



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

SECOND SECTION

CASE OF VASILICIUC v. THE REPUBLIC OF MOLDOVA

(Application no. 15944/11)

JUDGMENT

STRASBOURG

2 May 2017

FINAL

02/08/2017

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Vasiliciuc 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,

Stéphanie Mourou-Vikström, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 21 March 2017,

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

PROCEDURE

1. The case originated in an application (no. 15944/11) 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, Ms Axenia Vasiliciuc (“the applicant”), on 28 February 2011.

2. The applicant was represented by Mr S. Coptu, a lawyer practising in Chisinau. The Moldovan Government (“the Government”) were represented by their Agent, Mr L. Apostol.

3. The applicant alleged, in particular, that the detention order issued against her had not been based on relevant and sufficient reasons as required by Article 5 § 3 of the Convention.

4. On 10 May 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in Athens, Greece.

6. Because of the difficult economic situation in Moldova, in 1997 the applicant left that State for Greece where she found employment; she was engaged by a family to take care of a disabled child. She used to visit Moldova on holiday every two to three years and she kept an apartment in Causeni.

7. On 15 September 2008, after a visit to Moldova, the applicant was returning to Greece from Chisinau Airport when she was stopped by customs officers because she had on her twenty-nine pieces of non-identical jewellery such as rings, bracelets, necklaces and pendants. The applicant was wearing seven pieces of the jewellery and the rest were in a jewellery box in her handbag. Since the applicant had failed to declare the jewellery, she was taken to the airport police station. There she stated that she had not been attempting to smuggle the jewellery through customs and that she had honestly believed that no declaration was necessary for goods whose value was less than 5,000 euros (EUR). She also submitted that the jewellery in question had been brought to Moldova from Greece. She was informed that she only had the right to take five pieces of non-identical jewellery out of country, no matter their value. She also submitted that she had not been asked to declare anything by the customs officers. The police drew up a report according to which the applicant had in her possession twenty-nine pieces of jewellery made of precious metals and stones with a total value of 55,582 Moldovan lei (MDL – approximately EUR 3,284). All the jewellery, including the pieces allowed by law to be transported over the border, was seized by the police.

8. The applicant missed her flight and spent two weeks in Moldova during which time she went to the police station on several occasions. There she made an official declaration and signed a formal undertaking to appear before the prosecuting authorities and courts when necessary. She informed the authorities about her intention to leave the country and obtained their permission. She also gave her Greek address and telephone number.

9. On 1 October 2008 the applicant returned to Greece because she could no longer be absent from work. She had no difficulties in leaving the country through the same airport.

10. On 7 October 2008 the Chişinău airport police formally initiated criminal proceedings against the applicant for attempted smuggling of jewellery. The offence was considered to be a minor one (*infraţiune uşoară*) with a maximum penalty of 6,000 Moldovan lei (approximately EUR 430) or 240 hours community service or imprisonment of two years. The applicant was not aware of the initiation of the criminal proceedings against her.

11. Subsequently, the applicant was summoned to appear before the investigating authorities via her Moldovan address. Since she did not appear, the prosecutors contacted her adult son and a relative of hers and asked them about the applicant's whereabouts. Both of them stated that the applicant was in Greece and that they did not know when she intended to return to Moldova. It does not appear from the material in the case-file that the prosecutors asked the applicant's relatives for her contact information in Greece or to inform her that she had to appear before them.

12. On 16 June 2009 the prosecutor's office applied to the Botanica District Court for a detention order in respect of the applicant. The reason relied upon by the prosecutors was that the applicant had absconded from prosecution when she left the country on 1 October 2008, in spite of her having given a written undertaking to appear when summoned. A public defender was appointed to represent the applicant. On 19 June 2009 the Botanica District Court ordered the applicant's detention for a period of fifteen days. The reason relied upon by the court was that the applicant had failed to appear before the investigating authorities when summoned. The publicly appointed lawyer did not challenge that decision.

13. The applicant learned of the detention order against her in the summer of 2010 and employed a Moldovan lawyer to challenge it. On an unspecified date the applicant's representative lodged a *habeas corpus* application with the Botanica District Court in which it was argued, *inter alia*, that the applicant had not been aware of the criminal proceedings against her, that she had never been summoned to appear before the prosecutor's office and that she had not been informed that she could not leave the country. She asked the court to revoke the detention order and, in exchange, promised to appear before the court when necessary and to surrender her passport.

14. On 18 September 2010 the Botanica District Court rejected the applicant's *habeas corpus* application relying, *inter alia*, on the fact that the applicant had formally undertaken to appear before the prosecuting authorities and courts and later failed to abide by the undertaking. The applicant's representative appealed, arguing, *inter alia*, that according to the law the undertaking had not been valid because no criminal proceedings had been formally instituted at that time. The appeal was dismissed by the Chişinău Court of Appeal on 30 September 2010.

15. In July 2011, after the communication of the present case to the Government, the Moldovan authorities applied to Interpol for an international arrest warrant for the applicant. As a result, the applicant was arrested in Greece and held in detention pending extradition proceedings for a period of twenty-three days. In the documents ordering the applicant's arrest and detention, the Greek authorities made specific reference to the detention order issued by the Botanica District Court on 19 June 2009 (see paragraph 12 above). The extradition proceedings ended on 21 September 2011 when the Athens Court of Appeal rejected the Moldovan authorities' extradition request and ordered the applicant's release from detention. The Athens Court of Appeal found that according to Article 5 of the European Convention on Extradition, persons suspected of offences in connection with taxes, duties and customs could be extradited only if the Contracting Parties have so decided in respect of any such offence or category of offences. In the absence of any such agreement between Moldova and

Greece, the extradition request could not be upheld. It appears that the applicant has not returned to Moldova ever since.

II. RELEVANT DOMESTIC LAW

16. Under Article 198 of the Code of Criminal Procedure an obligation to appear before the courts can be imposed on a participant in criminal proceedings by a court only after the formal institution of the criminal proceedings.

17. According to Article 176 of the Code of Criminal Procedure, the preventive measure of detention pending trial can be imposed only when there are reasonable grounds to believe that the suspect could abscond from the investigating authorities, hinder the discovery of the truth or re-offend.

18. According to Article 238 of the Code of Criminal Procedure, a person shall be summoned at his or her home address. If the address is unknown, then the summons shall be sent to his or her place of work. If the person to be summoned declared another address during the proceedings, then the summons shall be sent to that address. The summoning of persons who live abroad shall be carried out in accordance with the provisions of the treaties concerning judicial assistance.

III. RELEVANT INTERNATIONAL LAW

19. The European Convention on extradition of 13 December 1957, in so far as relevant, reads as follows:

Article 5 – Fiscal offences

Extradition shall be granted, in accordance with the provisions of this Convention, for offences in connection with taxes, duties, customs and exchange only if the Contracting Parties have so decided in respect of any such offence or category of offences.

THE LAW

20. The applicant complained that, contrary to Article 5 §§ 1 and 3 of the Convention, there had been no reasonable suspicion that she had committed an offence and that the detention order issued against her by the Moldovan authorities had not been based on relevant and sufficient reasons. The Court shall examine the above complaints under Article 5 § 1 of the Convention which, in so far as relevant, 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:

...

(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;”

I. ADMISSIBILITY

A. The Court’s jurisdiction to examine the case against Moldova

21. When the applicant lodged her application with the Court on 28 February 2011, challenging the detention order of 19 June 2009 as upheld by the domestic courts in the *habeas corpus* proceedings, she had not been deprived of her liberty on the basis of or as a consequence of this detention order. The Court does not consider it necessary to determine the applicability of Article 5 of the Convention at that particular moment in time. That determination is not necessary in view of the fact that the applicant was in any event subsequently detained in Greece on the basis of an international arrest warrant issued by Interpol at the request of the Moldovan authorities for the purpose of enforcing the detention order of 19 June 2009. In such circumstances, the Court cannot but agree with the parties that Article 5 is applicable in the present case.

22. The Court notes that although detained in Greece, the applicant directed her complaints against Moldova by means of the current application. Although the Moldovan Government have not raised an objection to being held accountable under the Convention for the facts alleged against them, the Court will of its own motion deal with the matter. The question to be decided is whether the facts complained of by the applicant can be attributed to Moldova.

23. The Court notes that the applicant was under the control and authority of the Greek authorities in the period between her arrest in Greece and her release from detention. Nevertheless, in so far as the alleged unlawfulness of her arrest and detention is concerned, it cannot be overlooked that the applicant’s deprivation of liberty had its origin in the measures taken by the Moldovan authorities, that is the international arrest warrant issued by Interpol at the request of the Moldovan authorities for the purpose of enforcing the detention order of 19 June 2009. Here it should be noted that by ordering the applicant’s detention on remand and setting in motion a request for the applicant’s extradition, the responsibility lay with Moldova to ensure that the detention order complied with the requirements of Article 5 of the Convention.

24. In the above context, the Court recalls that in the context of an extradition procedure, a requested State should be able to presume the validity of the legal documents issued by the requesting State and on the

basis of which a deprivation of liberty is requested. Furthermore, the country requesting extradition must ensure that the request for detention and extradition is lawful, not only under national law, but also under the Convention. Accordingly, the act complained of by the applicant, having been instigated by Moldova on the basis of its own domestic law and followed-up by Greece in response to its international obligations, must be attributed to Moldova notwithstanding that the act was executed in Greece (see *Stephens v. Malta (no. 1)*, no. 11956/07, §§ 50-54, 21 April 2009).

25. In the light of the above, the Court considers that the applicant's complaints under Article 5 engage the responsibility of Moldova under the Convention.

B. The complaint under Article 6 of the Convention

26. The applicant also complained under Article 6 § 1 of the Convention that the proceedings in respect of her were not fair because she was not invited to participate at the hearings at which the courts decided her detention order. Since the proceedings in question did not concern the determination of a criminal charge against the applicant, the Court considers that the complaint is manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention, and declares it inadmissible.

C. The Government's objection and the complaint about lack of reasonable suspicion

27. The Government expressed doubts in respect of the validity of the application submitted to the Court and regarding the power of attorney of the applicant's representative. They claimed that the handwriting and the signature on some documents presented by the applicant did not belong to the same person. Moreover, they argued that the power of attorney submitted by the applicant's representative had been sent to him from a Moldovan fax number and not from Greece. They considered the application to be an abuse of the right of individual application and asked the Court to declare it inadmissible pursuant to Article 35 § 3 of the Convention.

28. In reply to this allegation, the applicant addressed a letter to the Court in which she confirmed the validity of her signature and of the power of attorney given to her representative. She also submitted that the power of attorney had been sent to her son in Causeni, Moldova, and her son had then faxed it to her representative.

29. On the basis of the material in its possession, the Court is unable to conclude that the applicant's handwriting and signature were forged and, thus that the applicant has committed an abuse. Accordingly, this objection fails.

30. In so far as the complaint about the lack of reasonable suspicion that the applicant had committed an offence is concerned, the Court notes that it is not disputed between the parties that the applicant was carrying more jewellery than allowed by law when checked by the customs officers on 15 September 2008. It is similarly undisputed that the applicant failed to fill in a customs declaration in respect of that jewellery. In such circumstances, the Court considers it established that there was a reasonable suspicion that the applicant had committed an offence provided for by the Criminal Code. Hence, the Court considers that this part of the complaint under Article 5 is manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention, and declares it inadmissible.

31. At the same time, the Court notes that the remainder of 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.

II. MERITS

32. The applicant submitted that her detention ordered by the Moldovan authorities was not necessary because the reasons relied upon by the Moldovan courts to order her detention pending trial and to dismiss her *habeas corpus* application had not been relevant and sufficient.

33. The Government disagreed and argued that the detention order had been necessary because she had absconded from the investigation by leaving the country and not showing up when summoned by the prosecutors.

34. The Court recalls 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 *Ilașcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 461, ECHR 2004-VII).

35. No deprivation of liberty is compatible with the Convention unless it is lawful. The expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 of the Convention essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should review whether this law has been complied with (see, among many other authorities, *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports* 1996-III and *Assanidze v. Georgia*,

cited above, § 171). A period of detention is, in principle, “lawful” if it is based on a court order. Even flaws in the detention order do not necessarily render the underlying period of detention unlawful within the meaning of Article 5 § 1 (see, *Benham*, cited above, §§ 42-47; and *Ječius v. Lithuania*, no. 34578/97, § 68, ECHR 2000-IX).

36. Compliance with national law is not, however, sufficient: Article 5 § 1 of the Convention requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among many other authorities, *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33; *Amuur v. France*, 25 June 1996, § 50, *Reports of Judgments and Decisions* 1996-III; and *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of “arbitrariness” in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008-I).

37. The Court notes that, in so far as Greece is concerned, the applicant’s detention for twenty-three days fell within the ambit of Article 5 § 1 (f) of the Convention, namely it was detention with a view to extradition. However, the Court is not assessing the responsibility of Greece for the lawfulness of the deprivation of liberty under Article 5 § 1 (f), but the responsibility of Moldova for that detention, that is the international arrest warrant issued by Interpol at the request of the Moldovan authorities for the purpose of enforcing the detention order of 19 June 2009. As indicated above, the applicant takes issue only with the lawfulness of the detention order which was at the origin of her deprivation of liberty in Greece, that is with the lawfulness of the detention order issued by the Botanica District Court on 19 June 2009. It is without doubt that the applicant’s deprivation of liberty in Greece was a direct consequence of that detention order and that no deprivation of liberty in Greece would have been possible in the absence of that order issued by the Moldovan courts. This fact was expressly noted by the Greek courts in their decisions concerning the applicant’s extradition, where they made specific reference to the Botanica District Court’s decision on 19 June 2009 (see paragraph 15 above).

38. The Court therefore considers that the applicant’s detention in Greece, although formally for the purpose of her extradition, was part of the mechanism used by the Moldovan authorities to implement the Botanica District Court’s decision of 19 June 2009 outside Moldova’s borders and to bring the applicant before a competent Moldovan legal authority on reasonable suspicion of having committed an offence. Therefore, as regards Moldova, the applicant’s detention is to be examined under Article 5 § 1 (c)

of the Convention. In reaching this conclusion the Court bears in mind the principle according to which “[t]he Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective” (see *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32). Had it been otherwise, the applicant would remain without the protection of Article 5 of the Convention.

39. The Court notes that the reason for ordering the applicant’s detention relied upon by the Moldovan courts was the fact that she had failed to appear before the investigating authorities when summoned (see paragraph 12). In this connection, the Court notes that the applicant left the country lawfully at a time when no criminal proceedings were pending against her. It was after her leaving the country that the authorities initiated criminal proceedings against the applicant. The Court further notes the applicant’s submission, which the Government did not contest, that she had given the police her contact information in Greece at a meeting with them after the events of 15 September 2008. In spite of that, the prosecutors issued the summons to her Moldovan address in Causeni. Moreover, according to the material in the case-file, the prosecutors contacted the applicant’s adult son and a relative of hers but failed to ask them to inform the applicant that she had to appear before them and made no attempt to follow up the information that she was in Greece. In fact, the case-file material does not contain any evidence to the effect that the authorities made any reasonable attempts to inform the applicant of the criminal proceedings and the necessity to appear before them within the framework of those proceedings.

40. The Court considers that where such an important issue as the right to liberty is at stake, it is incumbent on the domestic authorities to convincingly demonstrate that detention was necessary. Where the authorities order the detention of an individual pending trial on the grounds of his or her failure to appear before them when summoned, they should make sure that the individual in question had been given adequate notice and sufficient time to comply and take reasonable steps to verify that he or she has in fact absconded. That was certainly not the case in the present case where the authorities chose to take a very formalistic approach to the problem of summoning the applicant and when the applicant did not show up they hastily concluded that she was absconding. The Court notes that this appears to be contrary to Article 176 of the Code of Criminal Procedure which states in clear terms that detention pending trial can be imposed only when there are reasonable grounds to believe that the suspect could abscond from the investigating authorities (see paragraphs 17 above). It also appears to be contrary to Article 238 of the Code of Criminal Procedure which states that if the person to be summoned declared another address during the proceedings, then the summons shall be sent to that address (see paragraph 18 above).

41. In her *habeas corpus* application the applicant argued that she had not been summoned to present herself before the prosecutors and that she undertook to appear before them and give up her passport. The refusal of the domestic courts to check the applicant's submissions about improper summoning and to give her a chance to appear before the authorities has persuaded the Court that the applicant's detention cannot be considered necessary and devoid of arbitrariness under Article 5 § 1 (c) of the Convention (compare to *Ladent v. Poland*, no. 11036/03, § 56, 18 March 2008). There has therefore been a breach of Article 5 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage. She submitted that she had suffered considerable stress and frustration as a result of her arrest and detention.

44. The Government submitted that the claims were excessive and unsubstantiated.

45. The Court considers that the applicant must have been caused a certain amount of stress and anxiety as a result of the violation of her rights under Article 5 § 1 of the Convention. Deciding on an equitable basis, it awards the applicant EUR 3,000.

B. Costs and expenses

46. The applicant also claimed EUR 890 for the costs and expenses incurred before the Court. The amount included the legal fees and postal and translation expenses.

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

48. 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 entire amount claimed for costs and expenses for the proceedings before it.

C. Default interest

49. 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 complaint under Article 5 § 1 of the Convention about lack of reasonable suspicion and the complaint under Article 6 inadmissible and the remainder of 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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 890 (eight hundred and ninety 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 2 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Işıl Karakaş
President