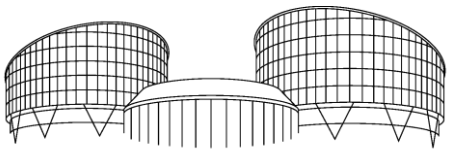

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KAROLY v. ROMANIA

(Application no. 33682/05)

JUDGMENT

STRASBOURG

11 February 2014

FINAL

11/05/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Karoly v. Romania,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Luis López Guerra,
Nona Tsotsoria,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 21 January 2014,

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

PROCEDURE

1. The case originated in an application (no. 33682/05) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Yozsef Karoly ("the applicant"), on 13 September 2005.

2. The applicant was represented by Mr C. Ciuhan, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Mrs I. Cambrea, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his pre-trial detention had been excessively long and the domestic courts had given insufficient reasons for its extension, in breach of Article 5 § 3 of the Convention.

4. On 27 January 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is a Romanian citizen of Hungarian origin who was born in 1971 and was detained at the date of lodging the application in Jilava Prison in Bucharest.

6. On 20 October 2003 the prosecutor's office attached to the Bucharest County Court arrested the applicant on suspicion of aggravated homicide

and robbery. On 22 October 2003 the Bucharest County Court granted the prosecutor's office's application for pre-trial detention in respect of the applicant, holding that the applicant was suspected of having stabbed a couple to death in order to take 13,000 US Dollars in cash from their house. The county court further held that the applicant represented a danger to the public order in the light of the severity of the crimes he was accused of and the punishment set by law for the respective crimes.

7. The applicant's pre-trial detention was successively extended by court order until he was convicted of aggravated homicide and robbery and sentenced to twenty three years' imprisonment by a judgment of the Bucharest County Court rendered on 23 September 2005. On 23 December 2005 the Bucharest Court of Appeal upheld the Bucharest County Court's judgment of 23 September 2005. By a final judgment of 12 May 2006 the High Court of Cassation and Justice dismissed the applicant's appeal on points of law and upheld the previous judgments.

8. The reasoning for the extension of the applicant's pre-trial detention remained unchanged in each order, namely the fact that there was a reasonable suspicion that the applicant had committed the crimes for which he was on trial and that the severity of the crimes implied that the applicant was a danger to the public order.

9. The applicant appealed against many of the orders extending his pre-trial detention, submitting that there was not enough evidence from which to infer a reasonable suspicion that he had committed the crimes, that he had a clean criminal record, that he had been open and honest during the proceedings and that there was no proof that, if set free, he would be a danger to the public order. He also repeatedly complained that his continuing detention without specific reasons based on his particular situation breached his rights under the Convention. His appeals were consistently rejected as without merit, the courts considering that the reasons for his initial pre-trial detention still existed without analysing the applicant's specific arguments.

10. In a judgment issued on 30 September 2004 on the applicant's appeal against the order to extend his pre-trial detention of 14 September 2004, the Bucharest Court of Appeal, quoting the Court's decisions in the cases of *Amuur v. France* and *Tomasi v. France*, held that the lower court had correctly decided that the reasons for the initial pre-trial detention still existed. The court further stated that pre-trial detention was regulated by the Code of Criminal Procedure in order to ensure the good progress of trials. Finally, the court decided that the evidence admitted to date in the case allowed the inference that there was a reasonable suspicion that the applicant had committed the crimes and this justified the extension of his detention.

II. RELEVANT DOMESTIC LAW

11. The relevant provisions of the Code of Criminal Procedure concerning placement in pre-trial detention and the extension of pre-trial detention during a criminal trial, in force at the relevant time, are described in *Pantea v. Romania* (no. 33343/96, § 150, CEDH 2003-VI).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

12. The applicant complained in substance that his pre-trial detention had been excessively long and that the orders by which his pre-trial detention was extended had not been based on relevant and sufficient reasons as required by 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 ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

13. 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.

B. Merits

14. The applicant complained that his pre-trial detention had been unlawfully extended for almost two years because the domestic courts had supported their decisions by simply citing the provisions of the law, without taking his specific situation into consideration. This had breached both the applicable provisions of domestic law and his rights under the Convention.

15. The Government contested that argument. They submitted that the applicant's pre-trial detention had been justified by the evidence against him and the complexity of the case. They further argued that the orders extending the applicant's pre-trial detention had been fully reasoned, giving as an example the judgment of 30 September 2004 of the Bucharest Court of Appeal.

16. The Court reiterates that a person charged with an offence must always be released pending trial unless the State can show that there are

"relevant and sufficient" reasons to justify the individual's continued detention (see, as classic authorities, *Wemhoff v. Germany*, 27 June 1968, § 12, Series A no. 7, and *Yagci and Sargin v. Turkey*, 8 June 1995, § 52, Series A no. 319-A).

17. The Convention case-law has developed four basic acceptable reasons for refusing bail. Those are the risks that, if released, the accused will: fail to appear for trial (see *Stögmüller v. Austria*, 10 November 1969, § 15, Series A no. 9); interfere with the administration of justice (see *Wemhoff*, cited above, § 14); commit further offences (see *Matznetter v. Austria*, 10 November 1969, § 9, Series A no. 10); or cause public disorder (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207).

18. The issue of whether a period of detention is reasonable cannot be assessed in the abstract. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on any applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts mentioned by the applicant in his 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 *Letellier*, cited above, § 35).

19. Arguments for and against release must not be "general and abstract" (see *Clooth v. Belgium*, 12 December 1991, § 44, Series A no. 225). Regard must be had in particular to the character of the person involved, his morals, his assets, his links with the State in which he is being prosecuted and his international contacts (see *W. v. Switzerland*, 26 January 1993, § 33, Series A no. 254-A, and the further references cited therein).

20. In the present case, the length of the applicant's detention was not short in absolute terms. Nevertheless, the Court cannot rule out the possibility that it might have been justified in the circumstances. But to reach such a conclusion the Court would first need to evaluate the reasons given by the domestic authorities to justify the detention. And it is these reasons that appear insufficient.

21. Indeed, the orders which the Court has at its disposal are remarkably terse and do not describe in detail the characteristics of the applicant's situation. All of the orders use the same reasoning based on the seriousness of the charge against the applicant and the implied danger to the public order to justify his detention. Similarly, although in the appellate decision of 30 September 2004 given as an example by the Government reference was made to the Court's case-law, those references were made without a full analysis being conducted and without giving any specific details pertaining to the applicant or considering any alternative measures of restraint.

Therefore, the Court notes that the domestic courts did not offer any explanation as to why the applicant's release would have an adverse impact on the public order.

22. The Court recalls that although the severity of the sentence which the applicant faced is relevant for the purposes of assessing whether he was at risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence (see *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 200; and *Segeda v. Russia*, no. 41545/06, § 63, 19 December 2013). Hence, systematic reference to the severity of the crime committed cannot replace substantive reasoning for the extension of an applicant's detention, based on facts connected to the applicant himself which would justify the existence of an actual threat to public order or any other grounds as provided in the Court's case-law (see *Lauruc v. Romania*, no. 34236/03, § 82, 23 April 2013).

23. The Court also notes that the applicant advanced before the national courts arguments questioning the grounds for his detention. He averred that there was not enough evidence from which to infer a reasonable suspicion that he had committed the crime, that he had a clean criminal record, had been open and honest during the proceedings and that there was no proof that, if set free, he would be a danger to the public order. However, the Court observes that the domestic courts devoted no consideration to any of these arguments in their relevant decisions (see paragraph 9 above). They limited themselves to repeating the formal grounds for detention provided by law. These grounds were cited without any attempt to show how they applied to the applicant's case. In this respect the Court reiterates that such an approach is not compatible with the requirements of Article 5 § 3 of the Convention (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II; and *Lauruc*, cited above, § 83).

24. The foregoing considerations are sufficient to enable the Court to conclude that the repeated extension of the applicant's pre-trial detention for a period of almost two years on the basis of insufficiently reasoned decisions amounts to a violation of Article 5 § 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. The applicant also complained under Article 5 § 2 about the authorities' failure to provide him with an interpreter at a certain stage of the investigation. He further complained under Article 6 of the Convention about the excessive length of the proceedings against him. Under the same Article he complained that his right to be presumed innocent had been breached by the length of his pre-trial detention and by the fact that during his pre-trial detention he had been held in a cell together with convicted prisoners. Finally, the applicant complained in substance under Article 6

§ 3 (b) that one of the hearings on the extension of his pre-trial detention had been held in the presence of a court-appointed lawyer who had not been afforded sufficient time for the preparation of his defence.

26. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as they fall within its jurisdiction, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be dismissed as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

29. The Government contended that the amount claimed as non-pecuniary damage was unsubstantiated and that the finding of a violation would constitute sufficient just satisfaction, having regard to the outcome of the criminal proceedings against the applicant.

30. The Court considers that, in the circumstances of the current case, the finding of a violation of Article 5 § 3 of the Convention constitutes sufficient just satisfaction for the applicant.

B. Costs and expenses

31. The applicant also claimed EUR 3,000 for costs and expenses incurred before the domestic courts, without providing any supporting documents.

32. The Government requested the Court to dismiss the applicant's claim as being unsubstantiated.

33. 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 lack of relevant documents justifying the payment of the expenses claimed and in the light

of its case-law, the Court rejects this claim (see *Alkaya v. Turkey*, no. 42811/06, § 48, 9 October 2012).

FOR THESE REASONS, THE COURT, UNANIMOUSLY

1. *Declares* the complaint under Article 5 § 3 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention due to the absence of sufficient reasons for the extension of the applicant's pre-trial detention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President