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

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ECHR 374 (2021)
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No violation of the presumption of innocence in respect of a former MP during proceedings on the lifting of his parliamentary immunity

In today's **Chamber** judgment[1] in the case of Filat v. the Republic of Moldova (application no. 11657/16) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 § 2 (presumption of innocence) of the European Convention on Human Rights.

The case concerned criminal proceedings which had led, in 2016, to Mr Filat being sentenced to nine years' imprisonment for passive bribery and influence peddling. Mr Filat was Prime Minister from 2009 to 2013, and was a party leader and MP at the material time.

Relying on Article 6 § 2 (presumption of innocence), Mr Filat complained about statements made by officials during the parliamentary sitting on 15 October 2015 concerning the lifting of his parliamentary immunity, statements which he considered to have infringed his presumption of innocence.

Relying on Article 5 § 4 of the Convention (right to a speedy decision on the lawfulness of his detention), Mr Filat complained that he had been unable to obtain a review of the lawfulness of his pre-trial detention, which had been ordered after his conviction at first instance.

The Court held that neither the statements made by the State Prosecutor during the parliamentary sitting on 15 October 2015 nor the reasoning set out in the latter's written request, which had been read out during the sitting by the Speaker of Parliament, had infringed the applicant's right to be presumed innocent until proved otherwise. There had therefore been no violation of Article 6 § 2 of the Convention.

The Court further found that pursuant to its established case-law, the safeguards contained in Article 5 § 4 of the Convention were inapplicable to the applicant's detention during the appeal proceedings. That complaint was therefore manifestly ill-founded and was rejected.

Principal facts

The applicant, Vladimir Filat, is a Moldovan national who was born in 1969 and lives in Chişinău. Between 2009 and 2013 he was Prime Minister of the Republic of Moldova. From 2014, he was a member of parliament and leader of a party which formed part of the ruling coalition.

On 13 October 2015 a criminal investigation was initiated against the applicant following a denunciation made on the previous day by a well-known businessman, who affirmed that he had offered him bribes between 2010 and 2014. Two days later his parliamentary immunity was lifted so that he could be tried in the framework of this case. During the Moldavan Parliament sitting on 15 October 2015, the State Prosecutor and the Speaker of Parliament made statements, which were widely reported in the media.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

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In November 2015 the applicant was placed in pre-trial detention. In June 2016 the court of first instance sentenced him to nine years' imprisonment for accepting bribes and for influence peddling. It also decided to extend his pre-trial detention until the judgment delivered had become enforceable. The applicant's appeal was dismissed, and the Supreme Court of Justice upheld the lower courts' decisions.

Complaints, procedure and composition of the Court

Relying on Article 5 § 4 of the Convention (right to a speedy decision on the lawfulness of his detention), the applicant complained that he had been unable to obtain verification of the lawfulness of his pre-trial detention, ordered following his conviction at first instance.

Relying on Article 6 § 2 (presumption of innocence), he complained about statements made by officials when his parliamentary immunity had been lifted.

The application was lodged with the European Court of Human Rights on 8 December 2015.

Judgment was given by a Chamber of seven judges, composed as follows:

Jon Fridrik **Kjølbro** (Denmark), *President*,
Carlo **Ranzoni** (Liechtenstein),
Valeriu **Griţco** (the Republic of Moldova),
Egidijus **Kūris** (Lithuania),
Branko **Lubarda** (Serbia),
Pauliine **Koskelo** (Finland),
Marko **Bošnjak** (Slovenia),

and also Hasan **Bakırcı**, *Deputy Section Registrar.*

Decision of the Court

Article 5 § 4 (right to a speedy decision on the lawfulness of his detention)

The Court observed that the parties seemed to disagree on whether the applicant's detention during the appeal proceedings had amounted to pre-trial detention under domestic law.

It noted that after the applicant's conviction at first instance, the old wording of paragraph 11 of Article 186 of the Code of Criminal Procedure (CCP) had still been in force for a further month. However, that provision – which had extended the scope of the procedure for pre-trial detention to the examination on appeal of a criminal case – had not been implemented in the instant case. On that basis the Court paid particular attention to the fact that Article 186 § 11 CCP had referred to provisions which had already been partly invalidated by the Constitutional Court on 23 February 2016, and above all, that that superior court had mentioned, with regard to that provision, that it was no longer necessary to extend pre-trial detention on appeal. The Court noted, therefore, that the impugned provision had apparently been superseded by the decision of the Constitutional Court, and further observed that the information available to it did not suggest that there was any domestic case-law to the contrary. That being so, it held that the failure to apply Article 186 § 11 CCP, in its former wording, to the present case could not be deemed arbitrary or manifestly unreasonable. The Court also noted that the applicant had not lodged a specific appeal for review of the lawfulness of his pre-trial detention in respect of the period during which the previous version of the said Article had still been in force. Furthermore, it was unable to conclude that the judges ought to have automatically conducted such a review on the basis of any specific provision of the CCP.

As regards the entry into force during the impugned detention of the new version of Article 186 CCP, it was not for the Court to challenge this decision by the Moldavan legislature, to the extent that

Article 5 § 4 of the Convention imposed no restrictions on the Contracting States' freedom to decide whether or not to establish further safeguards in addition to those required under that provision.

The Court therefore found that domestic law as interpreted and applied by the domestic courts had, at the material time, no longer afforded the applicant the same procedural rights as those available for persons who had been placed in pre-trial detention before their possible conviction at first instance. By the same token, it noted that even if the applicant's detention during the appeal proceedings had been considered as a precautionary measure, domestic law, at that time, had no longer provided for a specific procedure going beyond the requirements of Article 5 § 4 of the Convention. That being so, pursuant to its established case-law, the safeguards contained in Article 5 § 4 of the Convention were inapplicable to the applicant's detention during the appeal proceedings. The applicant's complaint was therefore manifestly ill-founded and was rejected.

Article 6 § 2 (presumption of innocence)

The Court noted that the impugned statements had been made in the framework of a procedure in the Moldavan Parliament geared to deciding whether the evidence gathered by the public prosecutor's office was sufficient to lift the applicant's parliamentary immunity.

As regards, firstly, the oral statements by the State Prosecutor, in relation to their context and in view of all the statements made by the State Prosecutor during the parliamentary sitting, the Court did not consider that they had been aimed at, or had resulted in, a breach of the applicant's presumption of innocence.

In connection with the reading out by the Speaker of Parliament of the State Prosecutor's written request, the Court pointed out, in particular, that the following expressions had been used: *"[The applicant] extorted and received from I.Ş. ... over 60 million US dollars"* and *"with a view to unlawfully receiving money, services and other assets and benefits ..., [the applicant] requested and received from I.Ş. ... more than 190 million US dollars"*.

The Court noted that those expressions had not been the Speaker's own words but had appeared in the State Prosecutor's written request. It paid particular attention to the reminders given by the State Prosecutor and also the Speaker of Parliament later on during the sitting that the subject of the discussions was the lifting of the applicant's immunity, not whether or not he was guilty. The Court considered that those reminders had been such as to dispel any doubts as to the real import of the impugned expressions.

The Court ruled that those expressions had been intended not to confirm the applicant's guilt but to support the State Prosecutor's argument before the MPs that the evidence gathered during the investigation had justified lifting the applicant's immunity. The Court was confirmed in that opinion by the conclusion reached by the Constitutional Court in its decision of 17 November 2015, pointing out, however, that that the scrutiny conducted by that superior court had not specifically concerned the passages impugned by the present complaint. Consequently, neither the statements made by the State Prosecutor during the parliamentary sitting of 15 October 2015 nor the reasoning used in the State Prosecutor's written request read out during the sitting by the Speaker of Parliament had infringed the applicant's right to be presumed innocent unless shown otherwise. There had therefore been no violation of Article 6 § 2 of the Convention.

The judgment is available only in French.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Inci Ertekin (tel : + 33 3 90 21 55 30)
Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)
Denis Lambert (tel : + 33 3 90 21 41 09)
Neil Connolly (tel : + 33 3 90 21 48 05)
Jane Swift (tel : + 33 3 88 41 29 04)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.