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

FIRST SECTION

DECISION

Application no. 1337/22
Mario BERIŠIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 30 April 2026 as a Committee composed of:

Artūrs Kučs*, President*,
Davor Derenčinović,
Anna Adamska-Gallant*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 1337/22) 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") on 23 December 2021 by a Croatian national, Mr Mario Berišić ("the applicant"), who was born in 1991, lives in Vukovar and was represented by Ms I. Margetić, a lawyer practising in Zagreb;

the decision to give notice of the complaint concerning the applicant's pre-trial detention under Article 5 §§ 1 (c) and 3 of the Convention to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's pre-trial detention.

2. In August 2020 the applicant was arrested after three years of being unavailable to the authorities. He was put in pre-trial detention.

3. In December 2020 the applicant was indicted on charges of fraud. The competent prosecutor asked for an extension of the applicant's pre-trial detention on the basis of the risk of absconding. The applicant stated that by a final judgment in another set of criminal proceedings he had been ordered

to serve a prison sentence of five months and ten days in Osijek Prison. He also explained that by serving his prison sentence, there would be no danger of his absconding and thus no need to extend his pre-trial detention.

4. On 31 December 2020 the Novi Zagreb Municipal Court extended the applicant's pre-trial detention, holding that, if he served his prison sentence in Osijek Prison, he would need to be transported to Zagreb for hearings, causing unnecessary costs. Furthermore, his sentence was only five months long and, given the possibility of delays due to the COVID-19 pandemic, it was uncertain that the proceedings would be concluded in that time.

5. On 2 February 2021 the Velika Gorica County Court upheld that decision. It stated that it had not been necessary to take into account the circumstances referred to by the lower court when examining the need for pre-trial detention but that, in any event, if the applicant was already in pre-trial detention, such detention had priority over serving the prison sentence. It further held that the Code of Criminal Procedure did not provide that pre-trial detention should be lifted if a defendant was sent to serve a prison sentence.

6. On 8 June 2021 the Constitutional Court found no breach of Article 5 of the Convention. It noted that under the Supreme Court's case-law (II Kž 321/2008-3; II Kž 121/2016-5; II Kž 133/2017-4; II Kž 44/2018-4; and II Kž 537/2020-4), pursuant to section 49(4) of the Enforcement of Prison Sentences Act, pre-trial detention in ongoing criminal proceedings prevailed over serving a prison sentence imposed in another case. Three judges attached a separate opinion, stating that such view had no justification and, moreover, that it contravened the principle of the presumption of innocence.

7. Meanwhile, on 8 February 2021 the Novi Zagreb Municipal Court terminated the applicant's pre-trial detention, holding that the risk of absconding could be removed by allowing him to serve his prison sentence. That court wrote a letter to Osijek Prison, asking to be informed if there was any request for release by the applicant so that it could examine the need to re-order his pre-trial detention.

8. Furthermore, on 29 January 2021 the Zagreb Municipal Criminal Court, in another set of criminal proceedings against the applicant, reached the same conclusion (that the risk of absconding could be removed by allowing the applicant to serve his prison sentence) and discontinued his pre-trial detention ordered in connection with that other set of criminal proceedings.

9. The applicant spent 40 days in pre-trial detention on the basis of the decisions of the Novi Zagreb Municipal Court of 31 December 2021 and of the Velika Gorica County Court of 2 February 2021.

10. On 6 September 2021 the Novi Zagreb Municipal Court sentenced the applicant to imprisonment and his pre-trial detention was deducted from his prison sentence.

11. The applicant complained before the Court, relying on Article 5 §§ 1 (c) and 3 of the Convention, that the domestic courts' decisions extending his pre-trial detention had been arbitrary and unjustified in the circumstances where the danger of absconding could have been prevented by allowing him to serve his prison sentence imposed in another case.

THE COURT'S ASSESSMENT

12. The Government argued that the applicant had abused his right to individual application because he had not mentioned in his application that his pre-trial detention had been terminated on 8 February 2021 and that he had not started serving his prison sentence immediately thereafter, as he had been placed in pre-trial detention in connection with several other sets of criminal proceedings. The Court notes that those decisions did not in any way change the fact that the applicant had spent 40 days in pre-trial detention on the basis of the decisions complained of (compare *Margaretić v. Croatia*, no. 16115/13, § 79, 5 June 2014). The manner in which the applicant presented his case did not therefore amount to an abuse of the right of application (compare *J.B. v. Poland*, no. 57675/10, § 44, 3 November 2015).

13. The Government further argued that the applicant had not suffered any significant disadvantage because his pre-trial detention had been lifted on 8 February 2021, and because it had been deducted from his prison sentence. The Court reiterates that the applicant spent 40 days in pre-trial detention on the basis of the decisions complained of and further notes that it has already rejected a similar deduction argument in *Van Velden v. the Netherlands* (no. 30666/08, §§ 38-39, 19 July 2011). In particular, it is a feature of the criminal procedure of many Contracting Parties to deduct periods of detention served prior to the final conviction and sentencing from the total length of the sentence. For the Court to hold generally that any harm resulting from pre-trial detention was thereby *ipso facto* nugatory for Convention purposes would remove a large proportion of potential complaints under Article 5 from the scope of its scrutiny. This objection is therefore likewise dismissed.

14. The Court further reiterates that Article 5 § 1 of the Convention is mostly concerned with the existence of a lawful basis for a detention within criminal proceedings, whereas the possible justifications for such detention fall under Article 5 § 3 of the Convention (see *Khodorkovskiy v. Russia*, no. 5829/04, § 165, 31 May 2011).

15. In the present case the detention order complained of had a legal basis and contained at least some reasoning, even if, as the applicant argued, that reasoning was flawed or insufficient. Thus, it cannot be said that the applicant's detention was unlawful under Article 5 § 1 of the Convention. As for the relevance and sufficiency of the reasons given by the national courts, the Court considers it more appropriate to examine the matter under Article 5 § 3 (compare *Buzadji v. the Republic of Moldova* [GC],

no. 23755/07, § 61, ECHR 2016 (extracts); *Šoš v. Croatia*, no. 26211/13, § 73, 1 December 2015; and *Rubtsov and Balayan v. Russia*, nos. 33707/14 and 3762/15, § 35, 10 April 2018).

16. The relevant general principles under Article 5 § 3 of the Convention have been summarised in *Merabishvili v. Georgia* ([GC], no. 72508/13, §§ 222-25, 28 November 2017). The Court also reiterates that the domestic courts must examine all the facts arguing for or 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 (see *Boicenco v. Moldova*, no. 41088/05, § 140, 11 July 2006).

17. Furthermore, it is not the Court's task to replace the national authorities, which are better placed to interpret national legislation, to examine all the circumstances of a case and to take all the necessary decisions, including those in respect of detention on remand (see *Kotov v. Russia* [GC], no. 54522/00, § 122, 3 April 2012). It is essentially on the basis of the reasons given in those domestic courts' detention decisions that the Court is called upon to decide whether or not there has been a violation of Article 5 of the Convention (see *Stašaitis v. Lithuania*, no. 47679/99, § 82, 21 March 2002).

18. In the present case it is undisputed that the national courts explained the persistence of a reasonable suspicion that the applicant had committed an offence and that they appropriately evaluated and demonstrated the existence of a substantial risk of the applicant's absconding if at liberty. The applicant's grievance is focused on the authorities allegedly not providing relevant and sufficient reasons in respect of his argument that the risk of absconding could have been removed by allowing him to serve his prison sentence imposed in another case.

19. In that connection the Court notes that the case-law of the Supreme Court which served as basis for dismissing the applicant's argument (see paragraph 6 above) is based on section 49(4) of the Enforcement of Prison Sentences Act, which states that, when a convicted person is in pre-trial detention for another case, the sentence-execution judge is to issue an order for him or her to serve the prison sentence without delay; however, the serving of the sentence begins only after the pre-trial detention is lifted (see *Dervishi v. Croatia*, no. 67341/10, §§ 109 and 124, 25 September 2012).

20. The Court observes that section 49(4) of the Enforcement of Prison Sentences Act reflects the principle that pre-trial detention and a prison sentence cannot run concurrently because they serve different purposes: detention is a preventive measure, while a sentence is punitive and rehabilitative (see *Dervishi*, cited above, § 125). It appears that it is designed to ensure continuity and efficiency in sentence execution. Issuing the referral immediately upon learning that pre-trial detention was ordered or extended in another case avoids unnecessary administrative gaps and prevents

situations where the convicted person is released between pre-trial detention and sentence execution, which could pose a risk of his or her absconding or reoffending.

21. However, it seems there is nothing in that provision mandating that pre-trial detention should always have priority over the serving of a prison sentence imposed in another case. The Court further notes that, apart from relying on the provision in question, no reasons are stated in the Supreme Court's case-law justifying an approach of giving priority to pre-trial detention and dismissing any argument that the risk of absconding can be removed by allowing the person to serve the prison sentence imposed in another case. No considerations are given, for instance, to the principles of presumption of innocence and prompt execution of sentences, or the fact that the flight risk argument becomes weaker once the order to serve a sentence is in place.

22. The Court also observes that on 8 February 2021 the very same domestic court terminated the applicant's pre-trial detention. It agreed with the applicant's lawyer that the flight risk could be removed by allowing the applicant to serve his prison sentence. Another court in another case against the applicant reached the same conclusion (see paragraphs 7 and 8 above).

23. However, the Court does not deny that there may exist reasons why pre-trial decision should have priority over the serving of a prison sentence imposed in another case. As noted by the Constitutional Court in its decision no. U-III/2155/2020 of 19 May 2020, a prison sentence may be interrupted, postponed or eased through various privileges. Although those measures are subject to approval and the approach taken by the Novi Zagreb Municipal Court in the present case (see paragraph 7 above) demonstrates the possibility of coordination between the authorities in such circumstances, the reasons may go beyond mere administrative convenience for the domestic authorities.

24. In any event, the Court cannot lose sight of the fact that the applicant relied on the serving of his prison sentence imposed in another case as an alternative measure to pre-trial detention for ensuring his appearance at trial. In that connection the Court reiterates that, according to its well-established case-law under Article 5 § 3, when deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures of ensuring his or her appearance at trial (see *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012).

25. However, this applies to guarantees and less severe measures expressly intended to ensure the appearance of an accused at a hearing, such as bail or the prohibition on leaving one's place of residence (which are expressly provided for by Croatian law; see *Margaretić*, cited above, §§ 70 and 92), which could allow the accused's provisional release once the continuing detention ceases to be reasonable (see *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000; *Aleksandr Makarov v. Russia*, no. 15217/07, § 138, 12 March 2009; *Peša v. Croatia*, no. 40523/08, § 107,

8 April 2010; and *Orban v. Croatia*, no. 56111/12, § 60, 19 December 2013). It is hard to say that the obligation to consider alternative measures of ensuring the accused's appearance at trial applies also to measures which are designed for other purposes and carry other constraints (such as imprisonment, which is punitive and rehabilitative) and which only incidentally also affect the risk of flight.

26. Accordingly, the fact that the national courts allegedly did not provide relevant and sufficient reasons when dismissing the applicant's argument that the flight risk could have been removed by allowing him to serve his prison sentence imposed in another case, although regrettable (see paragraphs 19-23 above), could not have led to a violation of Article 5 § 3 of the Convention.

27. Bearing in mind the considerations stated in paragraphs 25 and 26 above, the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 May 2026.

Liv Tigerstedt Deputy Registrar	Artūrs Kučs President