SECOND SECTION

CASE OF CAŞU v. THE REPUBLIC OF MOLDOVA

(Application no. 75524/13)

JUDGMENT

STRASBOURG

1 October 2019

*This judgment is final but it may be subject to editorial revision.*

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

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

 Egidijus Kūris, *President,* Valeriu Griţco, Darian Pavli, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 10 September 2019,

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

1. PROCEDURE

1.  The case originated in an application (no. 75524/13) 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, Ms Olga Cașu (“the applicant”), on 21 November 2013.

2.  The applicant was represented by Ms N. Pruteanu, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agents at the time, Mr L. Apostol and Mr M. Gurin.

3.  The applicant alleged, in particular, that her detention on remand was not based on relevant and sufficient reasons and that the conditions of her detention amounted to inhuman and degrading treatment, in violation of Articles 5 § 3 and 3 of the Convention, respectively.

4.  On 17 June 2015 notice of the above complaints was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5.  On 9 April 2019 the Court declared inadmissible the complaint under Article 3 of the Convention.

1. THE FACTS
	1. THE CIRCUMSTANCES OF THE CASE

6.  On 3 February 2012, the applicant (15 years and 7 months old at that time) was arrested on suspicion of having participated in a group assault of a person which led to death.

7.  On 4 February 2012, the prosecutor applied to the Râșcani District Court for a warrant for the applicant’s remand in custody. The reasons relied upon by the prosecutor were generally that the applicant, who was not married and had no permanent occupation, could abscond from prosecution and interfere with the criminal investigation.

8.  On the same day, the Râșcani District Court issued a warrant for thirty days detention, relying on the reasons provided by the prosecutor. In court, the applicant argued that she had no intention of absconding and was willing to cooperate with the prosecution. She asked to be placed under house arrest rather than being detained in prison. Nevertheless, the court, citing the provisions of the Criminal Procedure Code entitling it to remand a person because of the risk of absconding and of interfering with a criminal investigation, concluded that the applicant presented such risks because she was charged with an extremely serious offence. The applicant was subsequently placed in pre-trial detention in prison no. 13 in Chișinău.

9.  The prosecutor applied for the extension of the applicant’s detention pending investigation on several occasions, reiterating the same reasons. By final decisions of 4 and 29 March and 27 April 2012, the Râșcani District Court extended the applicant’s pre-trial detention, each time by thirty days, relying on the same grounds as before and re-using the same text in their decisions.

10.  On 17 May 2012, the case was referred to the Centru District Court for trial. In the bill of indictment the applicant was charged with robbery.

11.  On different dates, the prosecutor applied for the extension of the applicant’s detention pending trial, each time for ninety days. The courts allowed those applications and extended the applicant’s detention each time by ninety days, on the same grounds as in the previous decisions. Appeals by the applicant were rejected by the Chişinău Court of Appeal. The applicant was released from detention on 24 November 2013.

12.  By a judgment of 30 June 2014 the applicant was found guilty as charged and sentenced to six years and eight months’ imprisonment. The criminal proceedings are pending to date.

* 1. RELEVANT DOMESTIC LAW

13.  The relevant domestic law concerning detention on remand has been set out in the Court’s judgment in *Buzadji v. the Republic of Moldova* ([GC] no. 23755/07, §§ 42-43, ECHR 2016 (extracts)).

14.  According to Article 186 § 4 of the Code of Criminal Procedure, as in force at the material time, pre-trial detention of minors could not last longer than four months.

1. THE LAW
	1. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

15.  The applicant complained under Article 5 § 3 of the Convention that the domestic courts had given insufficient reasons for their decisions to remand her in custody and prolong her detention. Article 5 § 3 of the Convention, reads as follows:

“3.  Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

* + 1. Admissibility

16.  The Court notes that this complaint 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.

* + 1. Merits

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

18.  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 her absconding.

19.  The Court reiterates that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. The requirement for the judicial officer to give relevant and sufficient reasons for the detention – in addition to the persistence of reasonable suspicion – applies already at the time of the first decision ordering detention on remand, that is to say “promptly” after the arrest (see *Buzadji*, cited above, §§ 87 and 102). Furthermore, when deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures of ensuring his or her appearance at trial (see, for example, *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012).

20.  Justifications which have been deemed “relevant” and “sufficient” reasons in the Court’s case-law have included such grounds as the danger of absconding, the risk of pressure being brought to bear on witnesses or of evidence being tampered with, the risk of collusion, the risk of reoffending, the risk of causing public disorder and the need to protect the detainee (see, for instance, *Stögmüller v. Austria*, 10 November 1969, § 15, Series A no. 9; *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7; *Tomasi v. France*, 27 August 1992, § 95, Series A no. 241‑A; *Toth v. Austria*, 12 December 1991, § 70, Series A no. 224; *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; and *I.A. v. France*, 23 September 1998, § 108, *Reports of Judgments and Decisions* 1998‑VII).

21.  The presumption is always in favour of release. The national judicial authorities must, with respect for the principle of the presumption of innocence, examine all the facts militating for or against the existence of the above-mentioned requirement of public interest or justifying a departure from the rule in Article 5, and must set them out in their decisions on applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the applicant in his or her appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see, among other authorities, *Buzadji*, cited above, §§ 89 and 91). Arguments for and against release must not be “general and abstract” (see *Smirnova v. Russia*,nos. 46133/99 and 48183/99, § 63, ECHR 2003‑IX (extracts)).

22.  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 almost twenty 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 she could tamper with evidence or witnesses. The automatic and blanket prolongation of the applicant’s detention is further proved by the first several decisions ‒ of March and April 2012 (see paragraph 9 above) ‒ in which the courts re-used the same text. Besides that, the Court cannot but observe that the applicant’s detention for almost twenty months appears to have been contrary to Article 186 § 4 of the Code of Criminal Procedure, which limited the duration of pre-trial detention of minors to four months. The foregoing considerations are sufficient to enable the Court to conclude that the applicant’s detention on remand for almost twenty months was excessively long and was not based on relevant and sufficient reasons. There has accordingly been a violation of Article 5 § 3 of the Convention.

* 1. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23.  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.”

* + 1. Damage

24.  The applicant claimed 50,000 euros (EUR) in respect of non‑pecuniary damage.

25.  The Government argued that the claim was excessive and asked the Court to reject it.

26.  Ruling on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

* + 1. Costs and expenses

27.  The applicant also claimed EUR 117 for the costs and expenses incurred before the Court.

28.  The Government disagreed with the amount claimed by the applicant and argued that she had failed to substantiate her claims.

29.  According to the Court’s case-law, an applicant is entitled to the reimbursement of 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, it notes that the applicant did not submit any details in respect of the amount claimed. Therefore, the Court dismisses her claims for costs and expenses.

* + 1. Default interest

30.  The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

1. FOR THESE REASONS, THE COURT
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds*
	1. 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 3,000 (three thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
	2. that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 1 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Hasan Bakırcı Egidijus Kūris
 Deputy Registrar President