

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

FOURTH SECTION

CASE OF ŽEKONIENĖ v. LITHUANIA

(Application no. 19536/14)

JUDGMENT

STRASBOURG

12 July 2016

FINAL

12/10/2016

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



In the case of Žekonienė v. Lithuania,

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

András Sajó, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 21 June 2016,

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

PROCEDURE

1. The case originated in an application (no. 19536/14) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Ms Janina Žekonienė ("the applicant"), on 27 February 2014.

2. The applicant was represented by Mr J. Gabraitis, a lawyer practising in Kėpštai. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. The applicant alleged that her provisional arrest had been unlawful and arbitrary, and that the conditions of her detention had been inadequate.

4. On 7 July 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1940 and lives in Gelgaudiškis, Šakiai Region.

A. Pre-trial investigation concerning the applicant's son

6. On 17 February 2010 the Šakiai police arrested the applicant's son, V.Ž., on suspicion of unlawful possession of narcotic substances with the purpose of distributing them under Article 260 § 1 of the Criminal Code.

7. On that same day the police searched the applicant's apartment where she lived together with V.Ž., and found some small plastic bags. The following day a search was conducted in the applicant's daughter V.B.'s apartment. As V.B. was living abroad, the applicant provided the police officers with the keys to V.B.'s apartment and was present during the search. The officers found some plastic bags, a digital weighing scales, and remnants of "herbal substances" (*augalinės kilmės medžiagos*).

8. On 19 February 2010 the Šakiai District Court authorised V.Ž.'s detention for fourteen days.

9. On 2 March 2010 an officer informed the head of the Šakiai Police that V.Ž. had unlawfully carried a mobile phone into detention. Most of the information on that phone, including any text messages sent by V.Ž., had been deleted but police officers found several text messages which V.Ž. had received from his fiancée on 19 and 20 February 2010, including the following:

> "Will not risk transfer now, [it's been] said."
>
> "Don't use that phone at all, don't you understand."
>
> "She is telling me something else."
>
> "Throw that phone away, don't you understand, mother already knows what to do."
>
> "Give me their number, I'll arrange for us to give it later. We can't give it now. Your mother was questioned today and almost got arrested, don't you understand? It's all hidden now."
>
> "Mother doesn't give anything, I'm telling you the customs office is watching everything."

B. The applicant's provisional arrest on 3-4 March 2010

10. In the afternoon of 3 March 2010 the applicant arrived at Šakiai Police station, where V.Ž. was detained, to bring him food and clean clothes.

11. At 4 p.m. that day the applicant was informed by a senior investigator that she was being placed under provisional arrest (*laikinas sulaikymas*), on the basis of Article 140 of the Code of Criminal Procedure (see "Relevant domestic law" below). The decision to arrest the applicant indicated that she was suspected of unlawful possession of narcotic substances with the purpose of distribution (see paragraph 27 below). Provisional arrest had been deemed necessary in order to prevent her from fleeing, interfering with the investigation or committing further crimes

because it was suspected that she had previously hidden drugs from the investigators (see paragraph 9 above). The record of the provisional arrest, drawn up at the time of the arrest, stated that the applicant had been explained her rights, including the right to a lawyer, and that she had refused to sign the record. The applicant was placed in the Šakiai police station in a nearby cell to her son. Her husband was informed of her arrest. At that time the applicant was sixty-nine years old.

12. On 4 March 2010 the applicant was served with the official notice that she was a suspect (*pranešimas apie įtarimą*). The notice stated that in February 2010 she had allegedly acquired drugs from unidentified persons, kept them in her daughter V.B.'s apartment with the purpose of distribution, and subsequently distributed them, thereby committing the act proscribed in Article 260 § 1 of the Criminal Code. The applicant signed the notice that she was an official suspect, to indicate that she had received it and that her rights had been explained to her.

13. From 11.30 a.m until midday that day the applicant was questioned as a suspect in the case, in the presence of a lawyer. She denied having committed any crimes and refused to answer any further questions.

14. At some point during the day the applicant started feeling weak, and felt a headache and a pain in her chest. An ambulance was called to the police station and the applicant was given first aid.

15. On the same day the applicant's lawyer submitted a request to the Šakiai district prosecutor to release the applicant from provisional arrest. The lawyer argued that the applicant had not committed any crime and that she had only been arrested to pressurise her to testify against her son.

16. At 3.50 p.m. that day the Šakiai police released the applicant. The decision to release her stated that all the necessary investigative actions concerning the applicant had been conducted, and that there were no grounds to believe that she would interfere with the investigation upon her release.

17. On 5 March 2010 the Šakiai district prosecutor rejected the applicant's lawyer's request to release the applicant (see paragraph 15 above) as based on "subjective and declaratory statements" and thus unfounded. According to the applicant, she did not appeal against that decision because she had already been released.

18. On 30 September 2010 the Šakiai district prosecutor discontinued the pre-trial investigation against the applicant on the grounds of insufficient evidence that she had committed the crime outlined in Article 260 § 1 of the Criminal Code.

C. Conviction of the applicant's son

19. The Šakiai police continued the pre-trial investigation concerning the applicant's son V.Ž. The police obtained his call records and questioned several witnesses who admitted to having bought cannabis from V.Ž.

20. On 4 November 2011 the Šakiai District Court convicted V.Ž. of unlawful possession of narcotic substances with the purpose of distribution under Article 260 § 1 of the Criminal Code. On 2 March 2012 the Kaunas Regional Court dismissed V.Ž.'s appeal, and on 23 October 2012 the Supreme Court dismissed his appeal on points of law.

D. Civil proceedings for damages

21. On 25 February 2013 the applicant lodged a civil claim for damages against the State under Article 6.272 of the Civil Code. She claimed that her provisional arrest had been unfounded because she had not committed any crimes, as proven by the subsequent discontinuation of the pre-trial investigation. The applicant also argued that her arrest had been unnecessary because at the time she had been almost seventy years old, ailing and had had difficulties walking; she had had no prior convictions, had been retired and had had a place of residence with her husband. Thus, she claimed that it had been unlikely that she would have attempted to flee or hide from the investigation. The applicant noted that the investigation against her son had been instituted on 17 February 2010, and there had been no indication from that day until her arrest that the police suspected that she had committed any crimes or attempted to interfere with the investigation - on the contrary, she had voluntarily come to the police station to see her son. The applicant argued that the real purpose of arresting her had been to force her to testify against her son.

22. The applicant further submitted that she had suffered pecuniary and non-pecuniary damage because of the provisional arrest: her blood pressure had risen and as a result she had had to seek medical help and take medication; she had become irritable, had started having nightmares and was scared of police officers; she felt humiliated in front of her son who had been detained in a nearby cell, as well as other inhabitants of her village, who subsequently thought of her as a criminal. The applicant claimed 2,300 Lithuanian litai (LTL, approximately 666 euros (EUR)) in respect of pecuniary damage resulting from her legal expenses, as well as LTL 10,000 (EUR 2,896) in respect of non-pecuniary damage.

23. At the hearing before the Šakiai District Court the applicant also submitted that, after arresting her, the police officers had searched her purse and tried to strip search her, but she had resisted. She stated that the cell in which she had been detained had been damp and dilapidated and that there had been smells emanating from the toilet which had made her nauseous.

24. On 27 May 2013 the Šakiai District Court dismissed the applicant's claim. The court noted that the termination of the pre-trial investigation against the applicant did not make the investigation unlawful *ab initio*, and found that there had been sufficient grounds for suspicions against her: plastic bags had been found in the apartment where she lived together with her son V.Ž., and remnants of drugs had been found in the applicant's daughter V.B.'s apartment. Furthermore, while detained, V.Ž. had unlawfully been in possession of a mobile phone, and the police officers had had grounds to believe that he had warned the applicant to hide the drugs which had been stored in V.B.'s apartment. Accordingly, the court found that the applicant's provisional arrest had been well-founded. The court also noted that the applicant had not appealed against the district prosecutor's decision of 5 March 2010 to refuse her release (see paragraph 17 above), which meant that the decision to arrest her had not been declared unlawful. Lastly, the court held that the medical documents submitted by the applicant did not prove that the deterioration of her health had been caused by the provisional arrest. The court did not address the applicant's complaints concerning the conditions of her detention.

25. On 29 October 2013 the Kaunas Regional Court rejected the applicant's appeal. It upheld the findings of the first-instance court that at the time of the arrest there had been sufficient evidence to suspect the applicant of having committed a crime, and that the subsequent discontinuation of the pre-trial investigation did not make the arrest unlawful. The Kaunas Regional Court also noted that Article 140 of the Code of Criminal Procedure permitted the provisional arrest not only of a suspect but also any other person in respect of whom it was necessary to conduct certain investigative actions. Having found that the applicant's arrest had been lawful, the court held that there were no grounds to award the applicant any damages. It did not address the applicant's complaints concerning the conditions of her detention.

26. On 18 December 2013, following an appeal on points of law by the applicant, the Supreme Court refused to examine the case as raising no important legal questions.

II. RELEVANT DOMESTIC LAW

A. Criminal responsibility for drug-related offences

27. Article 260 § 1 of the Criminal Code reads as follows:

Article 260. Unlawful possession of narcotic or psychotropic substances for the purpose of distribution, or unlawful possession of a large quantity of narcotic or psychotropic substances

"1. A person who unlawfully produces, processes, acquires, stores, transports or forwards narcotic or psychotropic substances for the purpose of selling or otherwise distributing them or sells or otherwise distributes narcotic or psychotropic substances

shall be punished by imprisonment for a term of two to eight years ..."

28. Relevant parts of Article 24 of the Criminal Code read as follows:

Article 24. Complicity and types of accomplices

"1. Complicity shall be the intentional joint participation in the commission of a criminal act of two or more conspiring legally capable persons who have attained the age specified in Article 13 of this Code.

2. Accomplices in a criminal act shall include a perpetrator, an organiser, an abettor and an accessory.

3. A perpetrator shall be a person who has committed a criminal act either by himself or by involving legally incapacitated persons or persons who have not yet attained the age specified in Article 13 of this Code or other persons who are not guilty of that act. If the criminal act has been committed by several persons acting together, each of them shall be considered a perpetrator/co-perpetrator.

...

6. An accessory shall be a person who has aided in the commission of a criminal act through counselling, issuing instructions, providing means or removing obstacles, protecting or shielding other accomplices, who has promised in advance to conceal the offender, hide the instruments or means of commission of the criminal act, the traces of the act or the items acquired by criminal means; [it also includes] a person who has promised in advance to handle the items acquired or produced in the course of the criminal act."

B. Provisional arrest

29. Article 20 of the Constitution of the Republic of Lithuania reads as follows:

Article 20

"Human liberty shall be inviolable.

No one may be arbitrarily apprehended or detained. No one may be deprived of his liberty otherwise than on the grounds and according to the procedures established by law.

A person apprehended *in flagrante delicto* must, within forty-eight hours, be brought before a court for the purpose of deciding, in the presence of this person, on the validity of the apprehension. If the court does not adopt a decision to detain the person, the apprehended person shall be released immediately."

30. Article 140 of the Code of Criminal Procedure (hereinafter - "the CCP") reads as follows:

Article 140. Provisional arrest

"1. A prosecutor, a pre-trial investigation officer, or any other person may apprehend a person who is caught in the commission of a criminal act or immediately after its commission ...

2. Provisional arrest of a person who is not caught in the commission of a criminal act or immediately after its commission can be ordered by a prosecutor or a pre-trial investigation officer only in exceptional circumstances, where all the following conditions are fulfilled:

1) there are grounds for detention on remand provided in Article 122 of this Code;

2) it is necessary to immediately restrict the person's liberty in pursuit of the goals listed in Article 119 of this Code;

3) there is no possibility to urgently request a court [to authorise detention on remand], as provided in Article 123 § 2 of this Code.

3. When a person is arrested by a pre-trial investigation officer or another person, a prosecutor must be notified within the shortest possible time.

4. Provisional arrest cannot last longer than it is necessary to establish the person's identity and carry out the necessary procedural actions. The maximum duration of provisional arrest is forty-eight hours. If the arrested person has previously been questioned as a suspect in the case, the maximum duration of provisional arrest is twenty-four hours and it can be extended to forty-eight hours by a prosecutor's decision. If the arrested person needs to be placed in detention on remand, within forty-eight hours he or she must be presented to a judge who will decide on the detention in line with this Code. The duration of the provisional arrest is counted from the person's actual apprehension at the commission of a criminal act or any other location.

5. A pre-trial investigation officer or a prosecutor drafts the record of the provisional arrest within the shortest possible time.

6. Within twenty-four hours the arrested person must be questioned as a suspect, after carrying out the procedural acts provided in Article 187 of this Code.

7. [A family member or a relative of the arrested person] must be immediately notified of the arrest, in accordance with Article 128 §§ 1-2 of this Code.

8. The arrested person must be immediately released if:

1) the suspicion that he or she has committed a criminal act has not been confirmed;

2) the grounds for detention on remand under Article 122 of this Code have not been established, or detention on remand is not necessary;

3) the maximum duration of provisional arrest, as provided in law, has ended;

4) the court has decided not to authorise the person's detention on remand.

9. The duration of provisional arrest is included in the duration of detention on remand or sentence."

31. Article 122 § 1 of the CCP permits detention on remand when there is a well-founded belief that the suspect may flee, interfere with the investigation, or commit further criminal acts.

32. Article 119 of the CCP provides that restrictive measures can be applied in order to ensure that the suspect, the accused or the convicted person participates in the process, to prevent interference with the pre-trial investigation or with the examination of the case before the court, or with the execution of the sentence, as well as to prevent the commission of further criminal acts.

33. Article 187 § 1 of the CCP requires that before first being questioned, the suspect must be served with the official notice that he or she is a suspect or a prosecutor's decision to declare him or her a suspect.

C. Conditions of detention

34. The relevant domestic law concerning the State's responsibility for the damage caused by inadequate detention conditions is summarised in §§ 50-53 of *Mironovas and Others v. Lithuania* (nos. 40828/12, 29292/12, 69598/12, 40163/13, 66281/13, 70048/13 and 70065/13, 8 December 2015).

35. Article 15 § 1 (3) of the Law on Administrative Proceedings provides that administrative courts are competent to hear cases concerning damage caused by unlawful acts of public authorities. Article 16 § 2 of that same Law provides that administrative courts are not competent to hear cases concerning, *inter alia*, procedural acts of prosecutors and pre-trial investigation officials, related to an investigation of a case.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. The applicant complained that she had been detained in degrading conditions, contrary to Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Admissibility

37. The Government submitted that the applicant had failed to exhaust effective domestic remedies, as required by Article 35 § 1 of the Convention. They submitted that the domestic administrative courts had extensive and well-established case-law in this area, and awarded non-pecuniary damages in cases concerning inadequate conditions of detention. The Government noted that the applicant had not submitted such a claim to the administrative courts.

38. The applicant argued that she had exhausted domestic remedies by submitting a civil claim for damages due to the allegedly unlawful arrest. She contended that her complaint about the conditions of detention had been "derived" from the complaint about the arrest, so she had not needed to institute separate proceedings concerning the former.

39. The Government submitted that, under domestic law, only administrative courts were competent to examine claims for damages resulting from inadequate conditions of detention, so the courts of general jurisdiction which had examined the applicant's complaint about unlawful arrest could not be considered an effective domestic remedy in respect of this complaint.

40. The Court recalls its findings in *Mironovas and Others* (nos. 40828/12, 29292/12, 69598/12, 40163/13, 66281/13, 70048/13 and 70065/13, §§ 86-92, 8 December 2015) where it examined complaints about inadequate conditions of detention in Lithuania and held that a claim for damages before the administrative courts could in principle secure a remedy in respect of such complaints, in that it offered a reasonable prospect of success. In that judgment the Court also found that the domestic administrative courts had awarded adequate redress to one of the seven applicants in the case (ibid., §§ 95-98).

41. Accordingly, the Court considers that an effective domestic remedy was available to the applicant to complain about the inadequate conditions of her detention (see also *Ignats v. Latvia* (dec.), no. 38494/05, 24 September 2013). The fact that she raised this complaint before the courts which did not have jurisdiction to examine it (see paragraphs 35 and 39 above) cannot be considered as exhaustion of effective domestic remedies for the purposes of Article 35 § 1 of the Convention.

42. In the light of the above, the Court holds that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

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

43. The applicant also complained that her provisional arrest on 3-4 March 2010 had been unlawful and arbitrary. She relied on Article 5 § 1 of the Convention, which in its relevant parts 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 ..."

A. Admissibility

44. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

45. The applicant submitted that her provisional arrest had been unlawful and arbitrary. She argued that there had been no grounds to suspect her of having committed any crimes and that the real aim of the arrest had been to force her to testify against her son. The applicant further submitted that at the time of her arrest she had been almost seventy years old, retired and living with her husband, she had had no prior convictions, had been ailing and had had difficulties walking, so there had been no grounds to believe that she would have attempted to flee or interfere with the investigation.

46. The Government submitted that the arrest of the applicant had been imposed in accordance with the substantive and procedural rules of domestic law. They submitted that the police had been conducting a pre-trial investigation into large-scale distribution of narcotic substances, in which the applicant's son had been a suspect, and that that investigation had given reasonable grounds to believe that the applicant may have committed drug-related crimes as well. The Government stated that all the conditions for provisional arrest, listed in Article 140 § 2 of the CCP, had been met: firstly, there had been grounds to believe that the applicant may have fled because she had been facing a heavy sentence and she had had a daughter living abroad; secondly, her arrest had been necessary to ensure an unhindered pre-trial investigation; and thirdly, it had not been possible to urgently request a court to authorise the applicant's detention on remand because she had been apprehended on the premises of the Šakiai police station at the end of the working day (at 4 p.m.). The Government further submitted that all the other domestic procedural requirements concerning provisional arrest had been complied with as well: a record of the arrest had been drawn up, the applicant had been informed of her rights, her husband had been notified of her arrest, and she had been served with the official notice that she was a suspect within twenty-four hours.

47. The Government further submitted that the applicant had been protected from arbitrariness. They stated that there had been no bad faith on the part of the domestic authorities, and that the applicant's arrest had been based on a reasonable suspicion that she had committed a crime. The Government also submitted that at the time of her apprehension the applicant had not been suffering from any serious illnesses and that her age

alone could not have been a barrier to arrest. They noted that domestic law provided the applicant with safeguards against arbitrariness: her rights had been explained to her, she had had the assistance of a lawyer and the possibility to complain against the decision to arrest her, as well as to claim damages. Lastly, relying on the Court's case-law, the Government submitted that the subsequent discontinuation of the investigation against the applicant had not made that investigation and the applicant's arrest arbitrary.

2. The Court's assessment

(a) General principles

48. The Court reiterates that Article 5 § 1 of the Convention requires in the first place that detention be "lawful", which includes the condition of compliance with a procedure prescribed by law. The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it also requires that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness (see *Medvedyev and Others v. France* [GC], no. 3394/03, § 79, ECHR 2010, and the cases cited therein).

49. It is in the first place for the national authorities, notably the courts, to interpret domestic law, and in particular rules of a procedural nature, and the Court will not substitute its own interpretation for theirs in the absence of arbitrariness. However, since under Article 5 § 1 of the Convention failure to comply with domestic law may entail a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Qing v. Portugal*, no. 69861/11, § 44, 5 November 2015, and the cases cited therein).

50. The Court further reiterates that in order for an arrest on reasonable suspicion to be justified under Article 5 § 1 (c) it is not necessary for the police to have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant is in custody. Neither is it necessary that the person detained should ultimately have been charged or taken before a court. The object of detention for questioning is to further a criminal investigation by confirming or discontinuing suspicions which provide the grounds for detention (see *Yagublu v. Azerbaijan*, no. 31709/13, §§ 53-54, 5 November 2015, and the cases cited therein). However, the requirement that the suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention. The fact that a suspicion is held in good faith is insufficient. The words "reasonable suspicion" mean the existence of facts or information which would satisfy an objective observer that the person concerned may have

committed the offence (see *Gusinskiy v. Russia*, no. 70276/01, § 53, ECHR 2004-IV, and the cases cited therein).

(b) Application of the above principles in the present case

51. Turning to the circumstances of the present case, the Court observes that the applicant was held under provisional arrest for nearly twenty-four hours from 3 March 2010 to 4 March 2010. The arrest was based on a suspicion that the applicant had possessed and distributed unlawful narcotic substances, as provided in Article 260 § 1 of the Criminal Code (see paragraphs 11-12 and 27 above).

52. The Court notes at the outset that the applicant did not complain of any violations of the domestic procedural rules governing provisional arrest. Relying on the parties' submissions, the Court notes indeed that the arrest was ordered by officers acting within their competence, a record of the applicant's arrest was timely drawn up, the applicant's rights were explained to her, her family member was notified of her arrest, she had the assistance of a lawyer, the notice that she was an official suspect was served on her within twenty-four hours, and the duration of the detention for questioning did not exceed the limits provided for in domestic law (see paragraphs 11-13, 16 and 30 above).

53. The applicant complained that her provisional arrest had been unlawful and arbitrary for two reasons. Firstly, she argued that there had been no reasonable grounds to believe that she had committed any crimes, as proven by the subsequent discontinuation of the investigation against her. Secondly, she contended that her arrest had not been necessary because of her advanced age (she had been almost seventy years old at the material time), ailing health, lack of previous convictions, and other personal circumstances.

54. In this connection, the Court first observes that the Šakiai police were conducting a pre-trial investigation concerning the applicant's son V.Ž. on suspicion of unlawful possession and distribution of narcotic substances. During police searches, several items corroborating that suspicion were found in the apartment where V.Ž. lived together with the applicant, as well as in the apartment of V.Ž.'s sister, V.B., to which the applicant held the keys. Most importantly, the officers also discovered that V.Ž. had a mobile phone in detention, and the text messages found on that phone (see paragraph 9 above) indicated that the applicant may have been involved in the distribution of drugs together with her son, or that, at the very least, she may have acted under his instructions and hidden the drugs stored in V.B.'s apartment. The Court considers that all those circumstances, taken as a whole, were sufficient at that stage of the proceedings to lead to a reasonable suspicion as to the applicant's involvement in criminal activity (see paragraph 50 above).

55. The Court is therefore of the view that the information in the domestic authorities' possession at the time of the applicant's arrest was sufficient to satisfy an objective observer that the applicant may have committed criminal acts. Even though subsequently the police discontinued the investigation against the applicant and did not bring any criminal charges against her, the Court reiterates that the facts which raise a suspicion justifying arrest under Article 5 § 1 (c) of the Convention do not need to be of the same level as those necessary to bring charges or secure a conviction (see *Murray v. the United Kingdom*, 28 October 1994, § 55, Series A no. 300-A). Therefore, the fact that no criminal charges have been brought against the applicant does not, in and of itself, make her provisional arrest unlawful.

56. As regards the applicant's submissions concerning her advanced age and ailing health, the Court reiterates that the Convention does not prohibit the detention of persons of an advanced age (see *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, ECHR 2001-VI). Therefore, the fact that the applicant was sixty-nine years old at the time of the arrest does not suffice to make that arrest arbitrary. The Court also notes that the applicant did not argue that her state of health at the material time had been incompatible with any form of detention.

57. In the light of the above, the Court is of the view that the applicant's provisional arrest on 3-4 March 2010 was based on a reasonable suspicion of her having committed a criminal offence and was justified under paragraph 1 (c) of Article 5 of the Convention. Accordingly, there has been no violation of that provision.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 5 § 1 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 5 § 1 of the Convention.

Done in English, and notified in writing on 12 July 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	András Sajó
Deputy Registrar	President