CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF MANCEVSCHI v. MOLDOVA

(Application no. 33066/04)

JUDGMENT

STRASBOURG

7 October 2008

FINAL

07/01/2009

This judgment may be subject to editorial revision.

In the case of Mancevschi 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 16 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 33066/04) 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 Oleg Mancevschi ("the applicant"), on 18 June 2004.

2. The applicant was represented by Mr V. Nagacevschi, a lawyer practising in Chişinău and a member of the non-governmental organisation Lawyers for Human Rights. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that a search conducted at his apartment and office had infringed his rights under Article 8 of the Convention.

4. The application was allocated to the Fourth Section of the Court. On 21 November 2006 the President of that Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Chişinău.

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

7. In 1992 the applicant founded a company (Rusman) and was its director until 1998.

8. In July 2001 he became a licensed lawyer. On an unknown date in 2002 he became Rusman's lawyer.

9. On 28 July 2003 S. P., the director of another company, was killed and a criminal investigation was initiated into the case. On 23 February 2004 the applicant signed a contract to represent B., who was suspected of the murder of S. P. According to the Government, the investigator found certain links between the activities of Rusman and S. P.'s death and decided to hear the applicant as a witness in respect of the activities of Rusman.

10. On 26 May 2004 the applicant was summoned to appear on the same day before T., an investigator of the Chişinău Police Inspectorate, in order to testify as a witness in his client's case. Since he only received the summons fifteen minutes before the time indicated to appear, he was fifteen minutes late in arriving at the investigator's office. T. had left by then. On the same date the applicant sent a telegram to the investigator, informing him of these events.

11. Also on 26 May 2004 T. ordered the search of the applicant's office. The decision read as follows:

> "Officer T. [description of duties],
>
> Having examined the materials of criminal file [no. of file] initiated under Article 145(2) of the Code of Criminal Procedure;
>
> Has established that on 28 July 2003 at approximately 19.00 in Chişinău [address] [P. S.] was shot and killed with an unidentified firearm.
>
> Following a criminal and an operational investigation it was determined that B. [address], who has been arrested and is detained at [a detention centre], was connected with the murder of [P. S.]
>
> Taking into account that evidence in the file and the material obtained through the operational investigation allow a well-founded assumption that objects of interests to the operational investigation and which are material evidence in the criminal case, can be found at [the applicant's] office in Lex Consulting situated at [address], on the basis of Article 125 CPP.
>
> Decides

> To order a search of [the applicant's] office in Lex Consulting situated at [address] with the aim of finding and taking as evidence objects of interest to the operational investigation and which are material evidence in the criminal case."

12. On the same date T. issued an identically worded warrant for the search of the applicant's apartment.

13. Following T.'s order, also on 26 May 2004 a prosecutor asked the Râşcani District Court to issue a warrant for the search of the applicant's office since "objects which are of interest to the operational investigation and which are material evidence in the criminal case, are at [the applicant's] workplace". An identically worded request was made in respect of the applicant's apartment.

14. Still on the same day, Judge E.C. from the Râşcani District Court adopted a decision authorising the search of the applicant's office. The decision read as follows:

> "The court ... has examined in camera the request of the section prosecutor from the Prosecutor General's Office concerning the authorisation of a search.
>
> The court established:
>
> In the present request permission is requested to authorise the search of [the applicant's] office in Lex Consulting S.R.L. situated at [address] in respect of the criminal file [file number] initiated in respect of the crime provided for in Article 145(2) of the Criminal Code, concerning the murder of [S. P.] which took place on 28 July 2003 at approximately 19.00 in Chişinău at [address] with an unidentified firearm.
>
> The court considers that the request is lawful and well grounded, and, based on Articles 125, 301 and 306 of the Code of Criminal Procedure, the court:
>
> Orders
>
> To authorise a search at [the applicant's] office at Lex Consulting S.R.L. situated at [address].
>
> The decision is final."

An identically worded decision authorised a search of the applicant's apartment.

15. On 27 May 2004 the applicant complained to the Râşcani District Court of unlawful actions by the investigator. In particular, he relied on Article 90(3) of the Code of Criminal Procedure (CCP, see paragraph 26 below), which prohibited the hearing as a witness of a lawyer representing an accused in the same case. He finally requested the court "not to take into account any statements he had made because they would have been made under duress and the investigator had taken advantage of his ill health as he had been on sick leave at the time, being treated for blood poisoning".

16. On 28 May 2004 T. summoned the applicant again for 3 July 2004. On the same day he issued an order requiring the applicant to be brought

before him by force because of his unexplained failure to appear as a witness before the investigating authority on 25 and 26 May 2004.

17. On 31 May 2004 the applicant was brought by force before the investigating authority. On the same day he made statements relating to his client's case. He mentioned, as in the record of the interview, that he should not be examined as a witness as he was the lawyer of an accused in the same case.

18. Also on 31 May 2004 T. decided to remove the applicant as a representative of his client in the case because:

> "... during the criminal investigation it was established that [the applicant] had been involved in the economic activities of Rusman Ltd as a result of which there is a need to hear him as a witness".

19. After the interrogation, T. informed the applicant of the two decisions adopted on 26 May 2004 authorising the searches of his home and office and gave him copies of these decisions. The applicant complained that these decisions did not include any relevant reasons.

20. On the same day the applicant's office was searched in the presence of the applicant and his lawyer, followed by a search at his apartment. In the minutes of the search at both places the aim of the search was noted as "the discovery of a mobile telephone and documents regarding Rusman Ltd". A proposal was made to hand over the mobile telephone and documents regarding Rusman Ltd and then a search of the Lex Consulting offices took place. Nothing was discovered or taken from the applicant's office. According to the Government, the search lasted approximately thirty-five minutes. The record mentioned the time the search started but not the time it ended. It also mentioned that a complaint had been made about the unlawfulness of the search at the applicant's office.

21. According to the record of the search of the applicant's apartment, a mobile telephone was given to the investigators at their request. It was returned the following day. According to the parties, his home was searched (for about 20 minutes, as confirmed by the record). The applicant added that the telephone taken by the investigators belonged to his wife.

22. On 8 June 2004 the applicant submitted to the Râşcani District Court an addendum to his complaint of 27 May 2004. He claimed that he had not received any summons other than the one requesting him to appear on 26 May 2004 and that there was no evidence to the contrary. He also noted that the questions asked on 31 May 2004 concerned issues of which he had knowledge as a result of his activity as a legal representative in his client's case. He asked the court for a ruling that the actions of the investigating authority were unlawful, for cancellation of the orders to bring him to the prosecutor by force and to remove him as his client's representative and for a decision to be adopted informing the prosecuting authority and the Ministry of the Interior of the unlawful acts committed. He relied, *inter alia*, on Articles 6 and 8 of the Convention.

23. The Râşcani District Court scheduled the examination of the applicant's complaint for 10 June 2004. On that day he sought the withdrawal of Judge E. C. because she had taken the decisions authorising the searches of his office and apartment. He submitted that the relevant decisions were unreasoned and did not mention his status as the lawyer of an accused in the case in respect of whom the search had been ordered, which suggested that the judge had not even considered the case before signing the decision. In addition, the decision itself did not give any time-limits for making the searches, the aims of the searches or the person(s) authorised to carry them out, contrary to Article 306 CCP. Finally, the judge allegedly took the side of the prosecution, thus infringing the right to equality of arms. In an addendum, the applicant mentioned that he was about to lodge a complaint with the European Court of Human Rights about the searches and emphasised the superficial manner in which the judge had examined the investigator's request since she had failed to note the applicant's status as a legal representative. On the same date, another judge of the Râşcani District Court dismissed the applicant's request for Judge E.C. to be withdrawn.

24. The Râşcani District Court examined the applicant's complaint on 14 June 2004 and rejected it. The court found that the applicant had been asked questions regarding Rusman Ltd, where he had been a director until 1998, and not about anything he could have found out from his client. In addition, he had been removed as a legal representative in order to make it possible to question him as a witness. The court found, having analysed all the materials in the file, that the actions of the investigating authority, including the orders to bring in the applicant by force and his removal as his client's representative, had been lawful and well-founded. The decision was final. No reply was given to the applicant's complaint about the searches of his office and home.

25. According to the applicant, the investigating authority presented the criminal file to the court and the court consulted it before adopting its decision. He and his lawyer were not given access to it. His request to have access to the file was allegedly rejected.

II. RELEVANT DOMESTIC LAW

26. The relevant provisions of the Code of Criminal Procedure (CCP) read as follows:

> "Article 90. The witness.
>
> ... (3) The following cannot be heard as witnesses:
>
> ... 2) lawyers, members of bar associations – for the verification of information of which they have become aware due to requests for legal assistance or to giving such assistance; ..."

"Article 125. Grounds for ordering a search.

(1) The investigating authority has the power to search if the evidence in the file or operational investigative materials give reason to believe that objects or documents and valuables obtained as a result of a crime or other objects and documents which may be important for the criminal case are in a certain room or another place.

... (3) Searches shall be carried out on the basis of a reasoned order of the investigating authority and only with the authorisation of the investigating judge. ..."

"Article 126. Grounds for seizing objects and documents.

(1) The investigating authority has the power to seize objects or documents which are important for the criminal case if the evidence in the file or the operational investigative materials indicate precisely the place and person possessing them. ..."

"Article 128. The procedure for carrying out searches or seizing objects of documents.

...(4) In seizing objects and documents, after presenting the order, the representative of the investigating authority shall first request the objects or documents to be seized to be handed over and, in case of a refusal, shall proceed to their seizure by force. If the objects or documents to be seized are not in the place indicated in the order, the person conducting the search has the power to search for them, giving reasons. ...

(6) Objects and documents discovered during the search or the seizure, the circulation of which is prohibited by law, shall be seized regardless of their relevance to the criminal case."

"Article 301. Criminal investigation acts carried out with the authorisation of the investigating judge.

(1) Criminal investigations involving limitations to the inviolability of the home .. shall be authorised by the investigating judge. ..."

"Article 305. Manner of dealing with requests for criminal investigations, operational investigations or the application of preventive measures.

1. A request for criminal investigations, operational investigations or the application of preventive measures shall be examined by the investigating judge in camera, with the participation of the prosecutor and, if applicable, the agency responsible for carrying out the operational investigation.

... 8. The decision adopted by the investigating judge under the provisions of the present Article is final, except for the cases provided for in the present Code."

"Article 306. Court decisions concerning criminal investigations, operational investigations or the application of preventive measures.

A court decision regarding investigative actions, operational measures or preventive measures shall include: ... the authority carrying out the operational investigation, investigative or preventive measures, the aim of taking these actions or measures and

the person to whom they refer, as well as the authorisation or the refusal to authorise the measures, the period for which the action is authorised, the authority empowered to enforce the decision, ..."

"Article 313. Complaints about unlawful acts and decisions by the investigating authority and by the authority responsible for carrying out the operational investigation.

1. A suspect or accused or his or her lawyer, a victim and other participants in criminal proceedings whose rights and lawful interests have been infringed by unlawful acts and decisions by the investigating authority and by the authority responsible for carrying out operational investigations can lodge a complaint with the investigating judge.

2. Persons mentioned under paragraph 1 above have the right to challenge before the investigating judge:

... (3) other actions which affect the rights and constitutional freedoms of the person."

27. The relevant provisions of Law no. 1545 on compensation for damage caused by illegal acts by criminal investigation bodies, prosecution authorities and courts read as follows:

"Article 1

(1) In accordance with the present law, individuals and legal entities are entitled to compensation for the pecuniary and non-pecuniary damage caused as a result of:

... b) illegal search carried out during the investigation phase or during trial, confiscation, levy of a distraint upon property, illegal dismissal from employment, as well as other procedural acts that limit the person's rights;

... d) carrying out of unlawful investigative measures;

e) illegal seizure of accounting documents, other documents, money or stamps as well as blocking of banking accounts.

(2) The damage caused shall be fully compensated, irrespective of the degree of fault of the criminal investigation organs, prosecution and courts.

Article 4

A person shall be entitled to compensation in accordance with the present law when one of the following conditions is met:

a) pronouncement of an acquittal judgment;

b) dropping of charges or discontinuation of investigation on the ground of rehabilitation;

c) adoption of a decision by which an administrative arrest is cancelled on the grounds of rehabilitation;

d) adoption by the European Court of Human Rights or by the Committee of Ministers of the Council of Europe of a decision in respect of damages or in respect of a friendly settlement agreement between the victim and the representative of the Government of the Republic of Moldova before the European Court of Human Rights. Any friendly settlement agreement shall be approved by the Government of the Republic of Moldova; ...”

THE LAW

28. The applicant complained under Article 6 of the Convention that his right to equality of arms had been infringed as a result of his inability to consult the criminal file submitted by the prosecutor to the Râşcani District Court before its decision of 14 June 2004. He also complained, under the same Article, of absence of relevant and sufficient reasons for the various decisions in his case. The relevant part of Article 6 reads as follows:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

29. The applicant further complained under Article 8 of the Convention about the searches of his office and apartment and about being brought by force before the investigating authority in order to be heard as a witness. Article 8 reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

I. ADMISSIBILITY

30. The Government submitted that the applicant had not exhausted all the domestic remedies available to him. In particular he could have, but did not, make use of the provisions of Article 313 of the Code of Criminal Procedure (hereinafter “the CCP”, see paragraph 26 above), which allowed him to challenge in court the investigating authority’s searches at his office and apartment. In the Convention proceedings, the applicant incorrectly relied on Article 305(8) CCP since it applied to a different type of procedure involving the authorisation by the investigation judge and not the actions of the investigating authority. In addition, he could claim damages for

unlawful acts by the investigating authority on the basis of Law no. 1545 (see paragraph 27 above).

31. The applicant disagreed. He pointed to the absence of any domestic decision finding the searches unlawful and submitted that, accordingly, the provisions of Law no. 1545 were not applicable to his case. Under Article 305(8) of the CCP decisions of the investigating judge regarding, *inter alia*, searches, were final and not subject to any form of appeal.

32. The Court notes that it has already dismissed similar objections of the respondent Government based on Law no. 1545, finding that the law is applicable only to persons who have been acquitted or in respect of whom a criminal investigation has been discontinued (see *Sarban v. Moldova*, no. 3456/05, § 59, 4 October 2005). Since this is not the case with the applicant, the Court is not satisfied that the remedy under Law no. 1545 would have been effective in respect of the applicant's complaints.

33. The Court does not consider it necessary to resolve the difference between the parties as to whether the investigating judge's decision authorising the searches constituted a separate procedure from the acts of ordering and/or carrying out the searches by the investigating authority. It notes that, even where a search is ordered by an investigator, prior authorisation by an investigating judge is mandatory under Article 125(3) CPP (see paragraph 26 above). In any event, the complaint against the unlawful actions of the investigating authority to which the Government refer (Article 313 CCP, see paragraphs 26 and 30 above) would have to be submitted, under Article 313(1) CCP, to the investigating judge. The Court has doubts regarding the prospects of success of a complaint about the unlawfulness of an action which is lodged with the investigating judge who has just authorised it and found it both lawful and well-founded, expressly noting that her decision was final (see paragraph 14 above).

34. In view of the above, the Court concludes that the application cannot be declared inadmissible for non-exhaustion of domestic remedies. Accordingly the Government's objection must be dismissed.

35. In his initial application, the applicant also submitted two complaints under Article 6 of the Convention, as well as an additional complaint under Article 8 regarding his having been brought by force before the investigator. However, in his observations on admissibility and merits he asked the Court not to proceed with the examination of these complaints. The Court finds no reason to examine them.

36. In so far as the applicant's complaint under Article 8 of the Convention is concerned, the Court considers that it raises questions of fact and law which are sufficiently serious that its determination should depend on an examination of the merits, and that no grounds for declaring it inadmissible have been established. The Court therefore declares it 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 this complaint.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. The arguments of the parties

37. The applicant submitted that the searches at his office and apartment constituted an interference with his rights guaranteed under Article 8 of the Convention. He considered that, while pursuing a legitimate aim under paragraph 2 of that Article, the interference was neither "in accordance with the law", nor "necessary in a democratic society". In particular, he referred to the lack of detail in the court's decision authorising the searches, which failed to identify the object(s) to be searched, the time-frame for the searches or the person responsible for carrying it out, despite express legal requirements to give such detail. Moreover, the searches conducted on the basis of vaguely worded search warrants and without any special measures being taken to safeguard the confidentiality of files in a lawyer's office, necessarily resulted in a disproportionate interference with the applicant's rights. In particular, he referred to the opening, by the investigating authority, of his safe and of all his files at his office, which undermined his lawyer-client privilege.

38. The Government conceded that there had been an interference with the applicant's rights guaranteed by Article 8 of the Convention, but considered that the interference was in accordance with the law, pursued a legitimate aim and was "necessary in a democratic society". A number of Articles in the CCP clearly described the possibility of conducting searches and the manner of authorising and carrying them out. The searches were necessary in order to help an ongoing criminal investigation and were based on information in the file allowing a reasonable assumption that objects or documents important for the investigation could be found at the applicant's office or apartment. The applicant and his lawyer had made no objections to the manner in which the search had been conducted, noting only that the search had been unlawful. The search was brief and nothing was taken from the office, with only one mobile telephone taken from the apartment.

B. The Court's assessment

1. Whether there was an interference

39. The Court observes that the search and seizure in the present case concerned the applicant's apartment and office, in which he kept his clients'

case files. The Court reiterates that the search of a lawyer's office has been regarded as interfering with "private life" and "correspondence" and, potentially, home, in the wider sense implied by the French text which uses the term "*domicile*" (see *Niemietz v. Germany*, 16 December 1992, §§ 29-33, Series A no. 251-B, and *Tamosius v. the United Kingdom* (dec.), no. 62002/00, ECHR 2002-VIII; see also *Sallinen and Others v. Finland*, no. 50882/99, § 71, 27 September 2005, which confirms that the search of a lawyer's business premises also interfered with his right to respect for his "home", and *Wieser and Bicos Beteiligungen GmbH v. Austria*, no. 74336/01, § 43, ECHR 2007-...).

The Court agrees with the parties in the present case that the search of the applicant's office and apartment amounted to an interference with his rights guaranteed under Article 8 of the Convention.

2. Whether the interference was justified

40. The Court has next to determine whether the interference was justified under paragraph 2 of Article 8, that is, whether it was "in accordance with the law", pursued one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" to achieve that aim or those aims.

a. Whether the interference was "in accordance with the law"

41. The applicant claimed that the interference was not "in accordance with the law" because the search warrant had not given sufficient detail, contrary to legal requirements.

42. The Court observes that a number of provisions of the CCP describe the various aspects of obtaining and executing search warrants, such as the obligation for the investigating judge to give reasons when authorising a search, and to include information such as the purpose of the search, the person authorised to conduct it or the time-frame for the search. The obligation for the investigating judge to give such detailed reasons constitutes an important safeguard against abuse. The Court is satisfied that the legal framework concerning the authorisation of searches is, on the face of it, in line with Article 8 requirements.

43. The Court notes that the applicant's objections relate primarily to the manner in which this legal framework has been applied in the present case. The Court considers that a failure to observe the legal requirements may lead to a finding that the interference with the applicant's rights was not "in accordance with the law" within the meaning of Article 8. However, in the present case it finds that the issue of practical compliance with the law is closely related to whether the interference was "necessary in a democratic society" given, in particular, the special relevance of the principle of lawyer-client confidentiality to the facts under examination. It will therefore examine this issue below.

b. Whether the interference pursued a legitimate aim

44. The parties agreed that the interference had pursued the legitimate aim of the prevention of disorder or crime. The Court agrees with these submissions.

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

45. As regards, in particular, searches of premises and seizures, the Court has consistently held that the Contracting States may consider it necessary to resort to such measures in order to obtain physical evidence of certain offences. The Court will assess whether the reasons adduced to justify such measures were "relevant" and "sufficient" and whether the proportionality principle has been adhered to. As regards the latter point, the Court must first ensure that the relevant legislation and practice afford individuals adequate and effective safeguards against abuse. Secondly, the Court must consider the particular circumstances of each case in order to determine whether, in the particular case, the interference in question was proportionate to the aim pursued. The criteria the Court has taken into consideration in determining this latter issue have been, among others, the circumstances in which the search warrant was issued, in particular further evidence available at that time, the content and scope of the warrant, the manner in which the search was carried out, including the presence of independent observers during the search, and the extent of possible repercussions on the work and reputation of the person affected by the search (see *Buck v. Germany*, no. 41604/98, § 45, ECHR 2005-IV; *Chappell v. the United Kingdom*, 30 March 1989, § 60, Series A no. 152-A; *Camenzind v. Switzerland*, 16 December 1997, § 46, *Reports of Judgments and Decisions* 1997-VIII; *Funke v. France*, 25 February 1993, § 57, Series A no. 256-A; *Niemietz*, cited above, § 37; and *Smirnov v. Russia*, no. 71362/01, § 44, 7 June 2007, ECHR 2007-...).

46. With regard to the safeguards against abuse set out in Moldovan legislation, the Court observes that the search of the applicant's office and apartment was authorised by an investigating judge. The investigator's power to carry out a search was therefore confined only to actions authorised by an independent judicial officer, a procedure which was followed in the present case.

47. The Court notes that the search warrant issued by the investigating judge, repeating as it did almost entirely the order given by the investigator, (see paragraphs 11 and 14 above), did not provide any detail as to what was to be searched for. Rather, the warrant was formulated in extremely broad terms, simply authorising "a search at [the applicant's] office at "Lex Consulting S.R.L. situated at [address]."

48. The Court is struck by this broad formulation, which gave unfettered discretion to the investigator to search for anything he wanted in both the applicant's apartment and the law office. The order did not contain any

information about the reasons why it was believed that the search of the applicant's apartment or office would enable evidence of any offence to be obtained (compare *Niemietz*, cited above, § 37; *Ernst and Others v. Belgium*, no. 33400/96, § 116, 15 July 2003; and *Smirnov*, cited above, § 47). Only after the police had entered the applicant's apartment was he invited to hand over "a mobile telephone and documents regarding Rusman Ltd" (see paragraph 20 above).

49. The Court also observes that the applicant himself was not charged with, or suspected of, any criminal offence or unlawful activities. On the other hand, his office contained case files of his clients. Having regard to the fact that the search was conducted at the applicant's law office, with the implications that such a search could have for lawyer-client confidentiality, the Court would have expected the investigating judge to have given compelling and detailed reasons for authorising this course of action and for putting in place particular measures to safeguard the privileged materials protected by professional secrecy. Moreover, before being removed from the case by the investigator, the applicant had represented a person in the criminal case in connection with which the search had been ordered. The search could thus have led to the finding of items or documents obtained by the applicant as the accused's representative, with obvious repercussions for that accused's rights guaranteed under Article 6 of the Convention. Therefore, an even higher degree of caution was required before a search could be authorised in the applicant's home and office. However, no analysis of any of these considerations was made by the investigating judge in her decisions of 26 May 2004.

50. In these circumstances, in particular in view of the broad formulation of the search warrant and the absence of any special safeguard to protect lawyer-client confidentiality, the Court finds that the domestic authorities failed in their duty to give "relevant and sufficient" reasons for issuing the search warrants. There has, accordingly, been a violation of Article 8 of the Convention.

51. In view of its finding that the searches of the applicant's apartment and office were incompatible with Convention standards, the Court does not consider it necessary to verify whether the manner in which the searches were actually conducted satisfied Article 8 requirements.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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. Non-pecuniary damage

53. The applicant asked for 5,000 euros (EUR) in compensation for the non-pecuniary damage inflicted on him. He referred to the fact that both his office and apartment were searched, that a mobile phone belonging to his wife and containing very personal information had been seized and no apologies made upon returning it, and that he felt affected by the search of the private areas of his apartment.

54. The Government considered that no damage had been caused to the applicant, who had not submitted any evidence in this respect. They considered that a finding of a violation of Article 8 would constitute, in any event, sufficient just satisfaction.

55. The Court considers that the applicant must have been caused stress and anxiety as a result of searches conducted at his office and apartment, considering that he was not suspected of any unlawful action. It is also apparent that the search at his office was capable of affecting the relationships with his clients and could generally affect his image as a professional. In view of the above, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Deciding on an equitable basis, the Court awards the applicant EUR 2,500 under this head.

B. Costs and expenses

56. The applicant also claimed EUR 1,990 for legal costs and EUR 35 for translation expenses and submitted a contract with his lawyer, an itemised list of hours worked on the case and as well as receipts confirming that the above sums had been paid in full. The hourly fee paid was in conformity with the recommendation adopted by the Moldovan Bar Association on 29 December 2005 concerning fees for legal representation in cases before international tribunals.

57. The Government submitted that the decision of the Moldovan Bar Association had only a recommendation value and was not mandatory. Moreover, the amount paid by the applicant was exaggerated in comparison with the average monthly salary in Moldova. The number of hours worked

on the case (fourteen hours) was also exaggerated, given the applicant's withdrawal of some of the complaints.

58. In the present case, regard being had to the itemised list submitted and the complexity of the issues raised by the Article 8 complaint, the Court awards the applicant EUR 1,535 for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage and EUR 1,535 (one thousand five hundred and thirty five euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 7 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President