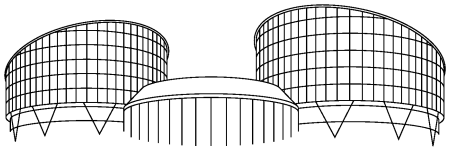

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF GUMENIUC v. THE REPUBLIC OF MOLDOVA

(Application no. 48829/06)

JUDGMENT

STRASBOURG

16 May 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Gumeniuc v. the Republic of Moldova,

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

Işıl Karakaş, *President,*
Julia Laffranque,
Nebojša Vučinić,
Valeriu Griţco,
Ksenija Turković,
Jon Fridrik Kjølbro,
Georges Ravarani, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 4 April 2017,

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

PROCEDURE

1. The case originated in an application (no. 48829/06) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moldovan national, Mr Andrei Gumeniuc ("the applicant"), on 27 October 2006.

2. The applicant was represented by Mr O.L. Dovbysh, a lawyer practising in Vinnytsya, Ukraine. The Moldovan Government ("the Government") were represented by their Agent, Mr L. Apostol.

3. The applicant alleged, in particular, that he had been subjected to detention in breach of the provisions of Article 5 § 1 of the Convention.

4. On 19 November 2014 the complaint concerning Article 5 § 1 was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1978 and lives in Calaraseuca.

6. On 27 July 2005 the applicant was stopped by the traffic police for speeding.

7. By an order of 5 September 2005 the traffic police fined the applicant 60 Moldovan lei (MDL) (the equivalent of some 4 euros (EUR) at the time). The applicant did not challenge the police order.

8. As the applicant failed to pay the fine, on an unspecified date a bailiff applied to the Ocnita District Court to have the fine converted into thirty days' administrative detention, under Article 26 § 5 of the Code of Administrative Offences (see paragraph 14 below). According to the bailiff, the applicant had been ordered to pay the fine by 28 February 2006; however, he had failed to do so and had thus acted in bad faith.

9. On 26 May 2006, at a hearing conducted without the presence of the parties, the Ocnita District Court accepted the bailiff's request and ordered the applicant's administrative detention for a period of thirty days. The document constituting the court's decision was a pre-printed template which the judge had completed by hand with the specific details of the case, such as the names of the judge, the applicant and the bailiff, the relevant dates, the amount of the fine, the applicant's address and the number of days of detention to be served by the applicant. It did not contain any indication that the applicant had been summoned to appear at the hearing.

10. At 8 a.m. on 12 June 2006 the applicant was arrested at home and placed in detention. At about 5 p.m. the same day he suffered a heart attack and was taken by ambulance to a hospital. He recovered shortly thereafter and was soon discharged from hospital.

11. On 16 June 2006 the applicant lodged an appeal against the Ocnita District Court's decision of 26 May 2006, arguing, *inter alia*, that he had not been summoned to appear at the hearing of 26 May 2006, that he had had no knowledge of the decision of 26 May 2006 prior to his arrest, and that he had not been given a chance to contest the court's decision before being placed in detention. The applicant also argued that the traffic police's order of 5 September 2005 imposing a fine on him for speeding had been abusive because the police had no evidence to prove that it had been his car which had been caught speeding and not other cars on the road.

12. On 30 August 2006 the Balti Court of Appeal dismissed the applicant's appeal, finding that the applicant had not challenged the traffic police's order of 5 September 2005 within the statutory time-limit. The Court of Appeal did not respond to the applicant's argument about the failure to summon him to the hearing of 26 May 2006.

13. It does not appear from the materials of the case that the applicant served the rest of the detention term.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. Under Article 26 (5) of the Code of Administrative Offences, in force at the material time, any person who failed to pay an administrative fine in bad faith was liable to have the fine converted into administrative detention. The duration of the detention was ten days for every 20 MDL but no longer than thirty days. Once such a measure had been adopted, it could

not be revoked upon payment of the fine. It could only be revoked by the hierarchically superior court if an appeal against it was successful.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

15. The applicant complained of a violation of his right to liberty. He relied on Article 5 § 1 of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Admissibility

16. The Court notes that the application 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

17. The applicant argued that his detention had been contrary to Article 5 § 1 of the Convention because he had not been informed about the hearing of 26 May 2006, and he had been unable to prepare for it and have a lawyer to represent him.

18. The Government submitted that the applicant's detention fell within the scope of the exception to the rule of personal liberty listed in sub-paragraph (a) of Article 5 § 1 of the Convention and not within the scope of sub-paragraph (b) of that Article. They argued that the measure of detention in this case had been punitive in nature and had not been intended to secure the payment of the fine by the applicant.

19. The Government further submitted that the materials of the domestic case file were no longer available, because they had been destroyed after a period of three to five years. Nevertheless, they expressed the conviction that the applicant had been summoned to appear before the Ocnita District Court for the hearing of 26 May 2006.

20. The Court reiterates that Article 5 of the Convention is, together with Articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of the individual. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty (see, for example, *Lukanov v. Bulgaria*, 20 March 1997, § 41, *Reports of Judgments and Decisions* 1997-II; *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II; and *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 461, ECHR 2004-VII).

21. While the first sentence of Article 5 § 1 of the Convention contains a general declaration of the right to liberty and security of person, the second sentence sets out an exhaustive list of six exceptions to the right to liberty, namely six ways in which detention may legitimately be imposed. Those exceptions are set out in sub-paragraphs (a) to (f) and no deprivation of liberty can be compatible with Article 5 § 1 unless it falls within the scope of any of those exceptions.

22. Turning to the facts of the present case, the Court notes that it is undisputed between the parties that the applicant was deprived of his liberty for approximately nine hours on 12 June 2006. The Court must therefore determine next whether the applicant's deprivation of liberty on that date fell under any of the six exceptions allowed by Article 5 § 1 of the Convention.

23. The Court notes from the outset the Government's submission to the effect that the applicant's detention fell under sub-paragraph (a) of Article 5 § 1 of the Convention. It also accepts the Government's submission that the decision of the Ocnita District Court of 26 May 2006 constituted a "conviction" for the purposes of the same sub-paragraph. At the same time, the Court notes that the proceedings as a result of which the applicant was placed in detention were not directly related to the proceedings concerning his breach of the traffic code but were new and entirely separate proceedings. In other words, the detention imposed on him by the Ocnita District Court on 26 May 2006 was not for speeding on a public road but for failing to pay an administrative fine in bad faith, conduct reprimanded under Article 26 (5) of the Code of Administrative Offences, a provision which is

of general application to all failures to pay administrative fines. As a matter of fact, the Court considers, in the light of the above findings, that the proceedings ending with the decision of 26 May 2006 constituted a new set of criminal proceedings against the applicant, distinct from that concerning his breach of the traffic code.

24. In this connection, it is to be reiterated that the requirement of Article 5 § 1 (a) that a person be lawfully detained after "conviction by a competent court" does not imply that the Court has to subject the proceedings leading to that conviction to comprehensive scrutiny and verify whether they fully complied with all the requirements of Article 6 of the Convention (see *Drozd and Janousek v. France and Spain*, 26 June 1992, § 110, Series A no. 240). However, if a "conviction" is the result of proceedings which were a "flagrant denial of justice", that is to say, were "manifestly contrary to the provisions of Article 6 or the principles embodied therein", the resulting deprivation of liberty would not be justified under Article 5 § 1 (a) of the Convention (see *Drozd and Janousek*, cited above, § 110; *Ilaşcu and Others*, cited above, § 461; and *Stoichkov v. Bulgaria*, no. 9808/02, § 58, 24 March 2005).

25. With the above in mind, the Court notes from the material in its possession that the procedure by which the applicant's administrative fine was converted to thirty days' administrative detention was at the very least problematic. In the first place, there is no indication in the material of the case file and/or in the text of the Ocnita District Court's decision of 26 May 2006 that the applicant was even informed about the proceedings, let alone summoned to the hearing. He therefore had no chance to defend himself in any way. Moreover, the court's decision itself indicates that the procedure was treated as a simple formality, without any assessment of the specific circumstances of the case. In this connection, it is relevant to note that the judge merely filled in by hand a pre-existing template, as though it were of little importance. Nevertheless, the stakes for the applicant were significant. Moreover, when examining the applicant's appeal against that decision, the Court of Appeal dismissed it without even mentioning his argument that he had not been informed about the proceedings and had not been summoned to the hearing.

26. In such circumstances, the Court considers that since the applicant's conviction was in flagrant breach of the guarantees of a fair trial, the subsequent detention must be regarded as arbitrary and therefore not "lawful detention" justifiable under Article 5 § 1 (a). Accordingly, there has been a breach of Article 5 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 5,000 euros (EUR) in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage. In so far as the pecuniary damage is concerned, the applicant argued that the sum represented the cost of medical treatment after his heart attack, costs of travel and postal expenses. He did not, however, submit any evidence in support of the above claim.

29. The Government submitted that the applicant was not entitled to any compensation for pecuniary damage, since such compensation had not been substantiated by the applicant and there was no causal link between the violation found and the alleged pecuniary damage claimed. As to the amount claimed for non-pecuniary damage, the Government argued that it was excessively high.

30. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, in view of the breach found in this case, it considers it appropriate to award the applicant compensation in respect of non-pecuniary damage. Deciding on an equitable basis, the Court awards the applicant EUR 1,000.

B. Costs and expenses

31. The applicant also claimed EUR 2,049 for the costs and expenses incurred before the Court. The amount included the legal fees.

32. The Government submitted that the expenses claimed by the applicant were neither necessary nor reasonable.

33. 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 applicant EUR 1,000 for costs and expenses for the proceedings before it.

C. Default interest

34. 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, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand 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;

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

Done in English, and notified in writing on 16 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Işıl Karakaş
Deputy Registrar	President