



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

FOURTH SECTION

CASE OF STICI v. MOLDOVA

(Application no. 35324/04)

JUDGMENT

STRASBOURG

23 October 2007

FINAL

23/01/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Stici v. Moldova,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 2 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 35324/04) 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 Petru Stici (“the applicant”), on 26 August 2004.

2. The applicant was represented before the Court by Mr V. Nagacevski from “Lawyers for Human Rights”, a non-governmental organisation based in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that he had been unlawfully detained and that the courts had not given relevant and sufficient reasons for his detention, that he had had no access to the relevant parts of his criminal file in order to challenge effectively his detention pending trial and that several of his rights under Article 6 had been violated.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 10 April 2007 a Chamber of that Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. Under Rule 41 of the Rules of the Court, the Chamber decided to give priority to the examination of the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in Chişinău.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. The applicant was summoned to appear at a prosecutor's office in Chişinău on 14 June 2004. Upon arrival he was arrested on suspicion of having murdered, in 1993, Mr I.O., whose mother became Speaker of Parliament in 2001.

8. On 15 June 2004 the prosecutor asked the Buiucani District Court to issue a warrant for the applicant's arrest. In his request the prosecutor alleged that the applicant had committed the crime with which he was charged.

9. On 17 June 2004 the Buiucani District Court issued an order for the applicant's pre-trial detention for thirty days. The applicant and his lawyer were not given access to the file which had been submitted to the court to justify his arrest. The court gave the following reasons for its decision:

“In initiating the criminal proceedings the procedure was followed. [The applicant] is accused of a serious crime for which the criminal law provides a punishment of deprivation of liberty for more than two years. [The applicant] is unemployed and has a Romanian passport – facts which confirm the existence of a danger of absconding from law-enforcement authorities. Moreover, the accused would be given a real possibility to obstruct the criminal investigation by influencing witnesses if he were to be released. In these circumstances, the accused's detention is at this moment absolutely necessary.”

The applicant did not appeal against that decision.

10. On 12 July 2004 the prosecutor asked for a prolongation of the applicant's detention, stating that many procedural acts still had to be carried out, such as a confrontation with a co-accused (U.) and a verification of the whereabouts of another person, and that the applicant could abscond.

11. On 13 July 2004 the Buiucani District Court extended the applicant's detention for a further thirty-day period, based on the reasons given by the prosecution.

12. In his appeal, the applicant submitted that during the first 30 days of his detention no procedural act had been carried out with his participation, which contradicted the prosecutor's claim that his detention was necessary to enable such acts to be carried out. Moreover, the co-accused with whom a confrontation was planned (U.) had also been detained during that period and yet no confrontation had taken place. The applicant stated that he had a permanent residence in Moldova and three children to support and suffered from a neurological disease requiring specialised medical treatment.

13. On 20 July 2004 the Chişinău Court of Appeal rejected the applicant's appeal. The court found that the lower court had observed the correct procedure and had adopted a lawful decision based on the circumstances of the case. According to the applicant, he and his lawyer had not had access to any part of his criminal file.

14. On 27 July 2004 the applicant made a habeas corpus request, submitting that there was no reason for his pre-trial detention. The crime he was charged with had been committed eleven years earlier and he could easily have left Moldova had he had anything to do with that crime. He appeared before the investigators in response to their first summons and had always pleaded his innocence. The applicant asked for a milder preventive measure such as bail or house arrest to be ordered in his case, emphasising that house arrest offered virtually the same guarantees against interference with the investigation as did detention. He finally added that he had no criminal record and promised to appear before the investigator at the first request.

15. On 6 August 2004 the applicant's brother concluded a contract with a second lawyer, Mr V. Nagacevski, to represent the applicant. According to the applicant, it is standard practice in Moldova for an accused's relatives to conclude a contract with a lawyer when the accused is detained and has no means of finding a lawyer or paying for one. According to the applicant, he intended to sign a contract with Mr Nagacevski just before the court hearing but he was deprived of that possibility by the authorities' failure to bring him to the hearing.

16. Also on 6 August 2004 Mr Nagacevski asked the court to give the applicant's lawyers access to the materials in the criminal file which allegedly proved the need to detain the applicant. He argued that a refusal to grant such access would violate the principle of equality of arms.

17. On the same day, the Buiucani District Court examined the applicant's habeas corpus request in his absence. The applicant's first lawyer gave additional reasons for releasing his client. He argued that the gravity of the crime with which he was charged could not in itself provide a sufficient basis for detention. No evidence had been made available to him regarding the risk of the applicant's absconding. The applicant's Romanian passport was an insufficient ground for detention since it could be seized by the authorities, along with his Moldovan passport. Moreover, the investigation was already finished and the applicant could therefore not interfere with its course. He finally stressed that detention should be an exceptional measure, yet in practice the Moldovan authorities applied it as a rule.

18. The court rejected the applicant's lawyer's request for the following reasons:

“The person is accused of a crime for which the criminal law provides a punishment of deprivation of liberty for up to twenty years. [The applicant] could abscond or commit further crimes, and could obstruct the investigation by influencing the

[victim's mother] or witnesses. The court considers it premature to replace the applicant's detention with a milder preventive measure.”

19. In his appeal, the applicant relied on the arguments submitted earlier to the courts, adding that his rights had been further violated when he was not brought to the court hearing, when Mr Nagacevschi was not allowed to plead before the lower court and when the lawyers were not given access to any parts of the criminal file.

20. On 9 August 2004 the prosecution submitted the case file and the bill of indictment of the applicant to the trial court. Following the expiry, on 14 August 2004, of the court order of 13 July 2004 (see paragraph 11 above), the prosecution made no further requests for extension of the applicant's detention.

21. On 17 August 2004 the Chişinău Court of Appeal upheld the decision of 6 August 2004.

22. On 29 November 2004 the first hearing before the trial court took place, during which the court decided, *inter alia*, that the applicant should remain in pre-trial detention, without specifying, however, for how long.

23. According to the Government, on 3 July 2006 the Rîşcani District Court found the applicant guilty of the crime with which he had been charged. That judgment was upheld by the Chişinău Court of Appeal on 2 October 2006.

24. The case is pending before the Supreme Court of Justice.

II. RELEVANT DOMESTIC LAW

25. The relevant domestic law has been set out in *Boicenco v. Moldova* (no. 41088/05, § 64-71, 11 July 2006).

26. In addition, the relevant provisions of the Code of Criminal Procedure read as follows:

“Article 66

(2) The accused ... has the right:

...

(21) to read the materials submitted to the court in support of [the need for] his arrest;”

“Article 176

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

(2) Detention pending trial and alternative preventive measures may be imposed only in cases concerning offences in respect of which the law provides for a custodial sentence exceeding two years. In cases concerning offences in respect of which the law provides for a custodial sentence of less than two years, they may be applied if ... the accused has already committed the acts mentioned in paragraph (1).

(3) In deciding on 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.”

THE LAW

27. The applicant complained that his detention after the expiry of the last detention order, on 14 August 2004, had not been “lawful” within the meaning of Article 5 § 1 of the Convention, the relevant part of which provides:

“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;”

28. The applicant also complained that his detention pending trial had not been based on “relevant and sufficient” reasons. The relevant part of Article 5 § 3 reads:

“3. 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.”

29. The applicant complained that the failure of the authorities to give him and his lawyer access to the relevant part of the case-file in order to effectively challenge the grounds for his arrest was contrary to Article 6 § 3 of the Convention. He also complained, under the same Article, about the court's failure to hear him personally on 6 August 2004 and to allow his second lawyer to take part in the proceedings on that date. The Court considers that these complaints should be examined under Article 5 § 4 of the Convention since they relate to the *habeas corpus* proceedings. Article 5 § 4 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.”

30. The applicant complained about the prosecution's statements that he had committed a crime before his guilt or innocence were decided by a court, contrary to Article 6 § 2 of the Convention.

Article 6 § 2 reads as follows:

“2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

31. The applicant finally complained that his appeal against the decision of 6 August 2004 had not been examined, thus depriving him of a review by a higher court as required by Article 2 of Protocol No. 7 to the Convention, which reads:

“1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.”

I. ADMISSIBILITY

32. In his initial application, the applicant alleged that the authorities had refused to give him access to the part of the file concerning the grounds for his detention. However, in his observations on the admissibility and merits, he asked the Court not to proceed with the examination of that complaint in view of the fact that, regardless of what had been in the case-file, the courts had never referred to any materials in the file to support their decisions for his detention. Therefore, the materials of the file had not affected the

applicant's detention orders in any manner. In view of its findings in respect of the reasons for the applicant's detention under Article 5 § 3 (see paragraph 46 below), the Court finds no reason to examine this part of the complaint.

33. The applicant also conceded that his appeal against the decision of 6 August 2004 had been examined on 17 August 2004, but insisted that he had not known about that decision as he had not been informed of it, nor invited to the hearing. The decision was in any event not reasoned. The Court considers that Article 2 of Protocol No. 7 to the Convention is not applicable since the applicant had not been convicted by the decision of 17 August 2004. It follows that this complaint must be rejected as incompatible with the Court's competence *ratione materiae*.

34. The Court considers that the applicant's complaint regarding the violation of the presumption of his innocence, contrary to Article 6 § 2 of the Convention, is also manifestly ill founded. The complaint referred to the prosecution's request for the applicant's arrest, in which the applicant was accused of having committed a crime. The Court considers that it is in the nature of the prosecution's functions to submit to the competent court evidence and charges against persons reasonably suspected of having committed a crime. The Court notes that the accusation was made only to the court and was not repeated in public.

35. The Court further considers that the applicant's complaints under Articles 5 § 1 (lawful basis for detention), § 3 (reasons for detention) and § 4 (examination of the applicant's habeas corpus request on 6 August 2004 in his absence and the failure to admit one of his lawyers to the hearing) of the Convention raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits. It therefore declares these complaints admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

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

36. The applicant argued that since the expiry of the last court order for his detention pending trial on 14 August 2004 no other court decision had provided for his further detention. He considered that the legal provisions referred to by the Government were not foreseeable in their application, contrary to the requirements of Article 5 of the Convention. He relied on *Baranowski v. Poland* (no. 28358/95, ECHR 2000-III).

37. The Government stated that after the applicant's case file had been submitted to the trial court on 14 August 2004, it was for the trial court to deal with any requests regarding the applicant's detention pending trial, which had been based on the clear provisions of the law. They relied essentially on the same legal provisions as those relied on in *Boicenco* (cited

above, §§ 64-71). The Government emphasised that, in addition to the relevant legal provisions, the applicant had had the right to ask the trial court to review the need for his continued detention and that the court had carried out such a review on a number of occasions, thus providing for a legal basis for his detention.

38. The Court recalls that it found a violation of Article 5 § 1 of the Convention in *Boicenco* (cited above, § 154), *Holomiov v. Moldova*, (no. 30649/05, § 130, 7 November 2006) and *Modarca v. Moldova* (no. 14437/05, § 74, 10 May 2007). Having examined the material submitted to it, the Court considers that the file does not contain any element which would allow it to reach a different conclusion in the present case.

39. The Court finds, for the reasons given in the cases cited above, that the applicant's detention pending trial after 14 August 2004, when the last court order for his detention expired, was not based on any legal provision.

40. There has, accordingly, been a violation of Article 5 § 1 of the Convention.

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

41. The applicant complained about his detention pending trial without sufficient reasons given by the courts. He relied on the Court's jurisprudence in cases such as *Sarban v. Moldova* (no. 3456/05, 4 October 2005) and *Boicenco* (cited above, § 145).

42. The Government considered that the domestic courts had given relevant and sufficient reasons for the applicant's detention.

43. The Court first notes that it has found that the applicant's detention after 14 August 2004 lacked any legal basis. In light of that finding, it does not consider it necessary to examine separately the complaint under Article 5 § 3 during the same period. However, the applicant also complained about the lack of reasons for his detention in the domestic court decisions adopted prior to 14 August 2004. The Court will examine his complaint in respect of that period, recalling that 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, and *Castravet v. Moldova*, no. 23393/05, § 33, 13 March 2007).

44. The Court notes that the reasons relied on by the domestic courts in their decisions to prolong the applicant's detention (see paragraphs 11, 13 and 18 above) were virtually identical to the reasons used by the domestic courts to remand the applicant in *Sarban* (cited above, at §§ 11 and 14) and other similar cases against Moldova. As in *Sarban*, the domestic courts limited themselves 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 only exception was that they referred to the applicant's

Romanian passport, which could have enabled him to abscond abroad, and his lack of a permanent job. However, the courts did not react in any way to the applicant's argument that both his Romanian and Moldovan passports could have been seized by the authorities if they had decided that this was necessary to prevent his absconding and that alternative preventive measures existed, some of which (for example, house arrest) provided virtually the same guarantees against absconding as pre-trial detention (see paragraph 17 above). Neither were any other factors in favour of the applicant's release examined, such as his appearance before the investigator at the latter's first request (see paragraph 7 above), despite an express requirement to do so under Article 176 (3) of the Code of Criminal Procedure (see paragraph 26 above) and the applicant's reference to several *prima facie* relevant reasons against detention (see paragraph 12 above; see also *Ambruszkiewicz v. Poland*, no. 38797/03, § 33, 4 May 2006). The Court also takes into account that the applicant was held for over two years in detention pending trial, even though no new reasons were advanced for the continued need for such detention.

45. Accordingly, the Court does not consider that the instant case can be distinguished from *Sarban* and other similar Moldovan cases in what concerns the relevancy and sufficiency of reasons for detention.

46. There has accordingly been a violation of Article 5 § 3 of the Convention in this connection.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

47. The applicant also complained under Article 5 § 4 of the Convention about the court's failure to hear evidence from him on 6 August 2004 and its refusal to allow one of his lawyers to participate in the proceedings on that date, which the Court has decided (see paragraph 29 above) should be examined under Article 5 § 4 of the Convention since the lawyer's participation concerned *habeas corpus* proceedings.

48. However, the Court considers that it need not examine separately these complaints in view of its finding above regarding the lack of relevant and sufficient reasons in the court's decision of 6 August 2004 (see paragraph 46 above). It appears from that decision that the arguments raised by the applicant's first lawyer were never answered in any serious manner by the court. In such circumstances, the Court doubts that the presence of the applicant or of another lawyer would have affected the outcome.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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. Damage

50. The applicant claimed 4,000 euros (EUR) in compensation for the damage caused to him by the violation of his rights. In support of his claims he relied on the Court's case-law in respect of similar complaints.

51. The Government disagreed with the amount claimed by the applicant, arguing that it was excessive in the light of the case-law of the Court and that no evidence had been adduced to show that damage had been caused to the applicant. In any event, a finding of a violation should constitute sufficient just satisfaction.

52. The Court considers that the applicant must have been caused a certain amount of stress and anxiety as a consequence of the authorities' failure to respect his rights guaranteed by Article 5 §§ 1 and 3 of the Convention, in particular his detention without any legal basis for more than ten months. It therefore awards in full the applicant's claim (see *Ječius v. Lithuania*, no. 34578/97, § 109, ECHR 2000-IX).

B. Costs and expenses

53. The applicant also claimed EUR 1,425 for costs and expenses. He relied on a contract with his lawyer, according to which he had had to pay legal fees at an hourly rate of EUR 75, and an itemised list of hours worked on the case, amounting to nineteen hours.

54. The Government considered those claims to be excessive and challenged the need to work for nineteen hours on the case. Moreover, no evidence had been submitted to prove that the amount claimed had in fact been paid to the lawyer.

55. The Court recalls that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and are reasonable as to quantum (see *Modarca*, cited above, § 106). According to Rule 60 § 2 of the Rules of Court, itemised particulars of claims made are to be submitted, failing which the Chamber may reject the claim in whole or in part.

56. In the present case the Court takes note of the contract with the applicant's lawyer and the itemised list submitted. In view of the relative lack of complexity of the case and of the rejection or withdrawal of a number of complaints initially raised before the Court, it awards the applicant EUR 1,000 for costs and expenses.

C. Default interest

57. 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* admissible the complaint under Articles 5 § 1 (lawful basis for detention), § 3 (reasons for detention) and § 4 (examination of the applicant's habeas corpus request on 6 August 2004 in his absence and the failure to admit one of his lawyers to the hearing), and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's detention without a legal basis after 14 August 2004;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention as regards the period between 14 June and 16 August 2004;
4. *Holds* that there is no need to examine separately the complaint under Article 5 § 4 of the Convention;
5. *Holds*:
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) for non-pecuniary damage and EUR 1,000 (one thousand euros) for costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 23 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President