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

SECOND SECTION

DECISION

Application no. 60951/12
Atila HUSAR
against Serbia

The European Court of Human Rights (Second Section), sitting on 26 April 2022 as a Committee composed of:

Jovan Ilievski, *President,*
Branko Lubarda,
Diana Sârcu, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to:

the application (no. 60951/12) 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 6 February 2012 by a Serbian national, Mr Atila Husar ("the applicant"), who was born in 1971 and lives in Hajdukovo, and was represented before the Court by Mr V. Juhas Đurić, a lawyer practising in Subotica;

the decision to give notice of the complaints under Article 5 §§ 1 and 5 of the Convention to the Serbian Government ("the Government"), represented by their Agent at the time, Ms N. Plavšić, and to declare the remainder of the application inadmissible; and

the parties' observations,

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's complaints under Article 5 § 1 of the Convention that his detention had been unlawful and arbitrary and under Article 5 § 5 that he had had no enforceable right to compensation.

2. On 1 June 2011 the applicant was arrested on suspicion of facilitating the illegal border crossing of two persons from Serbia into Hungary. On 2 June 2011 he was placed in detention for up to eight days by a decision of the Subotica Court of First Instance on the grounds that there was a high risk

of his reoffending. The court referred to a witness statement, the fact that the applicant was unemployed and therefore had "engaged in criminal activities" in order to provide for his unemployed wife and their minor children, and the fact that he had a prior conviction for reckless driving.

3. On 3 June 2011 a chamber of the same court dismissed a subsequent appeal by the applicant. He was released from detention on 9 June 2011.

4. On 22 December 2011 the Constitutional Court found that the detention order had violated the applicant's right to liberty and security because the reasons given had been insufficient. It further found that the wording used had breached the applicant's presumption of innocence. The Constitutional Court did not award the applicant any compensation.

5. The applicant complained under Article 5 §§ 1 and 5 of the Convention that his detention had been unlawful and arbitrary and that he had had no enforceable right to compensation.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 5 § 1 of the Convention

6. In the specific circumstances of the present case, the Court can accept that the existence of a clear and established avenue under domestic law by which an adequate amount of compensation can be claimed may constitute sufficient redress for the purposes of the Court's case-law under Article 34 of the Convention (see *Klinkel v. Germany* (dec.), no. 47156/16, § 29, 11 December 2018).

7. The Court notes that although the Constitutional Court did not award the applicant any compensation, it expressly acknowledged the breach of his right under Article 5 § 1 of the Convention with respect to the detention ordered on 2 June 2011. Such acknowledgment opened the possibility for the applicant to claim compensation in a separate set of proceedings (see *Al Husin v. Bosnia and Herzegovina (no. 2)*, no. 10112/16, § 90, 25 June 2019).

8. The Code of Criminal Procedure provides for a compensation claim before the civil courts in respect of unlawful detention (Articles 557 and 560), and the general rules of tort law provide for an action for damages in respect of a breach of liberty and other personality rights. Furthermore, Articles 89 and 90 of the Constitutional Court Act provide for the possibility of seeking compensation from the Commission for Compensation following a decision of the Constitutional Court finding a violation of human rights, and subsequently from the competent civil court in the event that the Commission has failed to decide within thirty days or has delivered an unfavourable decision. In these circumstances, the Court finds that the applicant could reasonably have been expected to turn to the domestic courts to obtain redress for the acknowledged breach of his rights under Article 5 § 1 of the

Convention, rather than apply to the Court to seek confirmation of the already recognised unlawfulness of his detention (see *Al Husin*, cited above).

9. The Court therefore upholds the Government's objection and considers that the applicant can no longer claim to be the victim of a violation of Article 5 § 1 of the Convention. This complaint must therefore be rejected in accordance with Article 35 § 4 of the Convention.

B. Alleged violation of Article 5 § 5 of the Convention

10. The applicant failed to provide plausible arguments as to the alleged lack of effectiveness of the available legal remedies mentioned above and as to his failure to use them to obtain compensation for unlawful detention (see *Al Husin*, cited above, §§ 123-26). The Court therefore considers that this complaint is inadmissible for non-exhaustion of domestic remedies and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 May 2022.

Hasan Bakırcı Deputy Registrar	Jovan Ilievski President