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

FOURTH SECTION

DECISION

Application no. 7861/23
Rada PETROVIĆ
against Serbia

The European Court of Human Rights (Fourth Section), sitting on 15 October 2024 as a Committee composed of:

Tim Eicke*, President*,
Ana Maria Guerra Martins,
Mateja Đurović*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 7861/23) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 8 February 2023 by a Serbian national, Mr Rada Petrović ("the applicant"), who was born in 2003, lives in Srpski Krstur and was represented by Mr V. Juhas Đurić, a lawyer practising in Subotica;

the decision to give notice of the application to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the reasonableness and length of the pre-trial detention of the applicant, who was minor at the relevant time. It raises issues mainly under Article 5 § 3 of the Convention.

2. In 2019 the applicant, who was 15 years old at the time, spent 29 days in pre-trial detention on suspicion of having raped a minor with a mental disability. The detention was based on the risk that he would obstruct the proceedings by exerting influence on witnesses, his co-accused and, in particular, the victim.

3. Once the victim had been interviewed, the applicant was released from detention. The criminal proceedings against him were ultimately discontinued at the request of the prosecutor due to lack of grounds. In 2021 the applicant was awarded approximately 770 euros (EUR), for wrongful deprivation of liberty, under the relevant provisions of the Code of Criminal Procedure and the Civil Obligations Act.

4. On 22 December 2022 the Constitutional Court dismissed as unfounded a constitutional appeal by the applicant concerning his detention.

5. Relying on Article 5 § 1 of the Convention, the applicant complained that his detention had been excessively lengthy and that it had not been based on relevant and sufficient reasons. He also complained that the authorities had not considered measures alternative to detention and that he had been detained with adults.

THE COURT'S ASSESSMENT

6. The Court, 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, § 126, 20 March 2018), finds it more appropriate to examine the applicant's complaints under Article 5 § 3 of the Convention (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 61, 5 July 2016).

A. Reasonableness of the detention

7. The general principles concerning the length of and the justification for pre-trial detention have been summarised in *Buzadji* (cited above, §§ 84-102). As regards minors in particular, the Court has held that pre-trial detention should be used only as a measure of last resort and for the shortest possible period (see *Korneykova v. Ukraine*, no. 39884/05, § 44, 19 January 2012, and *Nart v. Turkey*, no. 20817/04, §§ 31 and 33, 6 May 2008).

8. In the present case the applicant's pre-trial detention, which lasted for 29 days, was based on the risk that he might influence witnesses and, in particular, the victim. Moreover, his detention was ordered shortly after the offence had been reported and only 11 days after it had occurred (compare and contrast, *Merabishvili v. Georgia* [GC], no. 72508/13, § 228, 28 November 2017). Besides the co-accused, the victim was the only eyewitness to the offence with which the applicant was charged, and the charges against him were based on her testimony (see *Letellier v. France*, 26 June 1991, § 37, Series A no. 207). Moreover, the applicant was released one day after the reasons for his detention ceased to exist – that is, after the victim had been interviewed (see paragraph 3 above).

9. Having regard to the nature of the offence and the victim's vulnerability (see paragraph 2 above), the risk to which the domestic authorities referred

when ordering the applicant's detention was a conceivable one. Although the authorities did not consider using more lenient measures, they provided relevant and sufficient reasons for the relatively short period of the applicant's detention on remand (compare and contrast, *Nart*, cited above, §§ 30 and 32). Furthermore, there is nothing in the case file to suggest that the domestic authorities failed to display "special diligence" in the conduct of the proceedings.

10. Accordingly, this complaint is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Detention with adults

11. The general principles concerning the exhaustion of domestic remedies have been summarised in *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 138-44, 27 November 2023. Namely, Article 35 § 1 requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body "at least in substance". An applicant must actually complain (expressly or in substance) of a specific violation in a manner which leaves no doubt that the same complaint that was subsequently submitted to the Court had indeed been raised at the domestic level (see *Farzaliyev v. Azerbaijan*, no. 29620/07, § 55, 28 May 2020).

12. In the present case, the applicant failed to raise the complaint about his detention with adults in his constitutional appeal. The Government's preliminary objection of non-exhaustion of domestic remedies must therefore be upheld.

13. It follows that this complaint is inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and that it must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 November 2024.

Simeon Petrovski	Tim Eicke
Deputy Registrar	President