

Title: Arbitrary actions committed by the prosecutor's office and the court regarding the Petrenco group, cost the Republic of Moldova a new conviction at the ECHR and 67750 EURO from the state budget

On September 14, 2021, the European Court of Human Rights (ECHR) issued a judgment in the case of Petrenco and 6 others against the Republic of Moldova, recognizing the violation of several articles of the Convention by the Republic of Moldova.

The plaintiffs' complaint to the ECHR

The case concerns the retention, arrest and detention of the plaintiffs on the basis of allegations of mass disturbances, following a demonstration which they organized in front of the General Prosecutor's Office in September 2015. All the plaintiffs were detained for four and a half months in penitentiary no. 13 and, for approximately the same period of time, were under house arrest. While they were under house arrest, the plaintiffs were forced to wear electronic bracelets, which they had to charge every five hours.

The plaintiffs complained to the ECHR about the following violations of the Convention:

The first plaintiff complained about the conditions of detention in penitentiary no. 13. The plaintiff's detention in

Penitentiary no. 13 was an inhuman and degrading treatment, violating Articles and 8 of the Convention.

All plaintiffs complain, under Article 5 § 1 of the Convention, that deprivation of liberty was not based on a reasonable suspicion that they had committed a crime and that their detention was arbitrary and illegal. They also complain, pursuant to Article 5 §§ 3 and 4, that their deprivation of liberty was not based on relevant and sufficient grounds and that the national courts did not give sufficient reasons for their judgments on the application and extension of preventive measures.

All, with the exception of the first plaintiff, complained under Article 11 of the Convention that the plaintiffs' right to peaceful assembly had been violated by the application, as a precautionary measure, of prohibitions on going to places where mass protests were taking place.

With the exception of the first and fourth plaintiff, the plaintiffs complain, under the provisions of Article 13, that they have not had an effective remedy against the violation of Article 11 of the Convention (concerning the prohibition laid down by the court to participate in public meetings).

ECHR decision

Art. 5.1., Art. 5.3, art. 5.4 – allegations of involvement in mass disorder were not based on reasonable suspicion

The Court found that the plaintiffs had been arrested and charged with the offense of participating in mass disturbances, which, according to Article 285 of the Criminal Code, is described as involving "violence against persons, pogroms, arson, damage to property, the use of firearms or other objects used as weapons and violent or armed resistance to the representatives of the authorities " (see paragraph 22 of the Decision).

After examining the videos of the demonstration of September 6, 2015, included in the case file (see their detailed description in paragraphs 7 to 10 of the Decision), the Court finds that the allegations of the plaintiffs' violent behavior are totally incompatible with the footage contained in those videos. According to the videos in question, the authenticity of which was not disputed by the Government, the meeting in general and of the plaintiffs in particular were peaceful throughout. It is true that the police used force to push the protesters away from the entrance to the building, but the latter showed no violent or armed resistance and were removed from the entrance to the building in 2-3 minutes (see paragraphs 7-8 of the Decision).

The Court found that Svetlana Balmus, the Judge of the Court of Appeal had stated in her separate opinion that the meeting was peaceful (see paragraph 16 of the Decision). The Court also took note of the finding of the Supreme Court of Justice in its decision of 11 February 2020 that, in sentencing the plaintiffs, the lower courts relied solely on the presentation of the facts presented by the prosecution and did not pay attention to the evidence in criminal proceedings and defense evidence (see paragraph 18 of the Decision).

In such circumstances, it is impossible for the Court not to find that the allegation of participation in mass disturbances against the plaintiffs was not based on a "reasonable suspicion" and cannot therefore be considered "legal" and is arbitrary within the meaning of Article 5 § 1 of the Convention (see the case of Brega v. Moldova, no. 52100/08, § 38, 20 April 2010). There has therefore been a violation of Article 5 § 1 of the Convention.

Art. 11 – Violation of the freedom of assembly. Illegal prohibition applied to plaintiffs on participating in public meetings

As regards the lawfulness of the above interference, nothing

in this case did not allow the Court to consider that there was a legal basis for restricting the plaintiffs' right to freedom of assembly. The Court finds that, indeed, the Article 191 of the Code of Criminal Procedure (see paragraph 23 of the Decision) does not provide for such a procedural measure and the Government has not indicated any other domestic legal provisions allowing such a measure to be imposed on a released person and which is awaiting trial. Thus, the Court concluded that the interference in question was not lawful under national law.

Damages to be collected

The Court ordered the Government of the Republic of Moldova to pay the plaintiffs the total amount of EUR 63750, as non-pecuniary damage, for the violations committed and the amount of EUR 4000, as costs and expenses of representation and legal assistance before the ECHR.

Comments of the lawyers of the Promo-LEX Association

According to Program Director and lawyer Vadim Vieru, "This case highlights systemic issues related to the legality and validity of the application and extension of preventive detention measures, as well as the limitation of the right to freedom of assembly by applying, as a provisional measure, the prohibition to go to places where mass protests are taking place. The Court finds that there is no reasonable suspicion as to the commission of the offense and the arbitrary assessment of the evidence by the court, by exclusively reproducing the position of the prosecution".

According to the lawyer of the Promo-LEX Association, Nicoleta Hriplivii, "In a state where the Government limits the pluralism of opinions, freedom of expression or assembly, democracy is in danger. At that time, society witnessed the degradation of democracy in the Republic of Moldova, where freedom of expression, the right to safety and freedom of

persons, were most often violated rights. All judgments of the European Court of Human Rights indicate where the State has gone wrong and these human rights violations should not be repeated in the future.”

Russia convicted by ECtHR on the case of Ion Manole and Alexandru Postica as a result of the incident on the Vadul lui Voda bridge of 2005



On 29 June 2021, the European Court of Human Rights (ECtHR) issued a judgment on the case No 4711/07, ***Manole and Postica vs. Republic of Moldova and Russian Federation*** finding that Ion Manole and Alexandru Postica were victims of unlawful detention by Russian soldiers located at the peacekeeping checkpoint No 9 on the bridge over the Nistru river, connecting Vadul lui Voda town and Cosnita village.

It was thus noted that on 19 July 2005 at about 8.10 p.m. two members of Promo-LEX Association, Ion Manole and Alexandru Postica, who were travelling back from a working visit made to localities across Rabnita-Tiraspol road, were detained at the peacekeeping checkpoint located on the left bank of the Nistru river, in Cosnita village. The reason for detention was the fact that a passenger travelling those two allegedly made a picture of an advertising board in the vicinity of checkpoint No 9 with the inscription “Farewell – Dubasari district”.

After the vehicle was stopped, the Russian officer, who was the head of the peacekeeping group, ordered to destroy the picture taken.

When asked that detention grounds be explained and proper documentation be prepared, the Russian officer became very aggressive, treating roughly and threatening the detained persons, as well as inviting by phone his superiors from Dubasari to come on the site. He used special equipment to block the vehicle, which resulted in a huge traffic jam.

Though a number of representatives of law enforcement bodies and witnesses from several organisations came to the site, the Russian military staff continued their aggressive behaviour towards the peaceful persons and, in spite of the insistent requests of the latter, the soldiers refused to de-block the vehicle of the persons detained abusively. Suddenly, with no reason, a Russian soldier made two shots from his machine gun. This severe incident, which could have ended up with victims and deaths, was overcome only thanks to the professional intervention of a road police officer from Dubasari district.

The incident was resolved only after midnight, when the applicants were allowed to leave. The peacemakers neither prepared a protocol on the incident, nor justified their behaviour by any lawful decisions. The subsequent requests filed by the applicants failed to produce any outcomes.

The ECtHR Judgment of 29.06.2021 found the violation of Article 5 § 1 and Article 5 § 4 of the Convention due to the lack of any lawful grounds for applicants' detention and lack of any remedies to appeal against this arbitrary detention. The Court ruled that the Russian Federation shall pay EUR 3,000 to each applicant in respect of non-pecuniary damage and EUR 1,500 in respect of costs and expenses. The Judgment can be accessed [here](#).

The applicants represented themselves, and at the observations

stage they were assisted in the Court by Gerald Staberock and Lemetre Roemer, OMCT (World Organisation Against Torture).

ECHR ordered Moldova to pay 9,000 euros to a victim, abused and humiliated by guards in a penitentiary in Briceni



The European Court of Human Rights (ECHR) delivered its judgment on the case Baban v. Moldova, no. 83718/17. The case concerns the application of inhuman and degrading treatment in detention and the consequent award of small amounts for non-pecuniary and pecuniary damage, without regard to the moral and physical suffering caused to the applicant and the ECHR's practice of granting non-pecuniary compensation in similar cases.

Decision of the European Court

According to the [Decision](#), the Court received declarations of amicable settlement, signed by the parties, on the basis of which the applicant agreed to waive any other claims against the Republic of Moldova regarding the facts that gave rise to this request, subject to the government's commitment to pay him 9000 Euro.

The factual circumstances which led to the delivery of the

Decision

The applicant, in the Baban case, was detained in Penitentiary No.2 from Lipcani, where he was abused and humiliated by the guards repeatedly. He was denied medical assistance, but also the request for special food insurance, according to national legislation, based on the medical problems he has. The applicant was suffering from digestive disorders. In response to all his requests, he was punched and kicked multiple times by the guards.

Although he sent a complaint to the Briceni District Prosecutor's Office, in connection with the acts of ill-treatment, for two years the Prosecutor's Office refused to initiate a criminal case. However, a criminal case was initiated and the investigation of the case lasted another two years.

There have been several years in which the applicant fought for his rights in the courts. By the sentence of the Military Court of June 2015, the guards who mistreated him were acquitted. Subsequently, by the decision of the Criminal College of the Chisinau Court of Appeal, they were found guilty and convicted, but released from criminal liability in connection with the intervention of the limitation period. In June 2016, the case was sent for retrial by the hierarchically superior court, and a conviction was subsequently issued. As non-pecuniary damage, the applicant was granted the amount of 14,000 MDL, and the court did not motivate the solution in any way.

According to Promo-LEX lawyer, Vadim Vieru, director of the Human Rights Program: "considering the jurisprudence of the ECHR in Moldovan cases, there is a tendency for national courts to award reduced amounts of moral damages up to 10 times less than ECHR in similar cases. In those circumstances, the applicants continue to be victims of a violation of Article Three of the Convention."

Judicial practice of national courts vs. Jurisprudence of the European Court of Human Rights

In other similar cases, national courts have granted small amounts as non-pecuniary damage, referring only to “constant practice” without taking into account the specific criteria and circumstances of each case and the ECHR case law on similar cases.

For example, in the case of Ciorap no.2, the Supreme Court offered the applicant the equivalent of 600 Euros as non-pecuniary damage, compared to 4,000 Euros granted by the ECHR. In the case of Gavrilita both applicants received approx. 900 euros from the national court, compared to 9,000 euros and 10,000 euros granted by the European Court. The same goes for the Morgoci and Grecu cases, 958 Euro and 3,200 Euro as non-pecuniary damage offered by the Supreme Court of Justice, compared to 11,000 Euro and 11,800 Euro respectively granted by the High Court of Strasbourg.

The Promo-LEX Association recommends that national courts and, in particular, the Supreme Court of Justice take into account in the process of assessing the amount of non-pecuniary damage the ECHR case-law in similar cases and [Recommendation no. 6 on just satisfaction](#) prepared by the Supreme Court of Justice.

Case of Mitul and Cotofan v. Moldova and Russia (Application no. 33446/11)

Judgment

Strasbourg September 17, 2019

Final / 17/9/2019

Text of the judgment is available on the official page of [ECtHR](#) or in the document below.

[AFFAIRE BERZAN ET AUTRES c. R_PUBLIQUE DE MOLDOVA ET RUSSIE](#)

Case of Negruta v. Moldova and Russia (Applications no. 3445/13)

Judgment

Strasbourg / September 17, 2019

Final / 17/9/2019

Text of the judgment is available on the official page of [ECtHR](#) or in the document below.

[AFFAIRE NEGRU_A c. R_PUBLIQUE DE MOLDOVA ET RUSSIE](#)

Case of Filin v. Moldova and Russia (Applications no. 48841/11)

Judgment

Strasbourg / September 17, 2019

Final / 17/9/2019

Text of the judgment is available on the official page of [ECtHR](#) or in the document below.

[AFFAIRE FILIN c. R_PUBLIQUE DE MOLDOVA ET RUSSIE](#)

Case of Iovcev and Others v. Moldova and Russia (Application no. 40942/14)

Judgment

Strasbourg / September 17, 2019

Final / 17/9/2019

Text of the judgment is available on the official page of [ECtHR](#) or in the document below.

[AFFAIRE IOVCEV ET AUTRES c. R_PUBLIQUE DE MOLDOVA ET RUSSIE](#)

Case of Dobrovitskaya and Others v. Moldova and Russia (Applications no. 41660/10, 25197/11, 8064/11, 6151/12, 28972/13 and 29182/14)

Judgment

Strasbourg / September 3, 2019

Final / 3/9/2019

Text of the judgment is available on the official page of [ECtHR](#) or in the document below.

[CASE OF DOBROVITSKAYA AND OTHERS v. THE REPUBLIC OF MOLDOVA AND RUSSIA](#)

Case of Sobco and Ghent v. Moldova and Russia (Applications no. 3060/07 and

no. 45533/09)

Judgment

Strasbourg / June 18, 2019

Final / 18/6/2019

Text of the judgment is available on the official page of [ECtHR](#) or in the document below.

[CASE OF SOBCO AND GHENT v. THE REPUBLIC OF MOLDOVA AND RUSSIA](#)

Case of Cotofan v. Moldova and Russia (Application no. 5659/07)

Judgment

Strasbourg / June 18, 2019

Final / 18/6/2019

Text of the judgment is available on the official page of [ECtHR](#) or in the document below.

[CASE OF COTOFAN v. THE REPUBLIC OF MOLDOVA AND RUSSIA](#)