



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

SECOND SECTION

**CASE OF GRECU v. THE REPUBLIC OF MOLDOVA**

*(Application no. 51099/10)*

JUDGMENT

STRASBOURG

30 May 2017

*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 Grecu v. the Republic of Moldova,**

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

Robert Spano, *President*,

Julia Laffranque,

Ledi Bianku,

Işıl Karakaş,

Valeriu Griţco,

Jon Fridrik Kjølbro,

Stéphanie Mourou-Vikström, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 2 May 2017,

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

## PROCEDURE

1. The case originated in an application (no. 51099/10) 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, Mrs Tatiana Grecu (“the applicant”), on 23 July 2010.

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

3. The applicant alleged, in particular, that she had been subjected to inhuman and degrading treatment by the police and unlawfully detained.

4. On 18 November 2014 the complaints concerning Articles 3, 5 and 13 of the Convention were communicated to the Government and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

## THE FACTS

5. The applicant was born in 1960 and is detained in Vadul lui Voda.

6. On 22 February 2002 at 7 a.m. the applicant was arrested and placed in detention. She was released at 4.40 p.m. on the same day after a court had found that her detention had been abusive and had ordered her release.

7. In the meantime, during her detention, the applicant was subjected to ill-treatment by the police. In particular, she was punched and strangled. After release, the applicant went to a hospital, where she was diagnosed with concussion and multiple bruises on her head and neck. She lodged a

criminal complaint in relation to the above-mentioned facts; however, it was not successful.

8. On an unspecified date, the applicant initiated civil proceedings against the State, claiming compensation for unlawful detention and ill-treatment.

9. By a final judgment of 9 August 2012, the Supreme Court of Justice found a breach of the applicant's rights, as guaranteed by Articles 3 and 5 of the Convention, on account of her unlawful detention and ill-treatment on 22 February 2002. The Supreme Court also found a breach of the applicant's rights, as guaranteed by Articles 6 and 13 of the Convention, on account of the length and ineffectiveness of the criminal investigation conducted into the applicant's complaints of abusive actions on the part of the police. The Supreme Court awarded her 3,200 euros (EUR) in compensation.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLES 3 AND 5 § 1 OF THE CONVENTION

10. The applicant complained of a violation of Article 3 of the Convention as a result of her ill-treatment by the police and the insufficient investigation into her allegations of ill-treatment. She also complained of a violation of Article 5 § 1 of the Convention as a result of her abusive detention on 22 February 2002. The relevant parts of Articles 3 and 5 § 1 read as follows:

#### **Article 3**

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

#### **Article 5 § 1**

“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**

11. The Government submitted that the applicant had lost her victim status as a result of being compensated in the civil proceedings. The applicant disagreed and argued that the amount of compensation awarded to her by the domestic courts had been too small.

12. The Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of victim status unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III).

13. In the instant case it is true that the Supreme Court of Justice held that there had been a violation of the applicant's rights guaranteed by Articles 3 and 5 of the Convention and that it awarded her compensation. That said, the Court finds that the question of the applicant's victim status as regards redress for the violation of her rights is inextricably linked to the merits of the complaints. Therefore, it considers that both questions should be joined and examined together.

14. The Court further notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established. They must therefore be declared admissible.

### **B. Merits**

15. The applicant argued that the compensation awarded by the Supreme Court of Justice in respect of the breaches of Articles 3 and 5 of the Convention had not been adequate and proportionate to the severity of the breaches of her rights. In support of this contention the applicant cited cases in which the Court had found breaches of Articles 3 and 5 of the Convention and in which the awards had been considerably higher than that made by the Supreme Court of Justice in her case. In her view, as a result of the insufficient amount of compensation awarded by the Supreme Court of Justice, she still had victim status under Articles 3 and 5 of the Convention.

16. The Government referred to the Court's case-law in cases concerning poor conditions of detention and submitted that the amounts of money awarded by the Court in those cases were comparable to the amount awarded by the Supreme Court of Justice to the applicant in the present case. The applicant had therefore lost her victim status.

17. As the Court has stated on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII).

18. In cases of wilful ill-treatment the breach of Article 3 of the Convention cannot be remedied only by an award of compensation to the victim. This is so because, if the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 105, ECHR 2016).

19. The Court further 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, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 84, ECHR 2016 (extracts); *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).

20. There is no doubt and it is undisputed among the parties that the applicant suffered a breach of her rights, as guaranteed by Articles 3 (substantive and procedural aspects) and 5 § 1 of the Convention. In this respect the Court sees no reason to depart from the conclusion of the national courts, which acknowledged the violation of those provisions. The Court shares this opinion and does not consider it necessary to re-examine the merits of these complaints. The Court also notes that the domestic courts awarded the applicant compensation for non-pecuniary damage and considers that the principal issue is whether the award made was proportionate to the damage the applicant sustained.

21. The Court notes that the Supreme Court awarded the applicant the equivalent of EUR 3,200 in respect of non-pecuniary damage. Taking into account the unlawful detention contrary to Article 5 § 1 of the Convention and the beating to which the applicant was subjected at the hands of the

police, this is considerably below the amounts awarded by the Court in cases in which it has found a violation of Article 3 alone (see, for a recent example, *Cazanbaev v. the Republic of Moldova*, no. 32510/09, 19 January 2016, where the Court awarded the applicant EUR 12,000 in respect of ill-treatment received at the hands of the police; see also, for example, *Sochichiu v. Moldova*, no. 28698/09, 15 May 2012, where the Court awarded EUR 15,000 to Mr Sochichiu, who had been ill-treated during arrest). Moreover, the Court reiterates that a civil award of damages is not sufficient to deprive an applicant of victim status as far as ill-treatment is concerned, in view of the obligation incumbent on States to investigate ill-treatment allegations on their own initiative (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 234-35, ECHR 2014 (extracts)).

22. In the light of the foregoing, the Court considers that the applicant can still claim to be a victim of a violation of Article 3 and of Article 5 § 1 of the Convention. It therefore dismisses the Government's objection.

23. It also finds that there has been a violation of Article 3 and of Article 5 § 1 of the Convention, which arises from the unlawful detention of the applicant on 22 February 2002, her ill-treatment by the police and the failure to properly investigate her allegations of ill-treatment.

## II. ALLEGED VIOLATION OF ARTICLES 5 § 5 AND 13 OF THE CONVENTION

24. The applicant complained that she had no effective remedy against the breaches of her rights guaranteed by Articles 3 and 5 of the Convention. She relied on Articles 5 § 5 and 13 of the Convention.

25. However, having regard to the facts of the case, the submissions of the parties and its findings under Articles 3 and 5 § 1 of the Convention, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the remaining complaints (see, among other authorities, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *The Argeş College of Legal Advisers v. Romania*, no. 2162/05, § 47, 8 March 2011; *Women On Waves and Others v. Portugal*, no. 31276/05, § 47, 3 February 2009; *Velcea and Mazăre v. Romania*, no. 64301/01, § 138, 1 December 2009; *Villa v. Italy*, no. 19675/06, § 55, 20 April 2010; *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 72, ECHR 2012; and *Mehmet Hatip Dicle v. Turkey*, no. 9858/04, § 41, 15 October 2013; see also *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, §§ 210-11, ECHR 2009).

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant considered that she was entitled to compensation in the amount of 15,000 euros (EUR), less the EUR 3,200 already paid to her as a result of the judgment of the Supreme Court of Justice.

28. The Government considered that amount to be excessive.

29. In the light of all the circumstances, the Court awards the applicant the entire amount claimed (that is to say EUR 11,800) in respect of non-pecuniary damage.

#### B. Costs and expenses

30. The applicant also claimed EUR 840 for costs and expenses incurred before the Court.

31. The Government maintained that the claim was excessively high.

32. 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.

#### C. Default interest

33. 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. *Joins to the merits* the Government’s preliminary objection concerning the applicants’ victim status, *rejects it* and *declares* admissible the complaints under Articles 3 and 5 § 1 of the Convention;

2. *Holds* that there has been a violation of Article 3 of the Convention both under its substantive and procedural aspects;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
4. *Holds* that it is not necessary to examine the admissibility and merits of the complaints under Article 5 § 5 and 13 of the Convention;
5. *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 11,800 (eleven thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 840 (eight hundred and forty 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.

Done in English, and notified in writing on 30 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith  
Registrar

Robert Spano  
President