



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

SECOND SECTION

CASE OF ŠARANOVIĆ v. MONTENEGRO

(Application no. 31775/16)

JUDGMENT

STRASBOURG

5 March 2019

FINAL

07/10/2019

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

In the case of Šaranović v. Montenegro,

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

Robert Spano, *President*,
Paul Lemmens,
Işıl Karakaş,
Valeriu Griţco,
Stéphanie Mourou-Vikström,
Ivana Jelić,
Arnfinn Bårdsen, *judges*,

and Hasan Bakirci, *Deputy Section Registrar*,

Having deliberated in private on 5 February 2019,

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

PROCEDURE

1. The case originated in an application (no. 31775/16) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Montenegrin national, Mr Slobodan Šaranović (“the applicant”), on 2 June 2016.

2. The applicant was represented by Mr G. Rodić, a lawyer practising in Podgorica. The Montenegrin Government (“the Government”) were represented by their Agent, Ms V. Pavličić.

3. The applicant alleged, in particular, that his pre-trial detention between 15 November and 15 December 2014 had been unlawful, that his detention could last six months at most without an indictment and that the relevant decisions extending his detention and the Constitutional Court’s decision had lacked reasoning. After the applicant’s death on 11 March 2017 his wife expressed a wish to pursue the application before the Court (see paragraphs 56-59).

4. On 17 January 2018 notice of the complaints concerning the lawfulness and length of the applicant’s pre-trial detention, and the alleged lack of reasoning in the decisions on detention and the Constitutional Court’s decision was given to the Government; the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1938 and lived in Budva.

A. Background information

6. On 8 October 2009 the applicant's brother was murdered in Belgrade, Serbia. Shortly afterwards the applicant publicly offered a reward for any relevant information.

7. On 29 April 2013 X was murdered in an ambush in Belgrade by 15 shots. X's brother had been identified in 2010 by the Organised Crime Prosecution Service in Serbia as the leader of a criminal organisation responsible for, *inter alia*, the murder in 2003 of the then Prime Minister of Serbia.

8. On 18 July 2013 the Organised Crime Prosecution in Serbia opened an investigation in respect of the applicant and several other persons in relation to the murder of X. The investigation order implied that the applicant had arranged the murder of X as he had considered X's brother responsible for the murder of his own brother. On an unspecified date between 18 and 26 July 2013 the applicant was arrested in Montenegro.

9. On 26 July 2013 the Ministry of Justice of Serbia sought the applicant's extradition to Serbia on suspicion that he had committed an aggravated murder. On 29 January 2014 the High Court (*Viši sud*) in Podgorica refused the request, which decision was upheld by the Court of Appeals (*Apelacioni sud*). On an unspecified date in February 2014 the applicant was released from detention. On 4 April 2014 the Supreme State Prosecution of Montenegro authorised the applicant's prosecution in Montenegro.

B. The applicant's detention

10. On 8 April 2014 the applicant was arrested in Montenegro. The decision was based on the assessment that he could influence the witnesses and that his release could seriously disturb public peace and order. It also took into account the gravity of the offence he was suspected of and the severity of the penalty potentially faced.

11. On 9 April 2014 the High State Prosecutor ordered an investigation (*naredba o sprovođenju istrage*) in respect of the applicant on reasonable suspicion that he had committed aggravated murder through incitement (*teško ubistvo putem podstrekavanja*).

12. On 10 April 2014 the applicant was heard by an investigating judge of the High Court in Podgorica. He submitted, *inter alia*, that he had neither any reason nor any possibility to influence the other suspects given that they were in detention under a special regime in Belgrade. He also submitted that he had been in extradition detention for seven months and that the public had not been disturbed after he had been released. He also maintained that he had not fled, nor did he have any reason to do so, and that his wife and a minor child lived in Montenegro, too. He offered to hand in his passport and to put up bail (*jemstvo*) in lieu of detention.

13. The same day the investigating judge ordered the applicant's detention as of 8 April 2014, for one month at most, on reasonable suspicion (*osnovana sumnja*) that he had committed an aggravated murder through incitement, the penalty for which was ten years of imprisonment or more. The detention was ordered on the basis of Article 175 § 1(2) and (4) of the Criminal Procedure Code (hereinafter "CPC"; see paragraph 44 below). The decision specified that the applicant could influence witnesses. It also took into account the manner in which the offence had been committed, that the motive for it had been revenge and that the applicant's release could provoke an outcry among the people and could threaten public peace and order. In view of all that it was considered unacceptable that the applicant remain free during the proceedings.

14. On 15 and 24 April 2014 the High Court, in a three-judge panel, dismissed the appeals against the detention order lodged by the applicant and his representatives respectively. The court relied on the same reasons and found that there was no violation of Article 5 of the Convention.

15. The applicant's detention was further extended on 7 May, 6 June, 7 July, 4 August and 5 September 2014, each time for a month, relying on Article 175 § 1(2) and (4). The reasoning was the same as before: there was reasonable suspicion that the applicant had committed the said criminal offence; if released he could influence the witnesses, given that the investigation was ongoing and several witnesses were yet to be heard; the statutory penalty for the said criminal offence was ten years' imprisonment or more, which offence was particularly grave in view of its motive – revenge – and its consequence – X's death; and there were exceptional circumstances indicating that his release would seriously threaten public peace and order given that the media had extensively reported on the murder of X.

16. By a decision of 20 June 2014 the Court of Appeals upheld the decisions of 7 May and 6 June 2014. The court also examined the applicant's health-related and family circumstances and considered them to be "of no impact" (*nijesu od uticaja*). No appeal was allowed against the decisions of 7 July, 4 August and 5 September 2014.

17. On 7 October 2014 the High State Prosecutor issued an indictment against the applicant for aggravated murder through incitement and for

criminal association. The same day the High Court extended his detention “until a further decision of the court”. On 16 October 2014 the High Court’s decision was quashed by the Court of Appeal.

18. On 17 October 2014 the High Court extended the applicant’s detention “until a further decision of the court”, on the basis of Article 175 § 1(4) of the CPC. It relied on the same reasons as before, and added that, if released, the applicant could abscond. It considered that detention was proportionate to the gravity of the criminal offence at issue, taking into account “all the circumstances of the case”, and that the purpose of detention from Article 175 § 1(4) could not be achieved by any other, less restrictive measure.

19. On 22 October 2014 the High Court returned the indictment, requiring further investigation in respect of the offence of criminal association.

20. On 31 October 2014 the Court of Appeals dismissed the appeals submitted by the applicant and his representatives against the decision of 17 October 2014 extending his detention. It considered that the High Court’s reasoning was clear and detailed, the only exception being the finding that the applicant could abscond, which was an obvious error (*omaška*), but it considered it of no importance for the lawfulness of his detention. It also held that what was relevant for the lawfulness of the applicant’s further detention was that the indictment should be issued within six months, which had been complied with given that the investigation had begun on 9 April 2014 and the indictment had been issued on 7 October 2014. It was of no relevance that the indictment had been returned, or that it had been issued for two criminal offences whereas the applicant’s detention had been extended relying on only one of the two. The court “also considered ... [the applicant’s] personal and family circumstances ... and ... other submissions, but found them ... of no influence”.

21. On 13 November 2014 the High State Prosecutor ordered further investigation (*naredba o proširenju istrage*), in particular in respect of criminal association.

22. On 15 December 2014 the applicant approached the prison authorities and sought that he be released. He submitted that his detention had not been reviewed after a 30-day period and that therefore it had been unlawful as of 15 November 2014. He relied on Article 179 § 2 of the CPC (see paragraph 47 below).

23. The same day, 15 December 2014, the High Court extended his detention “until a further decision was taken by a court” relying on Article 175 § 1(4) of the CPC. The decision specified that the investigation had not been terminated yet, and given that the applicant was in detention the court of its own motion, pursuant to Article 179 § 2 of the CPC, reviewed his further detention. Invoking the same reasons as before, in particular that releasing the applicant would seriously threaten public peace

and order, the court considered that there were sufficient reasons justifying the extension of detention. The court also considered that detention could not be replaced by any other, less restrictive measure.

24. Between 19 and 22 December 2014 the applicant appealed against this decision. He submitted, in particular, that the court had failed to review within 30 days whether the reasons for his detention persisted, and when it had done so, it had merely copied the earlier reasoning without really examining what exactly would disturb public peace and order, as nothing had happened when he had been released after the seven-month extradition detention. He submitted that this was contrary to both national legislation and Article 5 of the Convention.

25. On 25 December 2014 the Court of Appeals dismissed the appeals. It held that pursuant to Article 179 § 2 of the CPC the court had a duty to review whether the reasons for detention persisted and to issue a new decision extending or revoking it every 30 days before the indictment entered into force, and every two months after the indictment had come into force. However, the court's failure to do so within the said time-limits by no means meant that the detention had ceased. It also held that the applicant's detention had been lawful, as the indictment had been issued within six months. It was irrelevant that it had been returned and further investigation requested.

26. On an unspecified date, apparently between 25 December 2014 and 8 January 2015, the applicant lodged a constitutional appeal. He relied on Articles 29 and 30 of the Constitution, Article 177 of the CPC (see paragraphs 38-39 and 46 below) and Articles 5, 6 and 13 of the Convention. He submitted, *inter alia*, that: (a) the courts had failed to review his detention and issue a relevant decision within 30 days; (b) his detention had already lasted for more than eight months without the indictment having entered into force even though it was statutorily limited to six months; (c) the decisions extending his detention had been insufficiently reasoned, the reasoning having been identical, merely copied from one decision to another, and the reasons set out in the first detention order could no longer suffice. In particular, the court had not taken into account the overall length of his detention or his personal circumstances – he was 77 years old at the time, had a minor daughter, had severe health problems, had never been convicted before, and had been a respectable citizen. Also, the decisions had not specified how long the detention would last, which made them arbitrary and his deprivation of liberty unlawful. The applicant referred to, *inter alia*, *Letellier v. France*, 26 June 1991, Series A no. 207; *Clooth v. Belgium*, 12 December 1991, Series A no. 225; and *Jablonski v. Poland*, no. 33492/96, 21 December 2000.

27. On 29 May 2015 the Constitutional Court dismissed the applicant's constitutional appeal, which decision was served on 9 January 2016. The court considered unfounded (*neutemeljeni*) the applicant's allegations

relating to his detention not having been reviewed within the statutory time-limits and the indictment not having entered into force. It acknowledged that reasonable suspicion was a *conditio sine qua non*, but that after a certain time it was no longer sufficient. It held, however, that the High Court and the Court of Appeals had examined the existence of reasonable suspicion, assessed the existing evidence and other circumstances justifying the extension of detention, indicated which evidence had been taken into account and given clear and precise explanations in accepting them. Therefore, the disputed decisions were reasoned, there was no arbitrariness in them and hence no violation of Article 5.

C. Other relevant facts

28. The applicant's detention was further extended on 15 January, 30 January, 2 March, 2 April, 4 May, 4 June, 6 July, 6 August, 10 September, 9 October, 9 November and 9 December 2015, 11 January, 11 February, 11 March, 11 April, 11 May, 13 June, 15 July, 25 July, 1 September, 4 October and 4 November 2016. The decisions of 11 March, 11 April and 15 July 2016 have not been included in the case-file. All the other decisions extended detention "until a further decision of the court" and gave the same reasons for detention as before. All these decisions were upheld by the Court of Appeals. The court explicitly held that once the indictment had been issued and then returned the detention was extended or revoked pursuant to Article 179 § 2 of CPC.

29. On 29 January 2015 the High State Prosecutor issued an indictment against the applicant for aggravated murder through incitement and for criminal association. On 13 February 2015 the High Court returned the indictment, seeking further investigation.

30. Between 26 February 2015 and 23 September 2016 the applicant was hospitalised in Cetinje. He was hospitalised again on 28 November 2016. There is no information in the case file as to when he was released from hospital.

31. Between 17 April 2015 and 10 August 2016 the time limit for finalising the investigation was extended 17 times, each time for one month, pursuant to the High State Prosecutor's request to that effect.

32. On 8 June 2016 an indictment was issued in Serbia against the applicant and several other persons for criminal association. On 15 July 2016 the indictment was approved by the High Court in Belgrade.

33. On 22 July 2016 the High State Prosecutor in Podgorica issued a third indictment against the applicant for aggravated murder through incitement and for criminal association. On 19 October 2016 the indictment was returned for further investigation.

34. On 25 July 2016 the applicant lodged a constitutional appeal against the High Court decision of 11 May 2016 extending his detention, and the Court of Appeals' decision of 30 May 2016 upholding it. He invoked, *inter alia*, Articles 5, 6 and 13 of the Convention. He submitted that the Court had found a violation of Article 5 in a case identical to his, and referred to *Mugoša v. Montenegro*, no. 76522/12, 21 June 2016. He complained again about the unlawful detention, in particular between 15 November and 15 December 2014, and about all 25 decisions extending his detention being insufficiently reasoned, the reasoning having been copied from one decision to another. It would appear that this constitutional appeal is still pending.

35. On 9 December 2016 the applicant's detention was revoked and he was released. The High Court found that the reasons for his detention no longer persisted. The court took into account the length of detention thus far, the fact that the indictment had been returned for the third time, and that it was uncertain when and if at all it would come into force, and held that the applicant should not bear the consequences of that. It also took into account that the detention could last three years at most, as well as Article 6 of the Convention. This decision was upheld by the Court of Appeals on 14 December 2016.

36. On 11 March 2017 the applicant was murdered in front of his house by at least 15 shots fired from a moving vehicle.

37. On 13 April 2017 the High Court terminated the proceedings (*obustavio postupak*) due to the applicant's death. The indictment against the applicant in Montenegro had never entered into force.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Montenegro 2007 (*Ustav Crne Gore*; published in the Official Gazette of Montenegro - OGM - no. 01/07)

38. Article 29 sets out details as regards the right to liberty. It provides that a deprivation of liberty is allowed only for the reasons and in accordance with the procedure provided for by the law. Unlawful deprivation of liberty is punishable (*kažnjivo*).

39. Article 30 contains details as regards detention. Paragraph 4, in particular, provides that the duration of detention must be as short as possible (*mora biti svedeno na najkraće moguće vrijeme*).

40. Article 32 provides for the right to a fair trial.

41. The Constitution entered into force on 22 October 2007.

B. The Criminal Procedure Code 2009 (*Zakonik o krivičnom postupku*; published in the OGM nos. 057/09, 049/10, 047/14, 002/15, 035/15, 058/15, and 028/18)

42. Article 15 provides, *inter alia*, for an obligation of the courts to conduct proceedings without delay, and to keep the duration of detention to a minimum.

43. Article 174 § 2 provides for a duty of all the bodies involved in criminal proceedings to act with particular urgency if the accused is in detention.

44. Article 175 § 1 provided that detention could be ordered if there was reasonable suspicion that an individual had committed a crime:

“ ...

(2) if there were circumstances indicating that he or she would ... obstruct the proceedings by influencing the witnesses or accomplices ...;

[...]

(4) for which he or she could be sentenced to ten years' imprisonment or more, and which was particularly grave due to the manner in which it had been committed or its consequences, and there were special circumstances indicating that the release of that person would seriously threaten the maintenance of public order and peace.”

As of 16 January 2015 part of Article 175 § 1(4) ceased to be in force, notably the words “and there were special circumstances indicating that the release of that person would seriously threaten the maintenance of public order and peace”. As of 14 August 2015 the relevant part of the said Article provides for detention when it is necessary for the unimpeded conduct of the proceedings, and the criminal offence at issue is particularly grave due to the manner in which it was committed or its consequences, and for which a person could be sentenced to 10 years or more.

45. Article 176 § 2 provides that a detention order must contain, *inter alia*, a period of detention.

46. Article 177 sets out details as regards detention during an investigation. It provides that an accused can be detained for one month at most on the basis of an investigating judge's decision. After the expiry of that time-limit the accused can be detained only on the basis of decisions extending his or her detention. Following a proposal of the State Prosecutor, the detention can be extended for two more months by the court. If the proceedings are conducted for a criminal offence for which the statutory penalty is more than five years of imprisonment a panel of the Supreme Court can, for important reasons, extend the detention for three more months at most. If by the end of these time-limits the indictment has not been issued the accused shall be released.

47. Article 179 set out details as regards detention after an indictment has been issued. Paragraph 1 thereof provides, *inter alia*, that detention can

last three years at most after the indictment has been issued until the first-instance judgment is rendered. Article 179 § 2 provides that a court “has a duty” (*je dužno*) to examine, pursuant to a proposal of the parties or of its own motion, if the reasons for detention persist, and to issue a decision extending detention or revoking it every thirty days before the indictment enters into force, and every two months after the indictment enters into force.

48. Articles 290 and 291 provide that the State Prosecutor shall issue an indictment within 15 days after the investigation has been concluded, and that once the investigation has been concluded, the proceedings can be conducted only on the basis of the indictment.

49. Article 292 § 2 provides that the indictment can propose the extension of detention, but that the prosecutor must make certain (*izvjesnim*) that other measures cannot achieve the aims for which the extension of detention is proposed.

50. Article 293 § 6 allows the court to return the indictment for, *inter alia*, further investigation. The prosecutor has two months to conduct it. On the request of the prosecutor and for justified reasons this time-limit can be extended.

51. This Code entered into force on 1 September 2011, and was amended, *inter alia*, in January and August 2015 (see paragraph 44 above).

C. The Constitutional Court’s case-law

52. On 20 June 2011 the Constitutional Court accepted a constitutional appeal submitted by R.K. and D.M. (Už-III br. 348/11). It found, *inter alia*, that the High Court had not extended their detention within the statutory time-limit and that the Court of Appeals had not ruled within the statutory time-limit on their appeal against the decision extending their detention, and that non-compliance with the national legislation led to a violation of Article 5 of the Convention. In so doing, the court relied on *Van der Leer v. the Netherlands* (21 February 1990, § 22, Series A no. 170-A). This decision was published in the OGM no. 30/11 on 22 June 2011.

53. On 20 April 2012 the Constitutional Court dismissed N.M.’s constitutional appeal (Už-III br. 152/12). It considered that the courts had a duty to examine every two months if reasons for detention persisted and, depending on the circumstances, to extend or revoke it. There was no obligation on the courts to specify how long the detention would last, given their obligation to control the duration of the detention every two months. These statutory time-limits, however, were not mandatory and the fact that the decision had been issued after two months and four days could not therefore be decisive for concluding that the applicant’s right to liberty had been violated.

D. The relevant legal opinions of the Supreme Court

54. On 24 June 2013 the Supreme Court issued a legal opinion that after the indictment had been returned and further investigation requested, further detention should be ruled on pursuant to Article 179 of the CPC.

55. On 17 January 2017 the Supreme Court issued a legal opinion that the national courts must consistently comply with the time-limits (*da se dosljedno pridržava rokova*) for reviewing detention provided for in Article 179 § 2 of the CPC and that failure to do so violates the right to liberty and security.

THE LAW

I. THE APPLICANT'S DEATH

56. On 11 March 2017 the applicant was murdered. On 30 March 2017 the applicant's wife informed the Court that she wished to maintain the proceedings lodged by her late husband.

57. The Government made no comment in this regard.

58. The Court has differentiated between applications where the direct victim has died before the application was lodged with the Court, and those where he or she has died after the application was lodged, as in the present application, which was lodged by the victim himself. In the latter cases, the Court has accepted that the next-of-kin, close family members or heirs may in principle pursue the application, provided that they have sufficient interest in the case (see *Provenzano v. Italy*, no. 55080/13, § 96, 25 October 2018, and the authorities cited therein). It is not only material interests which the successor of a deceased applicant may pursue by his or her wish to maintain the application. Human rights cases before the Court generally also have a moral dimension, and persons near to an applicant may thus have a legitimate interest in ensuring that justice is done, even after the applicant's death (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII). Thus, in cases where the direct victim has died after the application was lodged, the decisive factor is not whether the rights at issue are transferable to heirs willing to pursue an application, but whether the persons wishing to pursue the proceedings can claim a legitimate interest in seeking that the Court decide the case on the basis of the applicant's desire to use his individual and personal right to lodge a case before the Court (see *Ergezen v. Turkey*, no. 73359/10, §§ 27 and 29, 8 April 2014).

59. The Court thus accepts that Mrs Šaranović, as the applicant's wife, has a legitimate interest in pursuing the proceedings on his behalf (see

Vaščenkovs v. Latvia, no. 30795/12, § 29, 15 December 2016, and the authorities cited therein). Accordingly, the Court considers that she has standing to continue the proceedings before the Court in the applicant's stead. The text of this judgment will, however, continue to refer to the late Mr. Šaranović as "the applicant".

II. ALLEGED VIOLATION OF ARTICLES 5 AND 6 OF THE CONVENTION

60. The applicant complained under Article 5 of the Convention. He submitted, in particular, that: (a) his detention between 15 November and 15 December 2014 had been unlawful as there had been no decision on detention for that period due to the failure of the domestic bodies to review his detention within the 30-day time-limit; in any event, detention could last six months at most without an indictment, but in his case it had lasted for more than two years without the indictment having entered into force; (b) the decisions extending his detention, which had lasted for more than two years, had been insufficiently reasoned. Notably, the courts had failed to really examine whether the reasons for his detention persisted but had rather copied the reasoning from one decision to another.

61. The applicant also complained under Article 6 of the Convention that the Constitutional Court's decision of 29 May 2015 had lacked reasoning in respect of his complaints and that thus he had no effective remedy at his disposal.

62. The Government contested these arguments.

63. Articles 5 and 6 of the Convention, on which the applicant relied, insofar as relevant, read as follows:

Article 5

"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;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

Article 6

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by the law. [...]”.

*1. Article 5 § 1 (c) of the Convention***a. The parties’ submissions***i. The Government*

64. The Government submitted that there was a clear distinction between whether the indictment had been submitted to the court and whether it had entered into force. The detention regime was defined by whether the indictment had been submitted to the court. The only limitation provided for by the legislation was that detention could last three years at most after the indictment had been issued until the first-instance judgment was rendered. Once the indictment had been returned requiring further investigation, further detention was decided pursuant to Article 179 of the CPC (see paragraph 54 above), that is the detention was to be reviewed every thirty days before the indictment entered into force, and every two months after it entered into force. The Government averred that the courts were not obliged to specify how long the detention would last, given their duty to periodically review if the reasons for detention persisted. These time-limits, however, were not mandatory (*prekluzivni*). These time limits were just limits within which the existing decision had each time to be reviewed, and the decisions on extension of the detention did not represent new decisions on detention each time after the previous one had expired. Therefore, it could not be considered that detention had ended or that it had been unlawful if the review had not been undertaken within the statutory time-limit. The Government “did not dispute the fact that for the certain time period there [was] no written notice of decision on extension of detention of domestic court”.

ii. The applicant

65. The applicant submitted that the courts had had a duty to review his detention every thirty days given that the indictment had not entered into force, that is by 15 November 2014 at the latest. The time-limits within which the courts had to do so were mandatory and not indicative. The Government’s argument that the decisions extending detention did not represent new decisions was absurd. Article 179 § 2 specified that the court had a duty to issue a decision extending or revoking detention. This necessarily meant that each decision so given was a new decision on detention. By every new decision the court examined afresh if the reasons for detention persisted and had to set out the reasons extending it. His

detention had thus ceased to be lawful the day when it was supposed to be reviewed, and any further detention had to be declared unlawful. Therefore, he had spent 30 days in detention without any decision to that effect, in breach of Article 5 § 1 of the Convention. He relied on *Mugoša v. Montenegro*, no. 76522/12, 21 June 2016.

66. The applicant further maintained that at the stage of investigation the detention could last six months, after which the proceedings were conducted on the basis of the indictment. If the indictment was returned the prosecutor had two months to conduct further investigation. These time-limits were not mandatory and could be extended for exceptional reasons. However, it is certain that the intention of the legislator was to prevent prosecutors from dragging out the proceedings by conducting endless investigations.

67. In his case the prosecutor had issued the indictment one day before the expiry of the six-month period and thus had formally complied with the statutory time-limit. However, the indictment had been issued primarily with the aim of keeping him in detention. Notably, the indictment had been returned three times, never once had it ever entered into force, and the time-limit for further investigation had been extended sixteen times, the additional investigation having lasted for two years and two months. Since the first indictment had been issued there had been more than twenty decisions extending his detention.

b. The relevant principles

68. The relevant principles in this regard are set out in *Mooren v. Germany* [GC], no. 11364/03, § 72, 9 July 2009. In particular, the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. While it is normally in the first place for the national authorities, notably the courts, to interpret and apply domestic law, it is otherwise in relation to cases where, as under Article 5 § 1, failure to comply with that law entails a breach of the Convention. In such cases the Court can and should exercise a certain power to review whether national law has been observed (see, among other authorities, *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports of Judgments and Decisions* 1996-III; *Douiyeb v. the Netherlands* [GC], no. 31464/96, §§ 44-45, 4 August 1999; and *Mooren*, cited above, § 73).

69. However, the “lawfulness” of detention under domestic law is the primary but not always a decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1, which is to prevent persons from being deprived of their liberty in an arbitrary fashion. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein

(see, for example, *X v. Finland*, no. 34806/04, § 148, ECHR 2012 (extracts); *Bik v. Russia*, no. 26321/03, § 30, 22 April 2010; and *Winterwerp v. the Netherlands*, 24 October 1979, § 45, Series A no. 33).

c. The Court's assessment

i) The lawfulness of detention between 15 November and 15 December 2014

α) Admissibility

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

β) Merits

71. The Court notes at the outset that the applicant's detention was ordered by the investigating judge on 10 April 2014, and afterwards extended by the relevant courts on 7 May, 6 June, 7 July, 4 August, 5 September, each time for a month, and then on 7 October, 17 October and 15 December 2014, each time until a further court decision. While the first detention order must specify the length of detention (see paragraph 45 above), any subsequent ones, extending detention, apparently do not have to specify anything in this regard, as explained by the Constitutional Court (see paragraph 53 above; see also *Mugoša*, cited above, § 52). Indeed, the decisions of 7 October, 17 October and 15 December 2014, as well as the subsequent ones, merely specified that the applicant's detention would last until a further decision of the court (see paragraphs 17-18, 23 and 28 above).

72. It is further noted that the legislation, for its part, explicitly provides for the obligation of the courts to examine whether the reasons for detention persist or not, every thirty days for as long as the indictment has not entered into force, and every two months after the indictment has entered into force. Depending on whether the reasons for detention persist or not the courts shall extend it or revoke it. The parties agree that the indictment against the applicant never entered into force, which made the thirty-day time-limit applicable. It is also clear that this time-limit was exceeded in the applicant's case, which the Government would not appear to contest (see paragraph 64 *in fine* above).

73. They submitted, however, that these time-limits were not mandatory. When ruling on the applicant's constitutional appeal, the Constitutional Court, for its part, considered unfounded his allegations relating to the review of detention not having been undertaken regularly. While it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see *Benham*, cited above, § 41) the Court observes that

in 2011 the Constitutional Court, in a similar situation, had found that non-compliance with the national legislation and the time-limits contained therein led to a violation of Article 5 of the Convention (see paragraph 52 above). Finally, in its general legal opinion, issued in January 2017, the Supreme Court held that the national courts had to consistently comply with the time-limits for reviewing detention provided for in Article 179 § 2 and that failure to do so was in breach of the right to liberty and security.

74. The Court considers that compliance with statutory time-limits for re-examination of the grounds for detention is of utmost importance, particularly when the domestic courts were not obliged to specify the exact duration of the detention (see paragraph 71 above).

75. It also reiterates that where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention, a standard which 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 of Judgments and Decisions* 1998-VII).

76. The Court considers that, in the present case, the relevant legislation itself seems to be sufficiently clearly formulated. However, the lack of precision in detention orders in respect of the duration of detention extension and the lack of consistency at the time, before the Supreme Court issued its legal opinion in 2017, on whether the statutory time-limits for re-examination of detention grounds were mandatory or not made it unforeseeable in its application (see *Mugoša*, cited above, § 56).

77. In view of the above, the Court considers that the applicant’s detention was lawful on 15 November 2014, which was the last day of the 30-day period, but that there was no legal basis for his detention between 16 November and 15 December 2014. Therefore, the applicant’s detention between 16 November and 15 December 2014 was not “lawful” within the meaning of Article 5 § 1 of the Convention (see *Mugoša*, cited above, § 57). Consequently, there has been a breach of that provision in that regard.

ii) The lawfulness of detention after the six-month time limit

78. The applicant also complained that his detention at the investigation stage could last six months at most without an indictment having entered into force, whereas in his case it had lasted for more than two years.

79. The Court notes that the relevant domestic legislation requires an indictment to be issued, and not that it enter into force, within six months. It is further observed that there is no provision requiring that the indictment

enter into force for detention to be extended. On the contrary, the relevant domestic legislation allows for an indictment to be returned and for further investigation to be requested, and for detention to be extended (see paragraphs 49 and 50 above). The Supreme Court had issued its opinion in 2013, that is before the applicant was detained, and had clarified pursuant to which provision of the CPC the detention was to be extended in cases when an indictment had been returned. In addition, the applicant himself submitted that the time-limits for finalising the investigation were not mandatory and that they could be extended.

80. The Court further notes that there is no dispute between the parties that the indictment was issued within six months, that is the statutory time-limit for this was complied with. It is further observed that while the indictment was returned and further investigation requested, it was requested only in respect of the criminal offence of criminal association, and not in respect of the criminal offence of aggravated murder through incitement. In any event, as agreed by the parties, the statutory time-limits in this regard are not mandatory and can be extended. It is further noted in this respect that the time-limits for investigation were each time extended in accordance with the prescribed statutory procedure following the request of the competent State Prosecutor (see paragraph 31 above). With the exception of the above period between 16 November and 15 December 2014 the applicant's detention during the entire period was reviewed on a regular basis. Finally, the statutory limit for detention is three years after the indictment has been issued and before the first-instance judgment is rendered (see, *a contrario*, *Korchuganova v. Russia*, no. 75039/01, § 51, 8 June 2006). Contrary to the previous complaint there is no indication, either by the applicant or transpiring from the case-file, that the domestic bodies applied the relevant provisions inconsistently.

81. In view of the above, the Court considers that, in the present case, the relevant legislation is both sufficiently precise and foreseeable in its application, and that extending the applicant's detention beyond six months was not unlawful. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Article 5 § 3 of the Convention

82. The Government submitted that the High Court had given relevant and sufficient reasons for the applicant's detention. In particular, it had taken into account the reasonable suspicion that he had committed the criminal offence at issue, the circumstances, gravity, and the consequences thereof, the manner in which it had been committed, as well as the principle of subsidiarity. All these reasons justified detention, as accepted by the Court in its case-law. The Government relied on *Letellier v. France*, 26 June 1991, Series A no. 207, in this regard. All these decisions were upheld on

appeal. The Government also submitted that the length of the applicant's detention had not been excessive in view of all the circumstances of this complex case related to international organised crime.

83. The applicant submitted that the courts had failed to properly examine the reasons for his detention, which had lasted for more than two years, and that the reasoning therefor had remained identical throughout the entire period in all the decisions. The courts had extended his detention in a purely abstract manner, only summarising the content of the indictment, which had never entered into force, and had only generally stated that they had taken into account the principle of subsidiarity, without giving any reasons in that regard.

84. The Court notes that the applicant's complaint about alleged insufficient reasoning in the decisions extending his detention for more than two years, and an implicit complaint about the length of detention, have been raised in his second constitutional appeal, which would appear to be still pending. Accordingly, these complaints, being premature, must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

3. Article 5 § 4 of the Convention

85. The Government submitted that the Constitutional Court had examined in substance all the relevant arguments. In particular, it had considered that the decisions on detention had been well-reasoned.

86. The applicant reaffirmed his complaint (see paragraph 61 above). In particular, the Constitutional Court had merely summarised the relevant decisions of the High Court and the Court of Appeals, only generally noting that it had not found any arbitrariness, without giving its own explanation for any of the complaints.

87. The Court reiterates that the scope of a case referred to it in the exercise of the right of individual application is determined by the applicant's complaint. A complaint consists of two elements: factual allegations and legal arguments. By virtue of the *jura novit curia* principle the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). Upon receiving the observations from the parties relating to this complaint the Court considers that it falls to be examined under Article 5 § 4 of the Convention (see *Idalov v. Russia* [GC], no. 5826/03, § 161, 22 May 2012; *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61 *in fine*, ECHR 1999-II; and *Rasul Jafarov v. Azerbaijan*, no. 69981/14, § 141, 17 March 2016), which reads as follows:

“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.”

88. Turning to the present case, the Court notes that in his first constitutional appeal the applicant complained, *inter alia*, about the unreasoned decisions in the first eight months of his detention (see paragraph 26 above), whereas before this Court he rather complained about unreasoned decisions extending his detention for more than two years. The latter complaint, as noted above, is currently pending before the Constitutional Court and, as such, is premature under Article 35 §§ 1 and 4 of the Convention.

89. As regards the complaints raised by the applicant in his first constitutional appeal, the Court notes that the Constitutional Court, in its decision of 29 May 2015, explicitly and extensively examined the applicant’s submissions relating to the alleged lack of reasoning in the decisions extending his detention for the first eight months and dismissed them. It also examined his other complaints, relating to the indictment not having entered into force and his detention not having been reviewed regularly, and considered them unfounded (see paragraph 27 above). The Court considers that the Constitutional Court thus explicitly replied to the applicant’s complaints. Accordingly, the applicant’s complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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

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

92. The Government contested the applicant’s claim as unfounded and unrealistic.

93. The Court considers that, in the circumstances of the case, the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage that may have been sustained by the applicant (see, *mutatis mutandis*, *Gafà v. Malta*, no. 54335/14, § 80, 22 May 2018).

B. Costs and expenses

94. The applicant also claimed EUR 6,388, 53 for the costs and expenses incurred before the Court.

95. The Government contested the applicant's claim as unreasonably high and without proof that they had been actually incurred and justified.

96. 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 1,500 for the proceedings before the Court.

C. Default interest

97. The Court considers it appropriate that the default interest rate 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. *Holds* that the applicant's wife has standing to continue the proceedings before the Court in the applicant's stead;
2. *Declares* the complaint concerning the lawfulness of detention between 16 November and 15 December 2014 admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention in respect of the applicant's detention between 16 November and 15 December 2014;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
5. *Holds*
 - (a) that the respondent State is to pay the applicant EUR 1,500 (one thousand and five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 5 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakirci
Deputy Registrar

Robert Spano
President