



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

FOURTH SECTION

CASE OF GUȚU v. MOLDOVA

(Application no. 20289/02)

JUDGMENT

STRASBOURG

7 June 2007

FINAL

07/09/2007

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

In the case of Guțu v. Moldova,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 15 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 20289/02) 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 Tatiana Guțu, on 16 April 2002.

2. The applicant was represented by Ms Doina Straisteanu, acting on behalf of the “Moldovan Helsinki Committee of Human Rights”, a non-governmental organisation based in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr Vitalie Pârlog.

3. On 4 April 2005 the Court communicated the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, Mrs Tatiana Guțu, is a Moldovan national who was born in 1952 and lives in the village of Cojușna.

5. Her minor son M., who was twelve years old at the time of the events, was frequently suspected of committing petty thefts and was taken to the police station on numerous occasions. No criminal proceedings were ever instituted against him because of his age. On several occasions he

complained about being beaten up by police officers R.D. and I.B. and his mother lodged criminal complaints against them. On 28 December 2001 the applicant complained to the Prosecutor's Office that on 4 December 2001 her son had been ill-treated by police officers R.D. and I.B., as a result of which he had sustained concussion and multiple bruises.

6. On Sunday 30 December 2001 at noon, police officer R.D. came to the applicant's house and demanded that her son accompany him to the police station because he was suspected of being involved in a theft from a neighbour, which had taken place on 29 December 2001. According to the Government, the police officer demanded that both the applicant and her son accompany him to the police station. The applicant refused to let her son go unless he was properly summonsed.

7. A quarter of an hour later the same police officer came to her house accompanied by police officer I.B. and two neighbours. Since the gate was locked, the police officers asked one neighbour to climb over and unlock it from the inside.

8. One of the police officers announced to the applicant that she was being taken to the police station on a charge of committing the administrative offence of disobeying the lawful orders of a police officer, provided for by Article 174 § 1 of the Code of Administrative Offences ("the CAO").

9. The applicant was taken by the two police officers to the village police station. They did not let her change her clothes or slippers, although she did put on a coat.

10. On the way to the police station, according to statements of witnesses, as they appear in the domestic case file, the applicant was attacked by the neighbour who was the victim of the alleged theft and fell down during the altercation. The police officers intervened and handcuffed the applicant. The Government argued that the applicant had attacked her neighbour and that her fall was a result of the altercation.

11. When they arrived at the police station she was asked to sign a declaration written by one of the police officers, but she refused. Two witnesses, who came along with them, signed declarations written by the police officers, allegedly without reading them.

12. She was then taken by car to the town of Strășeni and placed in a cell at the local remand centre, where she was held from 8 p.m. on 30 December 2001 until 10 a.m. on 31 December 2001.

13. While in detention she was not given the opportunity to wash herself or to change her clothes. She was not provided with food or water or with a blanket. She was not questioned, informed about the reasons for her detention or provided with a lawyer.

14. On Monday 31 December 2001 the applicant was taken to the Strășeni District Court for the hearing in respect of the alleged offence of

disobeying the lawful orders of a police officer in accordance with Article 174 § 1 of the CAO.

15. According to the applicant, she was taken to the court wearing her slippers and her clothes, still covered in mud. During the hearing the applicant asked for a lawyer and a *pro bono* lawyer was provided to her.

16. At her lawyer's request the hearing was adjourned until 4 January 2002. On 4 January 2002, witnesses were heard by the judge.

17. In a judgment of 4 January 2002 the Stășeni District Court found the applicant guilty of disobeying the lawful orders of the police officers and imposed a fine of 90 Moldovan Lei (MDL) (the equivalent of 7.6 euros (EUR) at the time). The Court found that on 30 December 2001 at noon two police officers had asked the applicant to come with her minor son to the police station in order to be questioned in connection with a theft in which her son was suspected of having been involved. By refusing to accompany the police officers, she had committed the offence provided for in Article 174 § 1 of the CAO.

18. On 11 January 2002 criminal proceedings were formally instituted in respect of the theft allegedly committed by the applicant's son.

19. On an unspecified date the applicant lodged an appeal on points of law with the Chișinău Regional Court against the judgment of 4 January 2002. She submitted, *inter alia*, that the actions of the police officers had been motivated by a desire for revenge following her complaint lodged with the Prosecutor's Office against them on 28 December 2001 in connection with the unauthorised search and the alleged beating of her son. She also submitted that the police officers' orders were unlawful because she had not been summonsed to appear at the police station; however, when the police officers had insisted that she follow them she had not shown any resistance and had obeyed them.

20. On 16 January 2002 the Chișinău Regional Court heard the applicant's appeal in her absence and dismissed it as being unfounded, without stating any reasons. It appears from the case file that the applicant was not summonsed to appear before the court and was not legally represented during the proceedings.

21. On 2 January and 25 October 2002 the applicant complained to the Prosecutor General's Office about the illegal actions of the two police officers. She argued, *inter alia*, that they had illegally entered the front garden of her house and that they had subjected her to inhuman and degrading treatment, and asked the Prosecutor General's Office to institute criminal proceedings against them.

22. On 25 November 2002 the Prosecutor's Office decided not to institute criminal proceedings. It found that since the applicant had been convicted by a final judgment of the offence of disobeying the lawful orders of police officers, the officers' actions could not be considered illegal.

II. RELEVANT DOMESTIC LAW

23. Article 29 of the Constitution of the Republic of Moldova provides as follows:

“Inviolability of the home

(1) The home is inviolable. No one may enter or stay on the premises of a home without the owner's consent.

(2) The law shall allow for derogation from the provisions of paragraph (1) under the following circumstances:

(a) for executing an arrest warrant or a decision of a court of law;

(b) for forestalling an imminent danger threatening the life, physical integrity or property of a person;

(c) for preventing the spread of an epidemic disease.

(3) Searches and questioning at a person's home may be ordered and carried out only in accordance with the rule of law.

(4) Except for cases where an obvious offence has been committed, night searches are forbidden.”

24. The Code of Criminal Procedure, as in force at the material time, provided in Article 93 that after receiving a complaint about a criminal offence the investigating body could only request supplementary material or explanations but could not conduct any investigative measures until after criminal proceedings had been formally instituted. It had to decide within three days whether or not to institute criminal proceedings. In exceptional cases such a decision was to be taken within 15 days. The provision that a preliminary investigation could only be commenced after the formal institution of criminal proceedings was also contained in Articles 96 and 109.

Article 105 provided that a suspect was to be summonsed to appear before the investigating body by means of a summons handed to him, and the receipt containing the date of service had to be returned to the criminal investigator. The summons could also be effected by telephone or telegram. Article 129 provided that a suspect who failed to appear before the investigating body without good reason could be forcibly brought before the investigating body. Only suspects who were in hiding or did not have a permanent home address could be taken to the police without a summons.

25. The relevant provisions of the CAO, as in force at the material time, read:

Article 174

“Non-compliance in bad faith with the lawful orders of a police officer or of an agent of the internal affairs authorities ... shall be punishable by a fine of up to MDL 180 or by administrative detention of up to fifteen days.

...

Article 249

“Persons who ... disobey in bad faith the lawful orders of police officers... may be detained until the case is examined by a court... ..”

26. The Police Act of 18 December 1990, in so far as relevant, read at the material time as follows:

Section 13. The rights of the police

“The police have the right to:

(19) enter at any time of the day the premises of homes... front gardens ... and inspect them with a view to putting an end to criminal offences, pursuing persons suspected of having committed criminal offences, persons hiding from the investigating authorities and from courts, or persons who are seeking to avoid executing a criminal or administrative sentence or an order for forced detoxification treatment. [The police may also enter] if they have sufficient grounds to believe that an offence has been committed or is being committed on the premises, or in the event of natural disasters and in other circumstances which endanger the public order and the safety of persons. A prosecutor must be informed about all cases in which police officers have been forced to enter the premises of homes ... within 24 hours.”

27. The relevant provisions of Law No. 1545 on compensation for damage caused by the illegal acts of the criminal investigating authorities, prosecuting authorities and courts read as follows:

Section 1

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

(a) illegal detention, illegal arrest, illegal indictment or illegal conviction;

(b) illegal searches 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;

(c) illegal administrative arrests or orders to perform community service, illegal confiscation of property or illegal fines;

(d) the carrying out of unlawful investigative measures;

(e) the illegal seizure of accounting documents, other documents, money or stamps and the freezing of bank accounts.

(2) The damage caused shall be fully compensated, irrespective of the degree of fault of the criminal investigating authorities, prosecuting authorities and courts.

Section 4

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

(a) delivery of a judgment acquitting him/her;

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

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

(d) the 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. The friendly-settlement agreement shall be approved by the Government of the Republic of Moldova; ...”

THE LAW

28. The applicant complained under Article 3 of the Convention that she had been subjected by the police officers to degrading and humiliating treatment. In particular, she complained that she had been thrown to the muddy ground and then handcuffed and taken straight to the police station. She had been placed in a dirty cell, where she had been kept for approximately twelve hours without any food, water or bedding. The next day she had been taken to the court and publicly exposed in the same muddy clothes. Article 3, in so far as relevant, reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

29. The applicant alleged that her right to liberty provided for by Article 5 § 1 of the Convention had been breached since she had been detained for approximately twelve hours without any legal grounds. Article 5 § 1 reads, as relevant:

“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;

...”

30. The applicant complained under Article 6 § 1 of the Convention that she had not been summonsed to appear at the hearing of her appeal on 16 January 2002 before the Chișinău Regional Court. Article 6 § 1 reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

31. The applicant also complained under Article 6 §§ 2 and 3 that her right to be presumed innocent had been breached, that she had not been allowed to put forward witnesses during the court proceedings and that she had not been provided with a lawyer during the proceedings. Article 6 §§ 2 and 3, as relevant, reads as follows:

“2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

...”

32. The applicant further complained under Article 8 of the Convention that on 30 December 2001 police officers had entered the front garden of her house by climbing over the fence without any proper authorisation and had accordingly violated her right to respect for her home. She also complained that on an unspecified date prior to 30 December 2001 the police officers had entered her house in her absence and carried out a search without any authorisation. 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.”

33. The applicant complained under Article 13 of the Convention that she had not had an effective remedy in respect of the alleged abuses committed by the police. In particular, she complained that there had been no effective remedy in respect of the alleged breaches of Articles 3, 5 and 8. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

I. ADMISSIBILITY OF THE CASE

A. Complaints under Article 3 and Article 13 of the Convention concerning the allegation of degrading and humiliating treatment

34. The applicant argued that she had been treated contrary to Article 3 (see paragraph 28 above). According to her, the suffering had been particularly intensified by her vulnerability in front of two adult male policemen behaving in an aggressive manner and by the fact that she lived in a village where everyone knew everyone. After her release from detention she had had to return home by public transport wearing the same dirty clothes and slippers and had felt very ashamed and intimidated.

35. The Government disputed the fact that the applicant's clothes had been inappropriate for the season. In their submission, she had been wearing the clothes she had considered appropriate to wear when coming out of her home for a discussion with the police officers.

36. The Government further contested the applicant's submission that she had been thrown to the ground by the police officers and pointed to the statements by witnesses indicating that she had fallen down as a result of the clash with her neighbour. They also disputed that her clothes had been muddied after she had fallen down and argued that the temperature was below freezing and that there could therefore not have been any mud on the road.

37. They also argued that the applicant's public exposure in handcuffs could not have been damaging to her reputation because her reputation was not particularly good in the village; in support of that argument they produced a letter from the mayor in which she was described in a negative manner.

38. The Government did not dispute the applicant's allegation concerning the conditions of her detention during the night of 30 to 31 December 2001; however, they argued that the treatment to which she had been subjected had not attained the threshold of severity required by Article 3 of the Convention.

39. The Court notes that the applicant failed to adduce any evidence in support of her allegation that she was taken to the court in clothes that were dirty with mud. As to the conditions of her detention, the Court considers that in the particular circumstances of the case the applicant's alleged suffering did not attain the threshold of severity required by Article 3 of the Convention.

40. Accordingly, the Court concludes that the complaint under Article 3 of the Convention is manifestly ill-founded and therefore inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

41. In view of the above finding, the Court considers that the applicant has no arguable claim under Article 13 of the Convention taken together with Article 3. Accordingly, this complaint is also manifestly ill-founded and must be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.

B. The complaint under Article 6 § 2 of the Convention

42. With reference to the alleged violation of Article 6 § 2 of the Convention, the applicant argued that the judge who examined her case had seen her in muddy clothes and could therefore have been influenced in forming an opinion in respect of the charges brought against her. Moreover, he had asked irrelevant questions and had failed to pay attention to her complaints about humiliation, harassment, the dirty cell and her unlawful detention.

43. As to her complaint under Article 6 § 3, the applicant argued that she had not been effectively assisted by a lawyer throughout the proceedings and had not been allowed to have witnesses examined on her behalf.

44. The Government disputed the applicant's allegation and asked the Court to dismiss these complaints.

45. In so far as the applicability of Article 6 of the Convention is concerned, the Court would refer to its findings in paragraph 49 below.

46. As regards the complaint about the alleged breach of the presumption of innocence, the Court reiterates that the presumption of innocence guaranteed by Article 6 § 2 of the Convention requires, *inter alia*, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused (see, among other authorities, the *Barberà, Messegué*

and *Jabardo v. Spain* judgment of 6 December 1988, Series A no. 146, § 77).

47. The Court, however, finds no indication that the trial court started with the presumption that the applicant had committed the offences with which she had been charged. Thus, there is no appearance of a violation of Article 6 § 2 of the Convention and this complaint must be declared inadmissible as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Complaints under Article 5 § 1, Article 6 §§ 1 and 3 and Article 8 of the Convention

48. The Court considers that the applicant's complaints under Article 5 § 1, Article 6 §§ 1 and 3 and Article 8 of the Convention raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and that no grounds for declaring them inadmissible have been established. The Court therefore declares them 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 these complaints.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

A. The arguments of the parties

49. The Government agreed that the offence of which the applicant was accused qualified as “criminal” for the purposes of Article 6 of the Convention. However, they disputed the applicant's contention that she had not been summonsed to attend the hearing of her appeal and sent the Court a letter dated 21 May 2005 from the President of the Strășeni District Court to the Government Agent, in which it was stated that the applicant had been summonsed to attend the hearing of 16 January 2002 by means of a registered letter which, unfortunately, had been destroyed by the court after two years.

50. The applicant disputed the Government's submissions and expressed doubt about the memory of the President of the Strășeni District Court, who had managed to recollect precise information about the summons in her case after more than three years. She also pointed out that a summons was part of the case file and was not destroyed separately but only together with the case file.

B. The Court's assessment

51. The Court observes that in the case of *Ziliberberg v. Moldova* (no. 61821/00, §§ 7-36, 1 February 2005) it decided that the offence provided for by Article 174 § 1 of the CAO was “criminal” for the purpose of Article 6 of the Convention. In the present case the Court does not see any reason to find otherwise, especially since the offence provided for by Article 174 of the CAO was also punishable by imprisonment for up to fifteen days (see paragraph 25 above), unlike the offence with which the applicant in *Ziliberberg* was charged (see *Ziliberberg*, cited above, § 22).

52. The Court notes that the case file from the domestic courts, a copy of which was provided by the Government, does not contain any summons for the hearing of 16 January 2002 before the Chișinău Regional Court. In so far as the letter from the President of the Strășeni District Court is concerned (see paragraph 49 above), in the Court's view it does not constitute sufficient proof that a summons was sent by the Chișinău Regional Court and received by the applicant. Had a registered letter been sent to the applicant, the post office would normally have kept a record of it. However, the Government have failed to present any evidence that such a letter was indeed paid for by the domestic court, and was sent to and received by the applicant.

53. The Court recalls that the general principles concerning the presence of an accused at an appeal hearing have been summarised in *Hermi v. Italy* ([GC], no. 18114/02, §§ 58-67, ECHR 2006-...).

54. The Court further notes that in *Ziliberberg* it found that the applicant's right to a fair trial was breached because the summons had been sent to him too late (see *Ziliberberg*, cited above, § 41). The situation is even more serious in this case, where it has not been shown to the Court's satisfaction that the applicant was summonsed at all. Accordingly, there has been a violation of Article 6 § 1 of the Convention. It is therefore not necessary to address separately the applicant's complaint under Article 6 § 3 that she had not been allowed to put forward witnesses during the court proceedings and that she had not been provided with a lawyer.

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

A. The arguments of the parties

55. The Government argued that the actions of the police officers were lawful under domestic law and pointed to Article 249 of the CAO, which provided for the possibility of detaining a person for failure to comply with the lawful orders of a police officer.

56. According to the Government, the applicant's detention fell under paragraph (c) of Article 5 § 1 of the Convention and her subsequent conviction by an independent and impartial tribunal was proof that the actions of the police officers had been legitimate and not a form of revenge for her previous complaints against them.

57. The applicant argued that her arrest and detention had been arbitrary and disagreed that they fell under paragraph (c) of Article 5 § 1. She agreed that in accordance with Article 249 of the CAO, a person who disobeyed a police officer's request could be deprived of his or her liberty until the case was examined by a judge; however, she argued that there were no provisions in the CAO regulating the duration of detention or providing for any procedural safeguards against arbitrary detention.

B. The Court's assessment

58. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the “lawfulness” of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see *Anguelova v. Bulgaria*, no. 38361/97, § 154, ECHR 2002-IV, and *Fedotov v. Russia*, no. 5140/02, § 74, 25 October 2005).

59. The Court agrees with the Government that the applicant's detention fell within the ambit of Article 5 § 1 (c) of the Convention, as it was imposed for the purpose of bringing her before the competent legal authority on suspicion of having committed an offence.

60. There is no dispute as to the fact that the police, when arresting the applicant and taking her to the police station in Strășeni, followed the procedure provided for by Article 249 of the CAO (see paragraph 25 above).

61. The Court notes that the applicant refused to accompany the police officers to the police station on the ground that she had not been properly summonsed. Indeed, it appears that in accordance with Article 129 of the Code of Criminal Procedure, the applicant and her son could be forcibly taken to the police station only if they refused to go after being summonsed (see paragraph 24 above) and it is not disputed that they never were summonsed. Furthermore, the Court notes that in accordance with Articles 93, 96 and 109 of the Code of Criminal Procedure, no investigative measures at all could be taken in respect of the offence allegedly committed by the applicant's son unless criminal proceedings were formally instituted

(see paragraph 24 above). The Court lastly notes that criminal proceedings in respect of the theft allegedly committed by the applicant's son were instituted only on 11 January 2002 (see paragraph 18 above).

62. In such circumstances the Court considers that the applicant's detention on the ground that she had failed to comply with the lawful orders of a police officer cannot be considered “lawful” under Article 5 § 1 of the Convention. There has therefore been a breach of that provision.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. The arguments of the parties

63. The Government accepted that the police officers' entry into the front garden of the applicant's house constituted an interference with her right to respect for her home guaranteed by Article 8 of the Convention. However, the interference had been in “accordance with the law”. According to the Government, the interference had been based on section 13(19) of the Police Act of 18 December 1990, and in particular on provisions authorising the police to enter private houses without the consent of the owner and to inspect them in order to put an end to offences and to pursue persons suspected of having committed an offence. The Government also argued that the interference had pursued a legitimate aim and had been necessary in a democratic society.

64. The applicant disagreed with the Government and argued that the interference had not been in accordance with the law, had not pursued a legitimate aim and had not been necessary in a democratic society.

B. The Court's assessment

65. It is undisputed that the entry of the police officers onto the applicant's premises, her front garden, constituted an interference with her right to respect for home. An interference will contravene Article 8 unless it is “in accordance with the law”, pursues one or more of the legitimate aims referred to in paragraph 2 and furthermore is “necessary in a democratic society” in order to achieve the aim (see the following judgments: *Silver and Others v. the United Kingdom*, 25 March 1983, Series A no. 61, p. 32, § 84; *Campbell v. the United Kingdom*, 25 March 1992, Series A no. 233, p. 16, § 34; *Calogero Diana v. Italy*, 15 November 1996, *Reports* 1996-V, p. 1775, § 28; and *Petra v. Romania*, 23 September 1998, *Reports* 1998-VII, p. 2853, § 36).

66. The expression “in accordance with the law” not only necessitates compliance with domestic law, but also relates to the quality of that law (see *Halford v. the United Kingdom*, *Reports* 1997-III, p. 1017, § 49). The Court

reiterates that domestic law must indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities so as to ensure to individuals the minimum degree of protection to which citizens are entitled under the rule of law in a democratic society (see *Domenichini v. Italy*, Reports 1996-V, p. 1800, § 33).

67. In their submissions, the Government referred to section 13(19) of the Police Act (see paragraph 26 above) as being, in their view, the legal ground for the interference.

68. Having analysed this section, the Court notes that none of the situations described therein applied to the present case. In particular, the police officers were not putting an end to a criminal offence and were not in pursuit of a suspect, not to mention any of the other situations provided for in section 13(19). Moreover, the Court is of the opinion that an extensive interpretation of these provisions, such as the one made by the Government, would run counter to Article 29 of the Constitution (see paragraph 23 above), which proclaims the principle of inviolability of the home and sets out in an exhaustive manner the possible derogations from it. The derogations appear to be far from matching the circumstances of the present case. It follows that the interference complained of was not “in accordance with the law” within the meaning of Article 8. Accordingly, there is no need to examine whether the interference pursued a legitimate aim and was “necessary in a democratic society”.

69. The Court therefore finds that there has been a violation of Article 8 of the Convention in respect of the applicant's right to respect for her home.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

A. The arguments of the parties

70. The Government argued that the applicant's complaint about lack of effective remedies in respect of the allegedly unlawful actions of the police officers was ill-founded since it had been open to her to complain to the domestic courts.

71. The applicant disagreed and argued that during the administrative proceedings against her she had complained to the court about the allegedly unlawful and abusive actions by the police officers. In particular, she annexed to the file a copy of her request addressed to the Prosecutor General's Office in which she had complained about the allegedly unlawful trespassing on her property by the police officers, her allegedly unlawful arrest and detention and her alleged ill-treatment. However, the courts had ignored all her submissions.

B. The Court's assessment

72. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 of the Convention is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief.

73. The Court has found above that the applicant did not have an arguable claim under Article 13 taken together with Article 3 (see paragraph 41 above). In so far as her complaint under Article 13 taken together with Articles 5 and 8 is concerned, the Court notes that, under section 4 of Law No. 1545, the applicant could claim compensation for the allegedly unlawful actions of the police officers only if acquitted (see paragraph 27 above). However, she was found guilty of disobeying the lawful orders of police officers in a final judgment, which made the law inapplicable to her situation. Moreover, the Court notes that even the Prosecutor's Office dismissed the applicant's complaint about the alleged abuses committed by the police officers without conducting any investigation but solely on the basis of the fact that she had been found guilty by a final judgment.

74. In such circumstances, the Court considers that it has not been shown that effective remedies existed in respect of the applicant's complaints under Articles 5 and 8. There has therefore been a breach of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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

76. The applicant claimed EUR 10,000 for non-pecuniary damage.

77. The Government contested the claim and argued that it was ill-founded and excessive.

78. Having regard to the violations found above, the Court considers that an award of compensation for non-pecuniary damage is justified in this

case. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000.

B. Costs and expenses

79. The applicant's lawyer claimed EUR 4,975 for the costs and expenses incurred before the Court. She submitted a detailed time-sheet and a contract which indicated that the lawyer's hourly rate was EUR 50 for the domestic proceedings and EUR 150 for the proceedings before the Court.

80. The Government disagreed with the amount claimed for representation and disputed *inter alia* the number of hours spent by the applicant's lawyer and the hourly rate charged by her.

81. The Court reiterates that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-III).

82. In the present case, regard being had to the itemised list submitted and the complexity of the case, the Court awards the applicant's lawyer EUR 1,500 for costs and expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 of the Convention taken alone and in conjunction with Article 13, and under Article 6 § 2 of the Convention, 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* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that it is not necessary to examine the complaint under Article 6 § 3 of the Convention;
5. *Holds* that there has been a violation of Article 8 of the Convention;
6. *Holds* that there has been a violation of Article 13 of the Convention taken together with Article 5;
7. *Holds* that there has been a violation of Article 13 of the Convention taken together with Article 8;

8. *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 5,000 (five thousand euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(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;

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

Done in English, and notified in writing on 7 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President