



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

FIRST SECTION

CASE OF KRNJAK v. CROATIA

(Application no. 11228/10)

JUDGMENT

STRASBOURG

28 June 2011

FINAL

28/11/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Krnjak v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Anatoly Kovler, *President*,

Nina Vajić,

Peer Lorenzen,

Khanlar Hajiyeu,

George Nicolaou,

Julia Laffranque,

Linos-Alexandre Sicilianos, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 11228/10) 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”) by a Croatian national, Mr Ivica Krnjak (“the applicant”), on 1 February 2010.

2. The applicant was represented by Mr D. Rešetar, a lawyer practising in Osijek. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. On 29 September 2009 the President of the First Section decided to communicate the complaints under Article 5 of the Convention concerning the applicant’s pre-trial detention and the procedure by which the applicant sought to challenge the lawfulness of his detention. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1942 and lives in Zagreb.

5. On 16 April 2007 the applicant and six other defendants were indicted at Osijek County Court for war crimes against the civilian population, an offence under Article 120 of the Croatian Criminal Code.

6. On 29 May 2007 the Supreme Court (*Vrhovni sud Republike Hrvatske*) transferred jurisdiction to the Zagreb County Court (*Županijski sud u Zagrebu*) and the proceedings continued before that court. At that time the applicant lived in Osijek, a town about 280 kilometres from Zagreb.

7. On 17 April 2009 the applicant's defence counsel informed the trial court that the applicant would not be able to attend a hearing scheduled for 20 April 2009 because he was to be hospitalised that day in Osijek. However, the medical documentation he submitted indicated that the applicant's admission to Osijek Hospital had been scheduled for 20 May 2009 at 8.30 a.m.

8. The trial panel at the hearing on 20 April 2009 was composed of judges Ž.H., as the presiding judge, and R.T.A., S.B.B and M.K., as its members. At the beginning of the hearing, at 8.15 a.m., the presiding judge telephoned Osijek Hospital and learned that the applicant had not been admitted to that hospital. The trial panel made a request to a three-judge non-trial panel to order the applicant's detention and concluded the hearing at 10.05 a.m.

9. At 9.53 a.m. a fax sent by defence counsel arrived at the Zagreb County Court. Defence counsel submitted the same medical document as before, but with the date of the applicant's scheduled hospitalisation altered from 20 May 2009 to 20 April 2009.

10. At 10 a.m. the three-judge non-trial panel opened its session. One of the applicant's defence counsel was present and made no further submissions. The session ended at 11 a.m. The panel was composed of judges R.T.A., as the presiding judge, and S.P.L. and L.S., as members. It granted the request and ordered the applicant's detention under Article 102 § 1(1) of the Code of Criminal Procedure (*Zakon o kaznenom postupku*). The relevant part of the decision reads:

"The Deputy Zagreb County State Attorney said that ... the second defendant was obstructing the proceedings ... because ... he had already recalled a power of attorney given to his defence counsel owing to which the trial had to start over again ... he had also been given a time-limit to resolve his health problems but had not done so. She stressed in particular that the diagnostic examination [on account of which the applicant did not appear at the hearing] ... had not been necessary at that time. ...

The [other] Deputy Zagreb County State Attorney ... added that the applicant's behaviour in a longer period had shown that he had been obstructing the closure of the trial ... and that it was evident that he had been avoiding appearing at the trial ...

Defence counsel for the second defendant ... objected to ordering the defendant's detention. He argued that there was no indication that the second defendant had been avoiding the trial ... he had at that moment received a telephone message from the defendant's other defence counsel in Osijek ... who told him that he would fax fresh medical documentation in respect of the defendant which would shed new light on today's events.

...

The record of the hearing held on 20 April 2009 shows that the second defendant, although he had been properly summoned, did not appear, and his defence counsel ... in his submission of 17 April 2009 stated that the second defendant had been scheduled for hospitalisation in Osijek and for that reason would not be able to attend the hearing. He enclosed medical documentation showing that the second defendant had been scheduled for hospitalisation on 20 May 2009.

On 20 April 2009 the presiding judge telephoned ... Osijek Hospital and learned that the second defendant had not been admitted there.

Although the documents in the case file show that the applicant had some medical problems, it is evident that he is manipulating them, as he had already done on several previous occasions, owing to which disciplinary detention had already been ordered against him by a decision of this court of 24 November 2008 ...

Such behaviour by the second defendant, in view of the grave criminal charges [against him], attracting a prison term, shows that he is avoiding participating in these proceedings and is [obstructing] the trial ...”

11. On the same day the presiding judge of the trial panel ordered a medical examination of the applicant.

12. The medical documents show that the applicant was admitted to Osijek Hospital on 20 April 2009 at 2.45 p.m.

13. On 21 April 2009 at 10.45 a.m. the applicant was arrested in Osijek Hospital and remanded in custody. On the same day the medical expert submitted his report. The presiding judge asked the expert to see the applicant on 22 April 2009 in order to establish whether his hospitalisation was urgent. The expert carried out the order and in his report of the same day established that there was no urgent need for the applicant to have surgery.

14. A hearing was held in the applicant’s presence on 22 April 2009 and further hearings on 23, 27 and 28 April 2009, when the hearing was closed.

15. In the meantime, on 24 April 2009 the applicant lodged an appeal complaining about his detention and also that the presiding judge in the panel ordering his detention was also a member of the trial panel which asked for a measure of detention to be ordered against him. The applicant’s appeal was dismissed by the Supreme Court on 29 April 2009.

The relevant part of the decision reads:

“...

The defendant Ivica Krnjak was aware of his duty to participate in these criminal proceedings, and in the course of the proceedings disciplinary detention had already been ordered against him in order to ensure his presence at the trial.

Nevertheless, he failed to appear at the hearing scheduled for 20 April 2009 with the excuse that he was scheduled for hospitalisation that day. The medical documentation ... shows that he was scheduled for surgery at 8.30 a.m. that day. The presiding judge

verified by telephoning the Osijek Hospital Admission Centre the allegations of the defendant's counsel and established that the defendant had not been admitted to the hospital.

Against that background [the first-instance] court correctly concluded that the defendant was in hiding and it was necessary to order his detention as an extreme measure to ensure his presence at the trial. Moreover, the additional medical expert report established ... that the defendant's health did not indicate either medical intervention or surgery, which additionally confirms the conclusion that the defendant was in hiding in order to avoid participating in these proceedings.

As regards the allegations in the appeal that a trial judge had sat on the panel which ordered the defendant's detention ... it is to be noted that the trial panel is also authorised to extend detention during the hearing and that there is no statutory obstacle to a member of the trial panel participating in adopting a decision on detention as a member of a non-trial panel.

The appeal further alleges that the defendant had been admitted that day to Osijek Hospital but that the [first-instance] court could not establish this, because of the slowness of the Osijek Hospital administration. However, there is no reliable document in the case file, apart from the defendant's own allegations, showing that he was actually admitted to the hospital on 20 April 2009 at 8.30 a.m., as he should have been according to the medical documentation in the file. The only indication in that regard is the fact that he was arrested at 10.45 a.m. the next day in Osijek Hospital. It is particularly suggestive that his state of health did not indicate that there was a need, or any urgency, for surgery, as established afterwards by a [medical] expert ..."

This decision was served on the applicant's counsel on 4 May 2009.

16. The trial panel deliberations were held on 4, 5, 6 and 7 May 2009. On the latter date the Zagreb County Court found the applicant guilty as charged and sentenced him to eight years' imprisonment. It remanded him in custody until the judgment became final.

17. On 4 June 2009 the applicant lodged a constitutional complaint against the decision of the County Court of 20 April 2009 and the decision of the Supreme Court of 4 May 2009, concerning his detention.

18. On 8 July 2009 the Constitutional Court declared the applicant's constitutional complaint inadmissible on the ground that the impugned decisions were no longer in effect since, meanwhile, a fresh decision on his detention had been adopted, on 7 May 2009. The Constitutional Court decision was served on the applicant's counsel on 9 September 2009.

II. RELEVANT DOMESTIC LAW

19. The relevant provisions of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu*, Official Gazette no. 29/2002) read:

Section 62 § 1

“1. Anyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that a decision (*pojedinačni akt*) of a State body, a body of local and regional self-government, or a legal person with public authority, which has decided on his or her rights and obligations, or deemed that there is a suspicion or accusation of a criminal act, has violated his or her human rights or fundamental freedoms, or his or her right to local and regional self-government guaranteed by the Constitution (hereinafter: constitutional right) ...”

Section 64

“A constitutional complaint may be lodged within thirty days of the day the decision has been served [on a party].”

20. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku* – Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002 and 62/2003, 178/2004 and 115/2006) provide as follows:

8. General Provisions on Detention**Article 101**

(1) Detention may be imposed only if the same purpose cannot be achieved by another [preventive] measure.

(2) Detention shall be lifted and the detainee released as soon as the grounds for detention cease to exist.

(3) When deciding on detention, in particular on its duration, the court shall take into consideration the proportionality between the gravity of the offence, the sentence which ... may be expected to be imposed, and the need to order and determine the duration of detention.

(4) The judicial authorities conducting the criminal proceedings shall proceed with particular urgency when the defendant is in detention and shall review of their own motion whether the grounds and legal conditions for detention have ceased to exist, in which case detention shall immediately be lifted.

9. Grounds for Ordering Detention**Article 102**

“(1) Where reasonable suspicion exists that a person has committed a criminal offence, he or she may be placed in detention if:

1. the circumstances indicate a risk that [the defendant] will abscond (is in hiding or his or her identity cannot be established etc.);

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

21. Relying on Article 5 of the Convention, the applicant complained that the reasons for ordering his detention in the period between 20 April and 7 May 2009 had not been relevant and sufficient. The Court shall examine this complaint under Article 5 § 1(c) of the Convention, which reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...”

A. Admissibility

22. The Government argued that this complaint had been lodged outside the six-month limit because the applicant had lodged his constitutional complaint only after the first-instance judgment of 7 May 2009 had been adopted, and that he must have known that his constitutional complaint against the previous decision on his detention had already become ineffective, according to the constant practice of the Constitutional Court.

23. The applicant maintained that his constitutional complaint had been lodged within the prescribed time-limit and that he had lodged his application with the Court within six months of the date the Constitutional Court’s decision had been served on him.

24. The Court notes that it had already found that the practice of the Constitutional Court not to examine the merits of a constitutional complaint concerning a decision on detention only on the ground that meanwhile a

fresh decision on detention had been adopted violated Article 5 § 4 of the Convention (see *Peša v. Croatia*, no. 40523/08, §§ 122-126, 8 April 2010, and *Hađi v. Croatia*, no. 42998/08, §§ 42-47, 1 July 2010).

25. Furthermore, the time-limit for lodging a constitutional complaint under section 64 of the Constitutional Court Act is thirty days from the day when the impugned decision is served on a party.

26. In the present case, the impugned decision, namely the Supreme Court decision of 29 April 2009, was served on the applicant on 4 May 2009. He lodged his constitutional complaint on 4 June 2009, that is to say within the thirty-day time-limit. In this connection the Court notes that the Constitutional Court did not hold that the applicant's constitutional complaint had been lodged outside the prescribed time-limit.

27. In these circumstances the Court considers that the applicant made a proper attempt to exhaust all available domestic remedies, and that the final decision was that adopted by the Constitutional Court on 8 July 2009 and served on the applicant's counsel on 9 September 2009. The present application was lodged with the Court on 1 February 2010, within the six-month time-limit.

28. It follows that the Government's objection must be rejected.

29. The Court considers further that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention. It also considers that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

30. The applicant argued that there was no need to order his detention because he had not been able to appear at the hearing scheduled for 20 April 2009 on a justified ground, namely his urgent hospitalisation.

31. The Government argued that the national court had carefully examined all relevant circumstances concerning the grounds for ordering the applicant's detention, and concluded that the applicant had been obstructing the trial. They argued that the national courts had held that the applicant had previously been attempting to avoid appearing at the hearings and that the presiding judge had shown adequate caution when he had telephoned Osijek Hospital. However, the medical documentation submitted by the applicant's counsel on the morning of 20 April 2009 had indicated that his hospitalisation had been scheduled for 20 May 2009 and the presiding judge had learned at Osijek Hospital that the applicant had not been admitted there.

32. Further developments had shown that the applicant's hospitalisation had not been urgent.

2. *The Court's assessment*

(a) General principles

33. The Court first observes that this case falls to be examined under sub-paragraph (c) of Article 5 § 1, since the purpose of the applicant's detention was to bring him before the competent legal authority on reasonable suspicion of having committed an offence.

34. The Court reiterates that Article 5 of the Convention guarantees the fundamental right to liberty and security. That right is of primary importance in a "democratic society" within the meaning of the Convention (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12, and *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33). Its key purpose is to prevent arbitrary or unjustified deprivations of liberty (see *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-... and *Ladent v. Poland*, no. 11036/03, § 45, ECHR 2008-... (extracts)).

35. All persons are entitled to the protection of that right, that is to say, not to be deprived or continue to be deprived of their liberty (see *Weeks v. the United Kingdom*, 2 March 1987, § 40, Series A no. 114), save in accordance with the conditions specified in paragraph 1 of Article 5. The list of exceptions set out in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty (see *Amuur v. France*, 25 June 1996, § 42, *Reports* 1996-III; *Labita v. Italy* [GC], no. 26772/95, § 170, ECHR 2000-IV; and *Assanidze v. Georgia* [GC], no. 71503/01, § 170, ECHR 2004-II).

36. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and enshrine the obligation to conform to substantive and procedural rules thereof. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should review whether this law has been complied with (see, among many other authorities, *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports* 1996-III, and *Assanidze v. Georgia*, cited above, § 171).

37. This primarily requires any arrest or detention to have a legal basis in domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention (see *Stafford*, cited above, § 63, and *Kafkaris*, cited above, § 116). "Quality of the law" in this sense implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness

(see *Amuur v. France*, 25 June 1996, § 50, *Reports* 1996-III; *Nasrulloev v. Russia*, no. 656/06, § 71, 11 October 2007; and *Mooren v. Germany* [GC], no. 11364/03, § 76, 9 July 2009). The standard of “lawfulness” set by the Convention thus requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Steel and Others v. the United Kingdom*, 23 September 1998, § 54, *Reports* 1998-VII, and *Baranowski v. Poland*, no. 28358/95, § 52, ECHR 2000-III).

38. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among many other authorities, *Winterwerp*, cited above § 37; *Amuur*, cited above, § 50; and *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of “arbitrariness” in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008-...).

(b) Application of these principles to the present case

39. The Court firstly notes that the applicant’s detention had a clear basis in domestic law, since the national courts ordered his detention on the basis of Article 102 §1(1) of the Code of Criminal Procedure, holding that there was a risk of absconding. Articles 101 and 102 of that Code concern general conditions for ordering detention. Thus, detention is to be ordered if there is a reasonable suspicion that a person has committed a criminal offence. This issue is not relevant in the present case, since the applicant, charged with the serious offence of war crimes against the civilian population, has not contested the existence of such a suspicion against him. Also, there is no issue concerning the procedure followed by the national courts in ordering the applicant’s detention, since it was ordered by a competent court in the context of the criminal proceedings instituted against the applicant.

40. The issue to be addressed in the present case is whether the national authorities acted arbitrarily in ordering the applicant’s detention. In this connection, the Court notes that the national authorities ordered the applicant’s detention on the ground that he was in hiding and avoiding appearing at the trial. They held his applicant’s behaviour over a longer period had shown that he had been obstructing the trial.

41. The Court notes that the applicant’s counsel informed the trial court that the applicant’s hospitalisation had been scheduled on the day of a hearing, 20 April 2009, that same morning. However, the medical

documentation he then submitted showed that the hospitalisation had been scheduled for 20 May 2009. The presiding judge verified the applicant's allegations by telephoning Osijek Hospital and learned that the applicant had not been admitted.

42. In the Court's view the national courts carefully examined the applicant's situation, ordered a medical expert to assess his state of health and established that there had been no need for an urgent hospitalisation. Their conclusion that the applicant was avoiding appearing at the trial, which was approaching its closure, does not in any respect appear arbitrary.

43. The Court finds that the national authorities gave adequate and valid reasons for the applicant's detention between 20 April and 7 May 2009 and clarifying them with reference to the specific circumstances of the case and the evidence available to them.

44. Against the above background the Court finds that there has been no violation of Article 5 § 1 of the Convention.

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

45. The applicant complained that the Constitutional Court had failed to examine the merits of his constitutional complaint. He relied on Article 5 § 4 of the Convention, which reads:

"4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

46. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

47. The applicant argued that by failing to decide his constitutional complaint on the merits the Constitutional Court had not met the requirements under Article 5 § 4 of the Convention.

48. The Government reiterated that the applicant had lodged his constitutional complaint only after the first-instance judgment of 7 May 2009 had been adopted and that he must have known that his constitutional complaint against the previous decision on his detention had already

become ineffective, according to the constant practice of the Constitutional Court.

2. *The Court's assessment*

(a) General principles

49. The Court reiterates that the purpose of Article 5 § 4 is to assure to people who have been arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12, and *Ismoilov and Others v. Russia*, no. 2947/06, § 145, 24 April 2008). A remedy must be made available during a person's detention to allow that person to obtain a speedy judicial review of the lawfulness of the detention, capable of leading, where appropriate, to his or her release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see, *mutatis mutandis*, *Stoichkov v. Bulgaria*, no. 9808/02, § 66 *in fine*, 24 March 2005, and *Vachev v. Bulgaria*, no. 42987/98, § 71, ECHR 2004-VIII). The accessibility of a remedy implies, *inter alia*, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy (see, *mutatis mutandis*, *Čonka v. Belgium*, no. 51564/99, §§ 46 and 55, ECHR 2002-I).

(b) Application of these principles in the present case

50. The Court firstly notes that the applicant was able to lodge an appeal with the Supreme Court against the decision ordering his detention. The applicant was also able to lodge a constitutional complaint. However, the Court notes that the practice of the Constitutional Court at that time was to declare inadmissible each constitutional complaint where, before it has given its decision, a fresh decision extending detention has been adopted in the meantime. Thus, the applicant's constitutional complaint of 4 June 2009 against the Supreme Court decision of 29 April 2009 was declared inadmissible by the Constitutional Court on those grounds on 8 July 2009. The Court therefore has to address the question of the compliance of the Constitutional Court decision with the requirements of Article 5 § 4 of the Convention.

51. In this connection the Court reiterates that, according to its case-law, Article 5 § 4 enshrines, as does Article 6 § 1, the right of access to court, which can only be subject to reasonable limitations that do not impair its very essence (see *Shishkov v. Bulgaria*, no. 38822/97, §§ 82-90, ECHR 2003-I, and *Bochev*, cited above, § 70).

52. Furthermore, Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of applications for release from detention. Nevertheless, a State which institutes such a system must in principle accord detainees the same guarantees on appeal as at first instance (see *Toth*, cited above, § 84; *Rutten v. the Netherlands*, no. 32605/96, § 53, 24 July 2001; *Lanz v. Austria*, no. 24430/94, § 42, 31 January 2002; and *Svipsta v. Latvia*, no. 66820/01, § 129, ECHR 2006-III). The Court considers that the same applies in a system which provides for a constitutional complaint against decisions ordering and extending detention.

53. However, the Croatian system at that time, although allowing for a constitutional complaint, left it to the Constitutional Court to await a fresh decision on extending detention and then to declare the complaint against the previous decision on detention inadmissible. Thus, although the applicant lodged a constitutional complaint against the above-mentioned decision of the Supreme Court, the Constitutional Court did not decide on its merits, but declared it inadmissible because a fresh decision on the applicant's detention had meanwhile been adopted.

54. In the Court's opinion, the Constitutional Court's failure to decide speedily on the applicant's constitutional complaint made it impossible to ensure the proper and meaningful functioning of the system for the review of his detention, as provided for by the national law. By declaring the applicant's constitutional complaint inadmissible simply because a fresh decision extending his detention had meanwhile been adopted, the Constitutional Court did not satisfy the requirement "that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy" (see *Peša v. Croatia*, no. 40523/08, § 126, 8 April 2010, and *Hađi v. Croatia*, no. 42998/08, § 47, 1 July 2010). Thus, it fell short of its obligation under Article 5 § 4 of the Convention to review the lawfulness of the applicant's detention. There has accordingly been a violation of that provision.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. Relying on Article 5 of the Convention, the applicant complained that judge R.T.A. who was a member of the trial panel had also decided to detain him on remand, being a member of the non-trial panel which so decided.

56. Lastly, the applicant relied on Articles 1 and 14 of the Convention, without further substantiation.

57. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3(a)

as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

59. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

60. The Government deemed the amount claimed unfounded and in any event excessive.

61. The Court considers that the finding of a violation of Article 5 § 4 of the Convention constitutes in itself sufficient just satisfaction in the circumstances of the present case.

B. Costs and expenses

62. The applicant also claimed EUR 8,000 for the costs and expenses incurred before the Court.

63. The Government deemed the sum claimed excessive.

64. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,200 for the proceedings before the Court, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

65. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 5 of the Convention concerning the applicant's pre-trial detention; and the complaint concerning the conformity of the procedure before the Constitutional Court by which the applicant sought to challenge the lawfulness of his detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds*
 - (a) that the finding of a violation constitutes sufficient just satisfaction;
 - (b) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,200 (thousand two hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (c) 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Anatoly Kovler
President