



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

FIRST SECTION

CASE OF KRASNIQI v. CROATIA

(Application no. 4137/10)

JUDGMENT

STRASBOURG

10 July 2012

FINAL

10/10/2012

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

In the case of Krasnqi v. Croatia,

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

Anatoly Kovler, *President*,

Nina Vajić,

Peer Lorenzen,

Elisabeth Steiner,

Khanlar Hajiyev,

Linos-Alexandre Sicilianos,

Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 19 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 4137/10) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Zenel Krasnqi (“the applicant”), on 21 December 2009.

2. The applicant was represented by Mr N. Klaić, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. The applicant complained in particular that his detention following his conviction was unlawful and that the national courts had failed to examine this issue. He relied on Article 5 §§ 1 and 4 of the Convention.

4. On 8 June 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in Sisak, Croatia.

6. The Novska Police authority lodged a criminal complaint against the applicant with the Sisak County State Attorney’s Office on 30 December 1991, alleging that he had committed four murders. The applicant was arrested on 6 January 1992 and placed in pre-trial detention.

7. By a judgment of 5 October 1992 the Zagreb Military Court acquitted the applicant and he was released. On 7 July 1993, however, the Supreme Court quashed the first-instance judgment and ordered a retrial.

8. On 2 April 1998 the Sisak County State Attorney's Office indicted the applicant in the Sisak County Court on four counts of murder. The applicant was tried in his absence because his whereabouts were unknown to the authorities. On 25 March 1999 he was found guilty of all four counts of murder and sentenced to twenty years' imprisonment. This judgment was upheld by the Supreme Court on 14 January 2003, likewise in the absence of the applicant.

9. An international arrest warrant was issued in respect of the applicant. He was arrested in Germany on 8 April 2006, extradited to Croatia on 1 February 2007 and was placed in pre-trial detention in Croatia on that date.

10. On 21 February 2007 the criminal proceedings against the applicant were reopened.

11. On 1 March 2007 the Sisak County Court ordered the applicant's pre-trial detention under Article 102 § 1(1) and (4) of the Code of Criminal Procedure. The applicant's pre-trial detention was regularly extended on the same grounds.

12. The Sisak County Court confirmed its previous verdict on 7 May 2008, sentencing the applicant to twenty years' imprisonment. On the same date it extended the applicant's detention until 1 June 2009 or until the judgment entered into force.

13. The applicant lodged an appeal against the decision extending his detention. It was dismissed by the Supreme Court on 25 August 2008.

14. The first-instance judgment was upheld by the Supreme Court on 3 December 2008 in its capacity as an appeal court. On 17 March 2009 the applicant lodged a further appeal with the Supreme Court, in its capacity as a court of third instance.

15. On 20 March 2009 the applicant lodged with the Sisak County Court an application for the detention order against him to be lifted. He argued that the maximum statutory detention period where an appellate judgment had been adopted and against which an appeal was allowed was three months. That period had expired on 3 March 2009. He therefore asked for his release. On 27 March 2009 the Sisak County Court dismissed the complaint without addressing the issue raised by the applicant.

16. The applicant's subsequent constitutional complaint of 27 April 2009 was declared inadmissible on 26 May 2009 on the grounds that the impugned decision was not an act within the meaning of section 62 of the Constitutional Court Act. This decision was served on the applicant on 23 June 2009.

17. In the meantime, on 1 June 2009 the Sisak County Court extended the applicant's detention under Article 109 § 3 of the Code of Criminal

Procedure for a further nine months, i.e. until 1 March 2010. On 12 June 2009 the applicant lodged an appeal, arguing that the maximum period for which he could be detained had expired. This appeal was dismissed by the Supreme Court on 22 July 2009. The relevant part of that decision reads:

“The Supreme Court, as the court of second instance, considers that the first-instance court correctly established that in the present case the conditions for the extension of the overall detention of the accused, Zenel Krasniqi, under Article 109 § 2 of the Code of Criminal Procedure had been satisfied, and thus extended his overall detention for a further nine months.

In a non-final judgment of the Sisak County Court of 7 May 2008 ... the accused Zenel Krasniqi was found guilty ... and sentenced to twenty years’ imprisonment. That judgment ... was upheld by a judgment of the Supreme Court on 3 December 2008 ... against which the accused lodged an appeal. In view of the sentence given, the detention of the accused is obligatory under Article 102 § 4 of the Code of Criminal Procedure.

The accused was in detention between 6 January and 5 October 1992 (nine months) and also since 1 March 2007, so that the maximum period of detention [applicable to him], being three years under Article 109 § 1(5) of the Code of Criminal Procedure, was set to expire on 1 June 2009. Since the accused was, *inter alia*, convicted of the criminal offence of aggravated murder ... [which is] punishable by twenty years’ imprisonment, a court may, under Article 109 § 2 of the Code of Criminal Procedure, extend his overall detention for one quarter [of the term referred to in subparagraphs 4 and 5 of paragraph 1 of Article 109 of the Code of Criminal Procedure], that is to say for a further nine months.

Therefore, the Supreme Court finds that the extension of the accused’s detention for a further nine months by the first-instance court was well founded and lawful ...

...

The accused’s submissions based on Article 109 § 4 of the Code of Criminal Procedure in which he argued that his detention had to be lifted because more than three months had passed since the second-instance judgment was adopted are also unfounded. The Supreme Court considers that where, as in the present case, a first-instance judgment and a second-instance judgment against which an appeal is allowed have been adopted within the time-limit for detention under Article 109 § 1 of the Code of Criminal Procedure, the overall duration of detention may be extended under Article 109 § 2 of the Code of Criminal Procedure, and after that time-limit expires, it may still be extended under Article 109 § 4 of the Code of Criminal Procedure.”

18. The applicant then lodged a constitutional complaint, whereby he reiterated the arguments from his appeal as regards the issue of the lawfulness of his detention. On 16 September 2009 the Constitutional Court dismissed the complaint, endorsing the reasoning of the Supreme Court.

19. On 22 October 2009 the Supreme Court in its capacity as a court of third instance upheld the applicant’s conviction. Thus it became final and enforceable.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002 and 62/2003) provide as follows:

Article 109

“(1) Until the adoption of a first-instance judgment, pre-trial detention may last for a maximum of:

1. six months for offences carrying a statutory maximum sentence of three years’ imprisonment;
2. one year for offences carrying a statutory maximum sentence of five years’ imprisonment;
3. eighteen months for offences carrying a statutory maximum sentence of eight years’ imprisonment;
4. two years for offences carrying a sentence of more than eight years’ imprisonment;
5. three years for offences carrying a sentence of long-term imprisonment.

(2) In cases where a judgment has been adopted but has not yet entered into force, the maximum term of pre-trial detention may be extended for one sixth of the term referred to in subparagraphs 1 to 3 of paragraph 1 of this provision until the judgment becomes final, and for one quarter of the term referred to in subparagraphs 4 and 5 of paragraph 1 of this provision.

(3) Where a first-instance judgment has been quashed on appeal, following an application by the State Attorney and where important reasons exist, the Supreme Court may extend the term of detention referred to in subparagraphs 1 to 3 of paragraph 1 of this provision for another six months and the term referred to in subparagraphs 4 and 5 of paragraph 1 of this provision for another year.

(4) Following the adoption of an appellate judgment against which an appeal is allowed, detention may last until the judgment becomes final, for a maximum period of three months.

(5) A defendant placed in detention and sentenced to a prison term by a final judgment shall stay in detention until he is committed to prison, but for no longer than the duration of his prison term.”

21. The relevant part of the guidelines adopted at a meeting of the Criminal Division of the Supreme Court on 23 March 2006 and published by the Supreme Court, reads:

“...

I. Extending the duration of overall detention under Article 109 §§ 2 and 3 of the CPP.

Where a first-instance judgment and a second-instance decision quashing the first-instance judgment were adopted within the time prescribed for detention under Article 109 § 1 of the CPP, the overall duration of detention may be extended under Article 109 § 2 of the CPP and after the expiry of that period also under Article 109 § 3 of the CPP.

The overall duration of detention under Article 109 § 3 of the CPP is to be extended only after the time-limit prescribed in Article 109 § 2 of the CPP has expired, irrespective of whether the first-instance court has adopted a fresh judgment in the retrial proceedings.

The maximum period of detention where a judgment has been adopted but has not yet become enforceable is to be fixed according to the criminal offence the accused was found guilty of, even where the State Attorney has filed an appeal on any grounds.

II. Calculation of time-limits for the duration of detention

Where a first-instance judgment or a second-instance judgment against which an appeal is allowed have been adopted within the time-limits set by Article 109 § 1 of the CPP, the overall duration of detention may be extended under Article 109 § 2 of the CPP. After the time-limit set by that Article expires, detention may be extended under Article 109 § 4 of the CPP.

Where a first-instance judgment or a second-instance judgment against which an appeal is allowed have been adopted within the time-limits set by Article 109 § 2 of the CPP, the overall duration of detention may be extended under Article 109 § 2 of the CPP. After the time-limit set by that Article expires, detention may be extended under Article 109 § 4 of the CPP, after the expiration of the time-limit under Article 109 § 2 of the CPP.

Where a second-instance decision against which an appeal is allowed has been adopted within the time-limit set by Article 109 § 3 of the CPP, the overall duration of detention may be extended under Article 109 § 4 of the CPP, after the expiration of the time-limit set by Article 109 § 3 of the CPP.

Where a second-instance decision against which an appeal is allowed has been quashed within the time-limit set by Article 109 § 1 of the CPP, the overall duration of detention may be extended under Article 109 § 2 of the CPP, after the expiration of the time-limit set by Article 109 § 3 of the CPP.

Where a second-instance decision against which an appeal is allowed has been quashed within the time-limit set by Article 109 § 2 of the CPP, the overall duration of detention may be extended under Article 109 § 3 of the CPP.

...”

22. The Supreme Court’s practice as regards the interpretation of Article 109 of the Code of Criminal Procedure may be found in its case-law.

It's decision no. II 5 Kr 5/04-2 of 28 April 2004 reads in its relevant part as follows:

"... the Supreme Court has established that the accused, M.M., has been detained since 3 October 2003 on the basis of Article 102 § 1(3) of the Code of Criminal procedure ("CPP") and that the maximum period of detention under Article 109 § 1(1) of the CPP expired on 3 April 2004. Since the appeal decision quashing [the first-instance judgment] was adopted on 23 April 2004, the detention during the appeal proceedings from the adoption of the first-instance judgment on 26 March 2004 was based on the time-limits set by Article 109 § 2 of the CPP.

Therefore, the statutory requirements for extending the accused's detention for a further six months under Article 109 § 3 of the CPP have been satisfied ..."

The relevant part of decision no. II 5 Kr 8/07-2 of 23 November 2007 reads:

"The accused, V.D., has been detained since 27 February 2004 and the maximum period of detention under Article 109 § 1(1) and § 2 of the Code of Criminal Procedure ("CPP") expires on 27 November 2007.

The criminal proceedings are currently pending at third instance. The first-instance judgment of the Vukovar County Court was quashed by this court. After that, a fresh first-instance judgment was adopted, which was upheld by a judgment of the Supreme Court of 27 September 2007 ... by which the accused was sentenced to long-term imprisonment for forty years on account of two criminal offences of aggravated murder ... Under Article 109 § 1(1) and § 2 of the CPP, the maximum period of detention is three years and nine months, as the criminal offence in issue is punishable with long-term imprisonment. That period expires on 27 November 2007. Since the proceedings in which the first-instance judgment has been quashed are still pending, the accused's detention may be extended for one more year."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

23. The applicant complained that the statutory maximum period for which he could be detained following his conviction had expired on 3 March 2009 and that his subsequent detention had been unlawful. He relied on Article 5 § 1 of the Convention, the relevant part of 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:

(a) the lawful detention of a person after conviction by a competent court; ..."

A. Admissibility

24. The Government argued that the applicant had not exhausted all available domestic remedies and that he should have lodged a civil action for damages against the State.

25. The applicant replied that he had exhausted all available domestic remedies.

26. The Court points out that the purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Convention institutions. Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right through their own legal system. The rule of exhaustion of domestic remedies referred to in Article 35 of the Convention requires that normal recourse should be had by an applicant only to remedies that relate to the breaches alleged and which, at the same time, are available and sufficient (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

27. As to the present case, the Court notes that the applicant used all available domestic remedies as regards the decisions extending his detention, such as appeals to the Supreme Court and a constitutional complaint. The issue of the lawfulness of a person's detention should normally be examined in the decisions ordering that detention and through the remedies used in respect of such decisions. Already in his request of 20 March 2009 the applicant argued that his detention had become unlawful. When that request was dismissed by the Sisak County Court, the applicant lodged an appeal with the Supreme Court and later on also a constitutional complaint, both of which were unsuccessful. He also used all available remedies against the Sisak County Court decision of 1 June 2009. He thus made normal use of available remedies and provided the national courts with an opportunity to examine them. Furthermore, the Court does not consider that in such circumstances a civil action for damages would be an effective remedy within the meaning of Article 35 of the Convention. Thus, the Court rejects the Government's objection.

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

B. Merits

1. The parties' arguments

29. The applicant submitted that, under Article 109 § 4 of the Code of Criminal Procedure, after an appeal judgment had been adopted detention pending final conviction or release could not exceed three months. Since in his case the appeal judgment had been adopted on 3 December 2008, the statutory maximum period for which he could be detained had expired on 3 March 2009 and any further detention before his conviction had become final and enforceable had been unlawful.

30. The Government argued that the Supreme Court's practice clearly showed that Article 109 of the Code of Criminal Procedure was to be interpreted in its entirety and that, after three months of detention under paragraph 4 of that Article, detention after the adoption of an appeal judgment could still be extended under paragraphs 2 and 3 of the same provision.

2. The Court's assessment

(a) Grounds for deprivation of liberty

31. The Court firstly observes that as from the day when the charge is determined, even if only by a court of first instance, the person is detained "after conviction by a competent court" within the meaning of Article 5 § 1 (a) (see *Solmaz v. Turkey*, no. 27561/02, §§ 24 to 26, 16 January 2007; *B. v. Austria*, 28 March 1990, §§ 36-39, Series A no. 175; and *Kudła v. Poland* [GC], no. 30210/96, § 104, 2009).

32. As to the present case the Court notes that on 7 May 2008 in the renewed proceedings against the applicant the Sisak County Court adopted a judgment convicting him for four murders and sentenced him to a prison term. Therefore, from that date on the ground for the applicant's detention was his conviction. It follows that the present case falls to be examined under sub-paragraph (a) of Article 5 § 1, since the period of detention the applicant is complaining about concerns his detention after 7 May 2008, after he had been convicted in the criminal proceedings against him.

(b) "Lawful" detention "in accordance with a procedure prescribed by law"

(i) General principles

33. It is well established in the Court's case-law under the sub-paragraphs of Article 5 § 1 that any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a)-(f), be "lawful" (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR

2008; and *M. v. Germany*, no. 19359/04, § 90, ECHR 2009). Where the “lawfulness” of detention is in issue, including the question whether “a procedure prescribed by law” has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof (see, among many other authorities, *Erkalo v. the Netherlands*, 2 September 1998, § 52, *Reports of Judgments and Decisions* 1998-VI; *Saadi*, cited above, § 67, ECHR 2008; *Kafkaris v. Cyprus* [GC], no. 21906/04, § 116, ECHR 2008; and *Schönbrod v. Germany*, no. 48038/06, § 81, 24 November 2011).

34. This primarily requires any detention to have a legal basis in domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention (see *Stafford v. the United Kingdom* [GC], no. 46295/99, § 63, ECHR 2002-IV and *Kafkaris*, cited above, § 116). “Quality of the law” in this sense implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness (see *Amuur v. France*, 25 June 1996, § 50, *Reports* 1996-III; *Nasrulloev v. Russia*, no. 656/06, § 71, 11 October 2007; and *Mooren v. Germany* [GC], no. 11364/03, § 76, 9 July 2009). The standard of “lawfulness” set by the Convention thus requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Steel and Others v. the United Kingdom*, 23 September 1998, § 54, *Reports* 1998-VII, and *Baranowski v. Poland*, no. 28358/95, § 52, ECHR 2000-III).

35. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among many other authorities, *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33; *Saadi v. the United Kingdom*, cited above, § 67; and *Mooren*, cited above, § 72).

(ii) *Application of these principles to the present case*

36. The Court notes that Article 109 of the Code of Criminal Procedure prescribes the maximum duration of detention allowed before a conviction becomes final and enforceable. Thus, paragraphs 1 and 2 prescribe general rules on calculating the maximum duration of detention while paragraph 4 addresses the issue of the maximum period of detention following the adoption of an appellate judgment against which a further appeal is allowed.

37. The Court accepts that the wording of Article 109 leaves some doubt as to the manner of calculation of the maximum permissible period of detention where an appeal judgment has been adopted. Indeed, the wording of paragraph 4 might be understood to suggest, as the applicant argues, that

the maximum duration of detention after an appeal judgment has been adopted cannot exceed three months.

38. However, any possible lack of clarity as regards the maximum period of detention was remedied by the detailed guidelines adopted at a meeting of the Criminal Division of the Supreme Court on 23 March 2006.

39. As to the accessibility of these guidelines, the Court notes that they were published by the Supreme Court. The decisions adopted by the Supreme Court before the adoption of the said guidelines show that the guidelines of 23 March 2006 only confirmed existing practice. Furthermore, the same approach was confirmed in the subsequent decisions of the Supreme Court (see paragraph 22 above). The applicant was legally represented throughout the criminal proceedings against him and it should be expected of a lawyer that he or she be aware of the relevant case-law of the Supreme Court. The Court therefore concludes that the practice of the Supreme Court which clarified the manner of application of Article 109 of the Code of Criminal Procedure was accessible to the applicant and that it made the application of that provision sufficiently foreseeable.

40. The decisions the applicant is contesting were all taken well after the guidelines in question were adopted, namely in 2009.

41. The decisions were in conformity with domestic law as clarified in the guidelines of the Supreme Court of 23 March 2006 and its subsequent settled practice. The Court has found nothing to indicate that the Supreme Court's interpretation of domestic law was in any way arbitrary.

42. There has accordingly been no violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

43. The applicant also complained that the national courts had failed to examine the issue of the lawfulness of his detention after 3 March 2009. He relied on Article 5 § 4 of the Convention, which reads as follows:

“4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

44. The Government contested that argument.

Admissibility

45. The Court reiterates that when the decision depriving a person of his or her liberty is made by a court at the close of judicial proceedings, the supervision required by Article 5 § 4 is incorporated in the decision; this is so, for example, where a sentence of imprisonment is pronounced after “conviction by a competent court” within the meaning of Article 5 § 1 (a) of

the Convention (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12). In the present case the Court notes that the applicant was convicted by a competent court on 7 May 2008. Furthermore, his challenges to the lawfulness of his subsequent detention were examined by the County Court, the Supreme Court and the Constitutional Court as described above. The case does not disclose any reason to believe that the examination by the domestic courts fell short of the requirement of Article 5 § 4 of the Convention.

46. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

47. Lastly, the applicant complained under Article 6 that in the proceedings concerning his detention he, as a person whose mother tongue was Albanian, had not been provided with an interpreter. He also complained under Article 2 of Protocol No. 7 that he had had no right to an appeal.

48. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 5 § 1 of the Convention concerning the lawfulness of the applicant's detention after his conviction admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 1 of the Convention.

Done in English, and notified in writing on 10 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Anatoly Kovler
President