



The applicant's dismissal for "theft" in spite of an amnesty had breached his right to be presumed innocent

In today's Chamber judgment¹ in the case of **Felix Guțu v. the Republic of Moldova** (application no. 13112/07) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 2 (presumption of innocence) of the European Convention on Human Rights.

The case concerned the dismissal of an employee after criminal proceedings had been brought against him for embezzlement. He complained that his right to be presumed innocent had been infringed.

The Court reiterated that there was a fundamental distinction to be made between a statement that someone was merely *suspected* of having committed a crime and a clear judicial declaration, in the absence of a final conviction, that the individual *had committed* the crime in question. The applicant had been dismissed for committing a theft "established by a decision of the court or authority competent to apply administrative sanctions". The mere fact that the civil courts had confirmed this legal ground of dismissal, in spite of the amnesty discontinuing the criminal proceedings, had constituted a clear declaration that he was guilty of the offence in question. Moreover, the Supreme Court of Justice had declared, without any legal basis, that the request for an amnesty had in substance constituted an acknowledgment of guilt.

The Court took the view that the confirmation by the civil courts of the applicant's dismissal for theft, and the language used by them, had been incompatible with the presumption of innocence principle.

Principal facts

The applicant, Felix Guțu, is a Moldovan national who was born in 1966 and lives in Chișinău.

On 26 August 2003 the public prosecutor's office brought proceedings against Mr Guțu on suspicion of embezzling funds belonging to the State-owned corporation M.

On 2 December 2003 the public prosecutor issued a decision terminating the criminal proceedings. The investigation had established that Mr Guțu, in order to receive an undue reimbursement from his employer, had submitted an expense account with a fake hotel bill when he had only paid half the amount stated on the account. The prosecutor concluded that the offence of embezzlement was not made out, as Mr Guțu had, immediately after the company's accounting department rejected his expense claim, requested that the undue expenses be deducted from his salary. Furthermore, the amount indicated in the expense account did not exceed the maximum amount to which Mr Guțu was entitled under the rules in order to cover his travel expenses.

On 23 March 2005 the Deputy Principal Public Prosecutor cancelled the decision to terminate the proceedings and ordered further investigation. On 20 May 2005 the public prosecutor discontinued

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

the criminal proceedings for a second time on the ground that the charges fell within the amnesty law of 16 July 2004.

On 18 August 2005 the corporation M. dismissed Mr Guçu for theft, stating that the criminal investigation had established a misappropriation of funds.

Mr Guçu appealed against his dismissal. He objected that no court decision had established that he had misappropriated funds. The court rejected his claim, noting that although Mr Guçu had returned the money voluntarily, he had, by accepting the application of the amnesty to his case, acknowledged in substance that he had taken the money from his employer and that therefore the dismissal was lawful. Mr Guçu appealed against this judgment and the Court of Appeal upheld his action.

The Court of Appeal found that Mr Guçu's dismissal breached Article 86 § 1 (j) of the Labour Code and ordered his reinstatement. It ordered his employer to pay him a monthly salary covering the nine months of forced absence and an additional month's salary for non-pecuniary damage.

On 30 August 2006 the Supreme Court of Justice quashed the decision of the Court of Appeal on the appeal of corporation M. and upheld the first-instance judgment.

Complaints, procedure and composition of the Court

Relying on Article 6 § 2 (presumption of innocence) of the European Convention, the applicant alleged that the reasoning adopted by the civil courts to uphold his dismissal had breached his right to be presumed innocent.

The application was lodged with the European Court of Human Rights on 1 March 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Jon Fridrik **Kjølbro** (Denmark), *President*,
Marko **Bošnjak** (Slovenia),
Valeriu **Grițco** (the Republic of Moldova),
Ivana **Jelić** (Montenegro),
Arnfinn **Bårdsen** (Norway),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),

and also Hasan **Bakırcı**, *Deputy Section Registrar*.

Decision of the Court

[Article 6 § 2 \(presumption of innocence\)](#)

The applicant alleged that there had been no domestic decision establishing his criminal liability and that at no time had he intended to acknowledge any criminal misconduct. He asserted that he had accepted the amnesty without waiving his right not to incriminate himself. He argued that in considering his action for annulment of the dismissal, the civil courts had decided the question of his guilt in the criminal case and had infringed his right to be presumed innocent.

The Court noted that the decision of 20 May 2005 could not be seen as a decision on the merits of the applicant's criminal case. In that decision, the public prosecutor's office had considered that all the conditions had been met for application of the 2004 amnesty law in respect of the applicant, one of the conditions being his consent. The Court noted, however, that the Supreme Court of Justice had held in its decision of 30 August 2006 that the applicant's request to the public prosecutor's office to benefit from an amnesty had in substance been an admission of guilt.

The Court pointed out first of all that, when he had been given the opportunity to state his position before the public prosecutor's office, the applicant had denied having committed the alleged offence. Moreover, the amnesty could have been applied at any stage of the criminal proceedings. In accordance with Article 275 of the Code of Criminal Procedure, in particular, the application of the amnesty had precluded, in the same way as a statutory limitation, the continuation of the criminal investigation.

The Court noted that neither the provisions of the amnesty law nor those of the Criminal Code and the Code of Criminal Procedure expressly stated that prior acknowledgement of guilt was one of the conditions for applying the amnesty. Nor did it follow from the wording of these provisions that a suspect's acceptance of the amnesty amounted to an admission of guilt. The Court found that the applicant's consent to the amnesty could not be construed as a confession or as a form of self-incrimination.

In accordance with domestic law, the Court took the view that the applicant could not reasonably have expected that his request for amnesty during the investigation in his criminal case would be construed as an admission of guilt. Thus there had been no knowing or intelligent waiver by the applicant of his right to be presumed innocent and not to incriminate himself. The Supreme Court of Justice had concluded without any legal basis that his acceptance of the amnesty constituted in substance an admission of guilt.

The Court therefore found that, in its decision of 20 May 2005, the public prosecutor's office had not examined the merits of the applicant's criminal case and that the applicant had not waived the safeguards of a fair trial, namely his right to be presumed innocent or the privilege against self-incrimination. The decision had terminated the criminal proceedings on the basis of the amnesty, without establishing the applicant's guilt.

The Court reiterated, however, that exemption from criminal liability did not as such constitute an obstacle to the establishment of civil liability or any other form of responsibility for the same acts. It noted that the applicant had not been issued with a decision on the merits of the charge against him and that, therefore, the voicing of doubts regarding his innocence was conceivable. There was, however, a fundamental distinction to be made between a statement that someone was merely *suspected* of having committed a crime and a clear judicial declaration, in the absence of a final conviction, that the individual *had committed* the crime in question. The applicant had been dismissed pursuant to Article 86 § 1 (j) of the Labour Code for having committed a theft "established by a decision of the court or authority competent to apply administrative sanctions". The mere fact that the civil courts had confirmed this legal ground of dismissal, in spite of the amnesty discontinuing the criminal proceedings, had constituted a clear declaration that he was guilty of the offence in question, in spite of the criminal proceedings against him having been discontinued. Moreover, in its decision of 30 August 2006, the Supreme Court of Justice had emphasised that the request for an amnesty had in substance constituted an acknowledgment of guilt. Such a conclusion had left no doubt as to the belief of the civil courts that the applicant had committed the offence.

In those circumstances, the Court concluded that the civil courts' confirmation of the applicant's dismissal for theft and the language used by them had been incompatible with the presumption of innocence principle and that there had therefore been a violation of Article 6 § 2.

[Just satisfaction \(Article 41\)](#)

The Court held that the Republic of Moldova was to pay the applicant 3,600 euros (EUR) in respect of pecuniary damage, EUR 3,600 in respect of non-pecuniary damage and EUR 45 in costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.