



Excessive length of pre-trial detention of kidnapping suspect

In today's Chamber judgment in the case of [Vosgien v. France](#) (application no. 12430/11), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 5 § 3 (right to liberty and security) of the European Convention on Human Rights on account of the excessive length of Mr Vosgien's continued pre-trial detention.

no violation of Article 6 § 2 (presumption of innocence) of the Convention.

Mr Vosgien, who had initially been arrested and placed in police custody on suspicion of having taken part, with other persons, in the abduction and imprisonment of a couple with a view to obtaining a ransom, was then placed in pre-trial detention. The case concerned the excessive length of that pre-trial detention, which was extended on several occasions and lasted four years, three months and 2 days.

Principal facts

The applicant, Nicolas Vosgien, is a French national who was born in 1986 and lives in Nice (France).

On 15 September 2006 Mr Vosgien was arrested and placed in police custody on suspicion of participation, with other persons, in abduction and imprisonment for the purpose of obtaining a ransom, armed assault committed jointly with others, rape and attempted rape. On 19 September 2006 Mr Vosgien and other individuals were placed in pre-trial detention by the liberties and detention judge at the Nice *tribunal de grande instance*.

The applicant's pre-trial detention was extended on several occasions, and lasted a total of four years and three months.

After several dismissals of his applications for release, the investigation division ordered the applicant's release on 16 December 2010, noting that he had not appeared before the assize court following the most recent extension of his pre-trial detention.

On 21 January 2011 Mr Vosgien was convicted of the charges against him and sentenced to six years' imprisonment by the assize court. The applicant was then taken into custody again.

On 12 April 2011 the investigation division at the Aix-en-Provence court of appeal granted an application for the applicant's release and attached conditions; it referred to the length of time he had already spent in pre-trial detention, the guarantees submitted by him and, without prejudice to the ultimate decision on appeal, the length of the sentence imposed at first instance.

The Court has not been informed of the outcome of the proceedings before the assize court of appeal, which were due to be held in December 2011.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Complaints, procedure and composition of the Court

Relying on Article 5 § 3 (right to liberty and security) of the European Convention on Human Rights Convention, the applicant complained that his pre-trial detention had exceeded the reasonable time requirement set out in that Article.

Relying on Article 6 § 2 (presumption of innocence) of the Convention, the applicant also alleged that there had been a breach of his right to the presumption of innocence.

The application was lodged with the European Court of Human Rights on 26 January 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Mark **Villiger** (Liechtenstein), *President*,
Angelika **Nußberger** (Germany),
Boštjan M. **Zupančič** (Slovenia),
Ann **Power-Forde** (Ireland),
André **Potocki** (France),
Paul **Lemmens** (Belgium),
Helena **Jäderblom** (Sweden),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 5 § 3

The Court reiterated that it fell in the first place to the national judicial authorities to ensure that the pre-trial detention of an accused person did not exceed a reasonable time. To this end they had to examine all the circumstances arguing for and against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and set them out in their decisions on the applications for release. It was essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his appeals that the Court was called upon to decide whether or not there had been a violation of Article 5 § 3 of the Convention.

The persistence of reasonable suspicion that the person arrested had committed an offence was a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer sufficed; the Court had then to establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court had also to ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings.

In the present case, the investigating authorities had, throughout the proceedings, used relatively consistent grounds for dismissing the applications for release or for ordering an extension of the pre-trial detention: risk of absconding, risk of repetition of the offence and of collusion with accomplices, and serious and continuing prejudice to public order.

The Court noted that the investigation division had failed to specify the grounds for considering that there was a persistent risk of absconding. With regard to repeat offending, the investigation division had provided no tangible evidence to justify the assertion that the applicant’s personality made plausible the threat of a repeat offence. The Court further noted that the domestic courts had referred to the ground that there was a risk of pressure and collusion, given the violence used by the individuals concerned, including the applicant, to achieve their aims, but without confining themselves to the specific circumstances of the case. The Court also found that the domestic courts had merely referred in an abstract manner to the seriousness of the offences with which the

applicant was charged and the threat to public order, without substantiating the current and definite nature of the threat to public order and without specifying how the applicant's release would pose a threat to it.

The Court found that the reasons given by the judicial authorities had not been sufficient to justify the applicant's continued pre-trial detention for four years and three months.

In consequence, the Court concluded that there had been a violation of Article 5 § 3 (right to liberty and security) of the Convention on account of the excessive length of the applicant's pre-trial detention.

Article 6 § 2

The applicant submitted that the judges deciding on his detention had infringed the principle of the presumption of innocence in his respect. He relied on Article 6 § 2 of the Convention.

Having regard to all the evidence in its possession, the Court found no appearance of a violation of Article 6 § 2 of the Convention.

Just satisfaction (Article 41)

The court held that France was to pay the applicant 8,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in French.

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Jean Conte (tel: + 33 3 90 21 58 77)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.