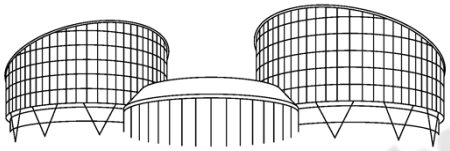

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF GËLLÇI v. ALBANIA

(Application no. 15468/23)

JUDGMENT

STRASBOURG

25 February 2025

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

In the case of Gëllçi v. Albania,

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

Oddný Mjöll Arnardóttir*, President*,

Darian Pavli,

Diana Kovatcheva*, judges*,

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 15468/23) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 5 April 2023 by a national of Albania and the United States of America, Mr Thoma Gëllçi ("the applicant"), who was born in 1961, lives in Tirana and was represented by Mr D. Matlija, a lawyer practising in Tirana;

the decision to give notice of the complaints under Article 5 § 3 of the Convention, concerning the applicant's pre-trial detention, to the Albanian Government ("the Government"), represented by their Agent, Mr O. Moçka, General State Advocate, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 4 February 2025,

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

SUBJECT MATTER OF THE CASE

1. The case concerns complaints under Article 5 § 3 of the Convention, regarding the grounds for the applicant's pre-trail detention. Such detention was ordered in the context of the criminal proceedings against the applicant on charge of abuse of office, on account of his alleged involvement as the director of the Albanian Public Television (*Televizioni Shqiptar*) in concluding public tender contracts concerning purchase of technical equipment.

2. In these proceedings, at the prosecutor's request, on 7 October 2021, the First Instance Court for Anticorruption and Organised Crime ordered the applicant's pre-trial detention. The first-instance court held that there was a reasonable suspicion that the applicant had organised the public tender at issue without previously obtaining permission from the Albanian Media Authority, as required by law. He was also suspected of having extended the deadline for the enforcement of the contract without that possibility being provided for by law. The applicant had, thus, given additional time to the winning party, placing the other bidders at disadvantage, and misused the public money, contrary to the public interest.

3. As to the grounds for ordering the applicant's detention on remand, the first-instance court held that not all evidence had yet been collected by the

prosecution, and that the applicant, if at large, could tamper with the evidence and put pressure on witnesses. The prosecution had collected documentary evidence, but some potential witnesses had not yet given their statements. The court also held that the applicant had frequently travelled outside Albania, and posed a risk of fleeing once he had learned of the charges against him.

4. The applicant was arrested on 7 October 2021 and on 11 October 2021 he appeared before the first-instance court. He submitted that he had been dismissed from office five months before and therefore had no possibility to tamper with the tender records. He added that the suspicions against him were based exclusively on documents which had already been seized by the prosecution, and, therefore, there was no risk of him tampering with any witness or other evidence. As regards the risk of absconding, he argued that he had surrendered to the authorities and the confiscation of his passport and/or another security measure would be sufficient to ensure that he would not abscond. He argued that his detention in prison was disproportionate on account of his health and age. He asked the court to order a more lenient security measure.

5. On the same date, the first-instance court confirmed the applicant's pre-trial detention, holding that the circumstances under which it had ordered the applicant's pre-trial detention had not changed in the meantime, and that such security measure was still justified by the seriousness of the offence and the possible punishment.

6. By way of two submissions of 28 and 29 October 2021 the applicant reiterated his previous arguments (see paragraph 4 above) before the Court of Appeal for Anti-Corruption and Organised Crime. He added that since his placement in detention on 11 October 2021, the prosecutors had not carried out any investigative measure, including his own questioning. He also argued that the prosecutors had not specified which evidence was in danger of being tampered with and had failed to explain why such evidence had not been collected in the past twenty months since the investigation had been opened. As regards the risk of absconding, the applicant stated that he had been in the United States during the prior summer months and had come back to Albania despite being aware of the investigation against him. He reiterated that a less stringent measure against him would satisfy the risks relied on by the prosecutors.

7. On 30 October 2021 the appeal court dismissed the applicant's appeal and endorsed the reasoning and conclusions of the first-instance decision. It held that the applicant knew the victims of the alleged offense, the party that had been unduly favoured in the tender and the other suspects, therefore there was a risk that they would collude and tamper with the evidence. In the court's view, the mere "ban on leaving the country" or any other less stringent measure was insufficient to address the said risks. The appeal court added that the applicant's personality was "particularly dangerous" given that the

criminal offences held against him involved the abuse of office and misuse of public funds and carried a sanction of up to seven years' imprisonment.

8. The applicant's further requests of 10 November 2021, 9 December 2021, 9 February 2022, and 19 April 2022, that his pre-trial detention be lifted or substituted by other measures were dismissed by the domestic courts on the ground that the conditions under which the pre-trial detention had been ordered had not changed.

9. On 27 January and 9 November 2022, the Supreme Court and the Constitutional Court, respectively, dismissed the applicant's appeals on admissibility grounds. The final decision was served on the applicant on 5 December 2022.

10. On 2 June 2022 the first-instance court found the applicant guilty as charged and sentenced him to one year and four months' imprisonment.

11. On 30 August 2022 at the applicant's request, the first-instance court lifted his detention and ordered his immediate release.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

12. The applicant complained under Article 5 §§ 1 (c) and 3 of the Convention that there was no valid ground for ordering his pre-trial detention, and that the length of his pre-trial detention had been excessive.

13. The Court, being the master of characterisation to be given in law to the facts of the case, considers that this complaint falls to be examined only under Article 5 § 3 of the Convention (see, for example, *Margaretić v. Croatia*, no. 16115/13, § 75, 5 June 2014).

A. Admissibility

14. The Government argued that the applicant had lost the victim status since at the time he had submitted his application with the Court, the security measure had already been lifted.

15. The applicant argued that the domestic courts had not acknowledged the violation of his right to personal liberty.

16. The Court notes that the applicant spent more than seven months in pre-trial detention, and that the mere fact that it had ended prior to the submission of his application with the Court cannot deprive him of the victim status of the alleged violation of Article 5 of the Convention.

17. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

18. The relevant domestic law is set out in *Delijorgji v. Albania*, no. 6858/11, §§ 39-50, 28 April 2015, and *Hysa v. Albania*, no. 52048/16, §§ 26-41, 21 February 2023.

19. The Court reiterates that persistence of a reasonable suspicion is a condition sine qua non for the validity of pre-trial detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether other grounds given by the judicial authorities continue to justify the deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 84-91, 102, ECHR 2016, and *Merabishvili v. Georgia* ([GC], no. 72508/13, §§ 222 -25, 28 November 2017).

20. Turning to the present case, the Court notes that the applicant's detention for the purposes of Article 5 § 3 of the Convention began on 8 October 2021 and ended with his conviction on 2 June 2022. It accordingly lasted seven months and twenty-six days.

21. The Court is satisfied that the domestic courts, on the basis of available evidence, established that there existed a reasonable suspicion that the applicant had committed the offence of abuse of official position.

22. As to the grounds for the applicant's detention, the domestic courts relied principally on the risk that the applicant might tamper with evidence and collude with witnesses, and the risk of absconding.

23. The domestic courts referred to the need for obtaining additional evidence as a ground for the applicant's prolonged detention, without having made any further attempt to show how it applied concretely to the applicant's case and its developments. They failed to specify the concrete pieces of evidence that were still to be collected as well as to explain why those pieces of evidence could not have been collected at an earlier stage of the investigation. They did not respond to the applicant's submission that the suspicion against him was based exclusively on documents which had already been seized by the prosecution, and that, therefore, there was no risk of him tampering with any witness or other evidence (see paragraph 4 above) The domestic courts only referred, in general terms, to a risk that, if released, the applicant might tamper with the evidence, and intimidate witnesses (compare *Trzaska v. Poland*, no. 25792/94, § 65, 11 July 2000; *Hristov v. Bulgaria*, no. 35436/97, § 105, 31 July 2003; *Belchev v. Bulgaria*, no. 39270/98, § 79, 8 April 2004; and *Eldar Hasanov v. Azerbaijan*, no. 12058/21, § 135, 10 October 2024). The Government's assertion that the applicant was familiar with the persons from whom the statements were to be obtained, lacking any supporting concrete factual evidence or any indication of actual

attempts by the applicant to engage in tampering with evidence, cannot be accepted.

24. As to the risk of absconding, the Court notes that the applicant's arguments that he had been abroad and voluntarily returned to Albania in the preceding months, and that he had voluntarily surrendered to the authorities, once informed of the detention order against him, have not been duly weighted, also in light of the factors relating to the person's character, his morals, home, occupation, assets, family ties and other links to Albania (compare *Buzadji*, cited above, §§ 90 and 118). The Court further notes that the domestic courts' reasoning did not evolve to reflect the developing situation and to verify whether those grounds remained sufficient at the advanced stage of the proceedings.

25. Nor does it appear that any alternative security measures were duly considered by those courts beyond a mere formal statement, and despite the applicant's multiple requests to this effect.

26. Having regard to its case-law on the subject and the above considerations, the Court concludes that the grounds given by the domestic authorities were not "sufficient" to justify the applicant's being kept in detention for the relevant period of seven months and twenty-six days from 8 October 2021 to 2 June 2022.

27. Under these circumstances, it is not necessary to examine whether the proceedings were conducted with special diligence.

28. There has accordingly been a violation of Article 5 § 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 3, 000 in respect of costs and expenses incurred before the domestic courts and EUR 2,880 for those incurred before the Court.

30. The Government contested the applicant's claim.

31. The Court awards the applicant EUR 500 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

32. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 5,000 covering costs under all heads, plus any tax that may be chargeable to the applicant, to be paid into the representative's bank account as identified by him (compare *Carabulea v. Romania*, no. 45661/99, §§ 180 and 181, 13 July 2010).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *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 500 (five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representative's bank account as indicated by him;
   (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;

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

Done in English, and notified in writing on 25 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Oddný Mjöll Arnardóttir
President