



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

THIRD SECTION

CASE OF RICCARDI v. ROMANIA

(Application no. 3048/04)

JUDGMENT

STRASBOURG

3 April 2012

FINAL

03/07/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Riccardi v. Romania,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,

Alvina Gyulumyan,

Egbert Myjer,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Mihai Poalelungi, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 13 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 3048/04) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mr Orlandino Riccardi (“the applicant”), on 11 December 2003.

2. The applicant was represented by Ms Ximena Moldovan, a lawyer practising in Târgu-Mureş. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horaşiu Radu.

3. As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mr Mihai Poalelungi to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

4. The applicant alleged, *inter alia*, that the excessive length of his pre-trial detention and of the overall proceedings, the failure of the domestic courts to provide reasons for the repeated extension of his pre-trial detention, and the unlawfulness of that detention between 25 June and 4 July 2003 and after 16 June 2004 had breached his rights guaranteed by Articles 5 and 6 of the Convention.

5. On 2 April 2009 the President of the Third Section decided to give notice of the application to the Romanian and Italian Governments. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

6. On 21 March 2011 the Italian Government informed the Court that they did not wish to exercise their right to submit written comments in respect of the present case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1956 and lives in Târgu-Mureş, Romania.

A. The criminal proceedings initiated against the applicant and his pre-trial detention

8. On 19 October 2001 criminal proceedings were initiated against the applicant and other third parties in respect of embezzlement, forgery of accountancy papers and tax evasion offences that had allegedly been committed by him in his capacity as director of the limited liability company R. On the same day he was placed in police custody for twenty-four hours on the basis of Article 148 (c) and (h) of the Romanian Code of Criminal Procedure (“the CCP”) on the ground that there was a reasonable suspicion that the applicant had committed the offences with which he had been charged, that he was a danger to public order, that the offences with which he had been charged were punishable by more than two years’ imprisonment, and that he was preparing to abscond.

9. On 20 October 2001 the Târgu-Mureş Prosecutor’s Office issued an arrest warrant on the basis of Article 148 (h) of the CCP and the applicant was placed in pre-trial detention for thirty days on the ground that the offences with which he had been charged were punishable by more than two years’ imprisonment and that he was preparing to abscond.

10. On 18 February 2002 the applicant and the third parties were indicted to stand trial on the above-mentioned charges. They continued to remain in pre-trial detention.

11. The applicant’s pre-trial detention was extended repeatedly by final interlocutory judgments of the Târgu-Mureş County Court. The court confirmed the legality of the detention on the ground that the reasons provided for by Article 148 (h) of the CCP which had justified the applicant’s initial detention remained valid, did not breach his right of presumption of innocence and that the length of proceedings depended on the complexity of the case. Therefore it dismissed the applicant’s repeated arguments that he was not a danger to public order, that his pre-trial detention could be replaced by alternative measures and that the length of his detention and of the overall proceedings was excessive. The domestic courts did not provide any other explanation for the extension of the applicant’s pre-trial detention. Moreover, the eight hearings held between March 2002 and April 2003 were repeatedly adjourned, *inter alia*, in order to allow all the suspects to employ the services of a lawyer, for witnesses to be heard, the summoning of various parties to the proceedings, the

submission of technical and medical expert reports and the examination of the transfer of the file to another court as a result of the applicant's request.

12. By the interlocutory judgment of 20 May 2003 the Târgu-Mureş County Court, having regard to the length of the pre-trial detention, the applicant's complaint concerning his state of health and his medical condition, the facts of the case and the evidence submitted by the parties, ordered the release of the applicant. The court also ordered the applicant not to leave town without the court's consent pending the outcome of the criminal investigation. Lastly, the court adjourned the hearing until 17 June 2003 for procedural reasons. The Târgu-Mureş Prosecutor's Office appealed against the decision.

13. By a final interlocutory judgment of 23 May 2003 the Târgu-Mureş Court of Appeal allowed the appeal of the Prosecutor's Office on the ground that according to the medical expert reports the applicant's health problems could be treated in prison hospitals and that the initial reasons justifying his detention were still valid. Consequently, the court ordered the applicant's pre-trial detention to be extended from 26 May to 24 June 2003.

14. By an interlocutory judgment of 17 June 2003 the Târgu-Mureş County Court, sitting as a two-judge bench, again extended the applicant's pre-trial detention from 25 June to 24 July 2003. The court held that the applicant's detention was still justified under Article 148 (h) of the CCP. Moreover, the court could not be held responsible for the length of proceedings given the complexity of the case, the large amount of evidence submitted by the parties and the difficulties it faced in summoning the witnesses living in other cities. Lastly, the court adjourned the hearing for procedural reasons and ordered a technical expert report to be drafted. The applicant appealed against the decision.

15. By a final interlocutory judgement of 2 July 2003 the Târgu-Mureş Court of Appeal allowed the applicant's appeal, quashed the interlocutory judgment of 17 June 2003 in part and ordered the lower court to re-examine the matter of extending the applicant's pre-trial detention. The court held that the decision had been taken by two judges despite the applicable procedural rules requiring that this be done by a single judge. The court did not address the issue of the applicant's release despite this having been requested by the applicant.

16. By an interlocutory judgment of 4 July 2003 the Târgu-Mureş County Court extended the applicant's pre-trial detention to 23 July 2003 on the ground that the reasons justifying his initial detention were still valid. It also dismissed the applicant's claim that his pre-trial detention had ceased to be lawful after the final interlocutory judgment of 2 July 2003. It held that the said interlocutory judgment had mainly concerned the composition of the bench which had examined the merits of the judgment and considered, in terms of the lawfulness of the applicant's detention, that the conditions set out by Article 160^c of the CCP had been met. Moreover, the extension of

the applicant's pre-trial detention had been lawful since it had been the will of both judges. The applicant appealed against the decision.

17. By a final interlocutory judgment of 7 July 2003 the Târgu-Mureş Court of Appeal dismissed the applicant's appeal and upheld the decision of 4 July 2003.

18. By an interlocutory judgment of 23 July 2003 the Târgu-Mureş County Court rejected the request of the Prosecutor's Office for the extension of the applicant's pre-trial detention and ordered the applicant's immediate release. The court held that following the judgment of 2 July 2003 the applicant's detention from 25 June 2003 had been unlawful in so far as the authorities had not extended the arrest warrant which had expired on 24 June 2003. Moreover, the present decision was not in breach of the *res judicata* principle in respect of the final decision of 4 July 2003 since the current decision, among others, did not touch on the merits of the case, but only assessed the lawfulness of the detention, and the decision of 4 July had interfered with the applicant's procedural rights. The Prosecutor's Office appealed.

19. By a final interlocutory judgment of 23 July 2003 the Târgu-Mureş Court of Appeal allowed the appeal of the Prosecutor's Office. It held that the County Court's judgment of 23 July 2003 interfered with the legal principle of *res judicata*. Consequently it quashed the decision and ordered the extension of the applicant's pre-trial detention on the general ground that he was a danger to public order and that the reasons justifying his initial detention, including the ground provided for by Article 148 (c) of the CCP, were still valid.

20. Between 19 August 2003 and 19 April 2004 the applicant's pre-trial detention continued to be extended by final interlocutory judgments of the domestic courts generally on the basis of the provisions of Article 148 (h) of the CCP, while his complaints concerning the length of his pre-trial detention and of the proceedings as a whole were dismissed generally for the reason that the case was complex. Furthermore, no additional reasons or explanations were provided by the courts in respect of the applicant's personal situation and his repeated claims that his pre-trial detention following the judgment of 2 July 2003 was illegal were dismissed as *res judicata*. Finally, the hearings were repeatedly adjourned, *inter alia*, in order to allow for witnesses and parties to the proceedings to be heard or resummoned and for the submission of technical expert reports.

21. By an interlocutory judgment of 12 May 2004 the Târgu-Mureş County Court assessed the lawfulness of the applicant's detention and ordered his immediate release. The court held that the applicant's detention between 20 October 2001 and 24 June 2003 had been unlawful in so far as the arrest warrant had been issued by a prosecutor who was not a "magistrate" within the meaning of the European Convention on Human Rights (ECHR) and who had not clearly established the charges against the

applicant. The prosecutor had also failed to hear the applicant prior to his detention or to provide reasons for his detention and had failed to immediately bring him before a judge following his arrest. At the same time, it considered that the assessment of lawfulness carried out by the domestic courts following the applicant's arrest could not have remedied the above-mentioned failures. Furthermore, it held that the applicant's pre-trial detention between 25 June and 4 July 2003 had also been unlawful in so far as following the final judgment of 2 July 2003 the applicant's arrest had not been based on any express or valid court order. It considered that the previous decisions delivered by the domestic courts in respect of the same issue were not *res judicata*, because the said principle did not apply to issues such as the applicant's detention which were separate from the merits of the case concerning the existence of the offence and the guilt of the accused. Moreover, it considered that its argument flowed from the provisions of the domestic procedural law which required courts to regularly assess the lawfulness of pre-trial detention even if other domestic courts had previously delivered final judgments in respect of the same issue and to revoke *ex officio* the measure if it had been rendered unlawfully. The court further held that the applicant's detention after 4 July 2003 had also been unlawful on the ground that the judgment of 4 July 2003 could not simply extend his pre-trial detention which had started on 20 October 2001 since the applicant had not been lawfully detained at the time. In so far as the judgment could be perceived as a new detention order, the court considered that the legal conditions for such an order had not been met: there were no new grounds for the applicant's detention, the court had not provided any reasons for it, no new detention order had been issued and the transcript of the applicant's evidence given to the court in respect of his detention had been missing from the file. Finally, the court held that in any event the extension of the applicant's pre-trial detention could no longer be justified. There was no evidence that the applicant was a danger to public order or that his release would interfere with the criminal investigation and his continuous pre-trial detention of two years and seven months was excessive and did not comply with the guarantees set out by Article 5 of the ECHR. The court also adjourned the hearing on procedural grounds and ordered the resummoning of some of the witnesses. The Prosecutor's Office appealed against the decision.

22. By an interlocutory judgment of 16 June 2004 the Târgu-Mureş Court of Appeal adjourned the appeal proceedings against the interlocutory judgment of 12 May 2004 for twenty-four hours on the ground that the applicant had not been summoned and ordered his summoning.

23. By an interlocutory judgment of 17 June 2004 the Târgu-Mureş Court of Appeal, in the absence of the applicant, who had been summoned, but in the presence of his chosen lawyer, suspended the appeal proceedings against the interlocutory judgment of 12 May 2004 pending the referral of

an objection of unconstitutionality raised by the applicant's lawyer to the Constitutional Court in respect of Article 385¹¹ (3) of the CCP. Relying on the provisions of Article 303 (6), 300² and 160^b of the CCP the court reviewed and maintained the applicant's pre-trial detention. Consequently, it dismissed the applicant's request for an end to his detention. He had based his request on the argument that after 16 June 2004 his pre-trial detention had no longer had a legal basis, since the sixty-day time-limit for assessing the lawfulness of detention provided for by the Constitution and the CCP had lapsed.

24. By a final interlocutory judgment of 13 August 2004 the Târgu-Mureş Court of Appeal reviewed and maintained the applicant's pre-trial detention on the ground that the reasons justifying the applicant's initial detention were still valid.

25. By an interlocutory judgment of 27 August 2004 the Târgu-Mureş County Court ordered the applicant's immediate release. It held that the argument of the Prosecutor's Office that the applicant's pre-trial detention was justified by the applicant's preparation to abscond (Article 148 (c)) had already been dismissed by the domestic courts on 7 March 2002 and that there was no new relevant evidence to rebut that finding. Moreover it held that there was no evidence that the applicant was a danger to public order and that two years and ten months was an unreasonable length of time for the proceedings. At the same time the court adjourned the hearing for procedural reasons. The Târgu-Mureş Prosecutor's Office appealed.

26. By a final interlocutory judgment of 30 August 2004 the Târgu-Mureş Court of Appeal dismissed the appeal and upheld the judgment of 27 August 2004. The applicant was released the same day.

27. In October 2004 the Constitutional Court dismissed the objection of unconstitutionality raised by the applicant's lawyer at the hearing of 17 June 2004 on the ground that the legal provision contested by the applicant was in compliance with the Constitution.

28. By a final interlocutory judgment of 8 December 2004 the Târgu-Mureş Court of Appeal dismissed the Prosecutor Office's appeal against the interlocutory judgment of 12 May 2004 as moot on the ground that the applicant had already been released.

29. The thirty-one hearings held by the Târgu-Mureş County Court between 24 September 2004 and 2 February 2009 were repeatedly adjourned, *inter alia*, in order to allow for more witnesses to be heard, the summoning of various parties to the proceedings, the resummoning of some of the witnesses, the submission of technical expert reports and the examination of some of the judges' requests to withdraw from the proceedings.

30. On an unspecified date in 2008 the applicant was arrested in Italy. He refused to take part via video link in the hearing of 2 February 2009

concerning the criminal proceedings brought against him in Romania and pending before the domestic courts.

31. By an interlocutory judgment of 6 March 2009 the Târgu-Mureş County Court decided to separate the proceedings concerning the applicant from the proceedings concerning the other co-accused and ordered the applicant's temporary transfer from Italy to be arranged.

32. The proceedings brought against the applicant are still pending before the first-instance court.

B. Detention conditions and the applicant's health

33. In January 2002, following an episode of depression, the applicant underwent a psychiatric examination. The panel of experts concluded that the applicant's condition was a "situational reaction" and that he could be treated in detention in Bucharest Prison Hospital which was equipped with a psychiatric unit.

34. The two psychiatrists on the panel of experts expressed a dissenting opinion. They concluded that the applicant should be treated in a civilian psychiatric hospital because psychotherapy sessions could not be properly provided in detention owing to the "lack of privacy".

35. There is no evidence in the applicant's medical file to show that he spent time in hospital for psychiatric treatment or that he continued to have similar problems afterwards.

36. The applicant also informed the Court that he had been kept in solitary confinement and that from the end of 2003 he had been under the same detention regime as dangerous detainees, which meant that he had been under constant supervision. His allegations are contradicted by a letter of 13 November 2003 sent by the Târgu-Mureş Prison authorities to the domestic courts from which it can be seen that the applicant was not classified as a "dangerous detainee".

37. According to the applicant's medical records, he was diagnosed with chronic uveitis in his left eye in May 2002.

38. A medical expert report drafted in February 2003 concluded that the applicant's situation required surgery and post-surgery treatment in a specialised hospital, specifically the Rahova-Bucharest Prison Hospital. However, his state of health was not incompatible with his detention.

39. The applicant did not undergo the surgery. However, he did not complain about the lack of medical treatment before the domestic courts under Article 3 of the Government Emergency Ordinance no. 56/2003 (GEO 56/2003) concerning the rights of individuals serving prison sentences.

40. After his release from prison on 30 August 2004 the applicant underwent cataract surgery in Italy.

II. RELEVANT DOMESTIC LAW AND PRACTICE

41. The relevant parts of Emergency Ordinance no. 56/2003 on the rights of prisoners, adopted by the Government on 25 June 2003 read as follows:

Article 3

“(2) Prisoners may complain about measures taken by prison authorities (...)

(5) In examining a complaint, the court takes one of the following decisions:

(a) allows the action and orders the annulment, revocation or change of the measure taken by the penitentiary authority;

(b) dismisses the action if it is ill-founded.”

42. The relevant Articles of the Code of Criminal Procedure (“the CCP”) provide:

Article 136

on the purpose and categories of interim measures

“In cases concerning offences which are punishable by a prison sentence, and in order to ensure the proper conduct of the criminal trial and prevent the suspect or accused from evading criminal proceedings ..., one of the following preventive measures may be taken against him or her:

(...)

(c) pre-trial detention.

The measure provided for in (c) may be ordered by the prosecutor or by a court.”

Article 137

on the form of the legal instrument by which an interim measure is adopted

“The legal instrument by which an interim measure is adopted must list the facts which gave rise to the charges, their legal basis, the sentence provided for in the legislation concerning the offence in question and the specific reasons which determined the adoption of the interim measure.”

Article 141

on appeals against interlocutory judgments concerning preventive measures

“An interlocutory judgment delivered by a first-instance court ordering, revoking (...) a preventive measure can be separately appealed (*recurată*) against by the accused or the prosecutor (...)

The appeal (*recurs*) lodged against an interlocutory judgment ordering a preventive measure to be taken does not suspend its enforcement.”

**Article 143
on police custody**

“The authority responsible for criminal proceedings may detain a person in police custody if there is cogent direct or indirect evidence that he or she has committed an offence prohibited by the criminal law.

(...)

Cogent evidence exists where, in the circumstances of the case at issue, the person who is subject to criminal proceedings may be suspected of having committed the alleged offences.”

**Article 146
on pre-trial detention of the defendant**

“Where the requirements of Article 143 are met, and in one of the cases provided for in Article 148, the prosecutor may, of his or her own motion or at the request of the prosecuting authority, order that the suspect be placed in pre-trial detention by a reasoned order indicating the legal grounds for such detention, for a period not exceeding five days.

(...)”

**Article 148
on pre-trial detention of the accused**

“Pre-trial detention of the accused may be ordered where the requirements set out in Article 143 are met and if one of the following conditions is satisfied:

(...)

(c) the accused absconded or prepared to abscond ...;

(...)

(h) the accused has committed an offence for which the law prescribes a prison sentence of more than two years and his or her continued liberty would constitute a threat to public order.

(...)”

Article 149
on the length of pre-trial detention of the accused

“The length of pre-trial detention of the accused may not exceed one month, except where it is extended in accordance with a procedure prescribed by law. ...

(...)”

Article 155
on extension of the pre-trial detention of the accused

“Where necessary, pre-trial detention of the accused may be extended if reasons are given.

Extension of pre-trial detention may be ordered by the trial court (...)”

Article 159
on the court procedure to extend pre-trial detention

“The trial court shall be presided over by the president of the court or a judge appointed by him or her; the prosecutor’s participation is compulsory.

The investigation file shall be lodged [at the court] by the prosecutor at least two days prior to the hearing and may be consulted by the lawyer on request.

The accused shall be brought before the court, assisted by a lawyer.

(...)

If the court grants extension [of the detention], such extension may not exceed thirty days.

(...)

The prosecutor or the accused may appeal against the interlocutory decision by which the court decides on extension of the pre-trial detention. The time-limit for an appeal shall be three days, starting from delivery of the judgment for those who are present and, for those who are not present, from the date of notification. An appeal against a decision to extend pre-trial detention has no suspensive effect, while an appeal against a decision to dismiss the request for an extension of the pre-trial detention does have suspensive effect.

(...) The court may grant further extensions of pre-trial detention, but none of these may exceed thirty days.”

Article 300
on supervision of the lawfulness of the accused person's arrest

“ ...

In cases where the accused is arrested, the court is obliged of its own motion and at the first hearing to confirm the lawfulness of the adoption and extension of the detention measure [against the accused].”

43. The relevant domestic practice concerning the notion of “danger to public order” provided for by the provisions of Article 148 (h) of the CCP is set forth in the case of *Calmanovici v. Romania* (no. 42250/02, §§ 40-42, 1 July 2008). Following the amendment of the CCP by Law no. 281/2002 published in the Official Gazette on 1 July 2003, Article 148 (h) of the CCP required the existence of evidence that the release of an accused would pose a real danger to public order.

44. Article 160^c of the CCP in force for a brief period of time provided that during the trial stage of proceedings the first-instance court could extend pre-trial detention if new elements had appeared justifying the measure.

45. Article 23 (6) of the Romanian Constitution and Article 160^b of the CCP provide that during the judgment stage of the proceedings the domestic courts must regularly examine, no later than every sixty days, the lawfulness of the pre-trial detention. If the court finds that the reasons justifying the detention have ceased to exist and that there are no new reasons justifying it, it must order the release of the accused. Article 300² of the CCP provides that when the accused has been detained at the trial stage of the proceedings, the court to which the matter has been lawfully referred must examine the lawfulness of the pre-trial detention pursuant to the provisions of Article 160^b of the CCP. Article 303 (6) provides, by referring to Article 160^b of the CCP, that the regular examination of pre-trial detention is also necessary where the proceedings have been suspended for a matter to be referred to the Constitutional Court.

46. Article 385¹¹ (3) of the CCP provides that appeals (*recurs*) in respect of preventive measures can be decided in the absence of the accused as long as he has been legally summoned.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

47. The applicant complained of the unlawfulness of his pre-trial detention. He argued that his detention between 25 June and 4 July 2003

had been ordered on 17 June 2003 by a court sitting as an unlawfully composed bench in breach of the domestic rules on criminal procedure. Moreover, he submitted that there had been no legal basis for his detention after 16 June 2004 on the ground that the sixty-day time-limit for assessing the lawfulness of his detention provided for by the Romanian Code of Criminal Procedure had lapsed. He relied on Article 5 § 1 of the Convention, which, in so far as relevant, reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(...)

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(...)”

A. Admissibility

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

B. Merits

1. The applicant's pre-trial detention between 25 June and 4 July 2003

49. The applicant argued that following the judgment of 2 July 2003 his pre-trial detention had ceased to be lawful on 24 June 2003. He argued that the judgment of 17 June 2003 had been given by an unlawfully composed bench, in breach of the domestic rules of criminal procedure. Consequently, the court sitting as a two-judge bench had issued an order to extend the applicant's pre-trial detention which was null and void *ab initio*. Therefore, his detention between 25 June and 4 July 2003 had had no legal basis.

50. The Government submitted that the applicant's detention had been compatible with the domestic procedural rules and free from arbitrariness. They argued that the judgment of 17 June 2003 had extended the applicant's pre-trial detention from 25 June to 23 July 2003. Furthermore, the applicant's appeal against the said judgment had not had suspensive effect. Consequently there had been no legal ground on which to release the

applicant on 25 June 2003. The Government further submitted that the judgment of 17 June 2003 and the lawfulness of the applicant's detention had eventually been upheld by the judgment of 4 July 2003, which, in turn, had been upheld by the final judgment of 7 July 2003. Consequently, the legal requirements for the applicant's detention had been met by the domestic courts and the provisions of the CCP had been clear and foreseeable in this respect. Moreover, in accordance with Articles 143, 148 (h) and 160^c of the CPP, the domestic courts had provided precise reasons for the extension of the applicant's detention.

51. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof.

52. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.

53. A detention order must be considered as *ex facie* invalid if the flaw in the order amounted to a "gross and obvious irregularity" in the exceptional sense indicated by the Court's case-law. Accordingly, unless they constitute a gross and obvious irregularity, defects in a detention order may be remedied by the domestic appeal courts in the course of judicial review proceedings (see *Mooren v. Germany* [GC], no. 11364/03, § 75, ECHR 2009-...).

54. The Court notes in the present case that the order of 17 June 2003 was affected by a procedural flaw. However, the Court considers that the order's defect cannot be regarded to amount to a "gross and obvious irregularity" that would render null the applicant's detention. On 2 July 2003, the Târgu-Mureş Court of Appeal quashed in part the judgment of 17 June 2003 and ordered a retrial in respect of the extension of the applicant's pre-trial detention on the ground that the decision had been taken by a two-judge bench although the applicable procedural rules required that the decision be taken by a single judge. However, the Court of Appeal did not declare the previous detention order of 17 June 2003 void and did not retrospectively declare the applicant's detention from 25 June until 2 July 2003 unlawful. As a consequence, the applicant's detention from 25 June 2003 until the fresh detention order of 4 July 2003, which was issued in compliance with the applicable procedural rules concerning the composition of the bench of judges, was not unlawful as it was based on the initial detention order of 17 June 2003. It being in the first place for the national authorities to interpret domestic law, the Court is prepared to accept that the applicant's pre-trial detention remained lawful under domestic law even after the Court of Appeal quashed in part the interlocutory judgment of

17 June 2003 and ordered a retrial in respect of the extension of the applicant's pre-trial detention on account of the composition of the bench of judges.

55. Moreover, the Court considers that the applicant's detention lacked arbitrariness. The Court notes that in order for the first-instance court to be able to rule on the applicant's detention in the correct composition of the bench of judges practical arrangements necessitated to be made. In these circumstances, the lapse of time between the Court of Appeal's decision on 2 July 2003 and the issuing of the new interlocutory judgment of 4 July 2003 cannot be considered as rendering the applicant's detention arbitrary (compare also *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, § 49 and *Erkalo v. the Netherlands*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 57).

56. Consequently, there has been no violation of Article 5 § 1 of the Convention.

2. The applicant's pre-trial detention after 16 June 2004

57. The applicant did not submit any observations in respect of this point. However, in his previous submissions before the Court he argued that the extension of his pre-trial detention had not been examined by the domestic courts within the statutory time-limit of sixty days provided for by Article 160^b of the CCP. In particular, the applicant had not been summoned to the hearing and according to his interpretation of Articles 303 (6), 300² and 160^b of the CCP, the Court of Appeal had exceeded its jurisdiction on 17 June 2004 by maintaining the applicant's pre-trial detention. In this regard he argued that the Court of Appeal had decided to maintain his pre-trial detention even though it had suspended the proceedings pending the examination by the Constitutional Court of an objection of unconstitutionality raised by the applicant's lawyer concerning Article 385¹¹ (3) of the CCP. In his opinion the only way of guaranteeing the effectiveness of Article 303 (6) would have been for the Court of Appeal to refer the case back to the first-instance court to allow it to examine the lawfulness of the applicant's detention and decide whether a new extension was needed.

58. The Government argued that a systematic examination of the provisions of Article 303 (6) of the CCP supported the Court of Appeal's interpretation that it had been within its jurisdiction to review the lawfulness of the applicant's detention. They also submitted that the applicant's detention had been compatible with the domestic procedural rules and free from arbitrariness. The applicant's detention had been repeatedly reviewed by the domestic courts on 19 April, 12 May, 17 June, 13 and 27 August 2004 in compliance with the sixty-day rule set out by Article 160^b of the CCP and the domestic courts had provided reasons for their decisions.

59. The Court notes from the outset that the domestic courts ordered the applicant's released on 27 August 2004 and that the decision became final on 30 August 2004.

60. The Court reiterates that, for detention to be "lawful" within the meaning of Article 5 § 1, it has to conform to both the substantive and procedural rules of the domestic law (see paragraph 51 and 52 above).

61. The Court notes that it has been alleged in the present case that on 17 June 2004 the Court of Appeal acted in excess of its jurisdiction. However, the appeal had been lawfully referred to the Court of Appeal and it was in the said court's jurisdiction *ratione materiae* to exercise judicial review in respect of interlocutory judgments delivered by the first-instance courts concerning the applicant's pre-trial detention. Therefore the Court considers that it cannot be said with any degree of certainty that the judgment of the Court of Appeal maintaining the applicant's pre-trial detention was to the effect that the judges acted in excess of jurisdiction, within the meaning of Romanian law or that the alleged flaw amounted to a "gross or obvious irregularity" in the exceptional sense indicated by its case-law (see *Liu v. Russia*, no. 42086/05, § 81, 6 December 2007). It follows that the Court does not find it established that the order for detention was invalid, and thus that the detention which resulted from it was unlawful under national law (see *Benham v. the United Kingdom*, 10 June 1996, § 46, *Reports* 1996-III).

62. The Court notes that the applicant was summoned to the proceedings and although he did not appear, his chosen lawyer attended the hearing and submitted observations. His detention was reviewed repeatedly, on 19 April, 12 May, 17 June, and 13, 27 and 30 August 2004 in compliance with the sixty-day rule set out by Article 160^b of the CCP. Furthermore, the Court finds that applicant's detention after 16 June 2004 cannot be said to have been arbitrary as the courts gave certain grounds justifying his continued detention. The sufficiency and relevance of these grounds remain to be discussed from the standpoint of Article 5 § 3 of the Convention.

63. It has not therefore been established that, in extending the applicant's detention after 16 June 2004, the domestic courts acted in bad faith, or that they neglected to attempt to apply the relevant legislation correctly (see *Gaidjurgis v. Lithuania* (dec.), no. 49098/99, 16 January 2001, and *Benham*, cited above, § 47; compare also *Bozano v. France*, 18 December 1986, § 59, Series A no. 111).

64. In these circumstances, the Court finds that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention after 16 June 2004.

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

65. The applicant complained of the excessive length of his pre-trial detention. He argued that the domestic courts had failed to provide reasons justifying their decisions to maintain his pre-trial detention or evidence of the existence of a “public danger” in the event of his release. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be... entitled to trial within a reasonable time or to release pending trial...”

A. Admissibility

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

B. Merits

67. The applicant argued that the domestic courts had extended his pre-trial detention for an excessively long time although they did not rely on any relevant evidence which would justify their view that the applicant’s release would have been a danger to public order.

68. The Government submitted that the applicant’s pre-trial detention could not be considered excessive because of the complexity of the case. They argued that the domestic authorities had taken all the necessary steps for the proper administration of justice and that there had been no distinguishable period of unexplained activity on their part in examining the case. Moreover, the domestic courts had repeatedly examined and extended the applicant’s detention, taking into consideration his arguments and providing relevant and sufficient reasons such as the reasonable suspicion that he had committed the offence, that he was a danger to public order or that he was preparing to abscond.

69. The Court notes from the outset that the applicant was taken into custody on 19 October 2001 and was released on 30 August 2004. Consequently, the total duration of his detention amounted to two years, ten months and eleven days.

70. The Court will examine the applicant’s complaint in the light of the general principles emerging from its case-law concerning the reasonableness of detention within the meaning of Article 5 § 3 of the

Convention (see *Calmanovici v. Romania*, no. 42250/02, §§ 90-94, 1 July 2008, and *Tiron v. Romania*, no. 17689/03, § 36, 7 July 2009).

71. The Court observes that its case-law has developed four basic acceptable reasons for placing a person suspected of having committed an offence in pre-trial detention: the risk that the accused will fail to appear for trial (see *Stögmüller v. Austria*, 10 November 1969, § 15, Series A no. 9), and the risk that the accused, if released, would take action to prejudice the administration of justice (see *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7), commit further offences (see *Matznetter v. Austria*, 10 November 1969, § 9, Series A no. 10) or cause public disorder (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207, and *Hendriks v. the Netherlands* (dec.), no. 43701/04, 5 July 2007).

72. The issue of whether a period of detention is reasonable cannot be assessed *in abstracto* (see *Patsuria v. Georgia*, no. 30779/04, § 62, 6 November 2007) and must be assessed in each case according to its special features. Continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 61, ECHR 2003-IX).

73. The Court notes in the present case that the domestic courts regularly and repeatedly extended the applicant's pre-trial detention. It also notes the abstract and brief reasoning of the domestic courts' judgments which were limited to mentioning certain grounds provided for by the CCP, but failed to explain how this criteria came into play in the applicant's case (see *Calmanovici*, cited above, §§ 97-98). Moreover, the court orders maintaining detention nearly always used identical, even stereotyped, wording and relied repeatedly on the same criteria, a practice which cannot be considered to comply with the requirements of Article 5 § 3 of the Convention (see *Mansur v. Turkey*, 8 June 1995, § 55, Series A no. 319-B; *Svipsta v. Latvia*, no. 66820/01, § 109, ECHR 2006-III (extracts); and *Tiron*, cited above, § 39).

74. The Court accepts that the applicant's detention may initially have been warranted by a reasonable suspicion that he had committed serious offences. However, with the passage of time those grounds inevitably became less and less relevant. Accordingly, the domestic authorities were under an obligation to examine the applicant's personal situation in greater detail and to give specific reasons for holding him in custody (see *I.A. v. France*, 23 September 1998, §§ 104-105, *Reports* 1998-VII, and *Tiron*, cited above, § 40).

75. The Court notes that in the instant case although the domestic courts repeatedly relied on the validity of the initial grounds justifying the applicant's detention – the fact that he was a danger to public order, the severity of the sentence if convicted and the danger of his absconding – they

failed, with the passage of time, to give specific reasons why the discontinuance of the applicant's pre-trial detention would have had a negative impact on society or on the investigation.

76. The fact that the domestic courts briefly referred to the seriousness of the offences, the circumstances in which the offences were committed and the severity of the potential sentence cannot replace the failure to provide specific reasons for the applicant's continued detention, because the nature of the elements relied on raises more questions than answers with regard to the existence of an alleged danger to public order (see *Calmanovici*, cited above, § 99, and *Tiron*, cited above, § 42). In this connection, the Court has already held that it is for the domestic courts to provide sufficient reasons, based on relevant facts, capable of showing that the release of the accused would actually disturb public order. In addition, detention will continue to be legitimate only if public order remains actually threatened (see *mutatis mutandis Letellier*, cited above, § 51).

77. With regard to the danger of absconding, the Court points out that such a danger cannot be gauged solely on the basis of the severity of the potential sentence. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see, *mutatis mutandis, Neumeister v. Austria*, 27 June 1968, § 10, Series A no. 8). In the present case the decisions of the domestic courts did not give the reasons why, notwithstanding the arguments put forward by the applicant in support of his applications for release, they considered the risk of his absconding to be decisive.

78. The Court further emphasises the fact that under Article 5 § 3 the authorities are obliged to consider alternative measures provided for by the domestic legislation for ensuring his appearance at trial when deciding whether a person should be released or detained (see *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000, and *Patsuria*, cited above, §§ 75-76). In the instant case, although the applicant expressly asked the domestic courts repeatedly to consider alternative measures and the first-instance court allowed such measures on one occasion, the domestic authorities did not explain why the use of alternative measures would not have ensured the presence of the applicant before the domestic courts.

79. Having regard to the above considerations, the Court finds that the authorities extended the applicant's detention on grounds which cannot be regarded as "relevant and sufficient". The authorities thus failed to justify the applicant's detention.

80. In these circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence" (see *Dolgova v. Russia*, no. 11886/05, § 50, 2 March 2006, and *Tiron*, cited above, § 46).

There has therefore been a violation of Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

81. The applicant complained of the excessive length of the criminal proceedings brought against him by the domestic authorities. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

“In the determination of ... any criminal charge against him ... everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal ...”

A. Admissibility

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

B. Merits

83. The applicant argued that the length of the criminal proceedings brought against him had been excessive. He was indicted in 2002 and more than eight years later the proceedings are still pending before the domestic courts.

84. The Government submitted that the case was rather complex owing to its legal complexity, the high number of parties involved and the large amount of evidence taken and examined by the courts. At the same time, they argued that there had been no substantial periods of inaction attributable to the authorities and that the authorities had separated the applicant's case from that of the other defendants in order to ensure the speediness of the trial. Furthermore, they argued that the applicant had caused delays in the proceedings by requesting repeated adjournments of the hearings in order to employ the services of a lawyer, to study the case, to challenge judges and by making full use of the procedures available to him under domestic law, including pleas of unconstitutionality. Moreover, following his arrest in Italy the applicant had had to be temporarily transferred to Romania because he had refused in February 2009 to take part in a videoconference with the Romanian authorities.

85. The Court notes that the proceedings against the applicant started on 19 October 2001 and are still pending before the first-instance court. Consequently, the period to be taken into consideration is over nine years.

86. The Court considers that there have been repeated procedural delays over the entire course of the proceedings. It can accept that the case against the applicant and other defendants could be regarded as complex and that the applicant was also responsible for some of the delays. That being said, it

cannot but note that the proceedings have lasted over nine years and are still pending before the first-instance court. The length of this period is excessive and cannot be justified by the complexity of the case and the adjournments requested by the applicant alone. In the Court's opinion, the length of the proceedings can only be explained by the failure of the domestic courts to deal with the case diligently (see *Gümüştan v. Turkey*, no. 47116/99, §§ 24-26, 30 November 2004).

87. Having regard to all the evidence before it, the Court finds that the length of the proceedings at issue do not satisfy the "reasonable time" requirement.

88. There has accordingly been a breach of Article 6 § 1 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

89. The applicant complained under Article 3 of the Convention that he had been subjected to ill-treatment at the time of his arrest on 19 October 2001, that he had been kept in solitary confinement, that he had been detained under the special regime reserved for "dangerous prisoners" and that the prison authorities had failed to provide him with the ophthalmological care required by his medical situation. Furthermore, he complained under Articles 5 § 1 (c) of the Convention of a lack of sufficient evidence for his arrest and the alleged lack of a legal basis for his pre-trial detention starting from 18 March 2004. He also complained under Article 5 § 4 of the Convention of the impossibility, prior to the CCP being amended by Law no. 281/2003, to appeal against the interlocutory judgments extending his pre-trial detention and the lack of a legal basis for his pre-trial detention after 17 June 2004. He further complained about the length of that period of detention. Lastly, the applicant complained under Article 6 §§ 1 and 2 of the Convention of the alleged lack of impartiality on the part of the judges who had extended his pre-trial detention and the breach of his right to presumption of innocence following the alleged publication of press articles containing "compromising accusations" about him before the judges had examined the extension of his pre-trial detention.

90. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as they fall within its jurisdiction, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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. Pecuniary damage

92. The applicant claimed 2,000,000 euros (EUR) representing capital losses suffered by his company during the period in which he was detained. He submitted that, as a result of his pre-trial detention, he had been unable to control his business and had been exposed to substantial financial losses.

93. The Government contested the existence of a causal link between the alleged violations and the losses claimed by the applicant and argued, *inter alia*, that the applicant should have substantiated his claims.

94. The Court shares the Government’s view that there is no causal link between the violations found and the pecuniary damage claimed (see *Khudoyorov v. Russia*, no. 6847/02, § 221, ECHR 2005-X (extracts)). Consequently, it finds no reason to award the applicant any sum under this head.

B. Non-pecuniary damage

95. The applicant claimed EUR 100,000 in respect of non-pecuniary damage suffered as a result of his pre-trial detention.

96. The Government considered the sum claimed by the applicant to be excessive and argued that a finding of a violation would constitute sufficient just satisfaction.

97. The Court notes that it has found a combination of violations in the present case. The applicant, who to date has not been convicted of the criminal offence with which he was charged, spent almost three years in custody. Moreover, his detention was not based on sufficient grounds. In these circumstances, the Court considers that the applicant’s suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

C. Costs and expenses

98. The applicant claimed EUR 2,000 in respect of lawyer's fees.

99. The Government contested the amount and argued that the applicant had not submitted any proof concerning the payment of the claimed amount.

100. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are also reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

101. The Court notes that the applicant did not provide any proof of having incurred any expenses in respect of lawyer's fees. Consequently, the Court makes no award under this head.

D. Default interest

102. The Court considers it appropriate that the default interest 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

1. *Declares* the complaints concerning the unlawfulness of the applicant's pre-trial detention from 25 June to 4 July 2003 and after 16 June 2004; the length of his pre-trial detention; the lack of reasons justifying the extension of his pre-trial detention; and the length of the criminal proceedings opened against the applicant admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's pre-trial detention from 25 June to 4 July 2003 and after 16 June 2004;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the length of the pre-trial detention and the lack of reasons justifying the extension of the pre-trial detention;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,800 (seven thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at a rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 3 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President