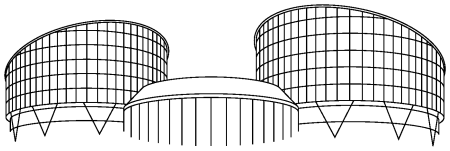

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF FRROKU v. ALBANIA

(Application no. 47403/15)

JUDGMENT

STRASBOURG

18 September 2018

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 Frroku v. Albania,

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

Robert Spano, *President,*
Ledi Bianku,
Işıl Karakaş,
Valeriu Griţco,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström,
Ivana Jelić, *judges,*

and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 28 August 2018,

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

PROCEDURE

1. The case originated in an application (no. 47403/15) 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") by an Albanian national, Mr Mark Frroku ("the applicant"), on 22 September 2015.

2. The applicant was represented by Mr T. Prendi, a lawyer practising in Tirana. The Albanian Government ("the Government") were represented by their Agent, Ms A. Hicka of the State Advocate's Office.

3. The applicant alleged that his detention in relation to charges under Articles 257/a and 287 of the Criminal Code was unlawful.

4. On 5 February 2016 the complaint concerning the unlawfulness of his detention in relation to charges under Articles 257/a and 287 of the Criminal Code was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Albania. He was a Member of Parliament from 2013 until 20 October 2015.

A. First set of criminal proceedings against the applicant

6. On 20 March 2015 the General Prosecutor's Office ("the GPO") initiated criminal proceedings against the applicant for making a false report of a crime and false statements before a prosecutor and for threatening people in order to obtain false statements in breach of Articles 305, 305/a and 312/a of the Criminal Code ("the CC").

7. Having regard to his parliamentary immunity, on 26 March 2015 Parliament authorised the applicant's arrest. As a result, on the same day the GPO ordered his arrest, which was carried out with immediate effect.

8. On 27 March 2015 the GPO asked the Supreme Court to validate the applicant's arrest.

9. On 28 March 2015 the Supreme Court found that the GPO had complied with domestic law in ordering the applicant's arrest, since it had obtained Parliament's prior authorisation in accordance with Article 73 § 2 of the Constitution. The applicant had been charged with a number of offences. Given his public office, his financial situation, the possibility that he could tamper with evidence, and information obtained from the Belgian authorities about his alleged involvement in the commission of a crime in Belgium, there was reasonable suspicion that he might flee. The Supreme Court thus considered that the applicant's deprivation of liberty was lawful. As to the security measure to be imposed on the applicant, the Supreme Court ordered his placement under house arrest.

B. Second set of criminal proceedings against the applicant

10. On 27 March 2015 the Interpol office in Tirana ("Interpol Tirana") informed the GPO of the existence of an international arrest warrant against the applicant. The warrant, no. B1/07 OPC, had been issued on 3 December 2014 by the Belgian prosecutor's office at the Brussels Court of Appeal, in connection with the criminal offence of premeditated murder committed in collusion with others. It appears from the case file that, according to a Red Notice issued by Interpol in respect of the applicant, he was wanted for prosecution purposes.

11. On 28 March 2015, relying on Article 6 of the CC, Article 287 of the Code of Criminal Procedure ("the CCP") and Article 38 § 7 of the Jurisdictional Relations Act, the GPO initiated fresh criminal proceedings against the applicant for committing premeditated murder in collusion with others under Article 78/1 and 25 of the CC. On the same day the prosecutor's office requested authorisation from Parliament with a view to ordering the applicant's arrest.

12. On 2 April 2015 Parliament authorised the applicant's arrest, in line with the GPO's request of 28 March 2015.

C. Third set of criminal proceedings against the applicant

13. On 1 April 2015, relying on a criminal report filed by the High Inspectorate for the Declaration and Audit of Assets and the Prevention of Conflicts of Interest, the prosecutor's office initiated criminal proceedings against the applicant for laundering the proceeds from a criminal offence or activity and refusing to state or falsely stating what his possessions were in breach of Articles 287 and 257/a of the CC. On the same date the prosecutor's office decided to join that set of proceedings to the second set of proceedings.

14. On 2 April 2015, following Parliament's authorisation on the same day (see above), the applicant was detained in connection with the second and third set of criminal proceedings. The arrest warrant referred to a letter from the Tirana Police Directorate stating "the enforcement of the security measure of house arrest cannot be entirely guaranteed, on account of the geographical position of the applicant's house, the large surface area of the house, the existence of more than two entry and exit gates, and the existence of numerous buildings constructed adjacent to and around the house".

D. Judicial proceedings concerning the lawfulness of the applicant's detention on 2 April 2015

1. Proceedings before the Supreme Court

15. On 2 April 2015 the prosecutor asked the Supreme Court to validate the applicant's detention.

16. On 3 April 2015 the Supreme Court decided that the applicant's detention was lawful. Since he had been charged with offences punishable by no less than two years' imprisonment, his detention was in compliance with Article 253 of the CCP. There were reasonable grounds to believe that there was a risk of flight on account of the offences with which he was charged. The applicant was a member of parliament, he had financial means, and there was a risk that he might tamper with the collection of evidence or abscond from justice.

17. The Supreme Court further stated that the security measure of detention (*arrest*) should be imposed in accordance with Articles 228-230 of the CCP, and this entailed the fulfilment of three conditions: firstly, that there was a reasonable suspicion, based on evidence, that the accused had committed a crime; secondly, that the facts attributed to the accused constituted a criminal offence which had not become time-barred, as provided for by the criminal law; and thirdly, that the accused was criminally responsible for the alleged criminal offence. In the Supreme Court's view, all three conditions had been cumulatively fulfilled in the applicant's case. Further, the applicant's detention complied with the criteria laid down in Article 229 of the CCP, and would also be justified by

the need to prevent any interference by the applicant in the administration of justice because of his public office, and the need to prevent further consequences resulting from the offence.

18. In his dissenting opinion, Judge A.B. stated that a risk of flight should not rest on assumptions, hypotheses, suppositions or second guesses. The fact that the police could not secure the applicant's house arrest should not have been held against him. The prosecutor had not discharged the burden of proof in relation to the assertion that the applicant intended or would attempt to flee. The case file did not contain evidence of any risk of flight.

2. Proceedings before the Constitutional Court

19. On 26 May 2015 the applicant appealed to the Constitutional Court. He complained that the prosecutor should firstly have sought Parliament's authorisation to institute a criminal investigation against him before seeking authorisation for his arrest. Further, no authorisation for his arrest had been given by Parliament in relation to the charges under Articles 287 and 257/a of the CC. The criminal proceedings initiated against him in relation to the alleged crime in Belgium had been in breach of the European Convention on the Transfer of Proceedings in Criminal Matters, because the Belgian authorities had not asked the Albanian authorities to initiate any proceedings against him.

20. On 6 July 2015 the Constitutional Court, composed of a bench of three judges, dismissed the applicant's appeal. It reasoned that Article 73 § 2 of the Constitution, as amended in 2012, required Parliament's authorisation for, amongst other things, the arrest of a member of parliament, Parliament's authorisation for the institution of a criminal investigation having been repealed. The security measures imposed on the applicant by the Supreme Court had been in response to all the criminal proceedings initiated against him, including the charges under Articles 257/a and 287 of the CC.

3. Criminal proceedings against the applicant in Belgium

21. On 19 February 2015 the Belgian Assize Court of Brabant Wallon decided to reopen the criminal proceedings against the applicant, and scheduled a hearing for 19 October 2015.

22. On 15 July 2015 the Albanian GPO decided that it did not have the authority to examine a request by the applicant to attend the hearing of 19 October 2015 in Belgium.

23. On 4 September 2015 the Assize Court of Brabant Wallon adjourned the proceedings *sine die*.

E. New related events

24. On 25 September 2015 the GPO decided to extend the period of investigation for three more months, on account of the voluminous files received from Belgium in the framework of mutual legal assistance, the complexity of the case, the need to question more people, and so on. On 29 September 2015 the applicant challenged the GPO's decision of 25 September 2015 before the Supreme Court.

25. On 2 October 2015 the applicant asked for the "personal security measure" of detention to be changed to house arrest. On 12 October 2015 the Supreme Court rejected the applicant's request. It reasoned that there was still a risk of flight and a risk of the applicant tampering with the collection of evidence.

26. It appears from the case file that the applicant lost his mandate as a Member of Parliament on 20 October 2015. Therefore, on 17 December 2015 the Supreme Court, at the GPO's request, decided to dismiss the case, noting that the competence to review the personal security measure lay with the court examining the merits of the case.

27. On 26 April 2016 the Tirana District Court decided that the applicant should remain in detention. On 3 May 2016 the applicant challenged the Tirana District Court's decision of 26 April 2016. The Court has not been informed of any outcome in those proceedings.

II. RELEVANT DOMESTIC LAW

A. Criminal charges against the applicant

28. Article 78 of the Criminal Code ("the CC") provides for the offence of premeditated murder, which is punishable by fifteen to twenty-five years' imprisonment.

29. Article 257/a of the CC makes it an offence for persons who are under a legal obligation to state what their property is to refuse to make such a statement, to fail to do so, to make a false statement, or to conceal property. The offence is punishable by a fine or by up to three years' imprisonment.

30. Article 287 of the CC makes provision for the offence of laundering the proceeds from a criminal offence or activity, an offence which is punishable by five to ten years' imprisonment.

31. Article 305 of the CC provides that falsely reporting a crime is punishable by a fine or by up to five years' imprisonment. Article 305/a of the CC provides that the offence of making false statements before a prosecutor is punishable by a fine or by up to one year's imprisonment. Article 312/a of the CC provides that threatening a person to obtain,

inter alia, false statements, testimony, a translation or an expert's report is punishable by one to four years' imprisonment.

B. Arrest of a member of parliament

32. Article 73 § 2 of the Constitution, as amended, provides that Parliament's authorisation, amongst other things, is required prior to ordering a member of parliament's arrest or his deprivation of liberty. Article 141 of the Constitution states that the Supreme Court has original *(fillestar)* jurisdiction when examining criminal charges against a member of parliament. Article 28 § 2 of the Constitution states that any person who has been deprived of his liberty should, within forty-eight hours, be taken to a judge, who will decide on the lawfulness of his arrest or detention.

33. Article 289 § 1 of the Code of Criminal Procedure ("the CCP"), at the time, provided that:

"Article 289

Prohibition to take action

1. Detention, issuing of personal security measures, searches, examination of person, identification, confrontation and interception of conversations or communication of the person for whom the authorisation is required, is not permitted until the authorisation to prosecute is issued. He may be questioned only if he makes a request for that."

C. Personal security measures

34. Under Article 228 § 1 of the CCP, a personal security measure (*masë sigurimi personal*) may be imposed if, on the basis of evidence, there is a reasonable suspicion that an accused has committed a crime. Under Article 228 § 2 of the CCP, no security measures may be imposed when there are grounds for exculpation or when the criminal offence ceases to exist. Under Article 228 § 3 of the CCP, security measures are imposed when: (a) there are important reasons which would endanger the collection or authenticity (*vërtetësinë*) of evidence; (b) the accused has absconded or there is a risk of flight; (c) there is a danger that the accused, owing to factual circumstances or his personality, may commit serious crimes or other offences similar to the one with which he or she has been charged.

35. Under Article 229 § 1 of the CCP, in ordering a security measure, a court considers its appropriateness and the degree of security necessary in a case. In accordance with Article 229 § 2 of the CCP, the court should also consider the severity of the offence, its duration, the penalty envisaged, recidivism, as well as mitigating or aggravating circumstances.

36. Article 230 § 1 of the CCP states that placement in a detention facility may be ordered if no other security measure is appropriate owing to the particular danger posed by the offence and the accused.

37. Under Article 232 of the CCP, the court may order, amongst other things, house arrest or detention of a suspect in a pre-trial detention facility as a security measure.

38. Article 253 § 1 of the CCP provides that when there are reasonable grounds to believe that there is a risk of flight, the prosecutor shall order the detention of a person suspected of having committed a crime punishable by a prison term of not less than four years.

39. The prosecutor shall seek validation of the lawfulness of a suspect's arrest or detention, in accordance with Article 258 of the CCP. Under Article 259 § 1 of the CCP, the hearing concerning the validation of the lawfulness of the detention should take place in the presence of the prosecutor and the suspect's lawyer. The court hears both parties and examines the evidence submitted to it (Article 259 § 2 of the CCP). If the court deems the detention to be lawful, it validates it. The court's decision may be appealed against to a higher court (Article 259 § 3 of the CCP).

D. Transfer of proceedings

1. The European Convention on the Transfer of Proceedings in Criminal Matters

40. The European Convention on the Transfer of Proceedings in Criminal Matters ("the Transfer Convention") entered into force in respect of Albania on 5 July 2000 and in respect of Belgium on 15 May 1972. Under this Convention, any Party may request another Party to take proceedings against a suspected person in its stead (Article 6). Such a request may be made: if the suspected person is normally resident in the requested State or he/she is a national of that State; if the suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the requested State; or if proceedings for the same or other offences are being taken against the suspected person in the requested State (Article 8). Proceedings may not be taken in the requested State unless the offence in respect of which the proceedings are requested would be an offence if committed in its territory and when, under these circumstances, the offender would be liable to sanction under its own law also (Article 7).

2. Domestic Implementation

41. Article 6 of the CC states that Albanian criminal law applies to an Albanian national who has committed an offence in the territory of another country, provided that the offence is punishable under Albanian law and that no final decision has been given by a foreign court.

42. In accordance with the Jurisdiction Relations Act (Law no. 10193 dated 3 December 2009), an international arrest warrant is transmitted by Interpol Tirana to the Ministry of Justice, which forwards it to the GPO

(section 38 §§ 1-3). Should the GPO not proceed with the detention of the suspect and the extradition procedure, it enters the information contained in the warrant into the register of the notification of criminal offences, with a view to instituting criminal proceedings. The Ministry of Justice is notified of that decision (section 38 § 7).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 (c) OF THE CONVENTION

43. The applicant complained that his detention in relation to the third set of criminal proceedings had violated Article 5 § 1 (c) of the Convention, which reads as follows:

> "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[.]"

44. The Government disputed this.

A. Admissibility

45. The Government submitted that the applicant's complaints related to the outcome of the case, and that by lodging an application with the Court, he was considering the Court to be a fourth-instance court. Further, they submitted that the applicant lacked victim status and that his complaint should be considered an abuse of process. Lastly, the Government submitted that the applicant's complaint lacked any merits and that the Court should therefore reject it as unsubstantiated and manifestly ill-founded.

46. The applicant contested the Government's observations and submitted that his complaint was admissible.

47. The Court notes that the applicant was placed in detention on 26 March 2015 following the authorisation provided by Parliament in the course of the first set of criminal proceedings against him. The Court further observes that Parliament's authorisation was sought also in the framework of the second set of criminal proceedings and was granted on 2 April 2015, and that on 1 April 2015 the office of the prosecutor decided to join the

third set of criminal proceedings to the second set of criminal proceedings against the applicant. In the light of the parties' submissions, the Court finds that the applicant's complaint raises serious issues of fact and law as regards the lawfulness of the applicant's detention in respect of the third set of criminal proceedings under the Convention, the determination of which requires an examination of the merits. For the reasons set out below, the Court finds that the application with regard to the third set of criminal proceedings 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 claimed that his detention in relation to the charges under Articles 257/a and 287 of the CC had been unlawful. In accordance with Article 73 § 2 of the Constitution, the authorisation of Parliament was necessary before ordering his arrest. By joining the second and the third set of proceedings, the GPO and the domestic courts had taken on the role of Parliament. By doing so, they had acted in breach of the constitutional provisions.

49. Further, the applicant stated that the GPO had never requested Parliament's authorisation for his arrest in relation to the charges under Articles 257/a and 287 of the Criminal Code.

50. The applicant claimed that the domestic court decisions validating his detention had been arbitrary. Neither the Supreme Court nor the Constitutional Court had identified the fact that he had been placed in detention without prior authorisation from Parliament. The prosecutor had failed to prove that there had indeed been a risk of flight, and stating that the enforcement of house arrest "could not be entirely secured" had not been sufficient.

51. The Government submitted that, in accordance with the Constitution, as amended in 2012, there had been no requirement for Parliament to issue authorisation for the GPO to institute criminal proceedings against members of parliament. Such prior authorisation was only required for, *inter alia*, placing members of parliament under arrest or in detention. Further, the Government stated that the GPO had acted in compliance with Article 5 § 1 (c) of the Convention. The arrest of the applicant had been lawful, considering that there had been a reasonable suspicion of a risk of flight and that the applicant had been charged with criminal offences punishable by at least two years' imprisonment. The reasonable suspicion had been supported by evidence. In conclusion, according to the Government, the applicant's placement under arrest had been in full

compliance with Article 229 of the CPC and Article 5 § 1 (c) of the Convention.

2. The Court's assessment

(a) General principles

52. The Court reiterates that Article 5 § 1 of the Convention contains an exhaustive list of permissible grounds for the deprivation of liberty. No deprivation of liberty will be lawful unless it falls within one of the grounds set out in sub-paragraphs (a) to (f) of Article 5 § 1 (see, for example, *Mitrović v. Serbia*, no. 52142/12, § 41, 21 March 2017).

53. The Court further reiterates that the authorities must also conform to the requirements imposed by domestic law in proceedings concerning detention (see *Grori v. Albania*, no. 25336/04, § 149, 7 July 2009). While it is for the national authorities, notably the courts, to interpret and apply domestic law, since a failure to comply with domestic law entails a breach of the Convention under Article 5 § 1, it follows that the Court can, and should, exercise a certain power of review of such compliance (see, for example, *M.S. v. Croatia (no. 2)*, no. 75450/12, § 141, 19 February 2015).

(b) Application of the general principles to the present case

54. The Court is of the view that the central issue in the case under consideration is whether the applicant's detention in relation to the third set of criminal proceedings was "lawful" within the meaning of Article 5 § 1, including whether it was effected "in accordance with a procedure prescribed by law". The Court reiterates that the Convention refers essentially to national law, but it also requires that any measure depriving the individual of his liberty be compatible with the purpose of Article 5, namely to protect the individual from arbitrariness (see, for example, *Lukanov v. Bulgaria*, 20 March 1997, § 41, *Reports of Judgments and Decisions* 1997-II, and *Creangă v. Romania* [GC], no. 29226/03, § 84, 23 February 2012).

55. Turning to the present case, the Court notes that the applicant was arrested and placed in detention on 26 March 2015 following Parliament's authorisation given in relation to the first set of proceedings against him. In addition, Parliament gave authorisation to arrest the applicant in relation to the second set of proceedings on 2 April 2015. The Court observes that the applicant was deprived of his liberty as of 26 March 2015 and that he was thereafter in detention in relation to the first and second sets of proceedings. The Court notes that the GPO's request of 28 March 2015 for Parliament's authorisation with a view to ordering the applicant's arrest did not mention the charges under Article 257/a and 287 of the CC. Indeed, the GPO initiated the criminal proceedings against the applicant in relation to the third set of proceedings only on 1 April 2015, and on the same day decided

to join that set of proceedings to the second set of proceedings against the applicant. Parliament's decision to grant authorisation to detain the applicant was taken on the basis of that request. In these circumstances, the Court accepts that Parliament may not have been informed that it was called on to decide also in relation to the third set of criminal proceedings, in addition to the charges under Article 78/1 and 25 of the CC in the second set of criminal proceedings. The Court observes, however, that although Parliament did not in fact give authorisation for the applicant's detention in relation to the third set of proceedings, the deprivation of his liberty was nonetheless lawful in the framework of the first and second criminal proceedings. Thus, although the authorities failed to specifically request Parliament's authorisation for arrest in relation to the third set of proceedings, that failure did not render the applicant's detention unlawful, since the entire period of detention was "lawful detention" on the basis of the first and second sets of criminal proceedings, in relation to which the Parliament had given its authorisation (see, *mutatis mutandis*, *Borisenko v. Ukraine*, no. 25725/02, § 44, 12 January 2012, and *Porowski v. Poland*, no. 34458/03, §§ 104-106, 21 March 2017).

56. Accordingly, there has been no violation of Article 5 § 1 of the Convention in the present case.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 5 § 1 of the Convention.

Done in English, and notified in writing on 18 September 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Robert Spano
Registrar	President