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

FOURTH SECTION

DECISION

Application no. 29417/13
Mihail BOLDEA
against Romania

The European Court of Human Rights (Fourth Section), sitting on 12 January 2021 as a Committee composed of:
Gabriele Kucsko-Stadlmayer, *President,*
Iulia Antoanella Motoc,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*
Having regard to the above application lodged on 16 April 2013,
Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mihail Boldea, is a Romanian national who was born in 1976 and lives in Bucharest. He is a lawyer and at the time when the facts of the present case occurred he was a member of parliament and an assistant professor of law in the Galaţi Law Faculty.

2. The Romanian Government ("the Government") were represented by their Agent, most recently Ms O.F. Ezer, of the Ministry of Foreign Affairs.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Criminal investigations against the applicant

4. On 21 July 2011 the department of the prosecutor's office for the investigation of organised crime and crimes of terrorism ("the prosecutor's

office") started a criminal investigation concerning several real-estate transactions in the town of Galaţi. In this connection, the prosecutor's office identified nineteen persons suspected of participating in the scheme. The applicant was one of them. The investigation concerning the applicant was supervised by the High Court of Cassation and Justice ("the HCCJ"), which had jurisdiction over the matter because the applicant was a member of parliament at that time.

5. On 16 March 2012 the prosecutor's office commenced criminal proceedings against the applicant on suspicion of fraud and organised crime, and informed him of the accusations brought against him.

6. On 17 March 2012 the applicant left for Turkey and on the following day he flew to Kenya.

7. On 20 March 2012 Parliament lifted the applicant's immunity for the purpose of the criminal investigation that was taking place.

2. The applicant's arrest and pre-trial detention

8. On 22 March 2012, acting upon a request lodged by the prosecutor's office, the HCCJ ordered the applicant's arrest and his pre-trial detention for a period of thirty days. As the applicant was still abroad, an international arrest warrant was issued in his name on the same day.

9. On 27 March 2012 the applicant returned to Romania and was arrested. He was brought before the HCCJ, which heard his submissions and examined the lawfulness and appropriateness of his detention. On 2 April 2012 he was heard by the court on the merits of the accusations against him.

10. His detention was subsequently extended on a monthly basis by the HCCJ, the Galaţi Court of Appeal and the Iaşi Court of Appeal successively. On 26 September 2012 the HCCJ transferred the case to the Galaţi Court of Appeal, which became the court with jurisdiction to hear the criminal case, following the applicant's resignation from Parliament. On 5 November 2012, acting upon a request by the applicant, the HCCJ transferred the case to the Iaşi Court of Appeal to continue its examination.

11. In deciding on the lawfulness of the applicant's detention and on the appropriateness of extending the period of detention, the courts referred to Article 5 of the Convention, Article 143 of the Code of Criminal Procedure ("the CCP") (concerning the existence of sufficient reasons for ordering detention pending trial), and Article 148 (a), (b) and (f) of the CCP (concerning the conditions to be met and the situations in which the detention of an accused may be ordered – see *Bivolaru v. Romania*, no. 28796/04, § 69, 28 February 2017) and gave the following reasons for his detention and its subsequent extensions:

(i) the evidence presented by the prosecutor gave rise to the suspicion that the applicant had committed the crimes in question;

(ii) the crimes in question had been punishable by a sentence of more than four years' imprisonment, and significant material damage had allegedly been caused or could have been caused;

(iii) the applicant had used his position in society as a member of parliament in order to commit the alleged crimes;

(iv) the applicant had tried to abscond by leaving the country, despite being aware of the investigation against him and without informing the prosecutor of his intention;

(v) the applicant had tried to influence witnesses: he had told a witness to hide from the investigators until the situation had been resolved; when he was in Kenya he had called his close lawyer colleagues and asked them to delete from their computers any traces of the activities under investigation, in order to avoid that material falling into the prosecutor's hands; he had asked close lawyer colleagues to offer legal representation to some of the witnesses called by the prosecutor; and he had been in contact with several witnesses encouraging them to abstain from making statements;

(vi) bearing in mind the nature of the crimes under investigation, the manner in which the criminal group had been organised and the precise coordination between its members, it could not be ruled out that if released, the suspects would restart their alleged criminal activity;

(vii) the offences committed represented a danger to public order, in so far as there existed a general feeling among the general public of indignation, disapproval and social insecurity, capable of creating mistrust in the authorities' ability to tackle the matter brought before them;

(viii) the reasons which had justified the taking of the measure of pre-trial detention still existed and there were no new elements that could allow the courts to conclude that the detention was no longer justified;

(ix) no other less severe measure had been considered suitable;

(x) the overall length of the measure was justified by the necessity of the proper administration of justice and by the complexity of the case, taking into account factors such as the nature of the crimes, the number of participants and victims, and the method of the commission of the crimes.

12. The applicant appealed against all the interlocutory judgments in which the courts had extended the preventive measure of pre-trial detention. He also lodged several requests for termination of that measure.

13. On four occasions (19 April, 12 May, 25 July and 18 September 2013) the Iaşi Court of Appeal decided to replace the measure with an obligation not to leave the country, but those interlocutory judgments were subsequently quashed by the HCCJ, on appeals lodged by the prosecutor's office, for the same reasons as those detailed in paragraph 11 above.

14. The applicant and his lawyers were present on all occasions when the detention was examined and were able to freely and extensively address the court.

15. Meanwhile, in the main proceedings on 27 June 2012, the prosecutor indicted eight individuals, including the applicant. When the case was referred to the Iaşi Court of Appeal (see paragraph 10 above), that court resolved procedural matters and objections raised by the parties, heard evidence from the accused several times (from 17 April to 25 July 2013), and started hearing witnesses. The applicant gave evidence on 17 April 2013.

The court had to postpone the hearing on several occasions because of the absence of the accused persons or their lawyers. In this connection it warned the accused persons not to unnecessarily protract the proceedings and on one occasion fined the absent lawyers.

16. On 18 November 2013 the Iaşi Court of Appeal replaced the order for the applicant's detention with a prohibition on leaving the town. He was released on the same day.

17. On 30 July 2018 the applicant was convicted and received a seven-year prison sentence.

COMPLAINT

18. The applicant complained under Article 5 § 3 of the Convention about the length of his pre-trial detention and submitted that no valid reasons had been given for its continuation.

THE LAW

19. The applicant complained about the length of his pre-trial detention and alleged that its continuation had been unjustified. He relied on Article 5 § 3 of the Convention, which reads as follows:

> "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."

A. The parties' observations

1. The Government

20. The Government argued that the domestic courts had established the existence of a reasonable suspicion that the applicant had committed the crimes in question. The courts had also established that the applicant's release would constitute a threat to public order and that if left free he might try to influence witnesses. Moreover, both the applicant and his representatives had had ample opportunities to present their arguments before the courts which had decided on the lawfulness of and the justification for the preventive measure in question.

21. Those courts had taken into account all the arguments which had been made, and had not relied on stereotypical reasoning, although a certain repetition in the wording of their reasoning for the various extensions of detention had been inevitable, given that they had verified at short and regular intervals the necessity of maintaining the measure. The courts had taken into account the applicant's specific situation, had based their findings on a detailed and individualised examination of the case and had given relevant and sufficient reasons for their decisions.

22. In the Government's view, the length of the detention had been justified by the complexity of the case. They argued that the authorities had taken all measures necessary to ensure the swift and proper administration of justice.

2. The applicant

23. The applicant argued that the domestic investigation had been protracted. He pointed out that the Iaşi Court of Appeal had waited for nine months before hearing evidence from him (see paragraph 15 above).

24. He further argued that the domestic courts had provided abstract reasons to justify the preventive measure, without any real assessment of his concrete situation. Moreover, all the elements that had pointed to his integration into society, such as the fact that he was a lawyer, a professor of law and a member of parliament, had been wrongly used by the domestic courts against him, as justifying the alleged social danger he represented.

B. The Court's assessment

25. The applicable general principles are set out in *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 84-102, ECHR 2016 (extracts)).

26. At the outset, the Court notes that the period of detention to be taken into consideration in the present case started on 27 March 2012, when the applicant was arrested (see paragraph 9 above), and ended on 18 November 2013, when he was released pending trial with an obligation not to leave the town (see paragraph 16 above; see also *Buzadji*, cited above, § 85). This period thus lasted one year, seven months, three weeks and two days.

27. When deciding on the applicant's pre-trial detention, the domestic courts relied on the relevant domestic law and applied it to the specific circumstances of the case, indicating which factual elements, in their opinion, justified that measure (see, *mutatis mutandis*, *Stavarache v. Romania* (dec.), no. 27090/07, § 28, 11 March 2014, and *Ghiurău v. Romania* (dec.), no. 3620/04, § 23, 6 January 2015). They firstly found that there were reasonable suspicions that the applicant had committed the crimes under investigation (see paragraph 11 (i) above). They further

referred expressly to the severity of those crimes and to the need to ensure the proper administration of justice (see paragraph 11 (ii) and (x) above).

28. The courts also found that the applicant had tried to abscond and to influence witnesses (see *Buzadji*, cited above, § 88, as well as paragraph 11 (iv) and (v) above respectively). Moreover, on the basis of the elements at their disposal, the courts could not exclude the risk of reoffending (see *Buzadji*, cited above, § 88; see also paragraph 11 (vi) above).

29. They also found that the applicant represented a danger to public order (see *Buzadji*, cited above, § 88; see also paragraph 11 (vii) and (v) above) and had abused his position in society in order to commit the alleged crimes (see paragraph 11 (iii) above). On this point, the Court reiterates that it has found that by reason of their particular gravity, and the public reaction to them, certain offences may give rise to social disturbance capable of justifying pre-trial detention, at least for a time. In exceptional circumstances this factor may therefore be taken into account for the purposes of the Convention, in any event in so far as domestic law recognises the notion of disturbance to public order caused by an offence. However, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the accused's release would actually disturb public order. In addition detention will continue to be legitimate only if public order remains actually threatened; its continuation cannot be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 20). In the present case the Count must note that Article 148 of the CCP, on which the Court of Appeal based its decisions (see paragraph 11 above), expressly recognises danger to public order as being among the reasons justifying detention pending trial (see paragraph 7 above, and *Bivolaru v. Romania*, no. 28796/04, § 69, 28 February 2017). The courts explained in detail the facts showing why public order was actually threatened in case of the accused's release. The Court can also see no reason to depart from the assessment made by the domestic courts as to the applicant's personal circumstances, and the weight the courts gave to his status in society (see paragraphs 11 (iii) and 24 above).

30. Furthermore, the Court of Appeal examined at regular intervals the appropriateness of extending the pre-trial detention (see paragraph 10 above), and took into account how the circumstances of the case were evolving (see paragraph 11 (viii) above; see also, *mutatis mutandis*, *Stavrache*, cited above, § 28, and *Ghiurău*, cited above, § 23).

31. The domestic courts also considered but rejected the possibility of imposing a less serious preventive measure (see paragraph 11 (ix) above; see also *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012).

32. Consequently, the Court concludes that the applicant's detention was based on relevant and sufficient grounds.

33. It remains to be ascertained whether the relevant national authorities displayed "special diligence" in the conduct of the proceedings (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 77, 22 October 2018). Regarding this point, the Court notes that the criminal proceedings were swift and that no periods of inactivity have been reported (see paragraph 15 above). The Court observes that although it indeed took a long time before the applicant was heard by the Court of Appeal in the proceedings on the merits of the accusations against him (see paragraphs 9, 15 and 24 above), the domestic court did not remain passive during this interval, but resolved procedural matters and other such preliminary issues. Moreover, the applicant was heard by the HCCJ soon after his arrest (see paragraph 9 above).

34. The Court therefore concludes that the length of the applicant's pre-trial detention does not disclose any appearance of a violation of Article 5 § 3 of the Convention (see, *mutatis mutandis*, *Stavarache*, cited above, §§ 25-30, and *Iordache v. Romania* (dec.), no. 8144/10, §§ 25-33, 14 November 2017, where the Court came to similar conclusions in relation to instances of pre-trial detention that lasted more than two years and two months, and one year and six months, respectively).

35. Accordingly, the application is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 4 February 2021.

Ilse Freiwirth Deputy Registrar	Gabriele Kucsko-Stadlmayer President