



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

SECOND SECTION

CASE OF BALAKIN v. THE REPUBLIC OF MOLDOVA

(Application no. 59474/11)

JUDGMENT

STRASBOURG

26 January 2016

FINAL

26/04/2016

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

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

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

Işıl Karakaş, *President*,

Julia Laffranque,

Nebojša Vučinić,

Valeriu Griţco,

Ksenija Turković,

Jon Fridrik Kjølbro,

Georges Ravarani, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 5 January 2016,

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

PROCEDURE

1. The case originated in an application (no. 59474/11/12) 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 Alexandr Balakin (“the applicant”), on 16 September 2011.

2. The applicant was represented by Mr E. Markov, a lawyer practising in Strasbourg. The Moldovan Government (“the Government”) were represented by their Agent, Mr L. Apostol.

3. The applicant alleged, in particular, that his detention on remand was not based on relevant and sufficient reasons.

4. On 13 April 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Chişinău.

6. On 21 August 2009 the applicant was arrested and charged with the offence of producing and putting into circulation counterfeit money. Since then he has remained remanded in custody pending criminal investigation and trial. The detention warrants were prolonged every month initially and every three months once the case had reached the Ialoveni District Court. Each time the reasons given for the detention were that the applicant had

been accused of a serious offence punishable with imprisonment of up to fifteen years, that the criminal case was complex and that, if released, he might interfere with the investigation or collude with other co-accused, or abscond or re-offend.

7. The last two extensions of the applicant's detention before the lodging of the present application took place on unspecified dates in May and August 2011. The applicant argued that there was no risk of his interfering with the investigation since all the witnesses and the parties to the proceedings had already been heard and all the evidence had been examined by the court. He also submitted that there were no reasons to believe that he would abscond or re-offend and he agreed to be placed under house arrest if he could not be released. The applicant also argued that according to Article 186 § 8 of the Code of Criminal Procedure, once the case had been referred to a court, the detention could not last longer than six months, other than in exceptional cases.

8. The Ialoveni District Court dismissed the applicant's arguments and, relying on the same grounds as before, extended his detention for a further three months. The court stated that the case was exceptional within the meaning of Article 186 § 9 of the Code of Criminal Procedure. The decisions of May and August 2011 contain similar wording. The applicant's appeals against them were rejected by the Court of Appeal.

9. On 30 January 2012 the applicant was convicted and sentenced to seven years' imprisonment. The Court has not been informed about the final outcome of the criminal proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

10. The relevant provisions of the Code of Criminal Procedure read:

“Article 176. Reasons for imposing of preventive measures

(1) Preventive measures may be applied by the prosecuting authority or by the court only in cases where there are sufficient reasonable grounds for believing that the accused ... will abscond, obstruct the establishment of the truth during the criminal proceedings or re-offend, or they may be applied by the court in order to ensure the enforcement of a sentence.

...

(3) In gauging the necessity of applying preventive measures, the prosecuting authority and the court will take into consideration the following additional criteria:

- 1) the character and degree of harm caused by the offence,
- 2) the character of the ... accused,
- 3) his/her age and state of health,
- 4) his/her occupation,
- 5) his/her family status and existence of any dependants,

- 6) his/her economic status,
- 7) the existence of a permanent place of abode,
- 8) other essential circumstances.”

“Article 186. The length of detention on remand and its extension

...

(8) Once the case-file has been sent to a court, the detention on remand cannot be imposed for longer than 6 months if the person is accused of an offence punishable with up to fifteen years of imprisonment...

(9) After expiry of the period provided for in paragraph ... 8, the detention on remand can be prolonged only in exceptional cases, at the request of the prosecutor and by a reasoned decision of the court...

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 3 AND 4 OF THE CONVENTION

11. The applicant complained under Article 5 § 3 of the Convention about the length of his detention and the lack of relevant and sufficient reasons for it. Article 5 § 3 of the Convention reads:

“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. Release may be conditioned by guarantees to appear for trial.”

12. The applicant also complained under Article 5 § 4 of the Convention that the proceedings concerning his detention on remand had not been fair because the courts had failed to examine the arguments adduced by him in favour of his release. Article 5 § 4 of the Convention reads:

“4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

A. Admissibility

13. The Court notes that the application 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

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

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

16. The Court reiterates that Article 5 of the Convention belongs in the first rank of the fundamental rights that protect the physical security of an individual (see, *Medvedyev and Others v. France* [GC], no. 3394/03, § 117, ECHR 2010) and as such its importance is paramount. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty (see, for example, *Lukanov v. Bulgaria*, judgment of 20 March 1997, § 41, *Reports of Judgments and Decisions* 1997-II; *Assanidze v. Georgia* [GC], no. 71503/01, § 170, ECHR 2004-II, and *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 461, ECHR 2004-VII).

17. The presumption is in favour of release. As established in *Neumeister v. Austria* (judgment of 27 June 1968, § 4, Series A no. 8), the second limb of Article 5 § 3 does not offer judicial authorities a choice between bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until conviction, he must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable (*McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X).

18. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain period has elapsed it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

19. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify the continued detention (*Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, § 52, Series A no. 319-A).

20. Article 5 § 3 of the Convention cannot be seen as authorising pre-trial detention unconditionally provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (*Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004).

21. Turning to the facts of the present case, the Court notes that the applicant was repeatedly detained – on the basis of the same reasons each time – for more than twenty-nine months. The reasons appear to have been limited to paraphrasing the reasons for detention provided for by the Code of Criminal Procedure, without explaining how they applied in the applicant's case. The courts did not explain why they believed that the applicant would abscond or re-offend, nor did they explain how he could tamper with evidence or witnesses more than two years after the beginning of the proceedings. The automatic and blanket prolongation of the applicant's detention is further proved by the two last decisions – of May and August 2011 (see paragraph 8 above) – in which the courts re-used the same text, simply changing the dates. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's detention on remand for more than twenty-nine months was excessively long and was not based on reasonable and sufficient reasons. There has accordingly been a violation of Article 5 § 3 of the Convention.

22. In view of the above, the Court holds that it is not necessary to examine the complaint under Article 5 § 4 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

23. In his initial application, the applicant also complained that the criminal proceedings against him were excessively long and thus in breach of Article 6 § 1 of the Convention. However, it does not appear from the materials submitted by the applicant that he exhausted domestic remedies available to him. The complaint must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

24. The applicant also complained under Article 34 of the Convention that he was subjected to pressure from the State authorities in order to oblige him to withdraw the present application from the Court. However, he did not substantiate this complaint and did not provide any evidence in support of it. In such circumstances and in the light of the material in the case file, the Court considers that there has been no failure of the State to comply with its obligations under Article 34 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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.”

26. The applicant did not submit a claim for just satisfaction within the time-limit imparted by the Court. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Article 5 §§ 3 and 4 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 5 § 4 of the Convention;
4. *Holds* that there has been no failure of the State to comply with its obligations under Article 34 of the Convention.

Done in English, and notified in writing on 26 January 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Işıl Karakaş
President