



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

FIFTH SECTION

**CASE OF CRABTREE v. THE CZECH REPUBLIC**

*(Application no. 41116/04)*

JUDGMENT

This version was rectified on 4 May 2010  
under Rule 81 of the Rules of the Court

STRASBOURG

25 February 2010

**FINAL**

*04/10/2010*

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



**In the case of Crabtree v. the Czech Republic,**

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 2 February 2010,

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

**PROCEDURE**

1. The case originated in an application (no. 41116/04) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British national, Mr Ronald David Crabtree (“the applicant”), on 10 November 2004.

2. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm, of the Ministry of Justice.

3. The applicant alleged, in particular, that his pre-trial detention had been unlawful and that he had had no enforceable right to compensation under domestic law, in violation of Article 5 §§ 1 (c) and 5 of the Convention.

4. On 7 September 2006 the Court decided to give notice of the application to the Government, inviting them to comment on the applicant’s complaints under Article 5 §§ 1 (c) and 5 of the Convention. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. On 11 September 2006 the Court decided to give notice of the application to the Government of the United Kingdom in order to enable them to exercise their right to intervene in the proceedings (Article 36 § 1 of the Convention and Rule 44). The Government of the United Kingdom waived that right by their letter of 4 December 2006.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. On 6 February 2003 the applicant was arrested on suspicion of fraud. On the following day, the Prague 1 District Court (*obvodní soud*) ordered his pre-trial detention pursuant to Article 67 (a) of the Code of Criminal Procedure (hereinafter “the CCP”). The court held that, given the applicant’s British citizenship and lack of residence in the Czech Republic, and the fact that he was likely to be sentenced to a lengthy prison sentence, there was a risk that he would abscond to avoid the criminal proceedings.

7. On 29 April 2003 an indictment against the applicant on a charge of fraud was filed in the District Court.

8. On 6 May 2003, 1 July 2003 and 24 September 2003 the District Court dismissed requests for release from custody filed by the applicant. The court held that the reasons for the applicant’s detention continued to apply. Two appeals by the applicant directed against the second and third of the District Court’s decisions were dismissed by the Prague Municipal Court on 7 August 2003 and 29 October 2003, respectively.

9. On 22 September 2003 the applicant filed a constitutional appeal (*ústavní stížnost*) against the Municipal Court’s decision of 7 August 2003, alleging a violation of his right to personal liberty under Article 8 §§ 2 and 5 of the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*), of his freedom of movement under Article 14 of the Charter and of the right to judicial protection under Article 36 § 1 of the Charter, in that the reasoning of the court decisions was insufficient. He added that Article 5 § 3 of the Convention had also been violated.

10. On 9 December 2003 the District Court dismissed a request for release from custody filed by the applicant on 5 December 2003 and decided, under Article 71 §§ 4 and 6 of the CCP, that the applicant was to remain in detention. The court did not accept the applicant’s written pledge.

11. In a judgment of 17 December 2003 the District Court convicted the applicant of fraud, sentenced him to three and a half years’ imprisonment and ordered his expulsion from the Czech Republic.

12. On 12 January 2004 the applicant supplemented his constitutional appeal, alleging that despite his request the Municipal Court’s decision of 7 August 2003 had not been translated into English, in violation of Article 6 § 3 (e) of the Convention. He also complained that in the decision of 9 December 2003 the District Court had decided to renew the order for his detention for the first time since the pre-trial detention had been ordered on 7 February 2003. The applicant thus regarded the period of detention after 7 May 2003, that is after the expiry of an initial three months period covered by the first detention order, as unlawful. In this respect he relied, *inter alia*,

on Article 5 § 1 of the Convention.

13. On 26 February 2004 the Municipal Court dismissed the applicant's complaint against the District Court's decision of 9 December 2003.

14. On 31 March 2004 the Municipal Court varied the District Court's judgment of 17 December 2003 but the applicant's prison sentence remained unchanged. In response to the applicant's argument that the trial court had not given him the opportunity to question one of the witnesses, the appellate court held that this witness had been heard at trial in the applicant's and his counsel's presence and that they had used this opportunity to ask him questions.

15. In a decision of 25 November 2004 the Constitutional Court (*Ústavní soud*) held that the Municipal Court had violated the applicant's rights guaranteed under Article 8 §§ 2 and 5 of the Charter in that it had not decided on extension of the applicant's pre-trial detention or his release within the statutory time-limit. The court stated in particular:

"It appears from the case-file that the courts decided on the applicant's requests for release and/or his complaints against the respective dismissals, but not on his remaining in custody or his release as provided for in Article 71 §§ 4 and 6 of the CCP. Such a decision complying with the requirements laid down in the CCP was adopted by the Prague 1 District Court on 9 December 2003, that is, more than ten months after the applicant's pre-trial detention had been ordered. The Constitutional Court underlines that when deciding on a request for release filed by an accused, a court 'merely' examines, as in the present case, whether there are still reasons for his detention. The criteria specified in Article 71 § 4 of the CCP require stricter conditions to be fulfilled for a decision to continue the accused's detention "

16. The Constitutional Court did not grant the applicant's request for the Municipal Court's decision of 7 August 2003 to be quashed, the applicant having been sentenced to a term of imprisonment in the meantime.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The relevant domestic law and practice concerning pre-trial detention and the possibility of compensation for its unlawfulness are set out in the Court's judgment *Smatana v. the Czech Republic*, no. 18642/04, §§ 49-76, 27 September 2007.

## THE LAW

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

18. The applicant complained that his pre-trial detention had not been extended every three months as required by Article 74 §§ 4 and 6 of the CCP. Therefore, he considered his detention to have had no legal basis and thus to have 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;”

19. The Government contested that argument.

#### A. Admissibility

##### *1. Whether the applicant is a victim (Article 34 of the Convention)*

20. In the first place, the Government challenged the applicant’s victim status. They pointed out that in the decision of 25 November 2004 the Constitutional Court had acknowledged a violation of the applicant’s rights guaranteed under Article 8 §§ 2 and 5 of the Charter which contained guarantees analogous to those of Article 5 § 1 (c) of the Convention. Concerning the pecuniary damage allegedly suffered by the applicant, they submitted that it had been sufficiently redressed by deduction of the time spent in custody from the term of imprisonment. In respect of non-pecuniary damage, the Government asserted that the Constitutional Court’s finding of a violation could be regarded as sufficient redress in view of the fact that even the Court may declare that finding of a violation constitutes sufficient satisfaction without affording the applicant any financial compensation.

21. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, among many other authorities, *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III).

22. In the present case, the Court observes that the Constitutional Court expressly acknowledged that there had been a violation of the applicant's rights. However, according to the Court's case-law cited above, mere acknowledgment of a violation of the Convention rights by the national authorities does not as such suffice to deprive the applicant of his status as a victim. Moreover, when ruling on the unlawfulness of the applicant's detention, the Constitutional Court's considerations were distinct from the question whether the finding of a violation constituted sufficient redress for the applicant.

23. The Court also notes that the decision to include the period of the applicant's pre-trial detention in the term of imprisonment which he had to serve was not based on the alleged violation of Article 5 of the Convention (see *Pavletić v. Slovakia*, no. 39359/98, § 61, 22 June 2004).

24. Therefore, the applicant cannot be said to have lost his victim status within the meaning of Article 34 of the Convention.

*2. Exhaustion of domestic remedies (Article 35 § 1 of the Convention)*

25. The Government submitted that the applicant could have sought compensation for non-pecuniary damage in respect of unlawful deprivation of liberty under Law no. 82/1998, which provided for the possibility of compensation for damage caused by exercise of public authority. Secondly, they contended that the applicant could have brought an action for protection of personality under Articles 11 and 13 of the Civil Code. While admitting that the case-law of the ordinary courts had not been uniform, the Government maintained that it had offered examples of an injured person successfully claiming damages for unlawful deprivation of liberty.

26. The Government also admitted that the original wording of Law no. 82/1998 did not explicitly mention the possibility of claiming compensation for non-pecuniary damage. However, this omission was in practice remedied by the use of the above-mentioned provisions of the Civil Code on personality rights. Moreover, in its decisions the Constitutional Court referred to the direct applicability of Article 5 § 5 of the Convention. Eventually, the omission was remedied by an amendment to Law no. 82/1998 (Law no. 160/2006, which entered into force on 27 April 2006).

27. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in theory as well as in practice, failing which they will lack the requisite accessibility and effectiveness (see, among many other authorities, *Pavletić*, cited above, § 68, and *Smatana*, cited above, § 93).

28. The Court observes that it has previously addressed the question of the effectiveness of the two remedies referred to by the Government in

a similar case (see *Smatana*, cited above, §§ 79-95), in which the Government submitted identical arguments and referred to the same domestic practice. The Court did not find it established that the possibility of obtaining appropriate redress in respect of alleged breaches of Article 5 of the Convention (in the *Smatana* case more specifically of Article 5 §§ 3 and 4) by means of those remedies was sufficiently certain in practice and offered reasonable prospects of success as required by the relevant case-law. It noted, in particular, that the case-law concerning compensation for non-pecuniary damage was not unified and that the decisions of the Constitutional Court, as well as those of the ordinary courts referred to by the Government, concerned situations different from the one under consideration.

29. Similarly in the present case, the Court is not convinced that the means referred to by the Government represented an effective remedy the applicant would have had to use. The information available does not show that at the relevant time it was the practice of the domestic courts to grant compensation for non-pecuniary damage under either of the two remedies.

30. The Government's objection in respect of this complaint must therefore be dismissed.

### 3. Conclusion

31. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

32. In their observations on the merits of the case, the Government admitted that the applicant had been deprived of his personal liberty in breach of Article 5 § 1 of the Convention. With reference to Article 71 § 5 of the CCP and given the fact that the applicant had been indicted on 29 April 2003, they acknowledged that between 29 May and 9 December 2003 the applicant had been held in custody without the formal conditions prescribed by the law being met.

33. The central issue in this case is whether the applicant's detention 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 here 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 instance, *Bozano v. France*, 18 December 1986, § 54, Series A no. 111, or *Benham v. the United Kingdom*, 10 June 1996, § 40, *Reports of Judgments and Decisions* 1996-III).

34. In the present case, it is undisputed, and it was expressly acknowledged by the Constitutional Court (see paragraph 15 above), that the applicant's detention lacked legal basis under the domestic law. This is sufficient to enable the Court to conclude that the applicant's detention was not "lawful" within the meaning of the provision relied on by the applicant.

35. There has accordingly been a violation of Article 5 § 1 (c) of the Convention.

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

36. The applicant also relied on Article 5 § 4 of the Convention. He failed to state any relevant facts or support this complaint with any arguments, however.

37. Nevertheless, the Court notes that under Article 6 § 3 (a) of the Convention the applicant complained that the Prague Municipal Court's resolution of 7 August 2003 had not been translated into English despite the fact that both the applicant and his counsel had asked for translation. The Court observes that this complaint does not bear on the right to be informed promptly, in a language which the applicant understands, of the nature and cause of the accusation against him. It rather relates to the procedural guarantees of Article 5 § 4 concerning court review of detention.

38. The Court will therefore examine the two above-mentioned complaints together under 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."

39. The Court reiterates that this provision entitles an arrested or detained person to institute proceedings bearing on the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, § 65). A court examining an appeal against detention must provide guarantees of a judicial procedure. The proceedings must be adversarial and must always ensure "equality of arms" between the parties, the prosecutor and the detained person (see, among many other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II).

40. In the instant case, the Court notes that the applicant had access to a court to apply for release: his first application was dismissed by the District Court on 6 May 2003 and the next one on 1 July 2003. The applicant's complaint against this dismissal was rejected on 7 August 2003. His subsequent application for release was dismissed on 9 December 2003 and his complaint against this dismissal then rejected on 26 February 2004.

41. Insofar as the lack of translation of one of the decisions is concerned, the court reiterates that the principle of “equality of arms” requires that each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent (see, among many other authorities, *Andrejeva v. Latvia* [GC], no. 55707/00, § 96, ECHR 2009-...).

42. Turning to the circumstance of the present case, the Court observes in the first place that the applicant limited his complaint to the fact that the Municipal Court’s resolution had not been translated into a language which he understands, namely English. However, he did not allege that he would have been unaware of its content or that of the other court decisions concerning his detention on remand.

43. The Court further observes that the applicant, assisted by his Czech counsel, challenged the content of the resolution in issue by means of a constitutional appeal and that the Constitutional Court acknowledged a violation of the applicant’s right to personal liberty in that the Municipal Court had failed to extend his pre-trial detention or release him (see paragraph 15 above).

44. Therefore, bearing in mind the circumstances of the present case and the procedural guarantees under Article 5 § 4 of the Convention, the Court concludes that the applicant had sufficient knowledge of the content of the resolution and that the lack of a written translation into English, if any, did not compromise his entitlement to adversarial proceedings and “equality of arms”.

45. It follows that the complaints reviewed by the Court under Article 5 § 4 of the Convention are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

46. Relying on Article 5 § 5 of the Convention, the applicant complained that he had no enforceable right to compensation for his unlawful detention. That provision reads as follows:

“5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

47. The Government contested that argument.

#### A. Admissibility

48. The Court reiterates that Article 5 § 5 of the Convention is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3

or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions (see *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X).

49. The Court notes that in the present case a violation of the applicant's right guaranteed under Article 5 § 1 of the Convention was acknowledged by the domestic authorities and also found by the Court itself. It further notes that the Government did not challenge the applicability of that provision in the present case. Accordingly, Article 5 § 5 is applicable.

50. The Court finally notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

51. The Government relied on their arguments submitted in support of their objection of non-exhaustion of domestic remedies in respect of Article 5 § 1 (c) of the Convention (see paragraph 25 and 26 above).

52. The Court reiterates its finding that neither of the two possibilities referred to by the Government was sufficiently certain in practice and offered reasonable prospects of success as required by the relevant case-law (see paragraphs 28 and 29 above). It follows that the applicant did not enjoy a right to enforceable compensation as required by Article 5 § 5 of the Convention.

53. Accordingly, the Court considers that there has been a violation of that provision.

## **IV. ALLEGED VIOLATION OF ARTICLE 6 § 3 (d) OF THE CONVENTION**

54. Relying on Article 6 § 3 (d) of the Convention and referring to the hearing held before the District Court on 17 December 2003, the applicant complained that he had not been permitted to question a witness who had been allowed to put questions to him. He could not, therefore, refute evidence brought by this witness.

Article 6 § 3 (d) of the Convention reads as follows:

“3. Everyone charged with a criminal offence has the following minimum rights:

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;”

55. The Court finds, however, that this complaint was not raised in a constitutional appeal to the Constitutional Court.

56. The Court therefore considers that the applicant has not exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention. It follows that the complaint must be declared inadmissible in accordance with Article 35 § 4 of the Convention.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58.<sup>1</sup> In his application form dated 9 November 2004 the applicant claimed 60,830 euros (EUR) in compensation for pecuniary damage. In his letter of 25 February 2005 he modified his claim asking to be paid 60,200 euros (EUR) in this respect. Those sums comprised loss of income, rent for an apartment paid in advance, personal effects stolen at the time when the applicant was detained and charges for his detention. He further claimed EUR 2,000,000 in compensation for non-pecuniary damage caused by mental and physical suffering during his detention. That sum also comprised punitive damages against the Czech Republic to prevent it from breaking its laws.

59.<sup>2</sup> As regards the applicant’s claim for pecuniary damage, the Court considers that there is no causal link between the violations found, that is unlawfulness of the applicant’s detention and the lack of an enforceable right to compensation, and the pecuniary damage claimed. The Court therefore dismisses that claim.

60.<sup>3</sup> The applicant did not make any claim for just satisfaction in respect of non-pecuniary damage within the time allowed for that purpose (Rule 60 § 1 of the Rules of Court). In such circumstances, the Court would usually

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<sup>1</sup> Rectified on 4 May 2010. The text was: “The applicant claimed 60,200 euros (EUR) in compensation for pecuniary damage. That sum comprised loss of income, rent for an apartment paid in advance, personal effects stolen at the time when the applicant was detained and charges for his detention.”

<sup>2</sup> Rectified on 4 May 2010. The text was: “He further claimed EUR 2,000,000 in compensation for non-pecuniary damage caused by mental and physical suffering during his detention. That sum also comprised punitive damages against the Czech Republic to prevent it from breaking its laws.”

<sup>3</sup> Rectified on 4 May 2010. The text was: “The Government did not comment on the applicant’s claims.”

make no award. In the present case, however, the Court has found a violation of the applicant's right to liberty. Having regard to the fundamental importance of that right, the Court finds it appropriate to award the applicant 2,000 euros (EUR) as compensation for non-pecuniary damage (see *Rusu v. Austria*, no. 34082/02, § 62, 2 October 2008).<sup>4</sup>

### **B. Costs and expenses**

61.<sup>5</sup> The applicant did not put forward any claim in respect of the costs and expenses incurred before the Court.

### **C. Default interest**

62.<sup>6</sup> The Court considers it appropriate that the default interest 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 complaints concerning the unlawfulness of the applicant's detention and the lack of an enforceable right to compensation admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention not having been "lawful" within the meaning of that provision;
3. *Holds* that there has been a violation of Article 5 § 5 of the Convention on account of the lack of an enforceable right to compensation under the domestic legislation for the applicant's deprivation of liberty in breach of Article 5 § 1 (c) of the Convention;

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<sup>4</sup> §§ 61 and 62 deleted on 4 May 2010. The text was: "61. As regards the applicant's claim for pecuniary damage, the Court considers that there is no causal link between the violations found, that is unlawfulness of the applicant's detention and the lack of an enforceable right to compensation, and the pecuniary damage claimed. The Court therefore dismisses that claim.

62. In view of the circumstances of the case, in particular the procedural nature of the defect that led to the violation of the applicant's rights under Article 5 § 1 (c) of the Convention, and making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 in compensation for any non-pecuniary damage he may have suffered."

<sup>5</sup> This paragraph was under number 63 in the former version of the judgment.

<sup>6</sup> This paragraph was under number 64 in the former version of the judgment.

4. *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, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into British Pounds (GBP) at the rate applicable at the date of settlement;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 25 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Peer Lorenzen  
President