100).

68. The Government argued that both the number of hours worked on the case and the rates charged by the lawyer were excessive.

69. According to the Court's 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 are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the application admissible;

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

3. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* unanimously that there has been a violation of Article 13 of the Convention;

5. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months of 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 respondent State's national currency at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge López Guerra is annexed to this judgment.

J.C.M.
M.T.

PARTLY DISSENTING OPINION OF JUDGE LÓPEZ GUERRA

Although I agree with the Chamber's finding of a violation of Article 3 of the Convention based on the conditions of the applicant's detention, I differ from the majority of the Chamber with respect to their finding of a violation of Article 6 § 1 of the Convention based on the argument that the grounds stated for the Supreme Court's ruling were insufficient. I do not find that the Moldovan courts failed to provide sufficient grounds for their decisions, since at three levels of jurisdiction they examined all of the criminal charges against the applicant, ruled on those charges on the basis of both the applicable law and the circumstances of the case, and provided reasons for those decisions in a non-arbitrary manner.

The applicant maintained (see paragraph 44 of the judgment) that none of the courts dealing with his case had given a clear explanation in response to several of his arguments. But as the Court has consistently held in its previous case-law, although Article 6 § 1 of the Convention obliges courts to state the reasons for their decisions, this cannot be interpreted as requiring a detailed response to each and every one of the applicant's arguments (see the case-law cited in paragraph 48 of the judgment). In order to counter the charges against him, the applicant was provided with an opportunity to put forward his defence before the Moldovan courts at three levels of jurisdiction. These courts examined the applicant's allegations, as evidenced by the fact that both the Chişinău Court of Appeal and the Supreme Court reduced the penalties imposed on the applicant in the previous rulings. Furthermore, when addressing the applicant's allegations in a ruling that found several mitigating circumstances in his favour and reduced the penalties imposed upon him by the Chişinău Court of Appeal, the Supreme Court made express reference to the applicant's objections to the lower court's application of Article 329 § 1 of the Moldovan Criminal Code. However, it dismissed those objections, considering them unsubstantiated and contradicted by the material evidence, likewise broadly making reference to the facts of the case, which had, moreover, already been examined in two previous court rulings (see paragraph 11 of the Court's judgment).

I consider that when the facts of a case have been sufficiently examined and evaluated in rulings by the lower courts, the higher courts are not required, in addressing a party's appeal, to once again reproduce all of the facts and reasoning included in the previous rulings.

In this specific case the Supreme Court addressed each and every one of the applicant's substantive complaints on appeal, reaching its decision based on the applicable law and stating its reasons, which can in no way be considered arbitrary. The succinct nature of its reasoning on several points cannot be regarded as a basis for finding a violation of Article 6 § 1 of the Convention.