

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

FIRST SECTION

CASE OF KNEŽEVIĆ v. CROATIA

(Application no. 55133/13)

JUDGMENT

STRASBOURG

19 October 2017

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Knežević v. Croatia,

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

Kristina Pardalos, *President,*
Ksenija Turković,
Pauliine Koskelo, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 26 September 2017,

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

PROCEDURE

1. The case originated in an application (no. 55133/13) 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 a Croatian national, Mr Stanislav Knežević ("the applicant"), on 8 August 2013.

2. The applicant was represented by Mr J. Franceschi, a lawyer practising in Split. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant complained, in particular, of unlawfulness and length of his pre-trial detention, under Articles 5 §§ 1 and 3 of the Convention.

4. On 8 November 2013 the above complaints were 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 1961 and lives in Split.

6. On 19 May 2011 the applicant and several other individuals (see, for further information, *Šoš v. Croatia*, no. 26211/13, § 17, 1 December 2015) were arrested on suspicion of drug trafficking and detained under Article 123 § 1(2), (3) and (4) of the Code of Criminal Procedure (risk of collusion, risk of reoffending, and seriousness of charges).

7. During the investigation, an investigating judge of the Split County Court (*Županijski sud u Splitu*) several times extended the pre-trial detention in respect of the applicant and the other suspects under Article 123 § 1(2), (3) and (4) of the Code of Criminal Procedure (risk of

collusion, risk of reoffending, and seriousness of charges). The reasoning of the relevant decisions is outlined in the case of *Šoš* (cited above, §§ 20 and 23).

8. On 18 August 2011 the investigating judge extended the pre-trial detention in respect of the applicant and the other suspects under Article 123 § 1 (3) and (4) of the Code of Criminal Procedure (risk of reoffending and seriousness of charges). He found that all the relevant witnesses had been questioned and that there was no further possibility of remanding the suspects in detention on the grounds of the risk of collusion. As to the other grounds relied upon for the pre-trial detention, the investigating judge reiterated his previous findings.

9. The investigating judge relied on the same reasons extending the pre-trial detention in respect of the applicant and the other suspects in the further course of the investigation. The reasoning of the relevant decisions is outlined in the *Šoš* case (cited above, §§ 28, 31, 36 and 41).

10. On 16 May 2012 the applicant and nine other individuals were indicted on charges of drug trafficking in the Split County Court.

11. Following the submission of the indictment, on 18 May 2012 a three-judge panel of the Split County Court extended the pre-trial detention in respect of the applicant and the other accused relying on Article 123 § 1 (3) and (4) of the Code of Criminal Procedure (risk of reoffending and seriousness of charges). His pre-trial detention was extended several times on the same grounds. The reasoning of the relevant decisions is outlined in the *Šoš* case (cited above, §§ 44, 47 and 52).

12. On 20 February 2013 the Supreme Court (*Vrhovni sud Republike Hrvatske*), acting as a court of appeal, found that the applicant's detention should be extended only under Article 123 § 1 (3) of the Code of Criminal Procedure (risk of reoffending). It explained that the 2013 amendments to the Criminal Code provided that the offence at issue was punishable by a prison sentence of between three and fifteen years and no longer by long-term imprisonment. It was therefore not possible to remand the applicant on the grounds of the seriousness of the charges since the possibility of imposing a sentence of long-term imprisonment was one of the conditions for extending pre-trial detention under Article 123 § 1 (4) of the Code of Criminal Procedure (seriousness of charges).

13. On 20 April 2013 a three-judge panel of the Split County Court extended the pre-trial detention in respect of the applicant and the other accused under Article 123 § 1 (3) of the Code of Criminal Procedure (risk of reoffending), without changing its previous reasoning.

14. On 17 May 2013 a three-judge panel of the Split County Court extended the maximum two-year statutory time-limit for the applicant's pre-trial detention under Article 133 § 1 (4) of the Code of Criminal Procedure for a further six months (until 19 November 2013) relying on section 35(2)

of the Office for the Suppression of Corruption and Organised Crime Act (hereinafter "the OSCOCA").

15. The applicant appealed to the Supreme Court arguing that section 35(2) of the OSCOCA was inapplicable to his case since he was not detained during the investigation.

16. On 7 June 2013 the Supreme Court dismissed the applicant's appeal on the grounds that the said provision of the OSCOCA made a mistaken reference to Article 130 § 2 of the Code of Criminal Procedure. It also considered that the cited provision was incomprehensible since, if understood as provided in that Act, it merely repeated paragraph 1 of section 35 of the OSCOCA, which would be obsolete. Instead it should be interpreted in line with the previous abrogated version of the OSCOCA, which in its section 28(3) had provided for a possibility of extension of the overall maximum period of detention for a further six months, which was in the applicant's case until 19 November 2013.

17. On 18 June 2013 the applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) reiterating his previous arguments.

18. On 11 July 2013 the Constitutional Court dismissed the applicant's constitutional complaint as unfounded, endorsing the reasoning of the Supreme Court.

19. The applicant's pre-trial detention was extended, under Article 123 § 1 (3) of the Code of Criminal Procedure (risk of reoffending), until the maximum period expired on 19 November 2013, when he was released.

II. RELEVANT DOMESTIC LAW

20. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 152/2008, 76/2009, 80/2011, 91/2012 and 143/2012) are summarised in the case of *Šoš* (cited above, § 70).

21. In addition, Article 130 of the Code of Criminal Procedure provides:

> "(1) The maximum period of pre-trial detention ordered by the investigating judge or a three-judge panel is one month from the moment of deprivation of liberty.
>
> (2) If there is a relevant reason the investigating judge may, based on a proposal of the prosecution, extend the pre-trial detention, for the first time for a maximum period of two months, and then, ..., for a further maximum period of three months. ..."

22. The relevant provision of the Office for the Suppression of Corruption and Organised Crime Act (*Zakon o Uredu za suzbijanje korupcije i organiziranog kriminaliteta*, Official Gazette nos. 76/2009, 116/2010, 145/2010, 57/2011 and 136/2012) provided:

Section 35

"(1) The maximum period of detention before indictment, if the investigation has been extended (Article 230 § 2 of the Code of Criminal Procedure) is twelve months. The investigating judge may also extend the pre-trial detention for three months.

(2) If the pre-trial detention was extended during the investigation as provided in § 1 of this section, the maximum period of detention under Article 130 § 2 of the Code of Criminal Procedure shall be extended for a further six months."

23. The explanatory report to the draft OSCOCA explained that it was necessary to adjust the Act with the 2008 Code of Criminal Procedure (see paragraphs 20-21 above). With regard to section 35, the explanatory report suggested that this section extended the maximum period of pre-trial detention during investigation to twelve months, and that paragraph 2 of this section extended the maximum period of pre-trial detention as provided for under Article 109 of the Code of Criminal Procedure (*sic*).

24. Article 109 of the Code of Criminal Procedure regulated the procedure following arrest by the police and not the issues of pre-trial detention. The latter issue had been regulated by Article 109 of the abrogated 1997 Code of Criminal Procedure.

25. By the 2013 amendments to the OSCOCA, section 35 of that Act was deleted.

THE LAW

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

26. The applicant complained that he had been unlawfully detained after 19 May 2013 (until 19 November 2013) when the maximum period of his pre-trial detention had expired. He relied on Article 5 § 1 of the Convention, which, in so far as relevant, 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;

..."

27. The Government contested the applicant's submission.

A. Admissibility

28. The Court notes that this complaint 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' arguments

29. The applicant contended that the application of the relevant domestic provisions on maximum pre-trial detention by the relevant domestic courts had been unforeseeable and arbitrary. In his view, such an application had been contrary to the clear wording of section 35 of the OSCOCA and the relevant provisions of the applicable 2008 Code of Criminal Procedure. Moreover, he argued that uncertainty in the interpretation and application of section 35 of the OSCOCA should not have been construed to his detriment.

30. The Government pointed out that the Supreme Court and the Constitutional Court had found that the extension of the maximum period of the applicant's pre-trial detention had been lawful. In the Government's view, the interpretation of section 35 of the OSCOCA in the applicant's case had been consistent with the intention of that Act as it had been explained in the explanatory report to the draft OSCOCA (see paragraph 23 above).

2. The Court's assessment

(a) General principles

31. The Court refers to the general principles concerning the lawfulness of detention set out in the case of *Mooren v. Germany* (no. 11364/03, §§ 72-81, 13 December 2007).

32. In particular, it reiterates that the requirement of "lawfulness" of detention 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 v. Cyprus* [GC], no. 21906/04, § 116, ECHR 2008). "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 *Mooren*, cited above, § 76; see also, *Dragin v. Croatia*, no. 75068/12, § 90, 24 July 2014, with further references). The standard of "lawfulness" set by the Convention thus requires that all law be

sufficiently precise to allow a 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 of Judgments and Decisions* 1998‑VII, and *Baranowski v. Poland*, no. 28358/95, § 52, ECHR 2000‑III).

33. While it is normally in the first place for the national authorities, notably the courts, to interpret and apply domestic law, the position is different in relation to cases where failure to comply with such law entails a breach of the Convention. This applies, in particular, to cases in which Article 5 § 1 of the Convention is at stake and the Court must then exercise a certain power to review whether national law has been observed. In particular, it is essential, in matters of deprivation of liberty, that the domestic law define clearly the conditions for detention and that the law be foreseeable in its application (see *Creangă v. Romania* [GC], no. 29226/03, § 101, 23 February 2012, with further references).

(b) Application of these principles in the present case

34. There is no dispute between the parties that normally the maximum period of the applicant's pre-trial detention expired two years following his deprivation of liberty, namely on 19 May 2013. The dispute arises as to the question of whether there was a possibility under section 35(2) of the OSCOCA to extend this maximum period for a further six months (see paragraph 14 above).

35. The Court notes that, on a purely textual interpretation, section 35(2) of the OSCOCA, as in force at the relevant time, provided for a possibility of extension of the maximum period of pre-trial detention ordered by an investigating judge under Article 130 § 2 of the Code of Criminal Procedure for a further six months (see paragraph 22 above). The cited Article provided, in particular, that an investigating judge could exceptionally extend the initial one-month period of pre-trial detention for a further maximum period of two months and then for a maximum period of three months (see paragraph 21 above). On this understanding, the maximum period of the initial pre-trial detention ordered by an investigating judge under Article 130 of the Code of Criminal Procedure could last six months and then, under the above cited section 35(2) of the OSCOCA, it could have been extended for a further six months.

36. However, when his pre-trial detention was extended by the reliance on section 35(2) of the OSCOCA, the applicant was not detained by an investigating judge at the preliminary stage of the proceedings but by a three-judge panel pending trial and he had already been on remand for two years, which significantly surpassed the period provided for under Article 130 § 2 of the Code of Criminal Procedure (see paragraph 14 above).

37. Following the applicant's complaint of unlawful extension of the maximum period of his pre-trial detention, the Supreme Court considered that section 35(2) of the OSCOCA was incomprehensible and erroneously cross-referenced to the Code of Criminal Procedure. The Supreme Court therefore differently construed this provision in the applicant's case and found that it allowed for an extension of the maximum period of the applicant's detention pending trial (see paragraph 16 above). Such an understanding of the situation was also accepted by the Constitutional Court (see paragraph 18 above).

38. In these circumstances, the Court finds that it has no reason to question the findings of the Supreme Court that the relevant domestic law was incomprehensible and confounded. As such, it obviously failed to meet the requisite "quality of law" standard under Article 5 § 1 of the Convention (see paragraph 32 above).

39. Moreover, the Court notes that in the context of extension of the maximum period of pre-trial detention it has accepted that in instances in which the wording of the relevant provision of domestic law left some doubt as to the manner of its interpretation, the accessible authoritative guidelines of the Supreme Court, supported by the consistent practice, could remedy the possible lack of clarity in its application (see, for instance, *Dragin*, cited above, §§ 93-95). However, in the case at issue it was not merely a question of a doubt as to the wording of section 35(2) of the OSCOCA, which, on the face of it, plainly provided only for a possibility of extension of the initial six-month period of detention, but there were also no authoritative guidelines or practice of the relevant domestic courts allowing the applicant to foresee the impugned manner of application of section 35(2) of the OSCOCA in his case.

40. In this connection, and with regard to the Supreme Court's reference to section 28(3) of the abrogated version of the OSCOCA, the Court notes that it is difficult to see how the applicant could have foreseen the manner of application of section 35(2) of the OSCOCA with reference to an obsolete provision which had been set aside by the amended OSCOCA.

41. The same is true with regard to the Government's reference to the explanatory report of the draft OSCOCA. Even assuming that this could be of relevance for the issue of quality of law relied upon for the extension of the applicant's detention, it should be noted that the explanatory report is in itself confusing and contradictory. In particular, it would appear that it refers to a provision of the existing Code of Criminal Procedure that is irrelevant in this context or, on another possible understanding, to a provision of the abrogated 1997 Code of Criminal Procedure. In any event, it clearly fails to alleviate the above noted deficiencies in the quality of law relied upon for the extension of the maximum period of the applicant's pre-trial detention.

42. In conclusion, the Court finds that the extension of the maximum period of the applicant's pre-trial detention after 19 May 2013 was incompatible with the requirements of the rule of law under Article 5 § 1 (see paragraph 32 above).

43. There has accordingly been a violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

44. The applicant complained of an excessive length of his pre-trial detention. He relied on Article 5 § 3 of the Convention, which provides as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

45. The Government contested the applicant's submission.

A. Admissibility

46. The Court notes that this complaint 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' arguments

47. The applicant maintained that his pre-trial detention had been excessively long.

48. The Government argued in particular that the applicant's pre-trial detention had been based on relevant and sufficient reasons and that the proceedings had been conducted with the requisite diligence.

2. The Court's assessment

49. The general principles for the Court's assessment are set out in the case of *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 84-91, ECHR 2016 (extracts)).

50. The Court notes that in the case of *Šoš* (cited above, §§ 95-96), concerning the length of pre-trial detention of the applicant's co-defendant, ordered on the same grounds and for the same period of time (see paragraphs 6-13 above), it has already found a violation of Article 5 § 3 of the Convention. The Court held, in particular, that the national courts had

not sufficiently explained why the applicant's continued detention on the grounds of the seriousness of the charges had been necessary and that, when extending the pre-trial detention on the grounds of the risk of reoffending, they had not conducted an assessment of the specific circumstances of the relevant case nor had they thoroughly examined the possibility of applying another, less severe, measure of restraint.

51. The Court sees no reason to depart from the above assessment in the present case.

52. It therefore finds that there has been a violation of Article 5 § 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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."

54. In his initial application, the applicant claimed 51,284.66 euros in total for non-pecuniary damage and costs and expenses. In his further submissions to the Court, the applicant referred to his initial claim.

55. The Government contested the applicant's claim.

56. The Court notes that the applicant failed to submit and specify a claim for just satisfaction within the time-limit fixed, as required under Rule 60 of the Rules of Court. There is therefore no properly made claim under Article 41 of the Convention (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 57-62, 30 March 2017; see also *Petar Matas v. Croatia*, no. 40581/12, §§ 52-53, 4 October 2016) and the Court considers that there is no exceptional situation, within the meaning of its case-law (see *Nagmetov*, cited above, §§ 78-82), warranting the making of an award in that connection.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds* that there is no call to award the applicant just satisfaction.

Done in English, and notified in writing on 19 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Deputy Registrar	Kristina Pardalos President