



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

SECOND SECTION

CASE OF MOSCALCIUC v. THE REPUBLIC OF MOLDOVA

(Application no. 42921/10)

JUDGMENT

STRASBOURG

1 October 2019

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

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

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

Egidijus Kūris, *President*,

Valeriu Grițco,

Darian Pavli, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having deliberated in private on 10 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 42921/10) 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, Mr Vladimir Moscalciuc (“the applicant”), on 15 July 2010.

2. The applicant was represented by Mr M. Babără and Mr V. Nicula, lawyers practising in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr L. Apostol.

3. The applicant alleged, in particular, that his detention on remand had not been based on relevant and sufficient reasons, and that the conditions of his detention had amounted to inhuman and degrading treatment, in violation of Article 5 § 3 and Article 3 of the Convention respectively.

4. On 13 November 2012 notice of the complaints was given to the Government.

5. On 19 March 2019 the Court declared the complaint under Article 3 of the Convention inadmissible.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

6. The applicant was born in 1967 and is detained in Chișinău.

7. In 2003 the applicant received a criminal sentence for theft and was imprisoned. On 10 February 2010 an application which he had made for an amnesty law to be applied was allowed, and he was released.

8. Immediately after exiting the court room following his release, the applicant was arrested by the police on suspicion of having created an organised criminal group consisting of detainees in various prisons of the Republic of Moldova for the purpose of obtaining money from other detainees and creating a power system parallel to the prison administration.

9. On 12 February 2010 the Rîșcani District Court ordered that the applicant be detained for thirty days pending trial, accepting the

prosecutor's arguments that the applicant could abscond and attempt to influence witnesses and victims, and that there was a need to protect public order. That decision was confirmed by the Chişinău Court of Appeal on 18 February 2010.

10. The applicant's detention was extended by the Rîşcani District Court on 10 March, 9 April, 10 May, 10 June and 6 July 2010. Each time, his detention was extended by thirty days. Those decisions were confirmed by the Chişinău Court of Appeal on 30 March, 20 April, 21 May and 18 June 2010. On 6 August 2010 the Chişinău Court of Appeal extended the applicant's detention pending trial by another ninety days. The same court ordered further ninety-day extensions on 1 November 2010, as well as on 3 February, 21 April, 6 July and 26 October 2011. The grounds for extending the applicant's detention were always the same as those set out in the initial decision of 12 February 2010. Each of those decisions was upheld by a higher court and the applicant's pre-trial detention ended on 27 February 2012, when he was found guilty as charged and convicted.

II. RELEVANT DOMESTIC LAW

11. 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)).

12. Article 25 of the Constitution, in its relevant parts, reads as follows:

“(4) Detention on remand takes place on the basis of a warrant issued by a judge for a maximum period of 30 days. The lawfulness of the detention warrant may be challenged, in accordance with the law, before a hierarchically superior court. The period of detention on remand may be extended only by a court, in accordance with the law, up to a maximum period of twelve months.”

THE LAW

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

13. 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 and extend his detention. Article 5 § 3 of the Convention reads as follows:

“3. 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

14. 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

15. The applicant submitted that his detention on remand had been excessively long and had not been based on relevant and sufficient grounds.

16. The Government disagreed with the applicant and argued that his detention had been justified by the complexity of the criminal proceedings and the need to avoid his tampering with the investigation or absconding.

17. The Court reiterates that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. The requirement for a 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).

18. 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, *Stögmüller v. Austria*, 10 November 1969, § 15, Series A no. 9; *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7; *Tomasi v. France*, 27 August 1992, § 95, Series A no. 241-A; *Toth v. Austria*, 12 December 1991, § 70, Series A no. 224; *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; and *I.A. v. France*, 23 September 1998, § 108, *Reports of Judgments and Decisions* 1998-VII).

19. 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. The Court is essentially called upon to decide whether, on the basis of the reasons given in those decisions and the well-documented facts stated by the applicant in his appeals, 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)).

20. Turning to the facts of the present case, the Court notes that the applicant was repeatedly detained – for the same reasons each time – for more than two years. The reasons given appear to have only paraphrased the reasons for detention provided for in the Code of Criminal Procedure, without explaining how they applied in the applicant’s case. However, in the Court’s view, what is most important is the fact that the applicant’s pre-trial detention for more than two years was contrary to Article 25 § 4 of the Constitution, which limited the duration of pre-trial detention to twelve months (see *Savca v. the Republic of Moldova*, no. 17963/08, § 50, 15 March 2016). Since the applicant’s detention had in any event become unlawful under domestic law as it had exceeded twelve months, no reasons for extending it could be considered relevant and sufficient. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention.

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

Egidijus Kūris
President