



The requirement on a judge to give relevant and sufficient reasons for detention is applicable as from the first decision ordering detention

In today's **Grand Chamber** judgment¹ in the case of **Buzadji v. the Republic of Moldova** (application no. 23755/07) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial) of the European Convention on Human Rights.

The case concerned a businessman's detention pending trial for ten months. In July 2006 a criminal investigation was initiated against Mr Buzadji, the director of a State company supplying liquefied gas, concerning an alleged unsuccessful attempt to defraud the company. He was arrested in May 2007 and placed in detention pending trial. His detention on remand was extended on a number of occasions, until July 2007 when the courts accepted Mr Buzadji's request to be placed under house arrest. He remained under house arrest until March 2008 when he was released on bail and was eventually acquitted of all the charges for which he had been detained.

The Court examined two issues raised by Mr Buzadji's case where it considered that it would be useful to further develop its case-law, namely as to the requirement on national judicial authorities to justify continued detention and as concerned house arrest.

First, the Court acknowledged that the question of when further relevant and sufficient reasons for detention – in addition to the persistence of reasonable suspicion – were required was, according to its well established case-law, left to depend on the rather vague notion of "a certain lapse of time". It therefore decided to clarify the guarantees under Article 5 § 3 of the European Convention, specifying that the requirement on a judge or other officer authorised by law to exercise judicial power to give relevant and sufficient reasons for detention applied already at the time of the first decision ordering detention on remand, that is to say promptly after the arrest.

Second, as concerned house arrest, the Court confirmed its case-law according to which house arrest is considered to amount to deprivation of liberty under Article 5 of the Convention. There was no question of Mr Buzadji having waived his right to liberty because he had requested house arrest and had not subsequently challenged the measure: given his state of health, it was understandable that he had been prepared to make concessions to end his custody. Moreover, the Court reaffirmed its case-law to the effect that different criteria were not to be applied to the assessment of the justification for detention even when the form of detention varied (in the present case, between pre-trial detention and later house arrest).

Looking at the justifications provided for Mr Buzadji's provisional detention in his particular case, the Court considered that the reasons given by the national courts for ordering and prolonging his detention had been stereotyped and abstract as well as inconsistent. Indeed, neither in the initial detention order nor in the ensuing decisions prolonging his detention had the national courts made any assessment of Mr Buzadji's character, his morals, his assets and links with the country or his behaviour during the first ten months of the criminal investigation. As regards the house arrest decisions, in spite of the courts finding that there were no reasons for his continued detention, they nevertheless ordered his house arrest briefly in June 2007 and then, from July 2007, for seven and half months.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Principal facts

The applicant, Petru Buzadji, is a Moldovan national who was born in 1947 and lives in Comrat (the Republic of Moldova).

Mr Buzadji was a minority shareholder in and the director of a State company supplying liquefied gas. In July 2006 a criminal investigation was initiated against him concerning an alleged unsuccessful attempt to defraud the company. He was notably accused of having devised a scheme involving the importation of liquefied gas, leading to the company having sustained major financial losses. Over the next ten months he cooperated with the investigating authorities on a number of occasions when summoned to appear before them. Mr Buzadji's sons, also suspects in the criminal proceedings, were likewise summoned to appear before the investigating authorities but were not arrested.

Mr Buzadji was arrested on 2 May 2007 and formally charged on 5 May 2007 with the attempted large-scale misappropriation of goods belonging to the gas supply company. He was placed in detention pending trial given the gravity of the charges against him, the complexity of the case and a risk of collusion. The first-instance court – and later the Court of Appeal – dismissed as unsubstantiated and improbable the other reasons relied on by the prosecutor in his application for placing Mr Buzadji in detention on remand, namely the risk of absconding and influencing witnesses or of destroying evidence.

This detention was then extended on four separate occasions: the first and second occasions on 16 May and 5 June 2007, respectively, on the grounds of the gravity and complexity of the case, as well as the danger of his absconding and the risk of him influencing witnesses and tampering with evidence; the third occasion on 26 June 2007 when the first-instance court placed him under house arrest, finding in essence that there were no grounds militating for his continued detention; and the fourth occasion on 29 June 2007, when the Court of Appeal quashed the decision of 26 June, on the ground that Mr Buzadji could abscond, influence witnesses, tamper with evidence and collude with his sons if kept under house arrest. Mr Buzadji's numerous requests for release, particularly on health grounds (he had suffered a heart attack and a stroke before his detention) were all dismissed.

Ultimately, in July 2007 the Court of Appeal accepted Mr Buzadji's request to be placed under house arrest, stating that there were no reasons to believe that he would abscond or interfere with the investigation. He remained under house arrest until March 2008 when he was released on bail, the courts finding that he had been in detention and under house arrest for over ten months in total without breaching any of the restrictions imposed on him.

Mr Buzadji was subsequently acquitted of the charges for which he had been detained between May 2007 and March 2008. His sons were also acquitted.

Complaints, procedure and composition of the Court

Relying in particular on Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial) of the European Convention on Human Rights, Mr Buzadji complained that the courts had not given relevant and sufficient reasons for his detention pending trial for ten months, maintaining that at the time there had been a practice of placing accused persons in pre-trial detention automatically, without any justification and solely on the basis of stereotyped and repetitive reasons.

The application was lodged with the European Court of Human Rights on 29 May 2007.

In its Chamber [judgment](#) of 16 December 2014, the Court held, by four votes to three, that there had been a violation of Article 5 § 3 of the European Convention.

On 16 March 2015 the Government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 20 April 2015 the panel of the Grand Chamber accepted that request.

A Grand Chamber hearing was held in Strasbourg on 7 October 2015.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Angelika **Nußberger** (Germany),
Dmitry **Dedov** (Russia),
Ledi **Bianku** (Albania),
Nona **Tsotsoria** (Georgia),
Nebojša **Vučinić** (Montenegro),
Vincent A. **de Gaetano** (Malta),
Erik **Møse** (Norway),
Paul **Mahoney** (the United Kingdom),
Krzysztof **Wojtyczek** (Poland),
Valeriu **Griţco** (Republic of Moldova),
Faris **Vehabović** (Bosnia and Herzegovina),
Robert **Spano** (Iceland),
Branko **Lubarda** (Serbia),
Yonko **Grozev** (Bulgaria),

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar*.

Decision of the Court

First, the Court dismissed, by 15 votes to two, the Government's objection that Mr Buzadji had failed to challenge the court decisions by which his house arrest had been ordered and had thus failed to exhaust remedies at national level. They had only raised that argument for the first time in their written submissions before the Grand Chamber and had no exceptional circumstances dispensing them from the obligation to raise their objection before the adoption of the Chamber's decision on admissibility.

The Court then went on to examine two issues raised by Mr Buzadji's case where it considered that it would be useful to further develop its case-law, namely as to the requirement on national judicial authorities to justify continued detention and as concerned house arrest.

According to the Court's established case-law under Article 5 § 3, the persistence of a reasonable suspicion was a condition for the validity of continued detention, but, after a certain lapse of time, it no longer sufficed. After that lapse of time, the Court had to establish: first, whether other grounds cited by the judicial authorities continued to justify the deprivation of liberty; and, second, where such grounds were "relevant" and "sufficient", whether the national authorities displayed "special diligence" in the conduct of the proceedings. The Court acknowledged that the question of when the second set of guarantees under Article 5 § 3 applied to its full extent, in the sense that further relevant and sufficient reasons additional to reasonable suspicion were required, was left to depend on the rather vague notion of "a certain lapse of time". Thus, the Court found compelling arguments for synchronising the second set of guarantees with the first one. That implied that the requirement on the judge or other officer authorised by law to exercise judicial power to give relevant and sufficient reasons for the detention – in addition to the persistence of reasonable suspicion – applied

already at the time of the first decision ordering detention on remand, that was to say promptly after the arrest.

As concerned house arrest, the Court confirmed its case-law according to which house arrest is considered to amount to deprivation of liberty under Article 5 of the Convention. Furthermore, it was not prepared to accept the Government's submission that Mr Buzadji's attitude to his house arrest and omission to challenge the measure had amounted to a waiver of his right to liberty. His state of health had considerably deteriorated in custody and, his numerous requests for release having been dismissed, it was understandable that he had been prepared to make concessions to put an end to that situation. He had therefore been under a clear state of duress when placed under house arrest. Even assuming that he had consented to be placed under house arrest, that state of affairs could not be equated to release from detention, as argued by the Government. Nor could it, as the Government apparently suggested, be viewed as a form of reparation complying with the requirement under Article 5 § 5 to provide a right to compensation. The Court therefore, unanimously, dismissed the Government's objection concerning Mr Buzadji's lack of victim status.

The Court also dismissed the Government's submission that greater reasons were required to justify detention in an ordinary remand facility than house arrest, which was a more lenient measure. It reiterated that Article 5 did not regulate conditions of detention, specifying that the criteria for the applicability of that Article referred only to the degree of restrictions to the liberty of movement, not to the differences in comfort or in the internal regime in different places of detention. Thus, the Court had to apply the same criteria for the entire period of detention of liberty, irrespective of the place where the applicant was detained.

Finally, turning to the justifications provided for Mr Buzadji's provisional detention in his case, the Court considered that the reasons given by the national courts for ordering and prolonging his detention had been stereotyped and abstract as well as inconsistent. Their decisions cited the grounds for detention without any attempt to show how they had applied concretely to the specific circumstances of his case. Furthermore, on some occasions the national courts (the first-instance court and the Court of Appeal) had dismissed as unsubstantiated and implausible the prosecutor's allegations about the danger of Mr Buzadji's absconding, interfering with witnesses and tampering with evidence. On other occasions (when prolonging Mr Buzadji's detention for the first and second times on 16 May and 5 June 2007) those same reasons had been accepted by the national courts, without there having been any apparent change in the circumstances and without explanation. Nor did they rely any more on the risk of collusion, which was, in essence, the only supplementary reason relied upon by the courts to order Mr Buzadji's remand in the first place. Indeed, as in the case of the initial detention order, no assessment had been made by the courts of Mr Buzadji's character, his morals, his assets and links with the country and his behaviour during the first ten months of the criminal investigation, when he would have had enough time to collude with his sons if he had wanted to. As regards the house arrest decisions, in spite of the courts finding that there were no reasons for his continued detention such as his absconding or interfering with the investigation, the courts nevertheless ordered his house arrest in June and July 2007. The Court therefore considered that the reasons given to order and prolong Mr Buzadji's detention pending trial had been neither relevant nor sufficient, in violation of Article 5 § 3.

[Article 41 \(just satisfaction\)](#)

The Court held that the Republic of Moldova was to pay Mr Buzadji 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,837 for costs and expenses.

Separate opinions

Judges Nußberger and Mahoney expressed a joint concurring opinion. Judge Spano, joined by Judge Dedov, expressed a concurring opinion. Judges Sajó and Wojtyczek expressed a joint partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.