Chapter 7

The Right to Liberty and Security with Special Regard to Central Europe

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Abstract

This paper examines the application of the right to liberty and security, as guaranteed by Article 5 of the European Convention on Human Rights (ECHR), within the specific context of Central Europe. Through an analysis of key European Court of Human Rights (ECtHR) case law involving Romania, Poland, Slovakia, Hungary, and Croatia, the study explores the Court's interpretation and enforcement of this fundamental right. The paper delves into critical issues such as the distinction between deprivation of liberty and restriction of movement, the lawfulness and duration of pre-trial detention, procedural safeguards for detainees, and the specific protections afforded to vulnerable groups, including individuals with mental disabilities and asylum seekers. Landmark cases are dissected to illustrate the ECtHR's robust approach to preventing arbitrary detention and ensuring judicial oversight. The analysis reveals the significant impact of the Court's jurisprudence on the domestic legal systems of these post-authoritarian states, highlighting both the progress made in protecting individual liberties and the persistent challenges in balancing state security interests with fundamental human rights. The paper concludes that the ECtHR's role remains indispensable in upholding the principles of the Convention and fostering a common standard of human rights protection across the region.

Keywords: Article 5 ECHR, Right to liberty and security, European Court of Human Rights (ECtHR), Central Europe, detention, imprisonment

Aleksandar Maršavelski (2025) 'The Right to Liberty and Security with Special Regard to Central Europe'. In: Nóra Béres – Renáta Hrecska-Kovács (eds.) *The ECHR at 70: The Central European Narrative*, pp. 179–196. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2025.nbrhkechr_7

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1. Introduction

The right to liberty and security, enshrined in Article 5 of the European Convention on Human Rights (ECHR), stands as a fundamental safeguard against arbitrary detention and a cornerstone of democratic societies. This fundamental right guarantees every individual's protection from unlawful confinement, ensuring that individuals are not deprived of their liberty except in accordance with the law and for legitimate purposes. In the context of Central Europe, the application of Article 5 has taken on particular significance, given the region's historical and political trajectory.

Central European countries, emerging from the shadows of authoritarian regimes in the late 20th century, embraced the ECHR as a beacon of democratic values and a tool for protecting individual liberties. However, the implementation of Article 5 has not been without challenges. Concerns have particularly arisen regarding the use of pre-trial detention, the treatment of persons with mental disabilities, and the treatment of migrants and asylum seekers. These concerns underscore the need for thoroughly examining the application of Article 5 in the Central European context.

Central European States have faced a delicate balance between safeguarding national security and protecting individual rights. Pre-trial detention, a particularly contentious issue, has been used to combat organised crime and terrorism. While acknowledging the legitimate concerns underlying its use, the European Court of Human Rights (ECtHR) has consistently emphasised the need for pre-trial detention to be applied in a strictly controlled manner, with strict safeguards against arbitrary confinement.

The application of Article 5 in Central Europe has evolved over time, reflecting the region's political transformation and its commitment to European human rights standards. The ECtHR, as the ultimate arbitrator of the ECHR, has played a crucial role in shaping the interpretation and application of Article 5, ensuring that the right to liberty and security is upheld in line with fundamental human rights principles.

Although progress has been made, there remain areas for improvement in Central Europe. Continued attention to pre-trial detention practices, the proper application of counter-terrorism measures and the humane treatment of migrants and asylum seekers are essential to ensure that the right to liberty and security is fully respected in the region. As Central European States continue to integrate into the European Union, adherence to the ECHR's standards will be crucial for upholding the fundamental rights of all individuals. The ECtHR's role as a guardian of human rights will remain indispensable in safeguarding the right to liberty and security in Central Europe.

This paper shall focus on the analysis of major ECtHR's case-law involving the following 5 countries: Romania, Poland, Slovakia, Hungary and Croatia. In cases involving some of these countries, Article 5 has been observed in contexts beyond formal arrest and detention, such as transportation of individuals to hospitals by

paramedics and police officers (*Aftanache v. Romania*),[1] confinements in transit zones at airports (*Shamsa v. Poland*;[2] *Mogoş and Others v. Romania*)[3] and land borders (*Ilias and Ahmed v. Hungary*;[4] *R.R. and Others v. Hungary*[5]); interrogations at police stations (*Cazan v. Romania*;[6] *Creangă v. Romania*[7]); house searches (*Stănculeanu v. Romania*[8]) and national lockdown imposed due to the COVID-19 pandemic (*Terheş v. Romania*[9]).

2. Literature Overview

There are countless academic debates about the various aspects of Article 5 ECHR.[10] It addresses the fundamental principles such as the presumption of innocence discussed in the context of pre-trial detention, which the ECtHR allows to be used more than necessary and even punitively.[11]

Recent literature on the right to liberty and security mainly focuses on the relationship between anti-terrorism measures and liberty and security.[12] In Central European countries, there were hardly any terrorist attacks, but they adopted anti-terrorism legislation in the context of harmonisation with the trends in European and international law. The major topic discussed in some countries (e.g. UK)[13] was how anti-COVID pandemic measures and legislation deprived individual liberties, but this subject was entirely neglected in most European countries despite the fact that some of them had excessive anti-pandemic measures (e.g. Serbia's lockdown of the elderly).

The greatest challenge, however, concerns balancing the right to liberty and security with the need for security measures to address threats to public safety and national security, which was discussed by Bachmann and Sanden.[14] They argue that the current framework under Article 5 of the Convention is insufficient to address these

1 *Aftanache v. Romania*, 2020.
2 *Shamsa v. Poland*, 2003.
3 *Mogoş and Others v. Romania* (Dec.), 2004.
4 *Ilias and Ahmed v. Hungary* (GC), 2019
5 *R.R. and Others v. Hungary*, 2021.
6 *Cazan v. Romania*, 2016.
7 *Creangă v. Romania* (GC), 2012.
8 *Stănculeanu v. Romania*, 2018.
9 *Terheş v. Romania* (Dec.), 2021.
10 See e.g. Patel, 2005; Macken, 2006; Dickson, 2009; Stevens, 2009; Nordin and Akther, 2015; Lach, 2021; Nisanci, 2021; Snacken, 2022; Johansen, 2022.
11 Stevens, 2009.
12 See e.g. Waldron, 2003, pp. 191–210; Taylor, 2003, pp. 25–31; Lewis, 2005, pp.18–30; Aradau, 2008, pp. 293–314; Payne, 2011, pp. 773–800; Bigo, 2016, pp. 263–288.
13 Pugh, 2020, pp. 1–14.
14 Bachmann and Sanden, 2017, pp. 320-336.

challenges. They propose amendments to the Convention to provide a more flexible framework for balancing these rights. Bachmann and Sanden also suggest that the States should implement general time limits for detention in immigration detention centres, distinguish remand detainees from criminal offenders, and provide access to legal counsel for detainees.[15] According to Crocker, to achieve this balance, the key issue is who makes the decisions regarding liberty and security.[16] On the other hand, Neocleous argues that the idea of a balance between security and liberty is a myth.[17] In any case, as Gearty correctly points out, "the human rights approach to liberty and security raises the right issues, focuses on the key questions, and invites a conversation about freedom and security of a sort that represents real moral progress".[18]

The ECtHR's rulings have not always been consistent in relation to Article 5. For instance, in cases involving the detention of asylum seekers, the ECtHR has been accused of giving too much room for manoeuvre to States, potentially compromising the right to liberty.[19] This inconsistency raises questions about the balance between State security and individual freedoms, a central issue in contemporary legal scholarship.

There is no literature analysing the ECtHR case law on the right to liberty and security in a particular European region. There are, however, articles on upholding Article 5 in a particular Central European country (e.g. Romania).[20] This paper aims to fill the gap to analyse the most important ECtHR case-law on Article 5 of the Convention developed in cases involving the selected European countries.

3. Cases concerning the scope of application of Article 5

3.1. Creanga v. Romania

The main purpose of Article 5 is to prohibit arbitrariness in deprivation of the physical liberty of each individual. The relationship between Article 5 and Article 2 of Protocol No. 4, the relevance of legal conclusions of domestic authorities and the range of criteria for determining whether a person was deprived of his or her liberty or not, was addressed in the landmark case of *Creanga v. Romania*.[21]

15 *Ibidem*.
16 Crocker, 2011, pp. 1511–1544.
17 Neocleous, 2007, pp. 131–149.
18 Gearty, 2010, p. 22.
19 See e.g. Costello and Mouzourakis, 2016.
20 Pîrnuţă, Arseni and Drăghici, 2010, pp. 111–116.
21 *Creangă v. Romania* (GC), 2012.

The case is about a Romanian police officer, Mr Creanga, who was summoned to appear before the National Anti-Corruption Prosecution Service (NAP) to be interrogated. Following his interrogation, Mr Creanga was detained in the NAP premises for an unexplained period of one day. The Romanian Government argued that Mr Creanga was not detained but was free to leave the NAP premises at any time. The ECtHR ruled that Mr Creanga was indeed deprived of his liberty during this period, as he was under the control of the authorities and was not free to leave. The ECtHR found that the Romanian Government had failed to demonstrate that Mr Creanga was in fact free to leave the premises, and therefore concluded that his detention was unlawful. The ECtHR's judgment in *Creanga v. Romania* provides valuable insights into the interpretation and application of Article 5 of the ECHR.

First, in this case the Court confronted the deprivation of liberty with mere restrictions on liberty of movement. The ECtHR made a distinction between the deprivation of liberty, which falls under Article 5, and mere restrictions on liberty of movement, which are governed by Article 2 of Protocol No. 4 to the ECHR. Deprivation of liberty involves a significant interference with an individual's freedom of movement and autonomy, while mere restrictions on liberty of movement may be imposed for legitimate reasons.

Second, the Court provided an autonomous assessment of the deprivation of liberty. The ECtHR asserted its independent role in assessing whether any deprivation of liberty has occurred. The Court clarified that it does not automatically defer to the legal conclusions of domestic authorities on this matter. Instead, it undertakes an autonomous assessment based on the specific circumstances of each case.

Third, the Court observed multi-factorial approach to the deprivation of liberty. The ECtHR emphasised the need for a comprehensive assessment of all relevant factors to determine whether any deprivation of liberty has taken place. These factors include the type of measure applied, its duration, the effects it has on the individual and the manner of its implementation.[22]

Fourth, the Court highlighted the significance of the general principle of legal certainty (*lex certa*) in the context of deprivation of liberty. It stressed that domestic law must clearly define the conditions for the deprivation of liberty and ensure that the law is predictable in its application. This is to ensure that individuals can adequately understand the legal consequences of their actions and avoid arbitrary deprivation of liberty.[23]

Finally, the Court observed that the concept of "arbitrariness" in Article 5 extends beyond mere legal nonconformity. A deprivation of liberty may be lawful under domestic law but may still be arbitrary and thus violate the Convention.[24] This aspect acknowledges the Court's role in ensuring that the deprivation of liberty is not exercised in an unreasonable or capricious manner.

22 *Ibidem*, para. 91.
23 *Ibidem*, para. 120.
24 *Ibidem*, para. 84.

3.2. Ilias and Ahmed v. Hungary[25]

The European Court of Human Rights (ECtHR) has grappled with the intricate distinction between a mere restriction on liberty of movement and a deprivation of liberty in the context of confinement of foreigners in airport transit zones and reception centres for the identification and registration of migrants. In the Grand Chamber judgment in *Ilias and Ahmed v. Hungary*, the Court established a framework for assessing this distinction, emphasising the interplay of various factors specific to each case.

In this case, the Court observed whether the confinement of Bangladeshi nationals in the transit zone for 23 days constituted a deprivation of liberty within the meaning of Article 5. The Grand Chamber judgment[26] held that it was a deprivation of liberty in violation of Article 5 § 1 because it was performed solely by virtue of an elastically interpreted general provision of the law without any formal decision of the authorities. The Grand Chamber, however, found that violation claims concerning Article 5 §§1 and 4 were inadmissible in this case. Stoyanova argued that this judgment constituted a further erosion of the protection of asylum seekers under the Convention "to the point that restrictions imposed upon asylum-seekers might not even be qualified as deprivation of liberty worthy of the protection of Article 5".[27]

The Grand Chamber identified four key considerations in determining whether a person's confinement constitutes a deprivation of liberty. The first one concerns an individual's situation and choices, where the Court assesses the applicant's personal circumstances, including their reasons for seeking asylum and their ability to exercise consequential choices regarding their movements. The second one concerns the applicable legal regime, in which the Court examines the legal framework governing the confinement, including the purpose of the regime and the extent to which it allows for exceptions and safeguards. The third one concerns duration and procedural protection where the Court considers the length of confinement and the existence of procedural safeguards, such as access to legal representation and the opportunity to challenge the confinement. The fourth one concerns the nature and degree of restrictions. The Court assesses the actual restrictions imposed on the applicant's freedom of movement and the extent to which they affect their ability to make personal choices.[28]

The Grand Chamber took a 'practical and realistic' approach to conclude that the applicants could make a choice to go back to Serbia, in spite of the fact that they could not do so lawfully. At the same time the Grand Chamber found that Hungary violated Article 3, as it failed to make a thorough examination of the risks the applicants could face in Serbia. This contradiction can only be understood in the context

25 *Ilias and Ahmed v. Hungary* (GC), 2019.
26 *Ilias and Ahmed v. Hungary*, 2017.
27 Stoyanova, 2019.
28 *Ilias and Ahmed v. Hungary*, 2017, para. 217.

of the theory of legal realism, which "exposed the role played by politics in judicial decision-making and, in doing so, called into question conventional efforts to anchor judicial power on a fixed, impartial foundation."[29] In this case, unfortunately, the Grand Chamber was obviously overwhelmed by the political consequences of its ruling rather than focusing on whether the individuals' right to liberty was violated.

3.3. The case of N. v. Romania[30]

In *N. v. Romania*, the Court grappled with the delicate balance between protecting the liberty of individuals and ensuring the necessary care for those with mental health issues. The Court's judgment highlighted the importance of ensuring that the confinement of persons with mental disorders, particularly in the absence of medical treatment, remains justified and subject to stringent procedural safeguards.

The case focused on the continued detention of the applicant, N., who was detained in a psychiatric hospital following his arrest on suspicion of child sexual abuse. Despite the discontinuation of criminal proceedings against N., he remained institutionalised for over a decade. N.'s continued detention was upheld by judicial decisions, even after finding that in principle the applicant should have been released from hospital, because there was no available suitable facility for his treatment. Although N. had agreed to remain in detention until there was an appropriate solution to his situation, the Court found that N.'s continued detention after the release order was arbitrary, emphasising that even voluntary surrender does not deprive individuals of their right to liberty.

The Court also addressed the scope of Article 5(1)(e) of the European Convention on Human Rights (ECHR), which allows for the confinement of mentally disordered persons for the sake of their own protection or the protection of others. The Court held that this measure must be strictly justified by the severity of the person's mental health condition and the necessity to protect them or others.[31]

Furthermore, the Court emphasised the right of individuals confined in psychiatric institutions to access a court and be heard, either in person or through representation. This right is particularly crucial in proceedings related to the continuation, suspension or termination of their confinement. The Court noted that, unless there are exceptional circumstances, individuals in this situation should receive legal assistance to effectively exercise their rights.[32]

Unlike in the previous case, in this landmark ruling the ECtHR reminded us that the right to liberty is too important for individuals with mental disabilities to be deprived of protection by the Convention by merely consenting to their detention.

29 Bybee, 2005, p. 76.
30 *N. v. Romania*, 2017.
31 *Ibidem*, para. 151.
32 *Ibidem*, para. 196.

4. Specific provisions of Article 5: *Pantea v. Romania*[33]

Pantea v. Romania is the type of case which is ideal for students to study the various provisions of Article 5 of the Convention. In this case, the Court condemned Romania for five violations of Article 5. The case concerns Romanian lawyer Alexandru Pantea who was involved in an altercation with an individual who sustained serious injuries. He was subsequently arrested and remanded in custody, initially under the order of a public prosecutor, and later under the order of a judge, which subsequently expired. He requested to be released, and after 3 months and 28 days he was released. During his detention, Mr. Pantea alleged that he was savagely beaten by his fellow-prisoners at the instigation of the prison staff. He was also made to lie under his bed, immobilised with handcuffs, for nearly 48 hours. Additionally, he was transferred to another prison in a railway wagon, where he was denied medical treatment, food, and water for several days. This worsened his condition as he had multiple fractures. A lawsuit in which Mr Pantea requested compensation for his unlawful detention was dismissed by the Court of First Instance due to expired statute of limitations. Besides the obvious violations of Article 3, the Court found the following violations of Article 5 by Romanian authorities with regard to Mr. Pantea:

Article 5 § 1 (c): Romania's failure to comply with the "procedure prescribed by law" at the time of Pantea's arrest violated his right to liberty;

Article 5 § 1 (c): Mr. Pantea's continued detention after the validity of the warrant committing him to prison had expired violated his right to liberty;

Article 5 § 3: The public prosecutor who ordered Mr. Pantea's detention was not a judge within the meaning of Article 5 § 3, and Mr. Pantea was not brought before a judge or other officer satisfying the requirements of the third paragraph of Article 5 within a prompt period;

Article 5 § 4: It took three months and 28 days before any court ruled on Mr. Pantea's request for release, which was not sufficiently expeditious'; and

Article 5 § 5: Romania did not secure Mr. Pantea's effective enjoyment of the right to compensation for unlawful detention with a sufficient degree of certainty.

In this case, the Court emphasised judicial control as a cornerstone of Article 5 § 3. Mere access to a judicial body is not sufficient to satisfy the requirements of Article 5 § 3. Instead, the judicial authority must exercise independent and impartial scrutiny of the detention decision, objectively reviewing the circumstances and determining whether the detention is necessary and proportionate.[34] The Court also highlighted the importance of independent assessment. The potential for conflict of interest when a judicial officer responsible for detention decisions also assumes other functions, particularly as a representative of prosecution services. Such dual roles could raise legitimate doubts about the officer's impartiality, undermining

33 *Pantea v. Romania*, 2003.
34 *Ibidem*, para. 236.

the fairness of the detention proceedings.[35] The ECtHR stressed that objective appearances at the time of the detention decision are crucial. If the judicial officer's involvement in subsequent prosecution proceedings is foreseeable, their independence and impartiality may be compromised.[36]

Finally, the Court emphasised procedural and substantive requirements within the meaning of Article 5 § 3. Procedurally, the detainee must be afforded a personal hearing before the judicial authority, allowing them to present their case and challenge the grounds for detention. Substantively, the judicial officer must meticulously assess the relevant circumstances, including the gravity of the alleged offence, the strength of the evidence, and the risk of absconding or obstructing justice. Based on this thorough evaluation, the officer must determine whether detention is justified and proportionate to the purpose sought.[37]

5. Two Polish cases concerning the lawfulness of deprivations of liberty

5.1. Ladent v. Poland[38]

Preventing unlawful deprivations of liberty is the main purpose of Article 5. In another landmark case, the *Ladent v. Poland* case, the ECtHR reaffirmed the fundamental importance of safeguarding the right to liberty and security enshrined in Article 5 of the Convention. The Court's judgment highlighted the need for rigorous judicial oversight to prevent arbitrary or unjustified deprivations of liberty, particularly in the context of pre-trial detention. The case focused on the detention of Mr Ladent, a French national who was apprehended on suspicion of failing to appear at a court hearing dealing with his prosecution for slander by a private individual. The Polish authorities justified Mr Ladent's detention on the basis of Article 5(1)(c) of the ECHR, which permits the temporary detention of individuals to secure their presence at trial.

In this case, the ECtHR found multiple violations of Article 5 of the Convention: with regard to § 1, the detention lacked procedural safeguards prescribed by law, it was arbitrary and disproportionate; with regard to § 2, the applicant was not informed promptly and in a language which he understood of the reasons of his arrest and charges against him; and with regard to § 3, it lacked automatic judicial review of his detention.

35 *Ibidem*.
36 *Ibidem*.
37 *Ibidem*, para. 231.
38 *Ladent v. Poland*, 2008.

The Court emphasised that detention under Article 5(1)(c) must be strictly proportionate and necessary to achieve its declared objective. It is incumbent on the authorities to demonstrate compelling reasons for depriving an individual of their liberty, ensuring that alternative measures, such as bail or electronic monitoring, are not feasible.[39]

The Court also underscored the crucial role of effective judicial control in safeguarding the right to liberty. It held that automatic judicial review within a short time frame is essential to prevent arbitrary detention and protect individuals from potential ill-treatment.[40] This automatic review indeed serves as a safeguard against potential abuse of power and ensures that detention measures are implemented in accordance with legal safeguards and procedures, including cases of individuals unfamiliar of the language used by officials.[41]

5.2. Baranowski v. Poland[42]

The case of *Baranowski v. Poland* addressed the issue of pre-trial detention under Polish law and its compatibility with Article 5 of the Convention. At the heart of the case was Mr Baranowski's claim that his continued detention for over four years, while awaiting trial on charges of organised crime, was excessive and violated his right to liberty.

The Court highlighted the importance of national authorities, particularly courts, in interpreting and applying domestic law. However, when failure to comply with such law entails a breach of the Convention, the ECtHR has a responsibility to review whether national law has been observed.[43] In examining the lawfulness of Mr Baranowski's detention, the ECtHR carefully considered the grounds provided by the Polish authorities to justify his prolonged confinement. The Court found that the gravity of the offences alleged against Mr. Baranowski, the risk of him influencing co-accused and witnesses, and the need to secure evidence were indeed "relevant" and "sufficient" reasons for keeping him in custody. However, the Court also recognised the exceptional complexity of the case, involving over 50 other defendants and a vast volume of evidence. In this context, the Court acknowledged that the length of the investigation and trial was justifiable, particularly given the authorities' efforts to expedite the proceedings.

However, in the Baranowski case the key issue was compliance with the speediness requirement under Article 5 § 4 of the ECHR, which guarantees detained individuals the right to challenge the lawfulness of their detention and to have the detention terminated if found unlawful. The Court held that this requirement

39 *Ibidem*, paras. 55–56.
40 *Ibidem*, para. 72.
41 *Ibidem*, para. 74.
42 *Baranowski v. Poland*, 2000.
43 *Ibidem*, para. 50.

necessitates a prompt judicial decision on the lawfulness of detention, ensuring that any unlawful detention is remedied promptly.[44] The Court found that the authorities had generally adhered to this requirement, by promptly reviewing Mr Baranowski's detention appeals. However, in one instance, the Court identified a delay of 45 days in reviewing the decision to extend Mr. Baranowski's detention on February 6, 2004. The Court concluded that this delay was not justified and constituted a violation of Article 5 § 4.

This case also illustrates the delicate balance that courts must strike between protecting individual liberty and ensuring public safety. While pre-trial detention may be justified in certain circumstances, such as to prevent fleeing or interfering with the investigation, its duration must be proportionate to the legitimate objectives and subject to rigorous review.

6. Procedural safeguards of authorised deprivations of liberty: the case of *M.S. v. Croatia* (No. 2)[45]

Judicialization of proceedings for confinement of persons with mental disabilities into psychiatric institutions has been a groundbreaking achievement in Europe to protect the human rights of this vulnerable population, particularly with regard to Article 5. In 1979, the ECtHR's ruling in *Winterwerp v. Netherlands*[46] set an important precedent for the protection of the rights of individuals who are subject to involuntary psychiatric detention. The Court's emphasis on procedural safeguards has helped to ensure that such detention is only used as a last resort and that the rights of patients are respected. At the beginning of my academic career, as a student researcher, I was involved in a CARDS Programme entitled "Bridging the Gap: Civil Society Promoting Access to Justice for People with Mental Disabilities in Croatia" (2007-2008). In this project, I visited psychiatric institutions in Croatia and attended court sessions where judges decided on the placement and the extension of involuntary placement of persons with mental disabilities into psychiatric institutions. This was highly controversial as all the cases were practically represented by the same group of lawyers, and hardly visited their clients. The patients were excluded from court proceedings, and the judgments resembled the practice of filling out forms, where the judge simply inserted the personal data of the person and the diagnosis of the psychiatrists. It was just a matter of time for the ECtHR to reprimand Croatia for such practice and one of such cases was *M.S. v. Croatia* (No. 2).

44 *Ibidem*, para. 68.
45 *M.S. v. Croatia* (no. 2), 2015.
46 *Vinterwerp v. Netherlands*, 1979.

In this Croatian case, the applicant M.S. was admitted to a psychiatric clinic against her will after visiting a hospital emergency room complaining of severe lower-back pain. The County Court upheld her continued confinement despite her request for release and complaints of ill-treatment right until her release from the clinic a month later. The ECtHR addressed the procedural safeguards against involuntary hospitalisation under Croatian law and its compatibility with Article 5 § 1 (e) of the Convention, which safeguards the right to liberty and security.

In its judgment, the ECtHR emphasised the importance of ensuring that individuals subjected to involuntary hospitalisation have access to fair and proper procedures to protect them from arbitrary deprivation of liberty.[47] These proceedings must provide effective safeguards against arbitrariness, given the vulnerability of individuals with mental disorders and the need for compelling reasons to justify any restriction of their rights.[48]

The Court also stressed that the mere appointment of a lawyer without their actual involvement in the proceedings is insufficient to meet the requirement of "necessary legal assistance" for individuals placed under involuntary hospitalisation. Effective legal representation for persons with disabilities necessitates an enhanced duty of supervision by competent domestic courts to ensure that their legal representatives provide adequate assistance and advocate effectively on their behalf.[49] Consequently, along with the fact that the applicant was excluded from the hearing, the ECtHR found that the Croatian authorities had failed to ensure that the applicant's national proceedings were free from arbitrariness. Therefore, the Court established the violation of Article 5 § 1 (e) of the Convention. This case shows that the judicialization of the hospitalisation of patients with mental disabilities can fail to improve their human rights if lawyers do not comprehend the importance of their role in such proceedings.

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7. Information on the reasons for arrest under Art. 5 §2: the case of *Z.H. v. Hungary*[50]

The more disabilities an individual suffers from, the greater attention to be paid to protecting the person's human rights. Article 5 § 2 requires an individual to be informed of the reasons for his or her detention promptly, in a language understood by him or her, and in a manner that allows the person to exercise his or her rights under Article 5 § 4, which guarantees the right to challenge the lawfulness of detention.

47 *M.S. v. Croatia* (no. 2), 2015, para. 114.
48 *Ibidem*, para. 147.
49 *Ibidem*, para. 154.
50 *Z.H. v. Hungary*, 2012.

However, what if a person is deafblind like Hellen Keller? Could her teacher and life-long companion Anne Sullivan receive such information on behalf of her? A Hungarian applicant Z.H. was deaf, mute, illiterate, unable to use the official sign language, and suffered from intellectual disability.

The case of *Z.H. v. Hungary* addressed the issue of the right to information for individuals with intellectual disabilities who are detained under Article 5 of the Convention. Only Z.H.'s mother could understand his unique sign-language. In April 2011, he was arrested on the suspicion of mugging and interrogated at the police station with the assistance of a sign-language interpreter. He was unable to understand this interpreter and his interrogation was not conducted using an adaptive interviewing approach fitted to his intellectual disability. Consequently, Z.H. was detained on remand until July 2011, when a district court ordered his release and placement under house arrest, citing the need to minimise his detention due to his communication difficulties. The ECtHR found that Hungary had violated Z.H.'s right to information under Article 5 § 2, which requires an individual to be informed of the reasons for his or her detention promptly, in a language understood by him or her, and in a manner that allows the person to exercise his or her rights under Article 5 § 4, which guarantees the right to challenge the lawfulness of detention.

The Court emphasised that the communication must be adapted to the individual's specific needs, taking into account his or her intellectual disability. If the individual is incapable of understanding the relevant information, the Court stressed that persons representing his or her interests must be informed.[51] Thus, the role of representatives, such as guardians or lawyers, is crucial in such situations. In Z.H.'s case this person should have been his mother. For someone like Hellen Keller, it would have been probably someone like Anne Sullivan.

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8. Right to a trial within a reasonable time or to be released pending trial under Article 5 § 3:

8.1. Štvrtecký v. Slovakia[52]

The right to trial within a reasonable time has been a particular challenge in European countries that transitioned from communism to democracies. The transition involved substantial reforms in the entire legal system and the efficiency of the reformed judiciary in the transitional and post-transitional legal order became one of the major issues. In the landmark case of *Štvrtecký v. Slovakia* (2018), the ECtHR delved into the intricacies of Article 5 § 3 of the Convention by addressing the critical

51 *Ibidem*, paras. 41–43.
52 *Štvrtecký v. Slovakia*, 2018.

issue of determining the permissible length of pre-trial detention and emphasising the importance of balancing the interests of the individual with the need to ensure the effective administration of justice.

Mr Štvrtecký was arrested in October 2006 on charges of extortion and held in pre-trial detention for more than three and a half years. The authorities justified his detention on the grounds that he might put pressure on witnesses, tamper with evidence, or contact other perpetrators. He remained in detention throughout the investigation and trial, which lasted four years. In June 2010, he was convicted of establishing, masterminding and supporting a criminal group, and sentenced to 25 years' imprisonment. Mr Štvrtecký complained to the ECtHR that his pre-trial detention was excessive.

In this case, the ECtHR established that the period to be considered when assessing the length of pre-trial detention under Article 5 § 3 begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance. This approach aligns with the Convention's emphasis on promptness and the need to ensure that detention is not prolonged unnecessarily.[53]

The ECtHR reiterated the principle that detention pending trial cannot be justified by abstract arguments but must be supported by concrete evidence of a risk that the accused may abscond, obstruct justice, or commit further offenses. In cases involving organised crime or criminal groups, the risk of witness tampering or other interference with the proceedings may increase due to the nature of the criminal activities and the potential influence of the accused.[54]

Nevertheless, such risks must be assessed carefully and must be supported by specific facts, rather than providing mere assumptions or generalisations. In Štvrtecký's case, the ECtHR found that the detention period of over three and a half years was excessive and violated the applicant's right to liberty under Article 5 § 3.

The ECtHR's ruling in the *Štvrtecký v. Slovakia* case serves as a reminder to national authorities of the importance of scrutinising the grounds for pre-trial detention carefully and ensuring that detention is not used as a routine measure or a substitute for effective investigation and prosecution. The Court's emphasis on the need for factual evidence and a case-specific risk assessment underscores the need to balance the interests of justice with the fundamental rights of individuals. By adhering to these principles, States can protect the right to liberty while ensuring the proper administration of justice.

53 *Ibidem*, para. 55.
54 *Ibidem*, para. 61.

8.2. Tase v. Romania[55]

In another landmark case, the *Tase v. Romania* case (2008), the ECtHR addressed the critical issues of pre-trial detention and the right to compensation for unlawful detention. Mr Tase was arrested in June 2002 on charges of theft and was ultimately convicted. He claimed that his arrest was unlawful and lacked concrete reasons. He also argued that he should have been entitled to compensation for his pre-trial detention, even though he was eventually convicted.

The ECtHR established that detention pending trial must be based on concrete reasons that are carefully considered and clearly articulated in the relevant judicial decisions. The Court rejected the practice of automatic or routine prolongation of detention, noting that such an approach undermines the individual's right to liberty and fails to meet the requirements of Article 5 § 3.[56] The Court also highlighted the duty of domestic authorities of establishing underlying circumstances warranting a person's detention, as only a reasoned decision facilitates public scrutiny.[57] No matter how short the period of detention may be, its justification must be convincing.[58]

In the *Tase v. Romania* case, the Court found a violation of Article 5 §§ 1, 3 and 5 of the Convention. The Court's emphasis on concrete reasons and rigorous scrutiny highlighted the importance of balancing the interests of justice with the right to liberty and security. This case completes this intellectual journey through the ECtHR's case law regarding Article 5 in some selected Central European countries.

9. Conclusions

This paper has examined the right to liberty and security in the ECtHR case law involving Romania, Poland; Slovakia, Hungary and Croatia. The analysis focused on a number of key issues, including the scope of application of Article 5, the specific provisions of Article 5, the lawfulness of deprivations of liberty, procedural safeguards, the right to information on the reasons for arrest and the right to trial within a reasonable time or to be released pending trial.

The cases observed have demonstrated that the ECtHR has taken a robust approach to protecting the right to liberty and security. The Court has consistently held that any deprivation of liberty must be lawful, necessary in a democratic society and proportionate to the legitimate aim pursued. The Court has also been willing to intervene where there have been procedural irregularities in the detention process.

55 *Tase v. Romania*, 2008.
56 *Ibidem*, para. 40.
57 *Ibidem*, para. 41.
58 *Ibidem*, para. 40.

The cases have also highlighted the importance of the right to trial within a reasonable time. The Court has held that this right is of fundamental importance to the protection of individual liberty. Where a person is detained pending trial, the Court will carefully scrutinise the reasons for the delay and may order the release of the detainee if the delay is found to be unreasonable.

The ECtHR's case law on the right to liberty and security has had a significant impact on the domestic law of the countries concerned. The cases have helped to raise awareness of the right and to ensure that it is better protected in practice. The Court has also been inclined to issue judgments that have significant financial consequences for the governments concerned.

Overall, the ECtHR's case law on the right to liberty and security has made a valuable contribution to the protection of human rights in Romania, Poland, Slovakia, Hu ngary and Croatia. The cases have helped to ensure that this right is interpreted in a way that is consistent with the European Convention on Human Rights and that it is effectively protected in practice.

Among the analysed countries, it was only Croatia that had a recent war experience in which personal liberties were limited for national security reasons in the 1990s,[59] an issue that remained unaddressed by the ECtHR as Croatia was not a Council of Europe Member State at the time. Interventions in liberty and security in wartime are gaining relevance again as we are on the edge of the escalation of the prospect of World War III.[60] Hopefully, we will not be needing them.

59 E.g. evictions of persons from their homes, detention and search of persons without a warrant for security reasons. Matulović and Bošković, 1996, pp. 322–325.

60 For a comparative overview on wartime security and liberty in post-World War II context see Jackson, R.H. (1951) Wartime Security and Liberty Under Law. *Buff L. Rev.*, *1*, pp. 103–117.

References

Aradau, C. (2008) 'Forget equality? Security and liberty in the "War on Terror"', Alternatives, 33(3), pp. 293–314;

Bachmann, S.D. and Sanden, J., (2017) 'The right to liberty and security according to article 5 of the European Convention on Human Rights and facing threats to public safety and national security', *Journal of South African Law/Tydskrif vir die Suid-Afrikaanse Reg*, 2017/2, pp. 320-336;

Bigo, D. (2016) 'Delivering liberty and security? The reframing of freedom when associated with security' in Europe's 21st century challenge, Routledge, pp. 263–288;

Bybee, K.J. (2005) 'Legal Realism, Common Courtesy, and Hypocrisy', *Law, Culture and the Humanities*, 1(1), pp. 75–102;

Costello, C., Mouzourakis, M. (2016) 'EU law and the detainability of asylum-seekers', *Refugee Survey Quarterly*, 35(1), pp. 47–73;

Crocker, T.P. (2011) 'Who Decides on Liberty', *Connecticut Law Review*, 44, pp. 1511–1544;

Dickson, B. (2009) 'Article 5 of the ECHR and 28-day pre-charge detention of terrorist suspects', *N. Ir. Legal Q.*, 60, 231;

Gearty, C.A. (2010) 'Escaping Hobbes: liberty and security for our democratic (not anti-terrorist) age', *LSE Legal Studies Working Paper*, 2010/3, pp. 1–22;

Jackson, R.H. (1951) 'Wartime Security and Liberty Under Law', *Buff L. Rev.*, 1, pp. 103-117;

Lach, A. (2021) 'Preventive arrest in criminal procedure and police law in light of Article 5 of the ECHR', *Revista Brasileira de Direito Processual Penal*, 7(3), 1597-1630;

Lewis, C.W. (2005) 'The clash between security and liberty in the US response to terror', *Public Administration Review,* 65(1), pp.18–30;

Johansen, J. N. (2022) 'Towards a More Restrictive Interpretation of the Right to Liberty in Article 5 (1) ECHR?', *ZEuS Zeitschrift für Europarechtliche Studien*, 25(1), 89–110;

Macken, C. (2006) 'Preventive detention and the right to personal liberty and security under article 5 ECHR', *The International Journal of Human Rights*, 10(3), 195–217;

Matulović, M., Bošković A. (1996) 'Protection of human rights and minority rights in Croatia', *Zbornik Pravnog Fakulteta Sveucilista Rijeci*, 17(2), pp. 303–328;

Neocleous, M. (2007) 'Security, liberty and the myth of balance: Towards a critique of security politics', *Contemporary Political Theory*, 6, pp.131–149;

Nisanci, D. (2021) *The Right to Freedom and Security in the Light of the ECHR Decisions (ECHR Art. 5) and the Examination of This Right in Terms of Freedom of Expression (ECHR Art. 10) and the Prohibition of Distribution (ECHR Art. 18).* Dicle Univ. JL Fac., 26, 37;

Nordin, R. and Akther, S. (2015) 'Rights Guaranteed under the ECHR for the Protection of Persons Deprived of Their Liberty at Pre-Trial Stage', *Law Review* 3, pp. 456–473;

Patel, P. (2005) 'Focus on Article 5 of the ECHR', *Judicial Review*, 10(4), 303–310;

Payne, S. (2011) 'The Conflict between Liberty and Security', *Istituzioni del Federalismo*, 32(4), pp. 773–800;

Pîrnuţă, O.A., Arseni, A.A. and Drăghici, C.O. (2010) 'Safeguarding The Right to Liberty and Security in the European Context', Review, pp. 111–116;

Pugh, J. (2020) 'The United Kingdom's Coronavirus Act, deprivations of liberty, and the right to liberty and security of the person', *Journal of Law and the Biosciences*, 7(1), pp. 1–14;

Snacken, S. (2022) *The European Court of Human Rights and National Penal Policies: Fostering quantitative and qualitative penal moderation through Articles 3 and 5 ECHR. In The Evolving Protection of Prisoners' Rights in International Law.* Taylor & Francis;

Stevens, L. (2009) 'Pre-trial detention: The presumption of innocence and Article 5 of the European convention on human rights cannot and does not limit its increasing use', *European Journal of Crime, Criminal Law and Criminal Justice*, 17(2), pp. 165–188;
Stoyanova, V. (2019) 'The Grand Chamber judgment in Ilias and Ahmed v Hungary: Immigration detention and how the ground beneath our feet continues to erode', Strasbourg Observers [Online], Available at: https://strasbourgobservers.com/2019/12/23/the-grand-chamber-judgment-in-ilias-and-ahmed-v-hungary-immigration-detention-and-how-the-ground-beneath-our-feet-continues-to-erode;
Taylor Jr, S. (2003) 'Rights, liberties, and security', *The Brookings Review*, 21(1), pp. 25–31;
Waldron, J. (2003) 'Security and liberty: The image of balance', *Journal of Political Philosophy*, 11(2), pp. 191–210.

Case Law

'Aftanache v. Romania' (2020) case no. 999/19;
'Baranowski v. Poland' (2000) case no. 28358/95;
'Cazan v. Romania' (2016) case no. 30050/12'Creangă v. Romania' (GC) (2012) case no. 29226/03;
'Creangă v. Romania' (GC) (2012) case no. 29226/03;
'Ilias and Ahmed v. Hungary' (2017) case no 47287/15;
'Ilias and Ahmed v. Hungary' (GC) (2019) case no 47287/15;
'Ilias and Ahmed v. Hungary' (GC) (2019) case no 47287/15;
'Ladent v. Poland' (2008) case no. 11036/03;
'M.S. v. Croatia (no. 2)' (2015) case no. 75450/12.'Mogoş and Others v. Romania' (dec.) (2004) case no. 20420/02;
'N. v. Romania' (2017) case no. 59152/08;
'Pantea v. Romania' (2003) case no. 33343/96'R.R. and Others v. Hungary' (2021) case no. 36037/17;
'Shamsa v. Poland' (2003) case nos. 45355/99 and 45357/99'Stănculeanu v. Romania' (2018) case no. 26990/15'Štvrtecký v. Slovakia' (2018) case no. 55844/12;
'Tase v. Romania' (2008) case no. 29761/02;
'Terheş v. Romania' (dec.) (2021) case no. 49933/20;
'Vinterwerp v. Netherlands' (1979) case no. 6301/73;
'Z.H. v. Hungary' (2012) case no. 28973/11.