

The First Section of the European Court of Human Rights (ECHR), with a judgement of February 3rd 2022, ruled against Poland for a violation of art. 5 of the European Convention on Human Rights which guarantees the right to liberty and security.

The case concerned the allegedly excessive length of the detention on remand of the applicant, who invoked art. 5§3 of the Convention. It establishes: «everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article [...] shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial». The man - tasked with the supervision of so-called “reprivatisation proceedings” concerning the reacquisition of properties which had been nationalized by the communist government in 1945 - submitted that the domestic courts had automatically extended his detention on remand, relying on essentially the same grounds each time, and stressed that his arrest had occurred several months after the so-called “reprivatisation scandal” had come into the public spotlight. He would have had more than enough time to attempt to obstruct the investigation or go into hiding. Instead, he had chosen to cooperate with agents of the Central Anti-Corruption Bureau despite being accused of several offences, including accepting bribes, influence peddling, money-laundering and abuse of power.

The Polish Government submitted that the length of the applicant’s detention was compatible with the standards applicable under Article 5 § 3 of the Convention and thus revealed no violation of this provision. The grounds referred to in the decisions of the domestic courts were “relevant” and “sufficient” to justify the entire period of his detention by virtue of the complexity of the case, the number of suspects and the fact that the applicant had already made a death threat against one person and incited another person to neglect her duties. Moreover, the reasonable suspicion of the applicant’s guilt had persisted throughout the entire period of his detention and, having been faced with a potentially severe penalty, he could have attempted to interfere with the course of the proceedings.

The applicant’s detention on remand lasted one year and eleven months: Strasbourg judges observed that, in their decisions on the applicant’s detention on remand, the domestic courts mainly relied on the reasonable suspicion against him, reinforced by the close ties between him and other suspects, the severity of the penalty to which he was liable and the risk of his obstructing the proceedings. However, the risk of proceedings being obstructed may be much higher if there is a serious suspicion that several suspects acted as an organised criminal group, as such a group may resort to various unlawful means to try to prevent the prosecuting authorities from establishing the facts. In the present case, although the applicant was charged with offences committed together with eight other suspects, he was not charged with acting within an organised criminal group. Furthermore, the Court recalled that, as a general rule, the competent authorities should resort to the least restrictive means in order to ensure the proper conduct of criminal proceedings. However, in the applicant’s case, whenever the authorities envisaged the possibility of imposing less restrictive preventive measures on him, such as bail, the relevant decisions were quashed on appeal: the second-instance courts relied on essentially the same criteria as the lower courts or referred to circumstances from before the investigation had been initiated and their grounds for keeping the applicant in detention did not change over time. The voluminous evidence and the complexity of a case cannot, in themselves, justify the entire period of detention on remand; indeed, it remains incumbent on the authorities to prove the continued need of detention and to give specific reasons why it is necessary to continue the detention instead of applying less restrictive preventive measures. In light of the foregoing, the European Court concluded that, although the reasons given by the national authorities may have justified the applicant’s initial detention on remand, they were not “relevant” and “sufficient” to justify the extension of the same for almost two years, in violation of art. 5§3 of the Convention.

Riferimenti Normativi:

- art. 5 Convenzione Europea dei Diritti dell’Uomo