

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

FIRST SECTION

DECISION

Application no. 43427/22
Ognjen GRUBIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 29 January 2026 as a Committee composed of:

Frédéric Krenc*, President*,
Davor Derenčinović,
Alain Chablais*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 43427/22) 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 6 September 2022 by a Croatian national, Mr Ognjen Grubić ("the applicant"), who was born in 1972 and lives in Zagreb, and was represented by Mr I. Žurić, a lawyer practising in Zagreb;

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

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's complaints under Article 5 of the Convention of his allegedly unlawful detention which was ordered in relation to reopened criminal proceedings against him.

A. Criminal proceedings against the applicant

2. The applicant was arrested on 8 May 2006. On 7 May 2007 the Office for the Suppression of Corruption and Organised Crime ("OSCOC") indicted him before the Zagreb County Court on charges of conspiracy to commit armed robbery and aggravated murder. He was detained throughout the investigation and the subsequent trial on grounds of the risk of his reoffending and the gravity of the charges against him.

3. On 21 April 2009 the Zagreb County Court found the applicant guilty of robbery and aggravated murder and sentenced him to 30 years' imprisonment ("the first-instance judgment"). His detention was extended pursuant to the 1997 Code of Criminal Procedure, which provided that detention should always be ordered when a sentence of five or more years' imprisonment was imposed.

4. Following appeals by both the OSCOC and the applicant, the first-instance judgment was upheld by the Supreme Court on 16 December 2009 ("the second-instance judgment"). The applicant's detention was extended.

5. On 8 September 2010 the Supreme Court, sitting as the court of final appeal, dismissed an appeal lodged by the applicant against the second-instance judgment. His conviction thus became final.

B. Previous proceedings before the Court

6. On 30 December 2010 the applicant lodged an application with the Court, complaining, *inter alia*, that the statutory maximum period for which he could be detained had expired on 16 March 2010 and that his subsequent detention had been unlawful. By a judgment of 30 October 2012, the Court, after examining the applicant's pre-trial detention from 8 May 2006 until 8 September 2010, found that there had been no violation of Article 5 § 1 of Convention on that account (see *Grubić v. Croatia*, no. 5384/11, 30 October 2012).

7. On a further application lodged by the applicant on 2 May 2017, the Court found, *inter alia*, that violations of Article 6 §§ 1 and 3 (c) of the Convention had occurred in the course of the second-instance and third-instance proceedings on account of the failure to forward the submissions of the State Attorney's Office to the defence, as well as owing to the applicant's absence from the sessions of the appeal panels (see paragraphs 4 and 5 above; see also *Grubić v. Croatia* [Committee], no. 33602/17, §§ 65 and 72, 18 March 2021).

C. Reopening of the criminal proceedings on the basis of the Court's judgment

8. Following the Court's judgment of 18 March 2021, on 26 March 2021 the applicant requested that the criminal proceedings against him be reopened. By a final decision of 13 January 2022, the High Criminal Court allowed the reopening. The proceedings were returned to the stage of appeal against the first-instance judgment before the Supreme Court (see paragraph 4 above).

9. Consequently, on 31 March 2022 the Zagreb County Court, of its own motion, terminated the applicant's serving of his prison sentence and placed him in pre-trial detention until his conviction could be decided with final effect. It relied on Article 507 § 5 of the 2008 Code of Criminal Procedure, which provided that the serving of a prison sentence had to be terminated after a decision allowing the reopening of the proceedings had become final and that the court had to order pre-trial detention on the State Attorney's request if the conditions under Article 123 of the 2008 Code of Criminal Procedure had been met. Article 123 § 2 thereof, as amended in 2019, provided that, if the first-instance judgment had imposed five or more years' imprisonment – as in the present case – pre-trial detention had to be ordered regardless of its maximum statutory duration.

10. An appeal by the applicant was dismissed by the High Criminal Court on 3 May 2022. In particular, that court dismissed the applicant's argument that the maximum statutory period of detention in his case had expired before the amended Article 123 § 2 of the 2008 Code of Criminal Procedure had come into force, while also noting that, in any event, the principle of immediate application of procedural laws applied. It further noted that, considering that the applicant had been sentenced to 30 years' imprisonment by the first-instance judgment, the Zagreb County Court was obliged to order his detention pursuant to Article 123 § 2 of the 2008 Code of Criminal Procedure, even without the State Attorney's request to that effect. Furthermore, it confirmed that the detention in question could have been ordered after the proceedings had been reopened and returned to the stage of appeal against the first-instance judgment. Lastly, in view of the grounds on which the applicant's detention had been ordered, it held that his arguments concerning the length of the sentence which he had already served and the lack of any risk that he would abscond were irrelevant.

11. By a decision of 7 July 2022, served on the applicant's representative on 13 July 2022, the Constitutional Court dismissed a constitutional complaint lodged by the applicant, endorsing the findings of the first- and the second-instance courts.

12. On 15 November 2022 the Supreme Court decided that the second-instance judgment of 16 December 2009 should remain in force.

13. On an appeal by the applicant, on 23 March 2023 the Supreme Court upheld its judgment of 15 November 2022. The applicant's conviction, thus, once again, became final.

D. Request for the reopening of the case on the basis of new facts and evidence

14. Meanwhile, in 2020, the applicant lodged another request for the reopening of the same set of criminal proceedings on the basis of allegedly new facts and evidence. It appears that the request is still pending before the domestic courts.

E. Complaint

15. The applicant complained, relying on Article 5 §§ 1, 3 and 4 of the Convention, that his pre-trial detention, ordered on 31 March 2022 in relation to the reopened criminal proceedings against him, had been unlawful.

THE COURT'S ASSESSMENT

16. Being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court considers that the applicant's complaints fall to be examined under Article 5 § 1 of the Convention.

17. The Court, firstly, notes that the period of detention complained of occurred after the applicant's conviction at first instance, since his prison sentence was terminated and he was placed in pre-trial detention following the High Criminal Court's decision to reopen the criminal proceedings against him at the stage of appeal against the first-instance judgment (see paragraphs 8-9 above).

18. Therefore, even though the serving of the applicant's prison sentence was terminated on 31 March 2022, the ground for his detention – considered "pre-trial detention" under the domestic legislation – continued to be his conviction, albeit by the first-instance judgment (see *Grubić v. Croatia*, no. 5384/11, § 35, 30 October 2012).

19. Despite the lapse of time, the reopening procedure created a sufficient causal link between the applicant's initial conviction and his pre-trial detention after 31 March 2022 for sub-paragraph (a) of Article 5 § 1 to apply (see *Ruslan Yakovenko v. Ukraine*, no. 5425/11, § 50, ECHR 2015). Namely, the criminal proceedings against the applicant continued at appeal stage, where his conviction and sentence imposed by the first-instance judgment were to be re-examined on both factual and legal grounds (see *Grubić v. Croatia* [Committee], no. 33602/17, § 70, 18 March 2021). What is more,

pursuant to Article 63 of the 1997 Penal Code, the time that the applicant had spent in pre-trial detention was to be counted towards his sentence imposed by the first-instance judgment, which he has not yet served in full. Pursuant to Article 133 (a) of the 2008 Code of Criminal Procedure, his pre-trial detention could last until his conviction could be decided with final effect, at the latest until the expiry of the term of his sentence. In other words, his placement in pre-trial detention on 31 March 2022 did not amount to a subsequent imposition of a new, additional deprivation of liberty (contrast *W.A. v. Switzerland,* no. 38958/16, §§ 39-45, 2 November 2021).

20. The general principles concerning the lawfulness of deprivation of liberty and, specifically, the requirement that detention must not be arbitrary, were set out in *Ruslan Yakovenko* (cited above, §§ 57-61).

21. The Court firstly notes that the decision of the Zagreb County Court to terminate the applicant's serving of his prison sentence and to place him in pre-trial detention was based in Article 507 § 5 of the 2008 Code of Criminal Procedure, which explicitly allowed for the ordering of pre-trial detention where a final decision to reopen the proceedings had been adopted if the conditions under Article 123 thereof had been met (see paragraph 9 above; contrast *Sâncrăian v. Romania*, no. 71723/10, §§ 69-71, 14 January 2014). The applicant's argument that the pre-trial detention in his case could not have been ordered following the decision to reopen the proceedings, but only at the moment of the adoption of the first-instance judgment finding him guilty, must therefore be rejected.

22. Secondly, the applicant's pre-trial detention was ordered on the basis of Article 123 § 2 of the 2008 Code of Criminal Procedure, as amended in 2019 (see paragraph 9 above). The latter amendments eliminated the maximum duration of the pre-trial detention to be ordered where the first-instance judgment had imposed five or more years' imprisonment. However, the maximum duration of the applicant's pre-trial detention had not been exceeded even before the amended Article 123 § 2 of the 2008 Code of Criminal Procedure entered into force and before the proceedings were reopened (see paragraph 6 above; see also *Grubić*, cited above, §§ 30 and 39-45).

23. Turning to the issue of the applicability in the present case of the amended Article 123 § 2 of the 2008 Code of Criminal Procedure, which had entered into force well after the criminal proceedings against the applicant had been initiated under the 1997 Code of Criminal Procedure in 2006 but before the decision to reopen the proceedings was adopted, the Court takes note of the Government's argument that its immediate application was provided for by way of Article 574 § 3 thereof. It is supported by guidelines adopted at a meeting of the Criminal Division of the Supreme Court on 24 October 2011 (decision no. Su IVk 1/2011-62) from which it can be inferred that, after a decision allowing the reopening of the criminal

proceedings had been adopted, those proceedings were to be conducted in accordance with the Code of Criminal Procedure currently in force.

24. Whereas the applicant proposed a different reading of Article 574 of the 2008 Code of Criminal Procedure, the Court notes that the immediate applicability of Article 123 § 2 thereof is further supported in the Supreme Court's practice referred to by the Government (the Supreme Court's decision no. Kž 355/2017 of 6 October 2017, where Article 123 § 2 of the 2008 Code of Criminal Procedure was immediately applied after the proceedings had been reopened).

25. There is nothing to suggest that the Supreme Court's guidelines and its practice, which made the immediate applicability of the amended Article 123 § 2 of the 2008 Code of Criminal Procedure in the present case sufficiently foreseeable, were not accessible to the applicant, who was represented by a lawyer throughout the proceedings for reopening (contrast *Sâncrăian*, cited above, § 72).

26. The Court further notes that the ordering of the pre-trial detention was mandatory in the present case (see paragraphs 9-10 above). The Zagreb County Court's decision to order pre-trial detention of its own motion, regardless of the time which the applicant had already been detained serving his sentence and without examining whether there existed any other reasons to justify it – such as the existence of a risk that he would abscond – was therefore in conformity with domestic law. Such approach was based on Article 123 § 2 of the 2008 Code of Criminal Procedure and aligned with the Supreme Court's practice (see, for instance, the Supreme Court's decision of 6 October 2017, cited above, and, as regards the domestic courts' obligation to order pre-trial detention of its own motion where the conditions under Article 123 § 2 of the 2008 Code of Criminal Procedure had been met, see the Supreme Court's decision no. Kž 75/15 of 2 March 2015).

27. The Court also finds nothing to indicate that the applicant's pre-trial detention was arbitrary. The domestic courts provided clear and sufficient reasons for their decisions, emphasising in particular the mandatory nature of the detention at issue (see paragraph 10 above). In view of the fact that the detention was ordered until the first-instance judgment could be delivered with final effect, that is, pending the appeals being re-examined in the reopened proceedings (see paragraphs 8 and 19 above), the Court concludes that its purpose was to secure the execution of the prison sentence imposed at first instance (compare *Yaroshovets and Others v. Ukraine*, nos. 74820/10 and 4 others, §§ 145-46, 3 December 2015; contrast *Ruslan Yakovenko*, cited above, §§ 64-65).

28. In that regard, the Court attaches particular significance to the fact that in the present case, the duration of the pre-trial detention did not – and could not – exceed the term of the prison sentence, which the applicant has not yet served in full (see paragraph 19 above; contrast *Ruslan Yakovenko*, cited above, §§ 64-65, and *Yaroshovets and Others*, cited above, §§ 143-49, where

the Court found that the applicants' continued detention beyond the duration of their prison sentences was unjustified).

29. There is thus nothing to suggest that the applicant's detention did not genuinely conform with the purpose of Article 5 § 1 (a) – which is the execution of a prison sentence imposed by a court – or that it was not reasonable in terms of this purpose (see *Yaroshovets and Others*, cited above, § 145).

30. The applicant lastly argued that, had his request for reopening of the proceedings made in 2020 been accepted and the proceedings reopened on the basis of new facts and evidence, the proceedings would have had to be returned to the trial stage and there would be no basis for ordering his pre-trial detention under Article 123 § 2 of the 2008 Code of Criminal Procedure (see paragraph 14 above). However, in view of their purely hypothetical nature, the Court notes that those arguments bear little, if any, significance in the present analysis.

31. It follows that the present application is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 February 2026.

Liv Tigerstedt Deputy Registrar	Frédéric Krenc President