



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

SECOND SECTION

CASE OF MIKLIĆ v. CROATIA

(Application no. 42613/19)

JUDGMENT

STRASBOURG

18 March 2025

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

In the case of Miklić v. Croatia,

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

Gediminas Sagatys, *President*,

Davor Derenčinović,

Juha Lavapuro, *judges*,

and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to:

the application (no. 42613/19) 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 2 August 2019 by a Croatian national, Mr Krunoslav Miklić (“the applicant”), who was born in 1982, lives in Zagreb and was represented by Mr G. Marjanović, a lawyer practising in Rijeka;

the decision to give notice of the application to the Croatian Government (“the Government”), represented by their Agent, Ms Š. Stažnik,

the parties’ observations;

Having deliberated in private on 25 February 2025,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the lawfulness of the applicant’s pre-trial detention.
2. On 22 April 2018 the police found the applicant in possession of almost 23 kilograms of marijuana packed in individual packages, three mobile phones and a paper with addresses. They arrested him and lodged a criminal complaint against him on drug-related charges. An indictment was brought against the applicant on 30 May 2018.
3. Starting from 24 April 2018, the national judicial authorities ordered and then periodically extended the applicant’s pre-trial detention in connection with the criminal proceedings against him, on the basis of the risk of reoffending (the applicant had previously been sentenced on several occasions to imprisonment for similar criminal offences).
4. Under Article 131 § 3 of the Croatian Code of Criminal Procedure, from the submission of the indictment to the competent court until the adoption of the first-instance judgment, the court does not fix the duration of pre-trial detention, but shall examine, every two months, whether the statutory grounds for detention subsisted, and consequently whether the detention shall be extended or lifted.
5. One such decision extending the applicant’s pre-trial detention was rendered on 26 October 2018 and became final on 5 November 2018.
6. On 15 February 2019 the applicant asked that his pre-trial detention be lifted arguing that the court had failed to examine, two months after the earlier

decision extending his detention had become final, whether it was still justified and decide on its extension or lifting.

7. On 20 February 2019 the Rijeka Municipal Court held a hearing and decided that the applicant's detention should be extended, finding that the grounds for it persisted. It explained that the two-month time-limit from Article 131 § 3 of the Croatian Code of Criminal Procedure was an indicative one, and that the failure to comply with it could not result in lifting the pre-trial detention if the grounds for detention persisted. The court also held that the failure, in the applicant's case, to comply with the two-month time-limit for review of detention did not lead to disproportionality of the measure, having regard to the gravity of the offence, the possible sentence, the fact that the applicant had previously been convicted on multiple occasions for similar criminal offences, the circumstance that he had up to that point been in pre-trial detention for ten months, and that he had not even disputed that the statutory grounds for his detention persisted.

8. On 25 February 2019 the applicant lodged an appeal against that decision, which the Rijeka County Court dismissed on 4 March 2019, stressing that the purpose of Article 131 § 3 was to regularly review the existence of statutory grounds for pre-trial detention, which in the applicant's case undisputedly persisted.

9. The Rijeka Municipal Court subsequently reviewed and extended the applicant's pre-trial detention by a decision of 3 May 2019.

10. On 18 June 2019 the applicant was convicted at first instance to four years' imprisonment, and on the same day the court reviewed and extended his detention. On 24 June 2019 the applicant asked to start serving his prison sentence before the finality of the judgment, which was granted. The first-instance judgment became final on 23 October 2019.

11. Meanwhile, the applicant lodged a constitutional complaint against the Rijeka County Court's decision of 4 March 2019 (see paragraph 8 above), arguing that the failure to examine, two months after the decision extending his pre-trial detention had become final on 5 November 2018, whether the legal grounds for his detention persisted, had rendered his pre-trial detention after 5 January 2019 unlawful.

12. On 29 June 2019 the Constitutional Court dismissed the applicant's constitutional complaint as unfounded by nine votes to two.

13. The Constitutional Court noted that: (i) pre-trial detention after the submission of the indictment could last until the first-instance judgment became final and, for the particular drug offence, a maximum of two years until the adoption of that judgment; (ii) once the indictment was submitted there was no fixing of the duration of pre-trial detention, but the two-month review served to regularly examine its lawfulness; (iii) pursuant to the Supreme Court's longstanding case-law, the two-month time-limit was of an indicative nature, and exceeding it did not guarantee release; (iv) the applicant had been in pre-trial detention during the impugned period on the basis of a

decision of 26 October 2018, which had clearly provided the grounds for his pre-trial detention, and which the applicant had not challenged by an appeal; (v) the applicant had used another safeguard (set in Article 128 of the Croatian Code of Criminal Procedure) and had asked that his detention be lifted, which had caused his detention to be speedily reviewed by the courts, and (vi) the applicant had not challenged the statutory grounds for his pre-trial detention but had asked that it be lifted only because the two-month time-limit for review had expired. The Constitutional Court concluded that by exceeding the two-month time-limit for review of detention, by one month and ten days, the applicant had not been put in a state of uncertainty as regards the grounds for and duration of his pre-trial detention.

14. The Constitutional Court further pointed out that, in addition to the two-month review provided by law, pursuant to Article 128 of the Croatian Code of Criminal Procedure, detainees had the unlimited right to ask for release. The applicant had exercised that right on 15 February 2019, and already on 20 February 2019 the relevant court had held a hearing and had confirmed that the grounds for his pre-trial detention persisted. The appellate court had examined the applicant's subsequent appeal in seven days only. The applicant had thus benefited from an effective judicial review of the lawfulness of his pre-trial detention.

15. The Constitutional Court lastly stressed that in each case an assessment had to be made as to whether exceeding the two-month time-limit for review of detention had led to a breach of Article 5 §§ 1 and 4 of the Convention.

16. Before the Court the applicant complained that his pre-trial detention after 5 January 2019 had been unlawful because the domestic courts had failed to examine, two months after the decision extending his pre-trial detention had become final on 5 November 2018, whether the grounds for detention subsisted and whether his detention should be extended or lifted, and that for the same reason he had not had an effective judicial review of his pre-trial detention. He relied on Article 5 §§ 1, 4 and 5 and Article 6 § 1 of the Convention.

THE COURT'S ASSESSMENT

17. The Court considers that the complaints fall to be examined under Article 5 §§ 1 and 4 of the Convention.

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION ON ACCOUNT OF THE NON-COMPLIANCE WITH THE TIME-LIMIT FOR JUDICIAL REVIEW

18. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

19. In determining whether the applicant was deprived of his liberty in accordance with Article 5 § 1 of the Convention, the Court notes that the applicant's pre-trial detention was ordered in connection with the criminal proceedings instituted against him, on the basis of the risk of reoffending (see paragraph 3 above) and that it therefore fell within the ambit of sub-paragraph (c) of Article 5 § 1.

20. As to whether the applicant's detention was "lawful" and "in accordance with a procedure prescribed by law" as required by Article 5 § 1, the Court observes that on 5 January 2019, when the two-month time-limit under Article 131 § 3 of the Croatian Code of Criminal Procedure for review of pre-trial detention expired, the Rijeka Municipal Court had not yet taken its decision. It was only 46 days later, on 20 February 2019, that the court ordered the continuation of the applicant's pre-trial detention; this decision was upheld by the Rijeka County Court on 4 March 2019 (see paragraphs 7-8 above).

21. The Court further notes that under the wording of Article 131 § 3 of the Croatian Code of Criminal Procedure, the domestic courts did not have any discretion as regards the compliance with the two-month time-limit; they were obliged to take a new decision on the continuation of pre-trial detention at least every two months.

22. However, the Court equally observes that, despite this non-compliance with the statutory time-limit for review of the applicant's detention, the domestic courts, including the Constitutional Court, having regard to the well-established case-law of the Supreme Court (see, for example, Kž 365/2006-3 of 5 May 2006; Kž 688/2011-4 of 23 December 2011, and Kž 109/13-4 of 6 March 2013), found that the applicant's pre-trial detention had not become unlawful under domestic law, neither from 5 January 2019 onwards, nor, at least, in the period between 5 January 2019 and 20 February 2019. The applicant's pre-trial detention in that latter period remained based on the decision of 26 October 2018, which became final on 5 November 2018 (see paragraphs 7, 8 and 13-15 above).

23. The Court is thus ready to accept that the applicant's pre-trial detention between 5 January 2019 and 20 February 2019, as well as his detention after that date, remained lawful under domestic law (contrast *G.K. v. Poland*, no. 38816/97, § 76, 20 January 2004). However, it reiterates that national law must also be of a certain quality: it must contain clear and accessible rules governing the circumstances in which deprivation of liberty

is permissible and must notably satisfy the test of foreseeability (see *Mooren v. Germany* [GC], no. 11364/03, § 76, 9 July 2009).

24. In that connection the Court finds that the domestic courts' case-law, which authorises the courts to take their decision on a person's continued pre-trial detention within a certain, not clearly defined time after the expiry of the statutory time-limit set out in Article 131 § 3 of the Croatian Code of Criminal Procedure, introduces an element of uncertainty in the application of that provision. That case-law therefore raises an issue in relation to the foreseeability of the application of the domestic law at issue (compare *H.W. v. Germany*, no. 17167/11, § 81, 19 September 2013).

25. The Court further reiterates that, under its well-established case-law, no detention which must be considered arbitrary can be compatible with Article 5 § 1 (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 74, 22 October 2018). One of the relevant elements in assessing whether a person's detention, despite its compliance with domestic law, must be considered arbitrary and thus contrary to Article 5 § 1 is the speed with which domestic courts issued a fresh detention order after the expiry of a previous one. Further relevant elements include the existence of adequate safeguards against unreasonable delays, the complexity of the proceedings and the applicant's conduct (see *H.W. v. Germany*, cited above, §§ 68-73 and 82).

26. The Court notes in this respect that the applicant was remanded in pre-trial detention without the necessary decision on the continuation of his detention having been taken for 46 days, which period cannot be considered negligible having regard to the strict standards laid down in its case-law on the question of State compliance with the requirement for a speedy replacement of expired detention orders (compare *H.W. v. Germany*, cited above, § 83).

27. The Court further observes that the applicant cannot be said to have contributed to the delays in the review procedure: the delay was caused by the fact that the review proceedings were initiated belatedly, only after the applicant had warned the domestic courts about the expiry of the time-limit (see paragraph 6 above). The Court further notes that the delay was not caused by an unforeseeable complexity of the proceedings. Furthermore, the time-limit in question was known to the domestic authorities and the applicant was in detention since April 2018 and thus under the authorities' supervision for some time.

28. Finally, the Court cannot discern sufficiently clear safeguards to ensure that a decision on the applicant's release from detention would not be unreasonably delayed. It notes in this connection that it was the applicant's own initiative which set in motion the review procedure (see paragraph 6 above and compare *Erkalo v. the Netherlands*, no. 23807/94, § 57, 2 September 1998). Furthermore, although the Constitutional Court is vigilant of the necessity to examine in each case whether the procedure followed in the review proceedings afforded sufficient protection from

excessive delays (see paragraph 15 above), the Court observes that the Supreme Court's case-law followed by the lower courts, according to which the two-month time-limit for review is of an indicative nature, does not set any threshold as to when exceeding that time-limit becomes an issue (compare *H.W. v. Germany*, cited above, § 89). It thereby does not seem to take the fundamental right to liberty sufficiently seriously.

29. In view of the foregoing, the Court concludes that the applicant's detention between 5 January 2019 and 20 February 2019 must be considered as arbitrary and thus unlawful for the purposes of Article 5 § 1.

30. Accordingly, the applicant's detention during that period was in breach of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

31. As to the applicant's complaint that he did not have an effective judicial review of his pre-trial detention because the domestic courts had exceeded the time-limit for examining whether the grounds for his detention subsisted and whether his detention should be extended or lifted, the Court considers, having regard to its findings under Article 5 § 1 above, that the complaint under Article 5 § 4 should be declared admissible but that it does not need to be examined separately on its merits (compare *Miklič v. Croatia*, no. 41023/19, § 81, 7 April 2022).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. The applicant claimed 18,000 euros (EUR) as "just compensation of damages suffered". He also claimed EUR 1,500 in respect of costs and expenses incurred before the Court.

33. The Government contested these claims.

34. The Court awards the applicant EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

35. Having regard to the documents in its possession, the Court considers it reasonable to award the applicant EUR 1,500 for the costs and expenses incurred in the proceedings before the Court, plus any tax that may be chargeable to him.

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 is no need to examine the merits of the complaint under Article 5 § 4 of the Convention;

4. *Holds*

- (a) that the respondent State is to pay the applicant, within three months, the following amounts:
 - (i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim
Deputy Registrar

Gediminas Sagatys
President