



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

Published on 10 August 2026

SECOND SECTION

Application no. 40847/23
István KISS
against Hungary
lodged on 25 October 2023
communicated on 6 July 2026

SUBJECT MATTER OF THE CASE

The application concerns the applicant's 12 days of administrative detention, imposed despite the fact that he had already served his sentence of community service for the same administrative offence.

On 12 February 2019 the applicant received a fine amounting to 60,000 Hungarian forints (approximately 200 euros) for a minor offence, which, if unpaid, could be converted into 72 hours of community service or, as a last resort, to 12 days of detention according to Act no. II of 2012 on Minor Offences ('the Minor Offences Act'). While the applicant had completed his community service in May and June 2019, the competent authorities failed to provide a certificate to that effect, resulting in a decision on 13 February 2020 by which the applicant's community service was converted into detention, subject to no appeal. The applicant was consequently detained for 12 days at Pécs Prison in June 2020.

On 9 July 2020 the local police were informed that the applicant had complied with the decision ordering his community service and that the certificate on his community service had been found while cleaning the drawers.

On the prosecution's motion for retrial, the decision converting his penalty into detention was quashed by the Pécs District Court.

Subsequently, the applicant lodged a claim with the Pécs District Court to obtain compensation for unlawful detention under section 133/A of the Minor

Offences Act. The district court found that, in the absence of a decision ordering the discontinuation of the minor offence proceedings, compensation could not be awarded. The judgment was upheld on appeal.

Before the Constitutional Court, the applicant alleged a violation of the principle of compensation for unlawful detention laid down in Article IV(4) of the Fundamental Law, as well as Article 5(5) of the Convention. The Constitutional Court found an unconstitutional legislative omission insofar as the Minor Offences Act made compensation claims conditional on the discontinuation of such proceedings (decision no. 18/2023 (VII. 3.) AB). Such a finding required Parliament to meet its legislative duty by 31 December 2023. The Constitutional Court however did not quash the contested final court decision in the applicant's case, nor did it annul the impugned legislation. The legislative framework regulating compensation for unlawful confinement was amended on 1 July 2023, however no transitional provision capable of remedying the applicant's situation was enacted.

The applicant complains under Article 5(5) of the Convention that, as a result of the Constitutional Court's decision, his right to compensation for unlawful detention had been violated.

QUESTIONS TO THE PARTIES

1. Is Article 5 § 5 of the Convention applicable to the applicant's case? In particular, did the fact that the conversion of his penalty was quashed by the Pécs District Court as unjustified render his detention incompatible with the guarantees of Article 5 of the Convention under the domestic law and practice (*Norik Poghosyan v. Armenia*, no. 63106/12, § 31, 22 October 2020)?

2. If so, did the applicant have an effective and enforceable right to compensation for his unjustified detention, as required by Article 5 § 5 of the Convention (see *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, §§ 226-234, 21 April 2011, and *Fernandes Pedroso v. Portugal*, no. 59133/11, §§ 138-39, 12 June 2018)?

3. The parties are invited to submit copies of all domestic decisions pertinent to the administrative offence proceedings, including the retrial before the Pécs District Court, and the compensation proceedings pursuant to section 133/A of the Minor Offences Act.