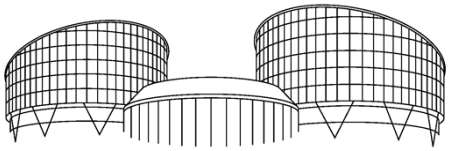

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF COTEȚ v. THE REPUBLIC OF MOLDOVA

(Application no. 72238/14)

JUDGMENT

STRASBOURG

23 October 2018

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Coteț v. the Republic of Moldova,

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

Paul Lemmens, *President,*
Valeriu Griţco,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 2 October 2018,

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

PROCEDURE

1. The case originated in an application (no. 72238/14) 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, Mr Iurii Coteț ("the applicant"), on 29 October 2014.

2. The applicant was represented by Mr A. Bivol a lawyer practising in Chișinău. The Moldovan Government ("the Government") were represented by their Agent, Mr O. Rotari.

3. On 12 July 2017 the applicant's complaints under Articles 3, 5 §§ 3, 4 and 5 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.

4. The Government did not object to the examination of the application by a Committee.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1991 and lives in Chișinău.

A. The applicant's arrest and detention

6. On 15 June 2014 the applicant had an altercation with two persons, one of whom was in an advanced state of intoxication. During the altercation, the applicant pushed the intoxicated person and punched the other one. As a result, the intoxicated person fell to the ground and received

a serious head trauma. The scene was witnessed by the wife of the intoxicated person and a neighbour.

7. On the same day the applicant was arrested and placed in detention. On 18 June 2014 the Ialoveni District Court ordered the applicant's remand in custody pending trial for a period of thirty days. The court considered that the detention was necessary because the applicant was accused of a serious offence and there appeared to be a risk of his interfering with the investigation, absconding and re-offending.

8. The applicant appealed against the detention order and argued, *inter alia*, that he had a permanent abode, an employment and no history of violent behaviour. He also submitted that he could not influence any witnesses because they were in another village and that a restraining order to quit his town of residence would be sufficient to eliminate that risk. He also submitted that he had cooperated with the investigators from the beginning of the investigation and that he could not leave the country because his travel documents had been seized.

9. On 1 July 2014 the Chișinău Court of Appeal dismissed the applicant's appeal.

10. On 11 July 2014 the Ialoveni District Court examined the Prosecutor's request for a prolongation of the applicant's detention and a *habeas corpus* request lodged by the applicant. It found no reasons to detain the applicant in custody and ordered his immediate release under judicial control. The applicant had no right to leave the town without approval by the court and to communicate with the persons involved in the criminal investigation. The Prosecutor's Office appealed.

11. On 22 July 2014 the Chișinău Court of Appeal upheld the Prosecutor's appeal, quashed the above decision and ordered the applicant's remand in custody for a period of thirty days. The reasons given by the Court of Appeal were that the applicant could abscond, interfere with the investigation and re-offend. The applicant was not arrested and, according to him, was told to go home.

12. On 25 August 2014 the applicant was arrested at home and placed in detention.

13. On 1 September 2014 the applicant lodged a *habeas corpus* request with the Ialoveni District Court. He argued, *inter alia*, that the case was not complex and that all witnesses had been heard in the beginning of the investigation.

14. On 17 September 2014 the Prosecutor's Office lodged an application for the prolongation of the applicant's detention arguing, *inter alia*, that between 22 July 2014 and 25 August 2014 the applicant had absconded from the investigating authority.

15. On 23 September 2014 the Ialoveni District Court upheld the Prosecutor's request and prolonged the applicant's detention for a period of

thirty days. The reasons for detention were the same as before: risk of absconding, risk of interfering with the investigation and re-offending.

16. The applicant appealed against the above decision and argued, *inter alia*, that there was no risk of absconding or interfering with the investigation. He submitted that, on 22 July 2014, when the Chișinău Court of Appeal had quashed the Ialoveni District Court's decision of 11 July 2014 and had ordered the prolongation of his detention, he had not been arrested but advised to go home. He went home and nobody came after him until 25 August 2014. Between 11 July and 25 August 2014 he had not attempted to abscond or interfere with the investigation.

17. On 7 October 2014 the Chișinău Court of Appeal dismissed the applicant's appeal. The court found that the risk of the applicant's absconding was real because he had absconded from investigating authorities between 22 July and 25 August 2014.

18. On 17 October 2014 the Public Prosecutor's Office applied to the Ialoveni District Court for a prolongation of the applicant's detention for another thirty days. One of the reasons relied upon by the Prosecutor was that the applicant had absconded from investigating authorities between 22 July and 25 August 2014.

19. On 22 October 2014 the applicant requested access to the casefile with a view to obtaining a copy of the materials filed by the public prosecutor together with his application of 7 October 2014. He argued that the public prosecutor's application was accompanied by a set of documents, while he had only received a copy of the application. The applicant lodged on the same date a *habeas corpus* request.

20. On 22 October 2014 the Ialoveni District Court upheld the public prosecutor's application and ordered the prolongation of the applicant's detention for thirty days on the ground that there was a risk of absconding and interfering with the investigation. The applicant's *habeas corpus* request was rejected while his request for access to the materials of the file was not examined. The applicant appealed and complained about the lack of relevant and sufficient reasons for detention. He did not complain in his appeal about the lack of access to the materials in the casefile.

21. On 4 November 2014 the Chișinău Court of Appeal dismissed the applicant's appeal.

22. On 14 November 2014 the Public Prosecutor's Office applied again to the Ialoveni District Court for a prolongation of the applicant's detention.

23. On 20 November 2014 the applicant lodged a *habeas corpus* request.

24. On 20 November 2014 the Ialoveni District Court dismissed the public prosecutor's request and upheld the applicant's *habeas corpus* request. The applicant was released from detention and ordered not to leave his town and not to interfere with the investigation.

B. Conditions of detention

25. Throughout his detention the applicant was held in Prison no. 13.

26. According to the applicant, he was detained in overcrowded cells which lacked ventilation. His co-detainees smoked in the cells. The cells were equipped with squat toilets which were not properly separated. There was a sink with a rusted tap and the quality of water was very bad. The food was insufficient.

C. The termination of the criminal proceedings against the applicant

27. On 9 March 2017 the Supreme Court of Justice convicted the applicant for hooliganism and unintentional infliction of severe bodily harm and sentenced him to a suspended sentence of two years' imprisonment.

II. RELEVANT DOMESTIC LAW

28. The relevant domestic law concerning detention on remand has been set out in the Court's judgment in *Buzadji v. the Republic of Moldova* [GC] (no. 23755/07, §§ 42-43, ECHR 2016 (extracts)).

29. The relevant provisions of Law No. 1545 "on Compensation for Damage Caused by the Illegal Acts of the Criminal Investigation Bodies, Prosecution and Courts", in force since 4 June 1998, read as follows:

> "Section 1
>
> (1) In accordance with the present law, individuals and legal entities are entitled to compensation for non-pecuniary and pecuniary damage caused as a result of:
>
> a) illegal detention, illegal arrest, illegal indictment, illegal conviction;
>
> b) illegal search carried out during the investigation phase or during the trial of the case, confiscation, levy of a distraint upon property, illegal dismissal from employment, as well as other procedural acts that limit the persons' rights;
>
> c) illegal administrative arrest or order to work for the community, illegal confiscation of the property, illegal fine;
>
> d) the carrying out of operative investigative measures in breach of lawful procedure;
>
> e) illegal seizure of accounting documents, other documents, money, or stamps as well as the blocking of bank accounts.
>
> (2) The damage caused shall be fully compensated, irrespective of the degree of culpability of the agents of the criminal investigation organs, prosecution and courts.
>
> [...]
>
> Section 6
>
> A person shall be entitled to compensation in accordance with the present law when one of the following conditions is met:

a) the pronouncement of an acquittal judgment;

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

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

d) the adoption by an investigation judge, in accordance with Article 313 para. 5 of the Criminal Procedure Code, in respect of the acquitted person or of the person of a decision declaring null the acts and the actions of the investigation bodies."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

30. The applicant complained under Article 5 § 3 of the Convention that the domestic courts had given insufficient reasons for their decisions to remand him in custody. Article 5 § 3 of the Convention, reads as follows:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

31. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

32. The applicant contended that there were no arguments in favour of his deprivation of liberty and that his remand in custody had not been based on relevant and sufficient reasons.

33. The Government submitted that the applicant's detention had been necessary in order to exclude the risk of his absconding and influencing witnesses. The Government submitted that the applicant had absconded between 22 July and 25 August 2014, a fact which confirmed the necessity of his remand in custody.

34. The Court reiterates that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. The requirement for the judicial officer to give relevant and sufficient reasons for the detention – in addition to the persistence of reasonable

suspicion – applies already at the time of the first decision ordering detention on remand, that is to say "promptly" after the arrest (see *Buzadji*, cited above, §§ 87 and 102). Furthermore, when deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures of ensuring his appearance at trial (see, for example, *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012).

35. Justifications which have been deemed "relevant" and "sufficient" reasons in the Court's case-law have included such grounds as the danger of absconding, the risk of pressure being brought to bear on witnesses or of evidence being tampered with, the risk of collusion, the risk of reoffending, the risk of causing public disorder and the need to protect the detainee (see, for instance, *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7; *Stögmüller v. Austria*, 10 November 1969, § 15, Series A no. 9; *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; *Toth v. Austria*, 12 December 1991, § 70, Series A no. 224; *Tomasi v. France*, 27 August 1992, § 95, Series A no. 241-A; and *I.A. v. France*, 23 September 1998, § 108, *Reports of Judgments and Decisions* 1998-VII).

36. The presumption is always in favour of release. The national judicial authorities must, with respect for the principle of the presumption of innocence, examine all the facts militating for or against the existence of the above-mentioned requirement of public interest or justifying a departure from the rule in Article 5, and must set them out in their decisions on applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see, among other authorities, *Buzadji*, cited above, §§ 89 and 91). Arguments for and against release must not be "general and abstract" (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX (extracts)).

37. Turning to the circumstances of the present case, the Court observes in the first place that the criminal case against the applicant was not complex and that there were very few persons to be questioned. The Court also notes that the main accusation against the applicant was that he had involuntarily caused bodily harm to a person. It also appears that the applicant cooperated with the investigating authorities during the proceedings against him. The applicant had a permanent abode and an employment and had no history of violent behaviour.

38. Between 11 July and 25 August 2014 the applicant was at large and it does not appear that he attempted to leave the country or to interfere with the investigation.

39. It is the Government's case that he absconded from the investigating authorities between 22 July and 25 August 2014. In support of this contention the Government submitted a copy of a handwritten document, signed by a police officer, in which he reported to his superior about having

arrested the wanted person (the applicant) on 25 August 2014. In the Court's view, this document does not prove that the applicant was absconding. The Government submitted no evidence to show that the applicant had been summoned to appear before the authorities between 22 July and 25 August 2014. The fact that the authorities only decided to place him in detention more than a month after the detention was ordered cannot be held against the applicant.

40. In the light of all of the above factors, the Court considers that there were no relevant and sufficient reasons to prolong the applicant's detention for almost four months. It follows that in the present case there has been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

41. The applicant complained that the late examination of his *habeas corpus* request of 1 September 2014 and the courts' refusal to present him with materials from the criminal file following his request on 22 October 2014 amounted to a breach of Article 5 § 4. Article 5 § 4 of the Convention reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

42. In so far as the lack of access to the materials of the case-file is concerned, the Court notes that the applicant did not raise this issue in his appeal lodged against the decision of the Ialoveni Court of Appeal of 22 October 2014 (see paragraph 20 above). Thus, this part of the complaint must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

43. The Court notes that the remaining part of the complaint under Article 5 § 4 of the Convention, namely the part concerning the late examination of the applicant's *habeas corpus request* of 1 September 2014, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

44. The applicant complained that his *habeas corpus* request, lodged on 1 September 2014, was examined only on 23 September 2014. This, in his view, could not be considered prompt review under Article 5 § 4 of the Convention.

45. The Governemnt submitted that the delay in examinining the applicant's *habeas corpus* request was justified by the interests of justice. They considered that the delay was not excessive.

46. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II). The question whether a person's right under Article 5 § 4 of the Convention has been respected has to be determined in the light of the circumstances of each case (see *Sarban v. Moldova*, no. 3456/05, § 118, 4 October 2005).

47. The Court notes that it took the Ialoveni District Court twenty-two days to examine the applicant's *habeas* corpus request of 1 September 2014. Such a period of time cannot be considered to correspond to the requirement of a speedy judicial decision within the meaning of Article 5 § 4 of the Convention (*Rehbock v. Slovenia*, no. 29462/95, § 82 et seq., ECHR 2000-XII, and *Kadem v. Malta*, no. 55263/00, § 45, 9 January 2003). In this respect the Court recalls that in its judgment in the case of *Sarban* (cited above, § 120), it found a delay of twenty-one days to be excessively long.

48. There has accordingly been a violation of Article 5 § 4 of the Convention in this respect too.

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

49. The applicant further complained that he had been denied an enforceable right to compensation for his detention which had contravened Article 5 §§ 1 and 4 of the Convention. He relied on Article 5 § 5 of the Convention, which reads as follows:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

50. The Government contested that argument and argued that there was a remedy under domestic law, namely that provided for by Law No. 1545. However, it admitted that since the applicant was not acquitted, that remedy was not open to him and Article 5 § 5 of the Convention was not applicable.

51. The Court reiterates that the right to compensation set forth in Article 5 § 5 of the Convention presupposes that a violation of one of the other paragraphs of that Article has been established, either by a domestic authority or by the Convention institutions (see *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X, and *Stanev v. Bulgaria* [GC], no. 36760/06, § 182, ECHR 2012).

52. The Court notes that it has found above a breach of Article 5 §§ 3 and 4 of the Convention. It also notes the Government's submission to the effect that since the applicant was not acquitted, no right to compensation existed in domestic law within the meaning of Article 5 § 5. That submission is consistent with the provisions of Section 6 of Law No. 1545 (see paragraph 29 above) and with the Court's finding of a breach of Article 13 of the Convention in *Guțu v. Moldova* (no. 20289/02, §§ 72-74, 7 June 2007) on account of lack of effective remedies under Moldovan law in respect of the applicant's complaint under Article 5 of the Convention.

53. Accordingly, the Court considers that in the present case there has been a violation of Article 5 § 5 of the Convention on account of lack of an enforceable right to compensation under domestic law.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

54. The applicant complained under Article 3 of the Convention about the poor conditions of his detention. Article 3 reads as follows:

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

A. Admissibility

55. The Court notes that the complaint is not manifestly ill-founded, within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

56. The applicant complained about poor conditions of detention in Prison no. 13 (see paragraph 26 above).

57. The Government disputed the applicant's allegations and argued that the conditions of detention did not amount to inhuman and degrading treatment.

58. The Court reiterates the general principles concerning conditions of detention set out in its judgments in the cases of *Ostrovar v. Moldova* (no. 35207/03, §§ 76-79, 13 September 2005); *Shishanov v. the Republic of Moldova*, (no. 11353/06, §§ 83-85, 15 September 2015); *Khlaifia and Others v. Italy (*[GC], no. 16483/12, §§ 163-67, ECHR 2016 (extracts)); and *Mursič v. Croatia* ([GC], no. 7334/13, § 104, ECHR 2016).

59. The Court recalls that it has found the conditions of detention in Prison no. 13 to be in breach of Article 3 of the Convention in a number of cases examined by it (see, amongst many other authorities, *Hadji*

v. Moldova, nos. 32844/07 and 41378/07, § 20, 14 February 2012; *Silvestru v. the Republic of Moldova*, no. 28173/10, 13 January 2015; *Pisaroglu v. the Republic of Moldova*, no. 21061/11, 3 March 2015). Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of the applicant's complaints. The Court thus considers that the hardship endured by the applicant during his detention in Prison no. 13 went beyond the unavoidable level of hardship inherent in detention and reached the threshold of severity required by Article 3 of the Convention. Accordingly, there has been a violation of Article 3 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

62. The Government disagreed with the amount of non-pecuniary damage claimed by the applicant.

63. The Court considers that the applicant must have suffered stress and frustration as a result of the violations found. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,000 for non-pecuniary damage.

B. Costs and expenses

64. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the Court.

65. The Government claimed that the amount claimed was excessive.

66. Regard being had to the documents in its possession, the Court considers it reasonable to award the entire amount claimed for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 5 § 4 of the Convention concerning lack of access to the documents of the case-file inadmissible and the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

5. *Holds* that there has been a violation of Article 5 § 5 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, 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;

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

Done in English, and notified in writing on 23 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Paul Lemmens
Deputy Registrar	President