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

FIRST SECTION

DECISION

Application no. 36867/14
Davor GROBENSKI
against Croatia

The European Court of Human Rights (First Section), sitting on 12 September 2017 as a Committee composed of:

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

and Renata Degener, *Deputy Section Registrar*,

Having regard to the above application lodged on 12 May 2014,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Davor Grobenski, is a Croatian national who was born in 1993 and lives in Koprivnica. He was represented before the Court by Ms K. Vuljak, a lawyer practising in Koprivnica.

2. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant has been diagnosed as having a slight mental disability. According to available criminal records, the applicant was convicted in March 2012 (conviction final on 12 April 2012) of making serious threats;

in November 2012 (conviction final on 29 November 2012) of theft, and in September 2013 (conviction final on 23 October 2013) of aggravated theft.

5. On 25 September 2013 the applicant was arrested and remanded in custody on suspicion of several offences of aggravated theft. Following his arrest, the applicant was questioned by the Koprivnica State Attorney's Office (*Općinsko državno odvjetništvo u Koprivnici*). He decided not to retain the services of a lawyer on the grounds that he could not afford one and confessed to committing the offences.

6. On 27 September 2013 the Koprivnica Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Koprivnici*) asked an investigating judge at the Varaždin County Court (*Županijski sud u Varaždinu*) to order the applicant's pre-trial detention. It submitted that there was a reasonable suspicion that the applicant had committed the offences at issue, based on the documents from the crime scene investigation, records of the applicant being identified by witnesses in an identification parade and the seizure of evidence, and the details provided in compensation claims submitted by the victims. The Municipal State Attorney's Office also referred to the applicant's confession and his previous convictions (making an erroneous reference to the case file numbers) and the criminal complaints lodged against him.

7. On the same day, the investigating judge questioned the applicant. He confessed to the offences he was suspected of and stated that he would not commit any more, a fact which he wanted to be taken into account when deciding whether to keep him in custody.

8. The investigating judge ordered the applicant's pre-trial detention for a month on the grounds of a risk of reoffending (Article 123 § 1 (3) of the Code of Criminal Procedure). The judge found that there was a reasonable suspicion that the applicant had committed the offences, based on the material available in the case file, particularly his confession. The judge stated further that his criminal record showed that the applicant had been convicted previously for property crime and that, despite the efforts of the local welfare centre, he had again come into conflict with the law. In addition, he had a problem with alcohol abuse. In those circumstances and in view of the accusations against the applicant, the judge considered that pre-trial detention should be ordered.

9. Parallel to the decision on pre-trial detention, the applicant was appointed a legal aid lawyer, Ms Vuljak (see paragraph 1 above). The lawyer challenged the investigating judge's decision on pre-trial detention before a three-judge panel at the Varaždin County Court. She argued that there had been no reason to order pre-trial detention as the applicant had confessed to the offences, his whereabouts were known and such a decision could prejudice the outcome of the proceedings.

10. On 4 October 2013 the three-judge panel dismissed the applicant's appeal and upheld the investigating judge's reasoning.

11. On 18 October 2013 the Koprivnica Municipal State Attorney's Office indicted the applicant in the Koprivnica Municipal Court (*Općinski sud u Koprivnici*) on charges of aggravated theft.

12. On 22 October 2013 a hearing was held on the applicant's pre-trial detention before a three-judge panel at the Koprivnica Municipal Court.

13. At the hearing, a representative of the Koprivnica Municipal State Attorney's Office asked for an extension of the applicant's pre-trial detention on the grounds of a risk of reoffending. The applicant's lawyer submitted that the applicant, nineteen years old at the time, had a mental disability and social development problems and had been questioned by the police without the presence of a lawyer, which had prevented him from understanding his position and rights. Thus, in her view, the applicant's confession was unlawfully obtained evidence and could not be used in the proceedings. For his part, the applicant stated that he had now seen what it meant to be deprived of his liberty and that he would no longer commit any offences.

14. On the same day the three-judge panel of the Koprivnica Municipal Court extended the applicant's pre-trial detention on the grounds of a risk of reoffending. It found that the reasonable suspicion of such a possibility flowed primarily from the applicant's confession, which was in accordance with the other evidence in the case file, in particular the records from the crime scene investigation, the identification of the applicant by witnesses during an identification parade and witness statements. It also considered that the applicant's previous convictions, his previous coming into conflict with the law, the fact he was unemployed and the particular circumstances in which the offences at issue had been committed suggested that there was a risk that he might reoffend. The three-judge panel refused to discuss the issue of the alleged unlawfulness of the applicant's confession on the grounds that it was not within its competence to hold a hearing on such an issue but that it had to decide on the necessity to keep the applicant in pre-trial detention. It also stressed that the issue of the alleged unlawfulness of evidence should be addressed during proceedings for confirmation of the indictment.

15. The applicant appealed to the Varaždin County Court, pointing out that the Koprivnica Municipal Court had established a reasonable suspicion justifying pre-trial detention based on evidence in respect of which he had raised an arguable claim of unlawfulness. At the same time it had refused to examine any of his arguments concerning that unlawfulness. He also contended that as a person with a mental disability he should not be kept in detention.

16. On 30 October 2013 the Varaždin County Court dismissed the applicant's appeal, endorsing the reasoning of the Koprivnica Municipal Court.

17. The applicant then lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*), reiterating his previous arguments. He contended, in particular, that the lower courts had relied on unlawful evidence, namely the confession he had made when there had been no lawyer present, when deciding on his pre-trial detention.

18. On 28 November 2013 the Constitutional Court dismissed the applicant's complaint as unfounded on the grounds that his pre-trial detention had been extended on the basis of a sufficiently established reasonable suspicion and on relevant and sufficient reasons showing that he might reoffend. The Constitutional Court also stressed the fact that the issue of the unlawfulness of evidence could not be examined in the constitutional proceedings, which only concerned the issue of pre-trial detention.

19. The Constitutional Court's decision was served on the applicant's representative on 2 December 2013.

20. Meanwhile, on 27 November 2013, the applicant's pre-trial detention formally ended as he was sent to serve a prison sentence he had been given in another set of criminal proceedings against him.

21. The criminal proceedings against the applicant are still pending. In the meantime, the indictment has been confirmed and his confession during the first questioning has been admitted as lawfully obtained evidence. In the course of the proceedings an expert report was obtained indicating alcohol abuse, a personality disorder and a slight mental disability. However, the report stated that he was clearly able to understand the charges and his position in the criminal proceedings; he knew his lawyer, and was able to follow the strategy for his defence.

B. Relevant domestic law

22. The relevant provisions on pre-trial detention in the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette, no. 152/2008, with further amendments) are cited in the case of *Šoš v. Croatia* (no. 26211/13, § 70, 1 December 2015).

COMPLAINTS

23. The applicant complained under Article 5 §§ 1 and 4 of the Convention that the grounds of reasonable suspicion as the basis for his pre-trial detention had been established on the basis of a confession which could not be considered as lawful evidence, and the domestic courts had refused to examine his complaints in that regard.

THE LAW

24. Complaining of a lack of a reasonable suspicion for his pre-trial detention and the absence of an effective judicial review procedure in that regard, the applicant relied on Article 5 §§ 1 and 4 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;
>
> ...
>
> 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."

A. The parties' arguments

25. The Government submitted, in particular, that the applicant's complaints concerning the use of allegedly unlawful evidence when ordering and extending his pre-trial detention had not been an issue to be addressed in the context of the decisions on pre-trial detention, but one which had to be decided in the criminal proceedings against him, which were still pending. Accordingly, in the Government's view, all the applicant's complaints on that issue were premature. The Government also contended that the applicant had failed to lodge a constitutional complaint against the initial decisions on his pre-trial detention and had thus failed to exhaust effective domestic remedies. Furthermore, the Government argued that the applicant's pre-trial detention had been lawful and that a reasonable suspicion that he had committed the offences at issue had been established by reliance on the ample evidence available to the domestic courts. The Government also submitted that the applicant had had an effective judicial review of his continued deprivation of liberty.

26. The applicant maintained that the reasonable suspicion that he had committed the offences at issue had been based on his confession, which had been obtained in the absence of a lawyer. Such a confession had therefore been unlawful as he, a person with a mental disability, should have been legally represented during the questioning. It was true that he had also confessed to the charges before the relevant courts, but that had been because he had been unable to obtain an effective defence lawyer at the relevant time and because of his mental disability. In any event, in the

applicant's view the reasonable suspicion had not been properly established on the basis of the available evidence. The applicant contended further that the relevant domestic courts had refused to examine his complaints of the unlawfulness of the evidence on which the reasonable suspicion had been established. In the applicant's view, the judicial procedure for the review of his pre-trial detention should have provided for the guarantees of equality of arms between the parties and should have allowed him to challenge the lawfulness of the evidence on which the reasonable suspicion had been based. However, the review procedure had been conducted hastily and had failed to provide for those guarantees. Moreover, his pre-trial detention had been disproportionate given his young age, the conditions of his confinement, his mental disability and the nature of the alleged offences.

A. The Court's assessment

27. The Court finds that it is not necessary to address all of the Government's objections as the complaints are in any event inadmissible for the following reasons.

1. As regards the applicant's complaint under Article 5 § 1 of the Convention

28. The Court's relevant case-law on the requirements of Article 5 § 1 (c) of the Convention is set out, for example, in *Murray v. the United Kingdom* (28 October 1994, §§ 50-63, Series A no. 300-A); *Mooren v. Germany* ([GC], no. 11364/03, §§ 72-81, 9 July 2009); *Lexa v. Slovakia (no. 2)* (no. 34761/03, §§ 46-50, 5 January 2010); and *Simons v. Belgium* ((dec.), no. 71407/10, §§ 25-33, 28 August 2012), all with further references.

29. Furthermore, the Court refers to its general principles under Article 5 § 4 of the Convention set out, for instance, in *Nikolova v. Bulgaria* ([GC], no. 31195/96, §§ 58-61, ECHR 1999-II); *Lexa* (cited above, §§ 66-69), and *Rasul Jafarov v. Azerbaijan* (no. 69981/14, §§ 140-142, 17 March 2016), all with further references.

30. In the present case the applicant was suspected of several offences of theft. On 27 September 2013 an investigating judge at the Varaždin County Court remanded the applicant in custody. With reference to the evidence that had been obtained and the acts of which the applicant had been suspected, as well as his previous convictions, the judge held that pre-trial detention was necessary within the meaning of Article 123 § 1 (3) of the Code of Criminal Procedure (a risk of reoffending). The decision was upheld by a three-judge panel at the Varaždin County Court (see paragraphs 8 and 10 above). Subsequently, a three-judge panel at the Koprivnica Municipal Court extended the applicant's pre-trial detention on the same grounds, a decision which was upheld by the Varaždin County Court

(see paragraphs 14 and 16 above). The applicant's pre-trial detention terminated on 27 November 2013, when he was sent to serve a prison sentence imposed in another set of criminal proceedings against him (see paragraph 20 above). His pre-trial detention thus lasted two months.

31. In those circumstances, the Court accepts that the applicant was remanded in custody in accordance with domestic law on the grounds that he had been accused of a criminal offence and for the purpose of being brought before the competent legal authority which was to determine whether or not that suspicion was justified. His two-month pre-trial detention therefore fell under Article 5 § 1 (c) of the Convention.

32. The parties' views differ as to whether the suspicion that the applicant had committed the offences imputed to him was reasonable, in particular in view of the fact that an allegedly unlawfully confession had been obtained during his first questioning, without the presence of a lawyer.

33. In that connection, the Court notes that the domestic courts referred to the extensive material obtained during the investigation, including the records from the crime scene investigation, witnesses identifying the applicant in an identification parade and the available witness statements. Moreover, specific and quite detailed reasons were given when examining the grounds for the applicant's detention. The Court can therefore accept that such reasons, on the basis of the available material, would at the relevant time have been capable of satisfying an objective observer that the applicant might have committed an offence.

34. As to the applicant's arguments related to the domestic courts' reliance on the allegedly unlawfully obtained confession, the Court firstly notes that it has already held that whilst a lack of legal representation during the questioning of a person who is deprived of his liberty can affect the fairness of the criminal proceedings against him under Article 6, it cannot be inferred from that sole fact that his detention has breached Article 5 § 1 of the Convention (see *Simons*, cited above, § 33). Indeed, it should not necessarily be inferred from the alleged unlawfulness of a particular piece of evidence that the suspicion against the applicant was unsubstantiated when he was remanded in custody or that the purpose of his detention was otherwise not in accordance with Article 5 § 1 (c). In particular, the existence of such a purpose must be considered independently of its achievement and sub-paragraph (c) of Article 5 § 1 does not presuppose that the police should have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant was in custody. The object of questioning during detention under sub-paragraph (c) of Article 5 § 1 is to further the criminal investigation by way of confirming or dispelling the concrete suspicion grounding the arrest or detention (see *Lexa*, cited above, § 57).

35. Moreover, in the case at issue, the applicant repeated his confession when questioned by the investigating judge at a hearing related to a decision

on his pre-trial detention (see paragraph 7 above) and in his subsequent appeal lodged through a lawyer (see paragraph 9 above). In addition, it is noted that at a hearing for the extension of his pre-trial detention the applicant stated, while being represented by a lawyer, that he had now seen what it meant to be deprived of his liberty and that he would not commit any more offences (see paragraph 13 above). In that connection, it should also be noted that an expert report found that the applicant was clearly able to understand the charges and his position in the criminal proceedings; he knew his lawyer, and was able to follow the strategy for his defence (see paragraph 21 above). It thus follows that the applicant's confession to the charges against him was not only made during his first questioning but was also repeated voluntarily several times during the proceedings.

36. In view of the above considerations, noting also that the applicant's pre-trial detention was not excessively long or otherwise disproportionate, the Court accepts that it was compatible with Article 5 § 1 of the Convention.

2. As regards the applicant's complaint under Article 5 § 4 of the Convention

37. With regard to the applicant's complaint concerning the scope of the judicial review of the decisions ordering and extending his pre-trial detention, the Court notes that there is no doubt that the applicant and his lawyer had ample opportunity to participate in the proceedings, were given access to the relevant materials and were able to put forward all the arguments in favour of the defence at the oral hearings before the competent judicial authorities. Moreover, the applicant's complaints were examined at several levels of domestic jurisdiction, including the Constitutional Court.

38. The Court would also note that there is nothing in its case-law under Article 5 § 4 of the Convention suggesting that domestic courts are required to conduct a full assessment of the lawfulness of the evidence presented against an accused in the context of decisions on pre-trial detention. As already explained above, that matter primarily falls to be examined in the context of the criminal proceedings on the merits of the charges (see paragraph 34 above; see also *Rafig Aliyev v. Azerbaijan*, no. 45875/06, § 78, 6 December 2011). Moreover, such an assessment could entail rendering the proceedings ineffective from the perspective of the requirement of speed under Article 5 § 4 of the Convention (see further *Patsuria v. Georgia*, no. 30779/04, § 52, 6 November 2007).

39. Having said that, the Court would stress that while Article 5 § 4 of the Convention does not impose an obligation on a judge examining an appeal against detention to address every argument contained in the appellant's submissions, its guarantees would be deprived of their substance if the judge, relying on domestic law and practice, could treat as irrelevant, or disregard, concrete facts invoked by the detainee and capable of putting

in doubt the existence of the conditions essential for the "lawfulness", in the sense of the Convention, of the deprivation of liberty (see *Nikolova*, cited above, § 61). Accordingly, it is not excluded that a refusal to examine the admissibility and probative weight of a particularly important piece of evidence could raise an issue with regard to the scope of review of the existence of a reasonable suspicion warranting an applicant's pre-trial detention (see, for instance, *Becciev v. Moldova*, no. 9190/03, §§ 75-76, 4 October 2005).

40. However, in the case at issue the Court notes, having in mind the above findings under Article 5 § 1 (c) of the Convention (see paragraphs 33-36 above), that the refusal of the domestic courts to deal with the lawfulness and admissibility of the applicant's initial confession in the context of the detention proceedings could not be interpreted as disregard for the concrete facts essential for the determination of the reasonable suspicion that he had committed the offences at issue (compare *Giosakis v. Greece (no. 2)*, no. 36205/06, § 79, 12 February 2009).

41. Indeed, the concrete facts in that respect flowed from a number of items in the available material, which the domestic courts examined and compared against the applicant's confession when determining the existence of the reasonable suspicion necessary for his detention. In those circumstances and in view of the fact that the Court has to confine itself, as far as possible, to an examination of the concrete case before it (see, for instance, *J.N. v. the United Kingdom*, no. 37289/12, § 100, 19 May 2016), it does not find that the scope of the review of the lawfulness and reasonableness of the grounds for the applicant's pre-trial detention was inadequate or otherwise contrary to the requirements of Article 5 § 4 of the Convention.

42. It follows from the above that the applicant's complaints under Article 5 §§ 1 and 4 of the Convention are manifestly ill-founded and must be rejected in accordance with 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 5 October 2017.

Renata Degener
Deputy Registrar

Kristina Pardalos
President