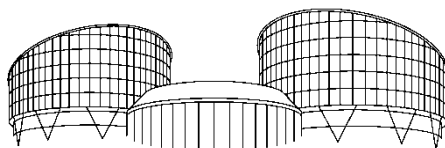


Il “ragionevole sospetto” come requisito essenziale per la restrizione della libertà personale (CEDU, sez. II, sent. 14 settembre 2021, ric. n. 53660/15)

La Corte EDU si è pronunciata sul ricorso presentato da una cittadina moldava, la quale lamentava di essere stata detenuta in assenza di ragionevoli sospetti riguardo alla presunta commissione del reato di frode. Ella veniva accusata, più specificamente, di aver sottratto con l'inganno alcune somme di denaro ad alcuni conoscenti. Di contro, la stessa sosteneva che le autorità nazionali, ordinando l'arresto non avevano fornito motivi pertinenti e sufficienti e ciò in violazione dell'art. 5 paragrafi 1 e 3 della Convenzione. Inoltre, ella invocava l'art. 1 del Protocollo n. 4 della Convenzione concernente il divieto di reclusione per inadempimento contrattuale, affermando conclusivamente che la controversia aveva natura civile ed era già stata definita in quella sede con una pronuncia di condanna. Secondo gli inquirenti l'ordine di arresto era stato, invece, necessario per via della omessa collaborazione della ricorrente all'accertamento dei fatti e per la mancata comparizione all'udienza.

La Corte EDU ha ribadito l'importanza cruciale dell'art. 5 CEDU nel panorama dei diritti fondamentali, il cui scopo è quello di prevenire privazioni di libertà arbitrarie e ingiustificate. In considerazione di ciò, il requisito del “ragionevole sospetto” costituisce una parte essenziale su cui deve fondarsi la restrizione della libertà personale. Sicché nella fattispecie in esame, i giudici di Strasburgo hanno contestato sostanzialmente l'azione del P.M. e, per conseguenza, quella delle autorità giudiziarie, le quali hanno ordinato e poi irragionevolmente prolungato la detenzione della ricorrente senza verificare preventivamente la fondatezza e la veridicità delle accuse. A questa stregua, la Corte ha concluso ritenendo non vi fosse alcun ragionevole sospetto sufficiente e plausibile in virtù del quale imputare alla ricorrente la commissione del reato di frode.



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

SECOND SECTION

CASE OF XXX v. THE REPUBLIC OF MOLDOVA

(Application no. 53660/15)

JUDGMENT

Dirittifondamentali.it (ISSN 2240-9823)

STRASBOURG

14 September 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

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

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

Jon Fridrik Kjølbro, *President,*

Carlo Ranzoni,

Valeriu Grițco,

Egidijus Kūris,

Branko Lubarda,

Pauliine Koskelo,

Marko Bošnjak, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 8 June and 24 August 2021,

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

PROCEDURE

1. The case originated in an application (no. 53660/15) 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 Xxx (“the applicant”), on 21 October 2015.
2. The applicant was represented by Mr C. Chira, a lawyer practising in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr O. Rotari.
3. The applicant alleged, in particular, that she had been remanded in custody in the absence of reasonable suspicion that she had committed a criminal offence, in breach of Article 5 § 1 of the Convention. She also alleged that she had been deprived of her liberty merely on the ground of inability to repay a debt, in breach of Article 1 of Protocol No. 4 to the Convention.
4. On 7 June 2017 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in xxx and lives in xxx.
6. At the time of the events she was married and owned a business specialising in the production of walnuts, with an estimated value of approximately 788,000 euros (EUR). She also owned several hundred hectares of agricultural land.
7. On an unspecified date the applicant borrowed 250,000 United States dollars (USD) from a bank. According to the terms of the contract, she had to repay the loan in monthly instalments of USD 11,000. The loan was secured on her house which, according to her, had an estimated value of approximately EUR 530,000.

8. In September 2012 she started experiencing financial difficulties and was late in paying the instalments due on her loan. As a result, the bank threatened to repossess and sell her house.
9. The applicant and her husband explored several solutions and decided to borrow money from one of her husband's friends, V.G.
10. On 23 September 2012 the applicant and her husband met V.G. and his wife and explained to them in detail the situation with the bank loan and the risk of them losing their house. The applicant and her husband told them that the money was to be used to pay the late instalments and promised to repay it within one month. V.G. and his wife agreed to lend the applicant 400,000 Moldovan lei (MDL – the equivalent of some EUR 25,000 at the time) for a period of one month, without interest. The applicant wrote out an undated receipt, in which she acknowledged the loan and promised to repay it by 23 October 2012.
11. The next day the applicant and her husband went to the bank and paid the late instalments with the money borrowed from V.G.
12. Since the applicant did not comply with her promise to repay the loan within the agreed time-limit, on 27 October 2012 V.G. visited her at her home and asked for his money. The applicant explained that due to unforeseen circumstances she could not pay him back. She wrote out another receipt, in which she acknowledged the debt and promised to repay it as soon as she had the means.
13. In 2013 the applicant's financial situation deteriorated further as a result of tensions between her and her husband, which culminated in her husband suing her for an alleged debt of some EUR 600,000. It appears from the case material that all of her assets were frozen pending those proceedings. The applicant challenged the decision to freeze her assets arguing, *inter alia*, that they were worth much more than the amount claimed by her husband. It appears that she was unsuccessful in challenging the freezing of her assets and that she officially divorced her husband in January 2015. The outcome of the proceedings between her and her former husband is unknown to the Court.
14. On 2 February 2014 V.G. visited the applicant again and obtained another receipt from her, in which she acknowledged the debt and promised to repay it within two weeks. It was also agreed that if she failed to respect the deadline, V.G. would bring civil proceedings against her.
15. Since the applicant again failed to keep her promise, on 24 February 2014 V.G. brought civil proceedings against her.
16. On 8 September 2014 the applicant met V.G. and wrote out another receipt, in which she acknowledged the debt and promised to repay it by the next court hearing.
17. During the proceedings the applicant's lawyer questioned the authenticity of the signature on the receipt dated 2 February 2014 and the court ordered an expert handwriting analysis. Nevertheless, the applicant did not deny having borrowed the money from V.G. and concluded a settlement agreement with him on 26 January 2015. It appears from the applicant's later submissions that the lawyer had acted without consulting her when challenging the validity of the signature, with a view to prolonging the proceedings.
18. On 27 March 2015 the Rîșcani District Court made a final ruling in the civil proceedings brought by V.G. against the applicant and ordered the applicant to pay him and his wife MDL

492,051, representing the amount of the debt, default interest and court fees. The applicant did not challenge this decision and it became final one month later.

19. In the meantime, on 4 February 2015 V.G.'s wife lodged a criminal complaint against the applicant, arguing that she and her husband had been defrauded by her. She explained that she and her husband had lent the applicant MDL 400,000 on 23 September 2012 for a period of thirty days so that the latter could pay her late instalments on the loan taken from a bank. After that, the applicant had not taken any steps with a view to repaying the debt and had kept avoiding them and dropping receipts in their letterbox with promises to repay the debt by different dates. She had not kept any of her promises and had lately started to question the validity of her own signatures. V.G.'s wife speculated that it was possible that she had done all of that in order to protract matters and leave the country without repaying the debt and that she had probably also taken money from other people.

20. On 6 February 2015 the Rîșcani prosecutor's office initiated criminal proceedings against the applicant on charges of fraud. She was accused of appropriating a large amount of money from V.G.'s family by deception and abuse of trust, an offence under Article 190 § 5 of the Criminal Code (see paragraph 44 below).

21. On 12 and 19 March 2015 the applicant was sent a summons to appear before the prosecutor in charge of the case. Since she did not comply, on 7 April 2015 the prosecutor ordered that the applicant be brought compulsorily. The police did not find her at home on that date. They attempted to find her on several other occasions without success and were informed by the neighbours that she was rarely at home.

22. On 23 April 2015 the prosecutor in charge of the case applied to an investigating judge to order the applicant's custody pending trial. The prosecutor stated the following in respect of the reasonable suspicion that she had committed a criminal offence:

"On 23 September 2012 [the applicant] and her husband visited V.G. and his wife ... Having misled the latter by divulging false information about financial problems she was facing and the possible consequences for her family and assets, and by lying and abusing trust, [the applicant] unlawfully obtained MDL 400,000 from the victims. Later, she refused to acknowledge [the debt] and refused to repay it, arguing that her signature on the receipt dated 2 February 2014 was false. However, her allegation was proved to be wrong by an expert analysis dated 23 February 2015. ... Therefore, through her premeditated actions, [the applicant] committed an offence under Article 190 § 5 of the Criminal Code, that is, she unlawfully appropriated another person's property by way of deception and abuse of trust, thus causing substantial loss to the victims.

...

The reasonable suspicion that [the applicant] committed the imputed criminal offence is confirmed by statements of the victims, witness statements and other evidence ..."

23. In giving reasons for remanding the applicant in custody, the prosecutor submitted that the applicant was avoiding the investigating authorities, thus hindering the investigation. Because of her failure to cooperate with the investigating authorities, the prosecutors were unable to verify the version of events given by the victims. Moreover, the applicant and her husband were being investigated in another set of criminal proceedings concerning accusations of fraud and abuse of

trust connected with the sale of a plot of agricultural land measuring 74 hectares in the district of Criuleni, and were hiding from the authorities. If she remained at large, she could re-offend.

24. On 27 April 2015 the Rîșcani District Court ordered the applicant's custody for a period of ten days. The court considered that the statements of V.G. and his wife, as well as the results of the expert analysis of the applicant's signature on the receipt of 2 February 2014, constituted reasonable suspicion that she had committed a criminal offence. The court did not mention the witness statements mentioned in the prosecutor's application. The court considered it necessary to place the applicant in custody because she was avoiding the authorities. She appealed against that order through her lawyer.

25. On 5 May 2015 the Chișinău Court of Appeal dismissed the applicant's appeal and upheld the decision to place her in custody.

26. On 14 May 2015 the applicant was arrested and placed in detention. Shortly after her arrest she lodged a *habeas corpus* application arguing, *inter alia*, that the matter was clearly of a civil nature and could not be treated as a criminal offence. She also pointed to the final judgment of 27 March 2015 in the civil proceedings between her, V.G. and his wife.

27. On 15 May 2015 the applicant was visited by the prosecutor in charge of the case. It appears from the case material that she made a statement to the effect that she denied the accusations against her and did not consider herself guilty. It does not appear that she was questioned on that date.

28. On 18 May 2015 the prosecutor applied to extend the applicant's detention for a period of thirty days. The application was identical to that of 23 April 2015, in that it repeated the argument that the prosecutors were unable to verify the version of events given by the victims due to the applicant's failure to cooperate with them.

29. On 21 May 2015 the Rîșcani District Court dismissed the applicant's *habeas corpus* application and allowed the prosecutor's application to extend the applicant's detention for another thirty days. An appeal by the applicant against that decision was dismissed by the Court of Appeal on 28 May 2015.

30. On 4 June 2015 the applicant lodged a *habeas corpus* application arguing, *inter alia*, that the matter was of a civil nature and that the prosecutor's office had intentionally failed to inform the court of the final judgment of 27 March 2015 in the civil proceedings between her and V.G. The applicant also argued that there was no reasonable suspicion that she had committed a criminal offence.

31. On 5 and 9 June 2015 the applicant was questioned for the first time. She confirmed that she had visited V.G. and his wife on 23 September 2012 with a view to borrowing money which she had needed to pay two instalments on her loan from a bank. However, the money had been borrowed by her former husband and not her. She pointed to the fact that she had met V.G. and his wife for the first time in her life that day. According to her, V.G. had been her former husband's friend and they had had a relationship of trust. When she and her former husband had arrived at V.G.'s house, the money had already been prepared and had been handed to her former husband after being counted. No receipt had been written by her on that date. The next day her former husband had gone to the bank, paid the instalments due and obtained confirmation of payment. In April 2015 she had learned from him that he had repaid the MDL 400,000 to V.G. on 30 October

2012. According to her, proof of that was the fact that, in the civil litigation between her and her former husband in 2013, he had sought to obtain from her, among other amounts, the amount of money borrowed from V.G. and paid to the bank. He had presented the confirmation which he had obtained from the bank on 24 September 2012 as evidence in support of his claim against her.

32. As to the receipts acknowledging the debt of MDL 400,000 towards V.G. and his wife, the applicant stated that they had indeed been written by her but only in 2014 and only as a result of pressure from V.G., who had threatened her with violence, setting her house on fire and harming her children.

33. She also stated that she did not consider herself guilty of the offence imputed to her, that the matter was of a civil nature and that her detention was unlawful.

34. On 10 June 2015 face-to-face confrontations were held between the applicant and the victims and the applicant and her former husband. The applicant's former husband denied that he had repaid MDL 400,000 to V.G. and maintained that the money had been borrowed by the applicant and not him.

35. On 16 June 2015 the applicant's lawyer gave the prosecutor in charge of the case a copy of the judgment of 27 March 2015 in the civil proceedings between the applicant and V.G. and the audio recording of a conversation between the applicant's former husband and a relative of the applicant in which he admitted to having repaid the debt of MDL 400,000 to V.G. and his wife. The applicant's lawyer argued that that evidence proved the civil nature of the matter.

36. Since the prosecutor in charge of the case refused to add that evidence to the file, the applicant's lawyer requested his removal from the case and argued that he lacked impartiality. It appears that the request was dismissed.

37. On 17 June 2015 the Rîșcani District Court dismissed the applicant's *habeas corpus* application of 4 June 2015 and upheld the decision of 21 May 2015.

38. On 18 June 2015 the prosecutor in charge of the case applied to the Rîșcani District Court to extend the applicant's detention for another thirty days. However, the application was dismissed by that court on 22 June and by the Chișinău Court of Appeal on 6 July 2015. The applicant was released from detention on 23 June 2015.

39. On 24 June 2015 the prosecutor questioned the applicant's former husband. He was asked about the audio recording presented by the applicant's lawyer of him discussing with someone, the applicant's relative, the applicant's debt towards V.G. In the recording he admitted to having repaid the debt to V.G. When asked about the recording, the applicant's former husband stated that it should not be taken seriously and that he had never repaid the debt to V.G. The recording had been made in an attempt to help the applicant. He also stated that he had discussed the matter with V.G. and had asked him to revoke his criminal complaint against the applicant, but V.G. had refused to do so unless she repaid the debt.

40. On 25 May 2016 the applicant was found guilty as charged by the Rîșcani District Court and sentenced to nine years' imprisonment. The court held that the applicant had lied to V.G. and his wife that the loan would be repaid within one month. This was proved by the fact that at the time of taking the loan, she had had no money. The applicant had exploited the trust which V.G. and his wife had had in her former husband and had led them to believe that she would repay the loan. The court accepted that, in the beginning, the matter had been of a civil nature. However,

later, as a result of the applicant's behaviour, it had migrated into the field of criminal law. In that connection, the court highlighted the fact that she had contested through her lawyer the validity of her signature on a receipt in the civil proceedings between her and V.G. and requested an expert analysis. The court also highlighted the fact that she did not accept that she was guilty of the criminal offence imputed to her.

41. On 19 September 2017 the Chişinău Court of Appeal dismissed an appeal by the applicant against that decision and upheld the judgment of the first-instance court.

42. On 30 January 2018 the Supreme Court of Justice quashed the judgment of the Chişinău Court of Appeal and sent the case for re-examination before that court. The Supreme Court cited, *inter alia*, the provisions of Article 1 of Protocol No. 4 to the Convention and argued that the Court of Appeal had failed to give sufficient reasons for finding that the applicant had intended to defraud V.G. and his wife at the time of taking the loan. Moreover, the Supreme Court of Justice found that the Court of Appeal had failed to take into consideration the fact that, at the time of taking the loan, the applicant had owned the entire capital of a walnut business estimated at approximately EUR 788,000.

43. The criminal proceedings against the applicant are still pending.

II. RELEVANT NON-CONVENTION MATERIAL

Domestic law

44. Article 190 § 5 of the Criminal Code reads as follows:

Fraud (Escrocheria)

"(1) Fraud, [that is] the unlawful obtaining of the goods of another by means of deception or abuse of trust shall be punishable ...

...

(5) ... with [eight] to [fifteen] years' imprisonment and a ban on occupying certain functions and practising certain activities for a period of [five] years ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 3 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 4 TO THE CONVENTION

45. The applicant complained that she had been detained between 14 May and 23 June 2015 in the absence of reasonable suspicion that she had committed a criminal offence, and that the domestic authorities had failed to provide relevant and sufficient reasons for the detention, as required by Article 5 §§ 1 and 3 of the Convention. The relevant parts of Article 5 read as follows:

Right to liberty and security

"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:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

...

3. 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.

..."

46. The applicant also complained that her detention for forty days had amounted to deprivation of her liberty merely on the ground of inability to fulfil a contractual obligation. She relied on Article 1 of Protocol No. 4 to the Convention, which reads as follows:

Prohibition of imprisonment for debt

"No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation."

A. Admissibility

47. The Court notes that the application 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

1. *The parties' submissions*

48. The applicant submitted that she had not committed a criminal offence and that the matter had been a purely civil dispute between her on the one hand and V.G. and his wife on the other. Therefore, there had been no reasonable suspicion that she had committed a criminal offence. Moreover, the prosecutors had not properly summoned her to appear before them. She had been away on business and had not received the summons. Instead of attempting more diligently to inform her about the criminal proceedings against her, the authorities had been quick to accuse her of avoiding the investigation and order her custody. According to the applicant, her detention had amounted to deprivation of liberty for failure to repay a debt.

49. The Government submitted that the submissions of V.G. and his wife as well as the expert analysis of the applicant's signature in the civil proceedings had constituted reasonable suspicion that the applicant had committed the offence imputed to her. As to the reasons for placing the applicant in custody, the Government submitted that her failure to appear when summoned and her avoiding the investigating authorities had constituted relevant and sufficient reasons for that purpose. The Government further submitted that Article 1 of Protocol No. 4 to the Convention did not apply to the circumstances of the present case, because the applicant had been found guilty of

fraud against V.G. and his wife. However, if the applicant was eventually acquitted, she would be able to seek compensation for her detention.

2. The Court's assessment

50. 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, and as such its importance is paramount. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty. Three strands of reasoning in particular may be identified as running through the Court's case-law: the exhaustive nature of the exceptions, which must be interpreted strictly, and which do not allow for the broad range of justifications under other provisions (Articles 8 to 11 of the Convention in particular); the repeated emphasis on the lawfulness of the detention, both procedural and substantive, requiring scrupulous adherence to the rule of law; and the importance of the promptness or speediness of the requisite judicial controls (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 84, ECHR 2016 (extracts), with further references).

51. The Court reiterates that in order for an arrest on reasonable suspicion to be justified under Article 5 § 1 (c) it is not necessary for the police to have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant is in custody (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, § 53, Series A no. 145-B). Nor is it necessary that the person detained should ultimately have been charged or brought before a court. The object of detention for questioning is to further a criminal investigation by confirming or discontinuing suspicions which provide the grounds for detention (see *Murray v. the United Kingdom*, 28 October 1994, § 55, Series A no. 300-A). However, the requirement that the suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention. The fact that a suspicion is held in good faith is insufficient. The words "reasonable suspicion" mean the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 32, Series A no. 182).

52. Turning to the facts of the present case, the Court notes in the first place that the prosecutor's applications lodged with the Rîșcani District Court on 23 April and 18 May 2015 to seek the applicant's custody pending trial and the extension of her detention were identical in respect of the reasons relied upon therein. The Court shall therefore examine both the application for the applicant's detention and that for the prolongation thereof together.

53. In the above applications the prosecutor in charge of the case presented what appears to be a version of the events which did not match that recounted by V.G. and his wife. In particular, he submitted that the applicant had lied to V.G. and his wife about her financial problems and the possible repercussions on her family and assets. The Court notes that no such statements were made by the alleged victims in their criminal complaint. The prosecutor also incorrectly submitted that after borrowing the money, the applicant refused to acknowledge the debt.

54. In so far as the reasonable suspicion that the applicant had committed the offence imputed to her is concerned, the prosecutor contended that it consisted of two elements: (a) the victims' and the witnesses' statements and (b) the applicant's denial of the validity of her signature on the receipt of 2 February 2014 (see paragraph 22 above). At the same time, when referring to the grounds for detention, the prosecutor admitted that the victims' statements could not be verified at

that time due to the applicant's lack of cooperation (see paragraph 23 above). The prosecutor did not indicate which witnesses he referred to and did not make any submission in respect of any witness statement. He also omitted to inform the court of the existence of several other receipts undisputed by the applicant, the settlement agreement signed by her and V.G. on 26 January 2015, the judgment of 27 March 2015 in the civil proceedings (which had become final during the applicant's detention) and the fact that the applicant had not appealed against that judgment. In other words, (a) the truthfulness of the victims' statements was entirely unverified and (b) the prosecutor presented truncated and misleading information to the court in respect of the remaining element of reasonable suspicion.

55. Notwithstanding the above, the Rîșcani District Court and the Chișinău Court of Appeal allowed the prosecutor's applications and ordered the applicant's custody for some forty days. When ordering and extending the applicant's detention, the courts were not in possession of any evidence to suggest that the applicant had not intended to repay the debt at the time of borrowing or that she had known that repaying it would be impossible. The courts did not verify the value of the applicant's assets at the time of borrowing, nor did they question what the money had been borrowed for and whether it had been used for that purpose. They did not enquire whether a civil avenue for recovering the debt had been used by the alleged victims and, if not, for what reason. Neither did the courts enquire whether V.G. had attempted to seek enforcement of the judgment of 27 March 2015.

56. When extending the applicant's detention, after the applicant had already been detained, the courts did not enquire whether the prosecutor had verified the victims' statements and did not enquire why it took the prosecutor three weeks after the applicant's arrest to question her for the first time. It would therefore appear that the courts accepted unreservedly and without any prior verification the position of V.G. and his wife which, for obvious reasons, could not be considered objective and unbiased. Moreover, they accepted without any reservation the incomplete and misleading statements made by the prosecutor in his applications to detain the applicant and to prolong her detention.

57. In the light of the above, the Court is not satisfied that the material put forward by the prosecuting authority and relied upon by the domestic courts to detain the applicant and prolong her detention was sufficient to persuade an objective observer that the applicant might have committed the offence imputed to her. It concludes therefore that the applicant's detention between 14 May and 23 June 2015 was not based on a reasonable suspicion that she had committed an offence and thus there has been a violation of Article 5 § 1 of the Convention.

58. In view of the above finding the Court does not consider it necessary to examine separately whether the applicant's detention was based on relevant and sufficient reasons as required by Article 5 § 3 of the Convention and whether her detention amounted to imprisonment for debt within the meaning of Article 1 of Protocol No. 4 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 12,000 euros (EUR) in respect of non-pecuniary damage.

61. The Government contested the amount of non-pecuniary damage claimed by the applicant, arguing that it was excessive.

62. The Court considers that the applicant must have suffered stress and frustration as a result of the violation found and awards her EUR 7,500 for non-pecuniary damage.

B. Costs and expenses

63. The applicant also claimed EUR 3,075 for costs and expenses incurred before the Court.

64. The Government considered the amount claimed excessive.

65. Having regard to the documents in its possession, the Court considers it reasonable to award the applicant EUR 2,000 for costs and expenses.

C. Default interest

66. 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 § 3 of the Convention;
4. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 4 to the Convention;
5. *Holds*
 - (a) 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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand 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.

Done in English, and notified in writing on 14 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Deputy Registrar

Jon Fridrik Kjølbro President

