



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

FOURTH SECTION

CASE OF URSU v. MOLDOVA

(Application no. 3817/05)

JUDGMENT

STRASBOURG

27 November 2007

FINAL

27/02/2008

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 Ursu 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 6 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 3817/05) 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 Mihai Ursu (“the applicant”) on 30 December 2004.

2. The applicant was represented by Mr V. Constantinov, acting on behalf of Lawyers for Human Rights, a non-governmental organisation based in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent at the time, Mr V. Pârlog.

3. The applicant alleged, in particular, that his detention had been unlawful and contended that there had been a violation of Article 5 §§ 1 and 3 of the Convention.

4. On 27 March 2006 the President of the Fourth Section of the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Mihai Ursu, is a Moldovan national who was born in 1970 and lives in Peresecina.

6. On 31 March 2004 the applicant was arrested on suspicion of having murdered, in 1993, Mr I.O., whose mother became Speaker of Parliament in 2001.

7. Between 2 April and 3 August 2004 he was remanded on the basis of monthly detention orders issued by the Buiucani District Court. The detention orders set out as grounds for his detention the fact that he had been suspected of having committed a serious offence punishable by more than two years' imprisonment; moreover, the isolation of the suspect from society was considered necessary because he might abscond and obstruct the criminal investigation by influencing the witnesses.

8. In his appeals against the detention orders, the applicant argued, *inter alia*, that his detention was not necessary since there were no objective reasons to suspect him, that during his detention no investigation measures had been carried out and that he suffered from epilepsy and needed specialist medical treatment.

9. All his appeals were dismissed on the ground that the circumstances warranting his detention had not changed. On 6 July 2004 the Chişinău Court of Appeal reduced the duration of the detention order from thirty days to twenty days on the ground that "during the previous month no investigation measures were carried out ... the suspect did not have a criminal record, he has a family and minor children, a house, a job and serious health problems."

10. On 3 August 2004 the Prosecutor's Office submitted the applicant's case file to the competent court. After that date the applicant continued to be detained without any detention order.

11. On 21 December 2004 a *habeas corpus* request lodged by the applicant was rejected and he continued to be detained in pre-trial detention until 6 July 2006, when he was convicted and sentenced to twelve years' imprisonment.

II. RELEVANT DOMESTIC LAW

12. The relevant domestic law has been set out in the Court's judgments in the cases of *Sarban v. Moldova* (no. 3456/05, § 51, 4 October 2005) and *Holomiov v. Moldova* (no. 30649/05, §§ 85 and 87, 7 November 2006).

THE LAW

13. The applicant complained under Article 5 § 3 of the Convention that his pre-trial detention between 2 April and 3 August 2004 had not been based on "relevant and sufficient" reasons. The relevant part of Article 5 § 3 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.”

14. The applicant complained under Article 5 § 1 of the Convention that his pre-trial detention after 3 August 2004, when the detention warrant had expired, had been unlawful since it had had no basis under domestic law. The relevant part of Article 5 § 1 reads:

“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;

...”

I. ADMISSIBILITY OF THE COMPLAINTS

15. The Court considers that the applicant's complaints raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring them inadmissible have been established. The Court therefore declares the application 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 the application.

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

16. The applicant argued that the reasons relied on by the domestic courts for detaining him were general and formulaic and could not therefore be considered as relevant and sufficient for the purpose of Article 5 § 3 of the Convention.

17. The Government submitted that the applicant's detention had been necessary because he had been suspected of having committed a serious offence and if released he might have fled, obstructed the criminal investigation, influenced the witnesses, destroyed evidence or reoffended.

18. The Court recalls that Article 5 of the Convention is, together with Articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of an individual (see, for example, its link with Articles 2 and 3 in disappearance cases in *Kurt v. Turkey*, judgment of 25 May 1998, *Reports of Judgments and Decisions* 1998-III, § 123) 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, *Reports* 1997-II, § 41; *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II, § 46; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 461, ECHR 2004-VII).

19. The presumption is in favour of release. As established in *Neumeister v. Austria* (judgment of 27 June 1968, Series A no. 8, p.37, § 4), the second limb of Article 5 § 3 does not give judicial authorities a choice between either 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 (see *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...).

20. The persistence of 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 lapse of time 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).

21. 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 their continued detention (see *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 52).

22. 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 (see *Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004).

23. The Court recalls that it has found a violation of Article 5 § 3 on the grounds of lack of relevant and sufficient reasons for detention in the cases of *Sarban* and *Becciev v. Moldova* (no. 3456/05, § 103, 4 October 2005 and no. 9190/03, § 64, 4 October 2005). The Court notes that, as in *Sarban* and *Becciev*, most of the reasons relied upon by the domestic courts in their decisions to remand the applicant in custody and to prolong his detention were formulaic and were 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.

24. In such circumstances, the Court does not consider that the instant case can be distinguished from *Sarban* and *Becciev* in what concerns the relevance and sufficiency of reasons for detention. This is particularly so,

since 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. Moreover, the Court is struck by the fact that in giving on 6 July 2004 reasons which would normally have argued in favour of the applicant's release from detention (see paragraph 9 above), the Chişinău Court of Appeal nevertheless decided to prolong the applicant's detention albeit reducing the period from thirty to twenty days.

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

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

26. The applicant argued that after 3 August 2004 he had been detained illegally since no detention warrant had been issued by a judge for that period. He pointed to Article 25 of the Constitution, according to which persons may be arrested only under warrant issued by a judge for a maximum period of 30 days, and argued that the situation in the present case resembled that in the cases of *Baranowski v. Poland* (no. 28358/95, ECHR 2000-III) and *Boicenco v. Moldova* (no. 41088/05, 11 July 2006). He argued that his detention had been in breach of Article 5 § 1 between 3 August 2004 and 21 December 2004, when a court had examined and dismissed a *habeas corpus* request lodged by him.

27. The Government stated that after the applicant's case file had been submitted to the trial court on 3 August 2004, it was for the trial court to deal with any requests regarding the applicant's pre-trial detention, which detention had been based on the clear provisions of the law, namely Article 79 of the old Code of Criminal Procedure and Articles 186 (2) and (8), 329(1), 351(7) and 345(1) and (4) of the new Code of Criminal Procedure. This and the fact that the applicant's detention had been ordered by an investigating judge and not a prosecutor distinguished the case from *Baranowski*.

28. The Court recalls that it found a violation of Article 5 § 1 of the Convention in this respect in *Baranowski v. Poland* (cited above, § 58); see also *Boicenco* (cited above, § 154) and *Holomiov* (cited above, § 130). 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.

29. The Court finds, for the reasons given in the cases cited above, that the applicant's detention pending trial after 3 August 2004 was not based on any legal provision.

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 4,000 euros (EUR) in respect of non-pecuniary damage and EUR 420 in respect of pecuniary damage suffered as a result of the breach of his Convention rights. He argued that he had experienced frustration, helplessness, anxiety, confusion, distress and a feeling of injustice. Moreover, he could have worked between August and December 2004 and earned at least EUR 420.

33. The Government contested the amount claimed by the applicant and argued that there was no proof that he had suffered any damage. They pointed to the fact that the applicant was unemployed. They asked the Court to dismiss the applicant's claim.

34. Having regard to the violations found above and their gravity, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,000 for non-pecuniary damage. In so far as his claim for pecuniary damage is concerned, the Court finds this to be speculative and therefore rejects the claim.

B. Costs and expenses

35. The applicant also claimed EUR 1,425 for the costs and expenses incurred before the Court. He submitted a detailed time-sheet indicating the time spent by his lawyer on the case and an itemised list of other expenses incurred in connection with the examination of the case. He also submitted a copy of a contract between him and his lawyer.

36. The Government disagreed with the amount claimed for representation and disputed, *inter alia*, the number of hours worked by the applicant's lawyer and the hourly rate charged by him. They also argued that the claims were excessive in view of the economic situation in Moldova.

37. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 1,000 for costs and expenses.

C. Default interest

38. 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 application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention in the absence of a legal basis in the period after 3 August 2004;
4. *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 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable, which sums are to be converted into the currency of the respondent State at the rate applicable at the date of payment;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President