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Meeting: 1259 meeting (7-9 June 2016) (DH)

Item reference: Communication from a NGO (Lawyers for Human Rights P.A.) (30/03/2016) in the case of Ziliberg against Republic of Moldova (Application No. 61821/00)

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1259 réunion (7-9 juin 2016) (DH)

Référence du point : Communication d'une ONG (Lawyers for Human Rights P.A.) (30/03/2016) dans l'affaire Ziliberg contre République de Moldova (Requête n° 61821/00)  
**(anglais uniquement)**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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**„LAWYERS FOR HUMAN RIGHTS” P.A.**

**„JURIȘTII PENTRU DREPTURILE OMULUI” A.O.**

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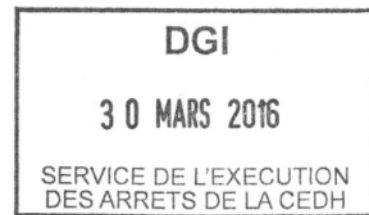
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*To:* Department for the Execution of Judgments of the ECHR

DGI - Directorate General of Human Rights and Rule of Law

Council of Europe

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*From:* Lawyers for Human Rights P.A.

MD 2009, Vlaicu Pircalab street, 2, of. 13

Chisinau, Republic of Moldova

**INDIVIDUAL COMMUNICATION**

**FROM LAWYERS FOR HUMAN RIGHTS**

**ON THE EXECUTION OF THE JUDGMENT OF THE ECtHR**

**IN THE CASE**

**ZILIBERBERG v. MOLDOVA**

**application no. 61821/00**

**judgment from 01/02/2005**

## **I. Introduction**

Public Association "Lawyers for Human Rights" is a Human Rights non-governmental organisation based in Chisinau, Republic of Moldova.

The main statutory purpose of Lawyers for Human Rights P.A. is to secure the effective implementation of the ECHR in Moldova. To achieve this purpose, the LHR represents persons at the ECtHR, organized training courses for lawyers on the ECHR standards and the procedures before the ECtHR, insures the translation into Romanian and publication of the ECtHR jurisprudence concerning Moldova, as well as informs the legal community and media through press-releases about the essence of this jurisprudence.

Following the Rule 9.2 of the Committee of Ministers for the supervision of the execution of judgments and of the terms of the friendly settlements, the Lawyers for Human Rights hereby presents its individual communication. The communication aims to address the Committee of Ministers on the status of execution of the judgment in the case ZILIBERBERG v. MOLDOVA, application no. 61821/00, judgment from 01/02/2005.

## **II. Case summary**

The applicant, *Cristian Ziliberg*, was a student. On 18 April 2000, the applicant attended a demonstration against the decision of the Municipal Council to abolish urban transport privileges for students. The demonstration was not authorized in accordance with the law, and as appears from the statements of the parties, its organizers did not even apply for authorization. In the beginning the demonstration was peaceful, but later some of the demonstrators started to throw eggs and stones at the Municipality building and the police intervened.

Around 12.30 p.m. the applicant was arrested by the police on grounds of being an active participant in an unauthorized demonstration in breach of Article 174/1 § 4 of the Code of Administrative Offences (hereinafter referred to as the "CAO"). On an unspecified date, the district police completed the administrative case file in connection with the offence committed by the applicant, mentioning *inter alia* that he had actively participated in an unauthorized meeting that had taken place in front of the building of the Municipal Council. The case was then referred to the competent district court.

Following an oral hearing on 19 April 2000, the Centru District Court imposed on the applicant an administrative fine of 36 Moldovan Lei (MDL) (the equivalent of EUR 3) provided for in Article 174/1 § 4 of the CAO. In its order, the court stated, *inter alia*, that the applicant had actively participated in a demonstration of students, which had been carried out without an authorization from the Municipal Council, and that he had pleaded guilty to the administrative offence as charged.

On 28 April 2000 the applicant lodged an appeal against the above order. The appeal was heard by the Chişinău Regional Court on 4 May 2000 at 10 a.m.

According to the applicant, the summons for the hearing was sent on 3 May 2000 and was received by him after 10 a.m. on 4 May 2000.

On 5 May 2000, the applicant appeared before the Registry of the Chişinău Regional Court to inquire about his case. He was issued with a copy of the decision of the Chişinău Regional Court of 4 May 2000 dismissing his appeal and upholding the order of the District Court of 19 April 2000.

On 10 May 2000 the applicant filed a request for annulment with the Regional Court against its decision of 4 May 2000, arguing that he had not been properly summoned and consequently did not have a fair trial. The court refused to register the request on the ground that the CAO did not provide for such a

remedy. On 18 May and 22 June 2000 respectively, the court rejected the repeated requests lodged by the applicant and his lawyer.

Before the Court the applicant argued, under Article 6 § 1 of the Convention, that the proceedings were not fair because he was not duly summoned to attend the hearing on 4 May 2000 and was thereby prevented from participating in the hearing.

By the judgment of 01/02/2005 the Court found violation of Article 6 § 1 of the Convention due to absence of safeguards in the relevant domestic law about summons to attend the hearings.

### **III. Description of the measures in the context of execution**

After the adoption of the judgement in the case *Ziliberberg v. Moldova*, Moldovan legislator enacted the Contravention Code, which entered into force on 31.05.2009, and several amendments, on 27.10.12, on the Criminal Procedure Code, which were meant, *inter alia*, to improve the institution of the summoning process in criminal cases.

Notwithstanding the above mentioned amendments, there are lacking adequate safeguards to ensure that the participants in criminal penal cases are properly summoned; accordingly deficiencies of the summoning procedure are as follows.

The national legislator failed to introduce in legislation provisions which would specify the authority or institution empowered to ensure participants in criminal proceedings with summons. In this sense, even if the Criminal Procedure Code, at Article 236/3, provides that the summons are served by an agent empowered with subpoena handing, there are not sufficient clear provisions as who should

carry out the respective agent's task, the respective duties and responsibilities, etc.

There are no indications as regards the circumstances what happens when the participant of process had received the summons later than he/she could inform about his/her absence, or he/she has been served with a summon after the hearing took place.

It appears that the adoption of the Contravention Code and the amendments on Criminal Procedure Code did not solve the shortcomings existent in Moldovan jurisprudence and found by the Court, or the last one, noted in case of *Ziliberberg v. Moldova* that no one may be tried without having first been effectively served with summons in time.

Furthermore, the risk of the examination of the case in absence of participant [who wasn't informed in time] is not excluded by any national legislative provision. The only foresight at Article 236/2 which provides that the service on summons will be done so, that the person called upon will be informed with least 5 days before the date when it shall come according to subpoena before the respective body, it is not enough, since the domestic law not regulates the situations and does not provides the consequences when this term [5 days] is not followed.

#### **IV. Description of the measures taken by the authorities**

According to the official website of the Committee of Ministers, the state of execution of this case is "Action plan/Report is awaited".

We have to point out that the judgment in case of *Ziliberberg v. Moldova* was delivered on 1 February 2005. Thus the Government of Republic of Moldova has not been submitting the Action plan since then.

## **V. Proposed recommendations to fully and effectively implement the judgment**

Moldovan legislator should consider the following amendments:

- Amend criminal procedural legislation in order to specify the authority or institution empowered to ensure participants in criminal proceedings with summons, its' duties and responsibilities, etc.
- Introduce legal provisions in order to regulate the situations when the summons was not served in time with the participant of trial.

## **VI. Questions to the Government**

Taking into account all the information provided above, we would like to seek reply from the Government to the following.

1. Invite the Government of the Republic of Moldova to submit the text of its Action Plan in the case of *Ziliberberg v Republic of Moldova*.
2. Invite the Government of the Republic of Moldova to answer whether are there plans to amend the current legislation, to deal with the above-mentioned shortcomings in the Moldovan legal framework regard summoning procedure.

Vitalie ZAMA



Project Director, Lawyers for Human Rights P.A.