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Meeting: 1310th meeting (March 2018) (DH)

Item reference: Action report (16/02/2018)

Communication from the Republic of Moldova concerning the case of Gumeniuc v. the Republic of Moldova (Application No. 48829/06)

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Réunion : 1310^e réunion (mars 2018) (DH)

Référence du point : Bilan d'action

Communication de la République de Moldova concernant l'affaire Gumeniuc c. République de Moldova (requête n° 48829/06) **(anglais uniquement)**



DGI

16 FEV. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

MINISTRY OF JUSTICE OF THE REPUBLIC OF MOLDOVA
GOVERNMENT AGENT

Chisinau, 16 February 2018

ACTION REPORT

for the execution of the judgment

in the case of *Gumeniuc v. the Republic of Moldova* (no. 48829/06)
judgment of 16 May 2017, final on 16 August 2017

CASE DESCRIPTION

1. The present case concerns the violation of the applicant's right to liberty and security, guaranteed by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter "the Convention"), in particular the applicant's administrative detention ordered due his failure to pay a fine of EUR 4 for speeding in the framework of a trial that the applicant had not attended since he had not been summoned.

2. The European Court of Human Rights (hereafter "the Court") found that the national courts made no reasonable attempt to inform the applicant of the administrative proceedings against him and the necessity to appear before them, whereas they had not assessed the specific circumstances of the case, and concluded that the applicant's detention – even if only for nine hours – had been arbitrary and unjustifiable under Article 5 § 1 (a) of the Convention.

INDIVIDUAL MEASURES

The applicant's release from detention

3. As indicated in the judgment, the applicant was released after nine hours of detention on 12 June 2006 (§ 22). No other individual measures are necessary.

Payment of just satisfaction

4. The just satisfaction was paid in full and without delays.

GENERAL MEASURES

Legislative amendments

5. At the time of the events the administrative procedure was regulated by the Code of Administrative Offences of 1985, which was repealed in October 2008 when a new Contravention Code was adopted. Article 34 (4) of the new Code provides that in case of non-payment of a fine in bad faith or on account of lack of resources the competent authorities can request a court to convert it into other administrative sanction, such as prohibition to drive for a certain period of time, community work or administrative detention for up to 30 days. The new Code includes procedural safeguards, which were not in place at the time of the events. In particular, it provides the following:

- The parties should be summoned at the court hearings. Failure of a person who was properly summoned to appear in court without a valid reason does not prevent the court from examining the cases in his/her absence (Article 455 (1) and (3)).
- When a court examines a request on the application of administrative detention, the presence of the person concerned is mandatory. If this person absconds and does not appear at the hearing in bad faith, the application of the detention can be decided in his/her absence (Article 455 (5)).
- The summoning in administrative proceedings is done as stated by the summoning rules established by the Code of Criminal Procedure (Article 382(6)).
- In case a party is absent from the court hearing, the judge should check whether the summoning was done as provided by the law (Article 456(2) (c)).
- The court should examine the evidence presented at trial (Article 457) and the decision adopted by the court should be reasoned (Article 462).
- The court decision can be appealed against to a higher instance by any party at the proceedings (Article 465).

6. Although in its judgment the Court has not found any shortcomings in the national criminal procedural legislation, on 5 April 2012 the Code of Criminal Procedure was also amended by a new provision offering an additional guarantee to a suspect, accused and/or defendant, related to the summoning of such a person. Thus, following this provision, in case the suspect, accused or defendant failed to appear before the prosecution authorities after the first legal summoning, s/he might be also summoned at the office of his/her lawyer.

7. Thus, following the events at issue, the legislative framework was considerably reformed and the current legislation is able to prevent similar violations from occurring in the future.

8. Taking into account the particularities of this case and the Court's case-law related to the Republic of Moldova concerning the right to liberty and security within the meaning of Article 5 § 1 of the Convention, and since no other driver has been placed in detention for failure to pay a fine for speeding starting 2011, the Government consider that this case is an isolated one, as it refers to the failure of the national investigative bodies to summon the applicant at the address he had notified the authorities during the criminal proceedings, which came in contradiction with the criminal procedure provisions (§ 39 of the judgment). Hence, a general measure needed in this case to prevent similar violations would definitely mainly involve raising the awareness of the authorities by means of publication and dissemination of the judgment.

Publication and dissemination

9. The judgment was translated, published on the Government Agent's official website¹ and disseminated to the relevant authorities (Supreme Court of Justice, Ministry of Interior, Prosecutor General's Office, and the National Institute of Justice). They were advised to reconsider the approach taken in any eventual similar case in the context of the present judgment in order to avoid any violations of such nature in future. Moreover, the Supreme Court of Justice also published a summary thereof on its website, thus making the present case even more accessible for all Moldovan judges².

Generalization of practice

10. On 5 July 2017 the General Prosecutor approved the Prosecutor's Guide on Applying Detention on Remand, published in cooperation with the Norwegian Mission Experts of Rule of Law

¹ <http://agent.gov.md/wp-content/uploads/2017/08/VASILICIUC-v.-THE-REPUBLIC-OF-MOLDOVA-rom.pdf>

² <http://csj.md/index.php/jurisprudenta-cedo1/rezumate-hotararilor-relevante-ale-cedo/40-rezumate-hotarari-cedo-2017/1013-rezumatul-cauzei-vasiliciuc-v-republica-moldova-articolul-5-1-din-conventia-dreptul-la-libertate-si-la-siguranta-incalcare>

Advisers to Moldova. It describes the means of assessing different legal components regarding the detention on remand and refers to the Court's findings in cases related to this issue that concern not only the Republic of Moldova, but also other states.

11. The Guide also refers to the way of appreciating the necessity to apply pre-trial detention in case of an imminent risk that the defendant would leave the country or would abscond from the prosecuting authorities, thus describing and analysing the factors to be taken into account when requesting the application of detention on remand.

Training

12. The national authorities continuously carry out training activities for professionals concerned, including on the matters concerning the right to liberty and security.

13. Under the auspices of the National Institute of Justice (hereinafter "the NIJ"), the judges and prosecutors are continuously instructed in terms of the Court's case-law, including the present judgments. During the period 2014 – 2017, the NIJ organized numerous training activities, including on the Article 5 standards, which involved 1288 professionals, of which over 170 judges and prosecutors attended courses related to Article 5 of the Convention in 2017.

14. In April-June 2017, Moldovan judges and prosecutors attended the distance learning course organized by the National Institute of Justice in cooperation with the European Program for Human Rights Education for Legal Professionals (HELP) concerning "Pre-trial investigation and the European Convention on Human Rights". This course drew a special attention to the issues related to ensuring the respect for the right to liberty and security during pre-trial investigation.

15. A distance-learning course entitled "Introduction to the European Convention on Human Rights and the European Court of Human Rights" was carried out in partnership with the Council of Europe, also addressing the standards imposed by Article 5 of the Convention. Similar training has been provided to candidates for the positions of prosecutors and judges.

16. Within the framework of the Council of Europe Project "Supporting the Criminal Justice Reform in the Republic of Moldova", in June 2017 the Supreme Court of Justice and the NIJ elaborated a commentary on the judgments of the European Court against the Republic of Moldova. It aims at facilitating the understanding of the Court's judgments and decisions, and at improving the implementation of the Convention standards at the national level.

CONCLUSION

17. The Government consider that no further individual measures are necessary in the present case, whereas the general measures described above are sufficient to conclude that the Republic of Moldova has complied with its obligations under Article 46 § 1 of the Convention.

18. Since no other similar case was brought before the national courts, and due to the unique nature of the violation in the present case, but also thanks to the progress made with regard to the enforcement of the Court's judgment in this case in terms of implementation of general measures, the Government consider that the supervision of this matter by the Committee of Ministers should be closed.



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