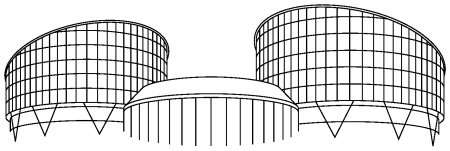

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF BOTNARI v. THE REPUBLIC OF MOLDOVA

(Application no. 74441/14)

JUDGMENT
(*Revision*[1])

STRASBOURG

1 October 2019

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

1. Revision of the judgment of 5 June 2018

In the case of Botnari v. the Republic of Moldova (request for revision of the judgment of 5 June 2018),

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 5 June 2018,

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

PROCEDURE

1. The case originated in an application (no. 74441/14) 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, Ms Viorica Botnari ("the applicant"), on 20 November 2014.

2. In a judgment delivered on 5 June 2018, the Court held that there had been a violation of Article 3 of the Convention on account of the applicant's conditions of detention in Prison no. 13 from 5 June 2013 until the date of delivery of the judgement and the insufficient medical care given to her and of Article 13 on account of the absence of any effective remedies in respect of complaints concerning conditions of detention. The Court also decided to award the applicant 10,000 euros (EUR) for non-pecuniary damage and EUR 1,500 for costs and expenses and dismissed the remainder of the claims for just satisfaction.

3. On 6 June 2018 the Government informed the Court that the information provided by them on 19 January 2018, namely concerning the date of the applicant's release from detention, had not been dealt with in the judgement of 5 June 2018. They accordingly requested revision of the judgment within the meaning of Rule 80 of the Rules of Court.

4. On 4 September 2018 the Court considered the request for revision and decided to give the applicant's representative one month in which to submit any observations. Those observations were received on 4 October 2018.

THE LAW

I. THE REQUEST FOR REVISION

5. The Government requested revision of the judgment of 5 June 2018, which had not dealt with the information about the date of the applicant's

release from detention. They noted that the last day the applicant spent in Prison no. 13 in Chișinău was 17 November 2016.

6. In her comments in reply the applicant did not contest that she had left Prison no. 13 on 17 November 2016 (the date when she was transferred to Prison no. 7 in Rusca). She partly agreed with the Government's request, but argued that the revision should not have a decisive influence on the amount of compensation for non-pecuniary damage.

7. The Court considers that the Government's request complies with the requirements of Rule 80 of the Rules of Court, the relevant parts of which provide:

> "A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court ... to revise that judgment.
>
> ..."

8. Accordingly, the Court decides that the relevant parts of its judgment dated 5 June 2018 should be revised to read as follows:

> "9. According to the Government, the applicant was transferred from the detention facility of the Ministry of the Interior to Prison no. 13 on 29 March 2010. On 30 March 2011 she was released from detention and was placed under house arrest. On 26 January 2012, after having been declared a wanted person, the applicant was again arrested and again placed in detention in Prison no. 13. On 19 September 2012 she was released from prison and was placed under house arrest. On 5 June 2013 the applicant was again placed in detention in Prison no. 13. On 10 June 2013 the Centru District Court found the applicant guilty as charged and sentenced her to thirteen years and six months' imprisonment. The case was pending before the Chişinău Court of Appeal at the time of the parties' observations. The last day the applicant had spent in Prison no. 13 in Chișinău was 17 November 2016.
>
> ...
>
> 27. The Court further notes that the application was lodged with the Court on 20 November 2014. There is nothing to suggest that the applicant was in any way impeded by the authorities from complaining before that date regarding her detention in the detention centre of the GDFOC from 17 March 2010 to 29 March 2010 and regarding the first two periods of detention in Prison no. 13 (from 29 March 2010 to 30 March 2011 and from 26 January 2012 to 19 September 2012). It is true that the applicant was deprived of liberty within the framework of the same criminal proceedings. Nonetheless, in view of the significant gap between the first period of detention and the second such period (ten months) and between the second period and the third (eight and a half months) with which the complaints are concerned, the Court cannot treat them as part of a continuing situation as described above (see *Haritonov v. Moldova*, no. 15868/07, § 26, 5 July 2011). In such circumstances, the Court considers that only the complaint concerning the last period of detention, in Prison no. 13 from 5 June 2013 until 17 November 2016, was lodged within the time-limit provided for in Article 35 of the Convention. Consequently, the complaints in respect of the other periods of detention in Prison no. 13 and the detention facility of the Ministry of the Interior must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

28. The Court considers that the remainder of the complaints under Article 3 of the Convention (about the conditions of the applicant's detention and lack of medical care in Prison no. 13 between 5 June 2013 until 17 November 2016) raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no grounds for declaring them inadmissible have been established. The Court therefore declares it admissible.

...

50. The Court considers it appropriate to award the applicant compensation in respect of non-pecuniary damage. Deciding on an equitable basis, it awards her EUR 7,500.

..."

Point 4 of the operative part of the judgment should read as follows:

"4. 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 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred 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;"

9. 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,

Decides to revise the judgment of 5 June 2018 in so far as it concerns the relevant period of the applicant's detention in Prison no. 13 in Chișinău as well as the amount of compensation for non-pecuniary damage awarded to her (see paragraph 8 above).

Done in English, and notified in writing on 1 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Paul Lemmens
President