



## Reasonable justification was not provided for placing a nurse in pre-trial detention following a fire in a maternity ward

In its committee judgment in the case of [Cîrstea v. Romania](#) (application no. 10626/11) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 5 § 3 (justification of pre-trial detention)** of the European Convention on Human Rights, and

**no violation of Article 5 §§ 1 (right to liberty and security) and 4 (right to a speedy review of the lawfulness of detention)** of the European Convention.

The case concerned the applicant's placement in pre-trial detention in the proceedings which followed a dramatic fire in a neonatal intensive-care ward where she was responsible for monitoring care.

The Court reiterated its previous finding that domestic courts were required to give specific reasons for finding that public order would in fact be threatened if a defendant were not to be detained before his or her trial. A defendant's pre-trial detention had to serve the needs of the criminal investigation, rather than a possible thirst for vengeance and punishment on the part of the general public.

Justification for even a short period of detention had to be convincingly demonstrated by the authorities. The fact that the applicant's pre-trial detention had lasted only about two months did not release the national authorities from their obligation to provide proper justification for imposing and extending this measure.

*The judgment is final.*

### Principal facts

The applicant, Florentina-Daniela Cîrstea, is a Romanian national who was born in 1975 and lives in Bucharest.

At the relevant time Ms Cîrstea was a nurse at the Giulești Maternity Hospital in Bucharest. On 16 August 2010, while she was the sole nurse on duty in the neonatal intensive-care ward, she left the ward at 6.24 p.m. and was absent for 12 minutes. At 6.30 p.m. a fire broke out, resulting in the death of 5 newborn babies and injuring the six other babies present.

On 17 August 2010 the prosecutor's office at the High Court of Cassation and Justice commenced criminal proceedings in respect of manslaughter and unintentional serious assault. Ms Cîrstea was questioned as a witness and stated that on the evening in question she had smelt something burning and had then gone out to summon help, and that the fire had broken out in her absence. On 23 August 2010 the prosecutor's office opened criminal proceedings against Ms Cîrstea on account of her unjustified absence from the intensive-care ward when the fire broke out. On the same date the prosecutor's office ordered her arrest for a period of twenty-four hours. On 24 August 2010 she gave a different account of the events, stating that she had left the ward to go to another room in the hospital and that someone had then raised the alert from the corridor. She had been unable to return to the ward because of the smoke. After she had given her statement the prosecutor's office asked the court to order that she be placed in pre-trial detention. On the same date Ms Cîrstea repeated her statements before the Bucharest Court of First Instance and explained that she had

given her first, false, statement, on the suggestion of various colleagues. The court decided that she was to be placed pre-trial detention for a period of twenty-nine days, holding that no other less restrictive measure, such as an obligation to remain in the city, could suffice in the circumstances of the case.

Ms Cîrstea appealed against that judgment. In a final judgment of 30 August 2010, the Bucharest County Court upheld the pre-trial detention order. The pre-trial detention was extended by an interlocutory judgment issued by the Bucharest Court of First Instance on 15 September 2010. That judgment was confirmed on appeal in a final judgment of 20 September 2010.

On 6 December 2010 Ms Cîrstea and five other defendants, including the Giulești Hospital, were committed for trial. By a judgment of 9 July 2013 the Bucharest Court of First Instance, upheld by a final judgment by the court of appeal dated 2 April 2015, Ms Cîrstea was sentenced to two and a half years' imprisonment. She served her sentence and was released on 8 February 2016.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 15 February 2011.

Relying on Article Articles 5 (right to liberty and security) and 6 (right to a fair trial) of the European Convention, the applicant considered that her placement in pre-trial detention had not been justified and that the courts had not correctly and thoroughly assessed her applications for release. Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private life), she complained about the publication, in the press, of photographs of her. Relying on Article 13 (right to an effective remedy), she alleges that she had no domestic remedy to defend her rights, infringed by the published press photographs.

Judgment was given by a Committee of three judges, composed as follows:

Georges **Ravarani** (Luxembourg), *President*,  
Marko **Bošnjak** (Slovenia),  
Péter **Paczolay** (Hungary),

and also Andrea **Tamietti**, *Deputy Registrar*.

## Decision of the Court

### Article 5 § 1

The Court noted that, in deciding to place Ms Cîrstea in pre-trial detention, the first-instance court had held that there existed plausible suspicions that the applicant had been at fault. It further noted that the applicant had been brought promptly before a judge. It followed that the arrest and placement in pre-trial detention had met the requirements of Article 5 § 1. There had thus been no violation of this provision.

### Article 5 § 3

The Court noted that the first-instance court had taken into account the existence of a risk of collusion between members of the hospital staff. However, the court had failed to explain the exact nature of this risk of collusion or to specify what evidence could still be hidden, given that it relied on Ms Cîrstea's statements.

The Court noted that the first-instance court had referred, in a general manner, to the facts of the case, without explaining how the applicant's specific situation could have given rise to a social disturbance capable of justifying pre-trial detention. The applicant had never been suspected of having started the fire or deliberately causing harm to the victims. In addition, the Court found that

although the tribunal had dismissed the possibility of applying less restrictive measures, it had not given reasons. The courts which subsequently examined the applicant's pre-trial detention had also not shown that her release would lead to breaches of the peace.

The Court had already stated that domestic courts were required to give specific reasons for finding that public order would actually be threatened if a defendant were not to be detained before trial. A defendant's pre-trial detention had to correspond to the needs of the criminal investigation, rather than to a possible thirst for vengeance and punishment on the part of the general public.

The Court reiterated that justification for even a short period of detention had to be convincingly demonstrated by the authorities. The fact that Ms Cîrstea's pre-trial detention had lasted only about two months did not release the national authorities from their obligation to provide proper justification for imposing and extending this measure.

In the light of the above, the Court considered that the reasons given by the domestic courts for the applicant's placement in detention had not been relevant and sufficient within the meaning of its case-law. It followed that there had been a violation of Article 5 § 3.

#### Article 5 § 4

The Court observed that Ms Cîrstea had been heard by the court which decided on her initial detention and that she had thus had an opportunity to present both her position in the case and the arguments in her defence. She had also been able to make use of the remedies against the first-instance judicial decisions on her initial and continued pre-trial detention.

The Court pointed out that it had also already held that the fact that the prosecutor had a specific position in the courtroom, and the conditions provided to lawyers to study the case files, did not suffice to raise doubts as to the equality of arms.

In consequence, there had been no violation of Article 5 § 4.

#### Article 8

The Court noted that Ms Cîrstea had not lodged a complaint against the media for infringing her dignity as a result of the publication of photographs showing her during the criminal trial. Articles 998 and 999 of the Civil Code as in force at the relevant time provided the applicant with an effective remedy for bringing her allegations before the domestic courts.

The Court considered that the applicant had not submitted any argument showing that this remedy would not have been effective. These complaints had thus to be dismissed for failure to exhaust the domestic remedies.

#### Article 13

The Court reiterated its finding that the available remedies for complaining about alleged breaches of the rights protected by Article 8 had been effective. The complaints under Article 13 were therefore manifestly unfounded and had to be dismissed.

#### Just satisfaction (Article 41)

The Court held that Romania was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage.

*The judgment is available only in French.*

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