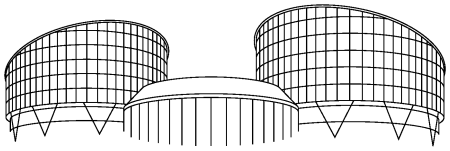

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF IALAMOV v. THE REPUBLIC OF MOLDOVA

(Application no. 65324/09)

JUDGMENT

STRASBOURG

12 December 2017

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

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

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

Ledi Bianku, *President,*
Valeriu Griţco,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 21 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 65324/09) 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 Alexandr Ialamov ("the applicant"), on 28 November 2009. After his death in 2014 his father, Mr Nicolai Ialamov, expressed his wish to pursue the proceedings before the Court.

2. The applicant was represented by Mr T. Osoianu, a lawyer practising in Ialoveni. The Moldovan Government ("the Government") were represented by their Agent *ad interim*, Ms R. Revencu.

3. The applicant alleged, in particular, that his pre-trial detention had been prolonged in an unlawful manner, contrary to Article 5 § 1 of the Convention. He also alleged that the proceedings concerning the prolongation of his detention had not complied with Article 5 § 4 of the Convention.

4. On 8 June 2016 the complaints concerning Article 5 §§ 1 and 4 were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. The Government did not object to the examination of the application by a Committee.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1986 and lived in Chisinau.

7. On 6 April 2009 he was arrested on a charge of murder. Later he was also charged with several counts of theft.

8. The applicant was held in pre-trial detention until 21 January 2011, when he was acquitted of the murder charges but convicted for theft and sentenced to one year and six months' imprisonment. In view of the duration of his pre-trial detention, he was immediately released.

9. During the trial the applicant's detention was extended periodically. One of the extensions concerned the period between 1 and 30 September 2009. On 28 September 2009, two days before the expiry of that period, the prosecutor in charge of the case applied for another extension. The applicant argued in his submissions, *inter alia*, that such an order was not allowed because the prosecutor had failed to comply with the provisions of Article 186 § 6 of the Code of Criminal Procedure, that is that such an application had to be lodged at the latest five days before the expiry of the detention period. Nevertheless, the prosecutor's application was accepted by the court on 29 September 2009 and the applicant's pre-trial detention was prolonged by twenty-five days. An appeal by the applicant was later dismissed by the Court of Appeal without any consideration being given to his argument set out above.

II. RELEVANT DOMESTIC LAW

10. The relevant provisions of the Code of Criminal Procedure in force at the material time read as follows:

Article 186

"...

(6) Should a necessity arise to extend the period of pre-trial detention of an accused, the prosecutor shall, no later than five days before the expiry of the detention period, submit a request for the extension of that period to the investigating judge. ..."

Article 230

"(2) When the exercise of a procedural right is limited by a time-limit, failure to observe the time-limit causes the loss of that procedural right and the nullity of the acts effected in breach of the time-limit."

11. In an explanatory judgment of 15 April 2013, the Plenary Supreme Court of Justice stated that an application for an extension of pre-trial detention, under Article 186 § 6 of the Code of Criminal Procedure, which has been lodged later than five days prior to the expiry of an ongoing period of detention, must be dismissed and the detainee must be released.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 4 OF THE CONVENTION

12. The applicant complained of a violation of his right to liberty and relied on Article 5 § 1 of the Convention which, in so far as relevant, 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; ..."

13. The applicant also complained of a violation of Article 5 § 4 of the Covention on account of the fact that he had been denied access to the evidence that had been presented to the judge for the decision on the extension of his detention. Article 5 § 4 of the Convention 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."

A. Admissibility

14. The Court takes note of the death of the applicant in 2014, after the introduction of the present application, and of the wish expressed by his father to continue the application before the Court in his name.

15. The Government submitted that the complaints under Article 5 of the Convention were of an eminently personal and non-transferable nature and, as such, could not be transferred from the applicant to his father. They relied, *inter alia*, on *Biç and Others v. Turkey* (no. 55955/00, §§ 22-24, 2 February 2006).

16. The Court notes that according to its case-law next-of-kin cannot lodge complaints alleging violations of Article 5 of the Convention on behalf of people who have died (see *Biç and Others*, cited above). However, next-of-kin may be entitled to continue proceedings before the Court concerning complaints lodged by a person before he or she died (see, among other cases, *Lukanov v. Bulgaria*, 20 March 1997, *Reports of Judgments and Decisions* 1997-II, and *David v. Moldova*, no. 41578/05, 27 November 2007).

17. As the application was lodged by the applicant and not by his father, the Government's objection must be dismissed. The Court will refer to the late Mr Alexandr Ialamov as "the applicant".

18. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and that it is not inadmissible on any other ground. The Court therefore declares it admissible.

B. Merits

19. The applicant argued that the extension of his detention on 29 September 2009 had been contrary to Article 5 § 1 of the Convention because it had been unlawful under domestic law, namely Article 186 § 6 of the Code of Criminal Procedure.

20. The Government disagreed and submitted that the five-day time-limit provided for by Article 186 § 6 was not compulsory, so the prosecutor's failure to observe it did not mean that he had not been able to apply for a prolongation of the pre-trial detention.

21. The Court reiterates 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 the individual. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty (see, for example, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 84, ECHR 2016 (extracts)).

22. No deprivation of liberty is compatible with the Convention unless it is lawful. The expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 of the Convention essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should review whether this law has been complied with (see, among many other authorities, *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports* 1996-III, and *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II).

23. Turning to the facts of the present case, the Court notes that under Article 186 § 6 of the Code of Criminal Procedure, a prosecutor is bound to lodge an application for the prolongation of an ongoing detention at the latest five days before the expiry of the current period of detention. It is the Government's case that that time-limit is optional and that failure to observe it cannot lead to a detainee's release. However, that interpretation appears to be contrary to Article 230 § 2 of the Code of Criminal Procedure (see paragraph 10 above), which states in clear terms that failure to observe a time-limit provided for the exercise of a procedural right causes the loss of that procedural right and the nullity of the acts effected in breach of the

time-limit. Moreover, the explanatory judgment of the Plenary Supreme Court of Justice (see paragraph 11 above) states that a detainee must be released upon the expiry of his or her period of detention if the prosecutor fails to observe the five-day time-limit for lodging an application for its prolongation. While this interpretation was given after the events, there is nothing to support the Government's contention that the provision contained in Article 186 § 6 was optional.

24. It follows from the above that upholding the prosecutor's application for extending the applicant's detention was contrary to the domestic law and that the detention ordered as a result of that decision was not lawful under domestic law.

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

26. The applicant further complained that he had been denied access to the evidence in the case which had been presented to the judge for the extension of his detention.

27. However, having regard to the facts of the case, the submissions of the parties and its findings under Article 5 § 1 of the Convention, the Court considers that it has examined the main legal question raised in the application and that there is no need to give a separate ruling on the remaining complaint (see, among other authorities, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *The Argeş College of Legal Advisers v. Romania*, no. 2162/05, § 47, 8 March 2011; *Women On Waves and Others v. Portugal*, no. 31276/05, § 47, 3 February 2009; *Velcea and Mazăre v. Romania*, no. 64301/01, § 138, 1 December 2009; *Villa v. Italy*, no. 19675/06, § 55, 20 April 2010; *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 72, ECHR 2012; and *Mehmet Hatip Dicle v. Turkey*, no. 9858/04, § 41, 15 October 2013; see also *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, §§ 210-11, ECHR 2009).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant argued that he was entitled to compensation of 20,000 euros (EUR) for the non-pecuniary damage he had suffered.

30. The Government submitted that that amount was excessive.

31. Having regard to the violation found above, the Court considers that an award in respect of non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards EUR 4,500 to the applicant in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicant also claimed EUR 1,305 for costs and expenses incurred before the Court.

33. The Government maintained that the claim was excessively high.

34. 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, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the entire amount claimed for costs and expenses.

C. Default interest

35. 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.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 5 § 4 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,305 (one thousand three hundred and five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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 12 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Ledi Bianku
Deputy Registrar	President