

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

FOURTH SECTION

CASE OF K.A. v. AUSTRIA

(Applications nos. 44001/22 and 22881/24)

JUDGMENT

Art 5 § 1 (e) • Persons of unsound mind • Art 5 § 4 • Review of lawfulness of detention • Applicant's confinement in a "forensic therapeutic centre" (formerly known as an institution for mentally ill offenders) ordered along with his conviction for numerous acts of domestic violence • Applicant reliably shown, by the domestic courts on the basis of objective medical expertise, to suffer from a "true" mental disorder of a kind or degree warranting compulsory confinement • Existence of the applicant's mental disorder reliably established and persistence reliably reviewed on the basis of an objective up-to-date medical assessment justifying his continued confinement

Prepared by the Registry. Does not bind the Court.

STRASBOURG

19 May 2026

FINAL

19/08/2026

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



In the case of K.A. v. Austria,

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

Lado Chanturia*, President*,
Lorraine Schembri Orland,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu,
András Jakab*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the applications (nos. 44001/22 and 22881/24) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a national of Kosovo[1], Mr K.A. ("the applicant"), on 10 September 2022 and 8 August 2024;

the decision to give notice to the Austrian Government ("the Government") of the complaints concerning the applicant's confinement in a forensic-therapeutic centre under Article 5 §§ 1 and 4 of the Convention, and concerning alleged breaches of his defence rights under Article 6 §§ 1 and 3 (d) and (e) of the Convention, and to declare inadmissible the remainder of the application no. 22881/24;

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated in private on 3 February and 28 April 2026,

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

INTRODUCTION

1. The present case concerns the applicant's confinement in a "forensic-therapeutic centre" (which, until 1 March 2023, was known as "institution for mentally ill offenders") after committing numerous acts of domestic violence against his wife and children. The applicant complained mainly that it had not been reliably shown that he was a person of unsound mind within the meaning of the Convention. He also complained that he had not been able to challenge and question the witnesses for the prosecution during the criminal proceedings. He relied on Article 5 §§ 1 and 4 and Article 6 §§ 1 and 3 (d) and (e) of the Convention.

[1] All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.

THE FACTS

2. The applicant is living in Austria since 2001; he was born in 1971 and is confined in Garsten, Austria. He was represented by Mr H. Graupner, a lawyer practising in Vienna.

3. The Government were represented by their Agent, Ambassador G. Schusterschitz, Head of the International Law Department at the Federal Ministry for European and International Affairs.

4. The facts of the case may be summarised as follows.

I. BACKGROUND

5. The applicant has been married to E., who is also from Kosovo, since 1997. They have four children: A., born in 1999; B., born in 2001; C., born in 2003; and D., born in 2005.

6. Until the end of May 2021 the applicant and his wife E. lived together with two of their daughters (A. and D.) and their son (C.) in the same house in a small town in Upper Austria. Their third daughter (B.) moved out in January 2021 and lived in an apartment in another town. From November 2020, B. was in contact with the Centre for Protection from Violence (*Gewaltschutzzentrum* – see *Kurt v. Austria* [GC], no. 62903/15, §§ 71-72, 15 June 2021). After moving out, B. obtained a ban on the disclosure of her new address in the civil register in order to keep it secret from the applicant.

7. According to B., C. and D., their family life was marked by frequent domestic violence on the part of the applicant against his wife E. and all four of his children. The applicant physically and verbally abused his family members over many years by insulting them with vulgar language, spitting at them and striking them with an open hand, his fists, his feet and with household objects such as tools and kitchenware. He hit his family members both in the face and on the body and became particularly aggressive under the influence of alcohol. A restraining order (*Betretungs- und Annäherungsverbot*) was issued in 2011 against the applicant following an incident of domestic violence. The applicant did not adhere to the order; he was angered by the fact that his family had sought the order, and his behaviour became even more violent against them.

II. THE APPLICANT'S ARREST (MAY 2021)

8. On Sunday 30 May 2021, at 12.18 p.m., B. called the police because her father had beaten her siblings in their parents' house. Police officers arrived at the scene and talked to the applicant's children. B. and C. stated to the police officers that their father (the applicant) had been constantly physically abusive towards all family members. The evening before, on 29 May 2021, the applicant had struck their mother E. on the head with a drill.

The applicant had told C. to leave the house after the latter had tried to intervene. C. had not left the house, so the applicant had taken a 30-cm-long knife and threatened C. with stabbing motions in his direction. C. had become frightened and had fled to a nearby forest. From there he had called his sister B. on his mobile telephone; she had taken him to her apartment to spend the night there.

9. The following morning of 30 May 2021 – a few hours before B. had informed the police of what had happened – the applicant had forced D. to call B. and to tell her that she and C. should collect all their belongings from the house – otherwise he would burn their belongings. During the telephone call, B. and C. had noticed that their sisters had been crying and had assumed that the applicant had been intoxicated and had hit them, and that they had accordingly decided to call the police.

10. The police officers confronted the applicant with the allegations, which he flatly denied. While still at the scene, the police officers issued a restraining order against the applicant. This order obliged him to stay away from the house and the surrounding areas – as well as from his wife and children – for fourteen days. The applicant did not comply with the order, even though he had been urged several times by the police officers to leave the property. Accordingly, the police officers enforced the order at 13.14 p.m. and took the applicant to the nearby police station.

11. On the same day, the police officers questioned the applicant with the assistance of an Albanian-language interpreter. The applicant availed himself of his right to remain silent. His wife E. also refused to give a statement. Thereafter, C. was questioned at around 4 p.m.; he gave a detailed witness statement concerning the events that had happened the evening before and alleged that his father had been abusing him, his mother, and his siblings verbally and physically for many years. Furthermore, C. stated that the applicant had called A. at around 3 p.m. on his mobile telephone after the applicant had been taken to the police station, and had threatened to kill the whole family.

12. The applicant was arrested at 6.10 p.m. because it was deemed that otherwise there would be a serious risk that he would commit further offences – such as bodily harm, coercion, or issuing dangerous threats – against his family members.

13. On 31 May 2021 the applicant was taken into pre-trial detention after he had been interrogated at the competent Regional Court by a judge (with the assistance of an Albanian-language interpreter).

III. CRIMINAL PROCEEDINGS (2021-22) AND CONFINEMENT (AS OF OCTOBER 2022)

A. Cross-examinations (June 2021)

14. The Public Prosecutor's Office initiated a criminal investigation in respect of the applicant and requested the Regional Court to cross-examine (*kontradiktorische Vernehmung*) at the pre-trial investigation stage the children with the use of audio-video facilities, in accordance with Article 165 § 3 of the Code of Criminal Procedure (see paragraphs 64-66 below).

15. The cross-examinations of the children (as particularly vulnerable victims, see paragraph 63 below) took place at the court on 30 June 2021 and were recorded via an audio-video facility. During the cross-examinations, which were conducted by a judge who was in the same courtroom as the children, the applicant, his State-appointed defence lawyer and the public prosecutor were present but physically located in a separate room, where they could follow the questioning via an audio-video facility. They were able to direct questions to each respective child via the audio-video facility. The applicant was assisted during the interviews by E.B., an Albanian-language interpreter, as the children gave their statements in German.

16. B. was interviewed from 8.30 until 10.06 a.m. She made serious allegations against her father and recounted numerous instances of domestic violence to which he had subjected her since her early childhood. During a break from 9.35 until 9.45 a.m., the interpreter, E.B., provided to the applicant a summary translation of B.'s statements thus far. After the break, E.B. continued to translate B.'s statements to the applicant and facilitated the applicant's communication with his defence counsel. The defence lawyer asked B. several questions and also asked the applicant (via E.B.) if he had any further questions. In response, the applicant stated that B. had stolen something from someone in 2011, that she had received everything from him, and that he had even bought her a car. He had nothing more to say. Lastly, B. was asked whether she would testify again in the event of a trial hearing against the applicant or whether she would like the audio-video recording of her cross-examination to be played or the transcript thereof to be read out. B. replied that the audio-video recording should be played or the transcript thereof should be read out.

17. C. was interviewed from 10.15 until 11.26 a.m. He also recounted numerous experiences of domestic violence with his father that had occurred since his early childhood and provided a detailed account of the events of 29 and 30 May 2021 that had led to the applicant's arrest. During a break from 11.10 until 11.20 a.m., E.B. provided a summary translation of C.'s statements thus far to the applicant. After the break, E.B. continued to translate to the applicant. Neither the defence lawyer nor the applicant asked C. any questions. The applicant was asked directly if he had any questions,

but he just stated in response that he had not hit his son. At the end of his cross-examination, C. was also asked whether he would testify again in the event of a trial hearing. C. replied that the audio-video recording should be played or the transcript thereof should be read out; however, in the event of additional questions, he was prepared to testify again if it was really necessary.

18. D. was interviewed from 13.00 until 13.55 p.m. She corroborated her siblings' accounts, recounting numerous acts of domestic violence committed by her father that she had experienced since her early childhood. During a break from 13.40 until 13.50 p.m., E.B. provided a summary translation of D.'s statements to the applicant. After the break, E.B. continued to translate to the applicant. The applicant and his defence lawyer did not ask D. any questions. According to E.B., the applicant stated that he had nothing more to say. D. requested that in the event of an oral hearing the audio-video recording of her cross-examination be played or that the transcript thereof be read out; in the event of additional questions, she was, however, prepared to testify again.

19. The applicant's wife, E., and his eldest daughter, A., were also summoned to a cross-examination. However, both exercised their right as close relatives to refuse to give testimony.

B. Psychiatric expert report (September 2021)

20. The Public Prosecutor's Office ordered an expert report from Dr K., a specialist in psychiatry and neurology, and the head of the Forensic Department of the Neuromed Campus of the Kepler University Hospital in Linz, in respect of whether the applicant had been criminally responsible under Article 11 of the Criminal Code (see paragraph 52 below) for the alleged offences, and in respect of whether the criteria justifying the confinement in an institution for mentally ill offenders under Article 21 § 1 or Article 21 § 2 of the Criminal Code (see paragraph 55 below) had been met.

21. On 29 September 2021 Dr K. submitted her 22-page long expert report, which was based on the investigation file of the Public Prosecutor's Office and on her own examination of the applicant (with the assistance of an Albanian-language interpreter). She diagnosed, according to ICD-10 (Tenth Revision of the International Classification of Diseases by the World Health Organisation, hereinafter "the ICD"), the applicant with (i) accentuated personality structure or suspected personality disorder (*akzentuierte Persönlichkeitsstruktur beziehungsweise Verdacht auf Persönlichkeitsstörung*), and (ii) alcohol abuse (*Alkoholmissbrauch*).

22. Dr K. noted that an examination of the applicant had been practically impossible *(praktisch nicht möglich)* because he either had not answered the questions posed to him (talking instead about something else) or had

responded with vague and redundant statements. The applicant had denied committing the alleged offences, had ascribed responsibility for the situation in question exclusively to his family members, and had generally blamed their "false statements" on their supposed mendacity. Dr K. noted that the applicant's statements had completely contradicted the allegations made by his children. However, the assessment of evidence – in particular an assessment of the respective credibility of the contradictory statements – was the responsibility of the court.

23. Assuming that the children's statements – who described regular assaults on practically all family members – were considered credible, then Dr K. asserted that the applicant was the classic type of family tyrant, who saw family members as his property, lived according to a rigid patriarchal attitude, derived his self-worth mainly from exercising power over all other family members, and displayed a huge lack of empathy and a complete inability to control his impulses within the family nucleus. Those were not personality disorders *in the narrower sense of the term*, but rather completely dysfunctional deep-rooted convictions (*keine Persönlichkeitsstörungen* im engeren Sinne*, sondern um gänzlich dysfunktionale Grundüberzeugungen*) according to which the family patriarch was entitled to unrestricted power over all other family members – to be exercised in a sadistic manner. It was unlikely that the danger emanating from the applicant's dysfunctional convictions could be reduced by issuing restraining orders (as his previous behaviour had demonstrated) or by mandatory therapeutical measures, because he did not recognise the need for treatment.

24. Regarding the applicant's criminal responsibility under Article 11 of the Criminal Code, Dr K. noted that he did not suffer from any mental illness or from any known brain diseases that would lead to a reduction or even the loss of his ability to understand the wrongfulness of his actions (*Diskretionsfähigkeit*) and to act accordingly (*Dispositionsfähigkeit*). Furthermore, the applicant had denied that he had been under the influence of alcohol at the times of the alleged offences. In the light of those considerations, it could be assumed that the applicant was criminally liable for his actions under Article 11 of the Criminal Code.

25. With regard to the criteria justifying confinement in an institution for mentally ill offenders under Article 21 § 2 of the Criminal Code – in particular, the commission of offences under the influence of a severe mental or emotional disorder that did not exclude criminal responsibility – Dr K. emphasised that owing to the applicant's lack of openness, such a disorder could not be attributed to him without first assessing the credibility of the witness statements made by the applicant's children. However, in the event that the children's statements were considered to be accurate, it had to be assumed that the applicant exhibited a personality structure which was highly narcissistic and exclusively dominance-oriented within the family nucleus, and which left him incapable of empathy. There was a high probability of

further assaults (which could be interpreted both as a continuation of the applicant's previous behaviour and as constituting a subjectively justified sanction for his "betrayal" by the witnesses). Severe consequences – such as grievous bodily harm and acts with a fatal outcome – were to be expected for those family members who had testified against the applicant.

C. The applicant's conviction

26. On 28 October 2021 the Public Prosecutor's Office indicted the applicant on charges of continuously exercising violence against his wife, his three daughters and his son over a long period of time (namely, from 2005 to 30 May 2021) by means of ongoing physical abuse, inflicting bodily harm and committing crimes of unlawful deprivation of their liberty. During that period the applicant had regularly beaten his wife and children, had threatened them, had locked them up, and had repeatedly inflicted on them bodily harm – using tools such as screwdrivers, carpet knives and iron bars. He had therefore committed the offence of continual use of force (*fortgesetzte Gewaltausübung*) under Article 107b §§ 1, 2, 3, 3a and 4 of the Criminal Code (see paragraph 63 below). On the basis of Dr K.'s psychiatric expert report, the Public Prosecutor's Office also requested that the applicant be confined in an institution for mentally ill offenders under Article 21 § 2 of the Criminal Code.

1. Proceedings before the Regional Court (October – December 2021)

27. The trial hearing took place before the Regional Court on 10 and 17 December 2021. During the hearing, the applicant was present (together with a new State-appointed defence lawyer) and was again assisted by E.B., the Albanian-language interpreter. The applicant's three children (B., C. and D.) who had been cross-examined on 30 June 2021 (see paragraphs 16-18 above) did not attend.

28. On 10 December 2021 (the first day of the trial) the applicant admitted in his interrogation that he had occasionally shouted at his children, had pushed them and had slapped them in the face, but otherwise denied the allegations. Subsequently, Dr K. explained her written expert report in detail and answered questions from the court, the prosecution and the defence.

29. Dr K. concluded that from a psychiatric point of view the criteria justifying the confinement of the applicant in an institution for mentally ill offenders under Article 21 § 2 of the Criminal Code were met, assuming the statements given by B., C. and D. were considered credible. The applicant exhibited an egomaniacal, narcissistic personality structure, and his alcohol abuse rendered the effects of that disorder more serious as it increased the likelihood of acts of domestic violence. Within the family nucleus, the applicant was a violent offender with sadistic tendencies. If the applicant were to be released, the children who had testified against him would be at serious

risk. There was a high probability that the applicant would seriously injure or kill his children.

30. According to Dr K., the applicant's disorder was difficult to treat owing to his lack of insight about his disorder and the language barrier. Nevertheless, it was necessary to attempt therapeutic measures and – contrary to the applicant's assertions – it was not the case that he did not understand any German. This was evident, for example, from the fact that he answered questions before they were translated, which showed that he had understood them.

31. Prior to the second day of the trial, B., C. and D. submitted a statement that they did not wish to give additional testimony before the trial court itself because any further statement would be emotionally too distressing (*zu belastend*) for them. Instead, they preferred that the audio-video recordings of their cross-examinations be played or the transcripts thereof be read out.

32. On 17 December 2021, during the continued trial hearing, the audio-video recordings of the cross-examinations of 30 June 2021 were played and the transcripts thereof were read out, in accordance with Article 252 § 1 (2a) of the Code of Criminal Procedure (see paragraph 67 below). The interpreter E.B., who was also present during these cross-examinations, described to the court in detail how she had provided summary translations of the children's statements to the applicant.

33. The applicant's defence lawyer objected to the admission in evidence of the recordings of the cross-examinations because the applicant had not had sufficient opportunity to question B., C. and D., who had testified against him. Furthermore, the applicant's lawyer requested the court to summon the applicant's children for additional questioning during the trial hearing. The court refused the request and decided to admit the recordings in evidence, as B., C. and D. had explicitly refused to testify again in the trial hearing.

34. After the audio-video recording of B.'s cross-examination was played to the court, the presiding judge asked the applicant if he had understood his daughter's statements; he answered in the affirmative. The presiding judge further asked whether the applicant would like his daughter's statement to be translated again. The applicant indicated certain passages of the transcript of the cross-examination, which were again translated to him. Thereafter, the applicant stated that it was not necessary to translate any further passages. Subsequently, the audio-video recording of C.'s cross-examination was played. At the applicant's request, the entire statement of his son was translated to him. Lastly, the audio-video recording of D.'s cross-examination was played, and the applicant requested again that the statement be translated in full. Thereupon, D.'s statement was summarised by the presiding judge and then translated to the applicant.

35. The Regional Court delivered its judgment on the same day (after the closure of the hearing) and convicted the applicant of the crimes of (i) the continual use of force against his wife and four children (Article 107b §§ 1,

2, 3, 3a and 4 of the Criminal Code) – specifically, during the period from 1 June 2009 (the date of the entry into force of the offence of continual use of force) until 30 May 2021, (ii) deprivation of liberty (Article 99 § 1 of the Criminal Code), (iii) inflicting bodily harm (Article 83 § 1 of the Criminal Code) and (iv) issuing dangerous threats (Article 107 §§ 1 and 2 of the Criminal Code; see paragraphs 60-63 below); the court sentenced him to eight years' imprisonment. Furthermore, the court ordered that the applicant be confined in an institution for mentally ill offenders under Article 21 § 2 of the Criminal Code.

36. The court dismissed as not plausible the applicant's allegations that his children had wrongly accused him. In its reasoning, the court held that the statements of B., C. and D. during their cross-examinations had been credible and had essentially accorded with each other. They had described the applicant's violent behaviour within the family nucleus in a comprehensible and detailed manner. As the children's statements were deemed credible, the court based its findings regarding the applicant's mental state, his criminal responsibility and the danger posed by him on the expert report provided by Dr K. (see paragraphs 21-25 and 29-30). In that regard, it held that the evasive nature of the applicant's statements – which according to Dr K. had rendered his examination practically impossible – had also been apparent during the trial hearing. In the light of the above-noted considerations, it concluded that the applicant had committed all the offences with which he had been charged; the court found him guilty of those offences, deeming that he had committed them under the influence of a severe mental disorder that did not exclude his criminal responsibility.

2. Appeal proceedings (2022)

37. The applicant lodged a plea of nullity (*Nichtigkeitsbeschwerde*) against the judgment and an appeal against the sentence (*Berufung*). He argued, *inter alia*, that the Regional Court had refused the request made by his lawyer during the trial hearing that B., C. and D. be summoned to face additional questioning. He also argued that as he did not understand any German and E.B. had only provided a summary translation to him during the cross-examinations, he therefore had not had sufficient opportunity to pose questions to the prosecution witnesses and to challenge their statements; the failure to afford him that opportunity had violated his rights under Article 6 of the Convention. Furthermore, he claimed that his confinement in an institution for mentally ill offenders had not been justified, as Dr K. had stated in her expert report that she had been unable on the basis of the applicant's examination to make a diagnosis and to assess whether the criteria that would justify his confinement under Article 21 of the Criminal Code were met. The applicant concluded accordingly that the Regional Court ought to have ordered a further expert report in respect of that issue.

38. On 27 April 2022 the Supreme Court (*Oberster Gerichtshof*) dismissed the applicant's plea of nullity and referred the case to the Court of Appeal (*Oberlandesgericht*) for a decision on the appeal. The Supreme Court held that the applicant (together with the State-appointed defence lawyer who had been representing him at the time) had been present during the cross-examinations of B., C. and D., that they had been able to follow the questioning and to pose questions to the witnesses, and that they had been assisted by an Albanian-language interpreter. There was no indication that the fact that the interpreter had only provided summary translations had interfered with the applicant's right (under Article 165 § 3 of the Code of Criminal Procedure) to pose questions to the prosecution witnesses.

39. On 21 June 2022 the Court of Appeal dismissed the applicant's appeal against the sentence and held that the applicant had simply failed to call into question Dr K.'s finding (in her expert report) that the criteria justifying confinement in an institution for mentally ill offenders under Article 21 § 2 of the Criminal Code were met. On the basis of Dr K.'s expert report, it had to be assumed that the applicant suffered from a personality structure which was highly narcissistic and exclusively dominance-oriented within the family nucleus, and which was marked by an inability to feel empathy and by sadistic tendencies. This was a severe mental disorder, even though it could not be classified in accordance with the categorisation system of the ICD. Since there was a high probability that the applicant – owing to his mental disorder – would seriously injure or kill B., C. and D if he were to be released, there was currently no viable alternative to the applicant's confinement.

40. On 5 October 2022 the applicant was transferred from the local prison to the Garsten institution for mentally ill offenders.

IV. REVIEW PROCEEDINGS FOR RELEASE FROM CONFINEMENT (2023-24)

A. Proceedings before the Regional Court

41. On 19 January 2023 another (following a change in court competences, the then competent) Regional Court ordered the continuation of the applicant's confinement after he had applied for conditional release. The applicant did not appeal against that decision.

42. On 1 March 2023 the relevant provisions concerning the confinement of mentally ill offenders – in particular, Article 21 of the Criminal Code – were amended (see paragraphs 54-56 below). The amendments introduced, *inter alia*, more neutral terminology and replaced the legal term "high degree of mental or emotional abnormality" (*geistige oder seelische Abartigkeit von höherem Grad*) with "severe and persistent mental disorder" (*schwerwiegende und nachhaltige psychische Störung*). The institution for mentally ill offenders (*Anstalt für geistig abnorme Rechtsbrecher*) was

renamed into forensic-therapeutic centre (*forensisch-therapeutisches Zentrum*).

43. Following the entry into force of those amendments, the applicant again lodged an application for release from the forensic-therapeutic centre with the Regional Court on 11 March 2023. He argued that he should not have been confined at all as he did not suffer from any mental disorder. Dr K. had described his personality structure as that of a "family tyrant", which was not a mental illness and, in any event, did not meet the criteria justifying his confinement under the amended version of Article 21 of the Criminal Code that came into effect on 1 March 2023.

44. Together with his application, the applicant submitted a privately-commissioned expert report prepared by Dr F. (a specialist in psychiatry) and P.F. (a specialist in psychology), which was based on an examination of the applicant with the assistance of an interpreter conducted on 9 December 2022. According to the privately-commissioned expert report, the applicant had (i) adjustment disorder with prolonged depressive reaction due to his confinement, and (ii) suspected mild mental retardation according to the ICD. During his examination, the applicant had been open, friendly and cooperative. He obviously understood German to a large extent but did not speak it fluently (*er versteht offensichtlich die Sprache über weite Strecken, spricht Deutsch aber nur sehr brüchig*). Dr K.'s conclusion in the expert report of 29 September 2021 that the applicant had the sadistic and dominance-oriented personality structure of a "family tyrant" did not correspond to any system of categorising psychiatric disorders such as the ICD. According to the expert report by Dr F. and P.F., the amendment to Article 21 of the Criminal Code (see paragraph 42 above) had clarified that only a diagnosis of a mental disorder that accorded with the ICD categorisation system could justify confinement. Furthermore, the expert report claimed that the level of potential danger posed by the applicant was restricted to the family nucleus. In the event of the applicant's release, the children would be able to decide for themselves whether they wanted to remain in contact with him. Thus, the expert report concluded that only the applicant's wife, E., could be a potential victim (provided that she still wanted to live with him). In sum, the privately-commissioned expert report recommended that the applicant be released from the forensic-therapeutic centre.

45. On 22 March 2023 the Regional Court received a written statement from the Garsten forensic-therapeutic centre which stated that it did not recommend that the applicant be released. The applicant continued to deny having committed any offences, blamed his family for what had happened, and refused to take responsibility for his actions – which is why his therapeutic treatment was still in its early stages. Accordingly, it could not be assumed that the level of danger posed by the applicant had decreased to an

extent that would justify his conditional release from the forensic-therapeutic centre.

46. The Regional Court commissioned Dr K. (the very same expert who had already examined the applicant in the course of the criminal proceedings, see paragraphs 20-25 above) in order to be able to submit her findings regarding whether the applicant was still suffering from a "severe and persistent mental disorder" (see paragraph 42 above) and whether it was still highly probable that he would commit (under the influence of that disorder) a criminal offence with serious consequences.

47. On 24 September 2023 Dr K. submitted her second expert report, which was based on the case file held by the court, her previous expert report of 29 September 2021 and on her own examination of the applicant (she had examined him in the Garsten forensic-therapeutic centre on 15 September 2023 – this time without the assistance of an Albanian-language interpreter). According to Dr K., the applicant had brought the transcripts of the witness statements given during the criminal proceedings with him and had requested that she review those documents as they would show that he had done nothing wrong. He had not answered the questions she had posed to him (but had instead talked about something else) and had repeated that he was innocent and that his children were lying. In sum, the applicant had depicted himself in the same manner as he had during his examination two years earlier. From a psychiatric point of view, the applicant's release could not be recommended as the previous diagnosis had not changed. The applicant suffered from a severe and persistent mental disorder, and it was highly probable that he would seriously injure his family members under the influence of that disorder. Contrary to the privately-commissioned expert report, the danger posed by the applicant was not determined by his children's willingness to maintain contact with him, but rather by the applicant's ability to locate them. In addition, Dr K. pointed out that the privately-commissioned expert report had ignored many facts documented in the case file (such as the applicant's refusal to adhere to restraining orders), and that it did not comply with professional standards.

48. Subsequently, the above-mentioned experts on psychiatry and psychology, Dr F. and P.F., were given the opportunity to comment on Dr K.'s expert report. In their written statement of 8 December 2023, they reiterated their legal understanding of Article 21 of the Criminal Code (as amended in 2022). According to them, only a diagnosis of a mental disorder that accorded with the categorisation system set out in the ICD or the Diagnostic and Statistical Manual of Mental Disorders (hereinafter "the DSM") of the American Psychiatric Association could justify confinement. They noted further that the legally relevant scope of the danger posed by the applicant was restricted to his family; however, given that the children had already grown up, the only family member who remained at risk was his wife (who, however, had also increasingly distanced herself from him). The

privately-commissioned expert report also claimed that it was very likely that the applicant would be deported to his country of origin after his release, whereas his wife would remain in Austria.

49. On 13 February 2024 the Regional Court – having held an oral hearing in the presence of the applicant, his lawyer and the head of the Garsten forensic-therapeutic centre – ordered the continuation of the applicant's confinement. The court held that a diagnosis of a mental disorder did not necessarily have to accord with any of categories set out in the ICD or the DSM in order to justify confinement under Article 21 of the Criminal Code. On the basis of the information on file and the most recent expert report submitted by Dr K., the court concluded that the danger posed by the applicant still persisted and that his application for release had therefore to be dismissed.

B. Appeal Proceedings

50. On 3 April 2024 the Court of Appeal dismissed an appeal lodged by the applicant. The decision was served on the applicant's lawyer on 9 April 2024. The court clarified that the appeal concerned a question of law – namely, whether the legal requirement of a "severe and persistent mental disorder" within the meaning of Article 21 of the Criminal Code, as amended, had been met. It was not relevant in that regard whether or not the psychiatric diagnosis obtained by a court had been in line with the ICD or the DSM categorisation systems. Contrary to the applicant's allegations, the law did not stipulate that only a diagnosis of a mental disorder that accorded with the ICD or the DSM categorisation systems could justify confinement. Referring to the explanatory notes on the amendment of Article 21 of the Criminal Code (see paragraph 54 below), the Court of Appeal also noted that the introduction of more neutral terminology had not changed the range of offenders to whom the provisions on confinement applied. Thus, the privately-commissioned expert report could not cast any doubt on Dr K.'s statements, which were found to be conclusive and comprehensible. Moreover, the fact that Dr K. had examined the applicant without the assistance of an interpreter did not constitute a procedural error, as the applicant had depicted himself in the same manner as he had during Dr K's examination of him two years earlier.

51. On the basis of Dr K.'s expert report, the court held that the applicant still suffered from a personality structure that was highly narcissistic and exclusively dominance-oriented within the family nucleus, left him incapable of empathy, and was marked by sadistic tendencies. Given those factors, it had to be assumed that the applicant had a severe and persistent mental disorder within the meaning of Article 21 of the Criminal Code, as amended. Should the applicant ever be released, his family would be at risk, as there was still a high probability that he would seriously injure or kill them.

Accordingly, the continued confinement of the applicant was necessary, given that there was no viable alternative.

RELEVANT LEGAL FRAMEWORK

I. CRIMINAL RESPONSIBILITY AND CONFINEMENT OF MENTALLY ILL OFFENDERS

A. Provisions on criminal responsibility

52. Article 11 of the Criminal Code (*Strafgesetzbuch*) concerns the capacity for criminal responsibility and reads, in so far as relevant, as follows:

> "A person who, at the time of the offence, is incapable of recognising the wrongfulness of his or her act or of acting on the basis of such recognition because of a mental illness, a mental disability, a profound disturbance of consciousness or another severe mental disorder equivalent to one of those conditions, does not act culpably."

B. Provisions governing the confinement of mentally ill offenders

53. Under section 164 of the Execution of Sentences Act (*Strafvollzugsgesetz*), the purpose of confining mentally ill offenders is (i) to deter them from committing further offences under the decisive influence of their severe and persistent mental disorder, and (ii) to improve their mental state, so that they will be unlikely to commit further criminal offences.

54. Article 21 of the Criminal Code on the confinement of mentally ill offenders as a preventive measure in an institution for mentally ill offenders (*Unterbringung in einer Anstalt für geistig abnorme Rechtsbrecher*), in its version as in force until 1 March 2023, reads as follows:

> "(1) If a person commits an offence punishable by a term of imprisonment exceeding one year, and if the person cannot be punished for the sole reason that he or she committed the offence under the influence of a state of mind excluding responsibility (Article 11) resulting from a high degree of mental or emotional abnormality, the court shall order his or her confinement in an institution for mentally ill offenders, if in view of his or her person, his or her condition and the nature of the offence it is to be feared that he or she will otherwise, under the influence of the mental or emotional abnormality, commit a criminal offence with serious consequences.
>
> (2) If such a fear exists, an order for confinement in an institution for mentally ill offenders shall also be made in respect of a person who, while not lacking responsibility, commits an offence punishable by a term of imprisonment exceeding one year under the influence of a high degree of mental or emotional abnormality. In such a case the confinement is to be ordered at the same time as the sentence is passed.
>
> (3) Offences against property shall not be considered to constitute "relevant offences" within the meaning of paragraphs 1 and 2, unless they were committed with the use of violence against another person or with the threat of imminent danger to life or limb (Article 89)."

55. Article 21 of the Criminal Code on confinement in a forensic-therapeutic centre (*Strafrechtliche Unterbringung in einem forensisch-therapeutischen Zentrum*), as amended and in force since 1 March 2023, reads as follows:

> "(1) If a person has committed an offence under paragraph 3 under the significant influence of a severe and persistent mental disorder and cannot be punished for the sole reason that he or she was not criminally responsible at the time of the offence owing to his or her mental disorder (Article 11), he or she shall be confined in a forensic-therapeutic centre, if in view of his or her person, his or her condition and the nature of the offence, it is to be feared with a high probability that he or she will otherwise, under the significant influence of the mental disorder, in the foreseeable future commit a criminal offence with serious consequences in the foreseeable future.
>
> (2) If such a fear exists, an order for confinement in a forensic-therapeutic centre shall also be made in respect of a person who, while not lacking responsibility, commits an offence under paragraph 3 under the significant influence of a severe and persistent mental disorder. In such a case the confinement is to be ordered at the same time as the sentence is passed.
>
> (3) Only offences punishable by a term of imprisonment exceeding one year may constitute grounds for confinement. If the offence is not punishable by a term of imprisonment exceeding three years, any fear under paragraph 1 must relate to an offence against life and limb punishable by a term of imprisonment exceeding two years or to an offence against sexual integrity or the self-determination of others punishable by a term of imprisonment exceeding one year. Offences against property shall not be considered, unless they were committed with the use of violence against another person or with the threat of imminent danger to life or limb (Article 89)."

56. The provisions regarding confinement were amended by the Preventive Measures Reform Act of 2022 (*Maßnahmenvollzugsanpassungs-gesetz*; see *P.W. v. Austria*, no. 10425/19, §§ 36-37, 21 June 2022, for more background information on the reform of the system of preventive measures), which entered into force on 1 March 2023. In respect of the applicant's criminal trial and ensuing confinement in 2021, the previous versions of the relevant provisions were applicable (see paragraph 54 above); regarding the applicant's request for release from confinement in 2023, the amended versions of the relevant provisions were applicable (see paragraph 55 above). According to the explanatory report on the draft law of the Preventive Measures Reform Act 2022 (*Erläuternde Bemerkungen zur Regierungsvorlage*, RV 1789 BlgNR XXVII. GP, pp. 7 et seq.), the amendment of Article 21 of the Criminal Code introduced a more neutral terminology. The legal term "high degree of mental or emotional abnormality" (*geistige oder seelische Abartigkeit von höherem Grad*) was replaced with the less stigmatising term "severe and persistent mental disorder" (*schwerwiegende und nachhaltige psychische Störung*). However, this did not change the type of offenders suffering from a mental disorder addressed by Article 21 of the Criminal Code (see paragraph 54 above). Furthermore, the threshold concerning the underlying offences which may serve as grounds for confinement was changed, and it was clarified that such

an offence must have been committed under the significant influence of a mental disorder. In line with the settled case-law of the Supreme Court, it was also clarified that there must be a high probability that the person suffering from a mental disorder will commit further offences with serious consequences.

57. In the event of indications that the criteria for confinement have been met, the person concerned must be examined by a psychiatric expert, pursuant to Article 430 § 1 (as amended) and Article 429 § 2 (in its previous version) of the Code of Criminal Procedure (*Strafprozeßordnung*). Confinement under Article 21 §§ 1 or 2 of the Criminal Code may thus only be ordered after an expert report has been obtained.

58. If a person was sentenced to both imprisonment and confinement in a forensic-therapeutic centre, Article 24 of the Criminal Code provides that the confinement shall be carried out before a prison sentence, and that the time spent in confinement shall be credited toward the sentence. If the confinement is terminated before the sentence has been fully served, the person concerned shall be transferred to prison unless the remainder of the sentence is conditionally or unconditionally remitted. Section 164 of the Execution of Sentences Act provides that in so far as the time spent in confinement shall be credited toward the sentence imposed simultaneously with the order for confinement, the execution of the confinement also reflects the "wrongfulness of the conduct underlying the conviction" (*Unwert des der Verurteilung zugrunde liegenden Verhaltens*).

59. The duration of confinement is governed by Article 25 of the Criminal Code, according to which such a preventive measure shall be ordered for an indefinite period and implemented for as long as its purpose requires. The termination of the preventive measure shall be decided by a court. Whether confinement of a mentally ill offender is still necessary must be reviewed and decided on by the competent court of its own motion at least once a year. Section 167 of the Execution of Sentences Act, read in conjunction with section 152, provides that a confined person also has the right to apply for a review of the lawfulness of his or her confinement.

II. CRIMINAL OFFENCES

60. Article 83 § 1 of the Criminal Code on the offence of bodily harm (*Körperverletzung*) provides that anyone who physically injures or damages the health of another person shall be punished by imprisonment of up to one year or a fine. Article 84 of the Criminal Code (causing grievous bodily harm – *schwere Körperverletzung*) stipulates, *inter alia*, that the penalty shall be imprisonment for up to three years if the injury or damage to health is serious.

61. Article 99 § 1 of the Criminal Code (deprivation of liberty – *Freiheitsentziehung*) provides that anyone who unlawfully detains another

person or otherwise deprives them of their personal liberty shall be punished by imprisonment of up to three years.

62. Article 107 § 1 of the Criminal Code (issuing dangerous threats) (*gefährliche Drohung*) provides that anyone who seriously threatens another person in order to cause them fear and anxiety shall be punished by imprisonment of up to one year or a fine. Article 107 § 2 of the Criminal Code stipulates, *inter alia*, that the offence shall be punishable by imprisonment of up to three years in the event that another person was threatened with death.

63. Article 107b §§ 1 and 2 of the Criminal Code (continual use of force (*fortgesetzte Gewaltausübung*) provides that anyone who physically abuses another person over a longer period of time shall be punished by imprisonment of up to three years. Under Article 107b §§ 3, 3a and 4 of the Criminal Code, the possible length of the sentence of imprisonment that may be imposed shall increase to (i) a term of between six months and five years if the offence results in the controlling of the victim's behaviour or significantly restricts the victim's autonomous way of life, (ii) a term of between one and ten years if the victim is a minor, and (iii) a term of between five and fifteen years if the offence is committed over a period of more than one year.

III. PROCEDURAL PROVISIONS ON THE EXAMINATION OF WITNESSES

64. Article 66a of the Code of Criminal Procedure qualifies victims of crime as particularly vulnerable *(besonders schutzbedürftig)* during the criminal proceedings if they are minors or if the issuance of a restraining order might be necessary in order to protect them.

65. Under Article 156 § 1 of the Code of Criminal Procedure an accused's relatives – such as his/her spouse and children – are exempted from the obligation to answer a summons to testify as a witness against that accused person. Furthermore, any particularly vulnerable victim is also exempted from any obligation to testify as a witness, provided that that victim has had the opportunity to participate in a previous cross-examination of the witness, in accordance with Article 165 of the Code of Criminal Procedure.

66. Under Article 165 §§ 1 and 2 of the Code of Criminal Procedure the Public Prosecutor's Office may request the competent court to conduct a cross-examination of a witness at the pre-trial investigation stage if it is to be feared that an examination in a trial hearing will not be possible for factual or legal reasons. Such a cross-examination must be recorded on audio and video. The court shall give the public prosecutor, the accused, the victim, and any private parties and their representatives the opportunity to participate in the cross-examination and to ask questions. Article 165 § 3 of the Code of Criminal Procedure stipulates that such parties may participate via video link without being physically present if a particularly vulnerable victim is to be

examined. Prior to the cross-examination, the court must inform the witness concerned that, pursuant to Article 165 § 5 of the Code of Criminal Procedure, the transcript of the examination may be read out and the audio-video recording of the examination may be played in the trial hearing – even if the witness refuses to testify in the further proceedings.

67. Article 252 § 1 (2a) of the Code of Criminal Procedure stipulates that a transcript of an interview may be read out and an audio-video recording thereof may be played in the trial hearing, provided that the witness lawfully refuses to testify and both the public prosecutor and the accused had the opportunity to participate in a cross-examination of the witness, in accordance with Article 165 of the Code of Criminal Procedure.

THE LAW

I. JOINDER OF THE APPLICATIONS

68. Having regard to the similar subject matter of the applications lodged by the same applicant, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

69. The applicant complained that in both the criminal proceedings and the subsequent review proceedings it had not been reliably shown that he was a person of unsound mind within the meaning of Article 5 § 1 (e) of the Convention. Relying on Article 5 § 4 he complained that the review proceedings had been flawed in that no assistance of an interpreter had been provided for his psychiatric examination by Dr K. notwithstanding his limited command of German. His confinement in an institution for mentally ill offenders had therefore been contrary to Article 5 §§ 1 and 4 of the Convention, the relevant parts of which read 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:
>
> ...
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> ...
>
> 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

70. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

71. The applicant complained that he had been confined in a forensic-therapeutic centre even though he had not been suffering from any mental disorder. Referring to the Court's case-law, the applicant argued that only if he had been suffering from a true mental disorder – as recognised by current medical science – could he have been deemed to be of "unsound mind" within the meaning of Article 5 § 1 (e) of the Convention.

72. The court-appointed expert, Dr K. had not established that he suffered from a mental illness (not even a personality disorder), but rather a severe "character disorder" in the sense of his being a "family tyrant". While the applicant might therefore have a pronounced criminal character, he was not mentally ill – let alone suffering from a true mental disorder that would require treatment in an institution for mentally ill offenders. This had been confirmed by Dr F. and P.F. in their privately-commissioned expert report.

73. The applicant submitted that having a certain personality structure or character was not the same as being of unsound mind within the meaning of Article 5 § 1 (e) of the Convention and could not justify his potentially life-long confinement. Pursuant to the requirements of the Convention, the amendment to Article 21 of the Criminal Code in 2023 had clarified the legal situation in Austria by indicating that for a person to be confined, it was necessary that that person be suffering from a severe and persistent mental disorder. Psychological deviations from the norm (other than mental illnesses, that is, without pathological significance) could not warrant confinement. The current state of medical science concerning mental disorders was set out by the ICD and the DSM. Dr K.'s conclusion that the applicant had the personality structure of a "family tyrant" did, however, not accord with any of the categories of mental disorders set out in the ICD or the DSM.

74. In any event, the applicant submitted, the review proceedings had been flawed and not in line with Article 5 § 4 of the Convention, given the fact that the second Regional Court had ordered – citing Dr K.'s expert report of 24 September 2023 – the continuation of the applicant's confinement. However, Dr K. had based her second expert report on an examination of the applicant that she had conducted without the assistance of an interpreter – even though the applicant's language proficiency in German was limited to

the simple communication skills required for manual workers on construction sites.

(b) The Government

75. In the Government's view, the applicant's confinement in a forensic-therapeutic centre had complied with the requirements of Article 5 §§ 1 and 4 of the Convention and was justified under sub-paragraph (e) of Article 5 § 1 because it constituted the lawful detention of a person of unsound mind.

76. Referring to the Court's case-law, the Government argued that the national authorities should be recognised as having a certain discretion in deciding whether an individual should be detained as a person "of unsound mind" – in particular regarding the evaluation of the merits of clinical diagnoses adduced before them in a particular case. Psychotic conditions, psychotic personality disorders, and schizoid and narcissistic personality disorders had been considered as "mental disorders" – regardless of their medical classification.

77. On the basis of Dr K.'s well-founded psychiatric expert reports, the domestic courts had conclusively held that the criteria justifying confinement under Article 21 § 2 of the Criminal Code – both in its previous wording (as in force until 1 March 2023) and in its amended wording – were met. The applicant had committed all the offences of which he had been found guilty of committing under the influence of a severe mental disorder that had not excluded his criminal responsibility – namely, a personality which was highly narcissistic, exclusively dominance-oriented within the family nucleus and which was marked by an inability to feel empathy. Neither domestic law nor the Convention required that only a diagnosis of a mental disorder that accorded with the categorisation system of the ICD or the DSM might warrant confinement. As there was a high probability that the applicant would commit further assaults on his family members with serious consequences, the applicant's confinement was necessary and without any viable alternative.

78. As regards the applicant's psychiatric examination by Dr K. during the review proceedings that she had conducted without the assistance of an interpreter, the Government argued that the applicant had been evidently able to follow the conversation and to communicate with Dr K. in a sufficient manner. According to Dr K., the applicant had depicted himself in the same manner as he had during his examination two years previously and had refused to take any responsibility for his actions. There had been no change in the applicant's mental condition, and it was still highly probable that he would seriously injure his family members under the influence of his mental disorder. Dr K.'s conclusions had been corroborated by a written statement from the Garsten forensic-therapeutic centre, where the applicant was confined. Even the private experts Dr F. and P.F. had been unable to deny the danger posed by the applicant, given that they had stated that the scope of risk was restricted to the family nucleus.

2. The Court's assessment

(a) General principles

(i) Grounds for deprivation of liberty

79. As regards the justification of a person's detention under sub-paragraph (e) of Article 5 § 1, the Court reiterates that the term "persons of unsound mind" in that provision has to be given an autonomous meaning. It does not lend itself to precise definition since its meaning is continually evolving as research in psychiatry progresses (see *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, § 134, 1 June 2021).

80. As regards the deprivation of liberty of persons suffering from mental disorders, an individual cannot be deprived of his liberty as being of "unsound mind" unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind, that is, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the validity of continued confinement depends upon the persistence of such a disorder (see, among many other authorities, *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 127, 4 December 2018; *Rooman v. Belgium* [GC], no. 18052/11, § 192, 31 January 2019; and *Denis and Irvine*, cited above, § 135).

81. In deciding whether an individual should be detained as a person "of unsound mind", the national authorities are to be recognised as having a certain discretion, since it is in the first place for the national authorities to evaluate the evidence adduced before them in a particular case; the Court's task is to review under the Convention the decisions of those authorities (see *Denis and Irvine*, cited above, § 136).

82. As regards the first condition for a person to be deprived of his liberty as being of "unsound mind" – namely, that a true mental disorder must have been established before a competent authority on the basis of objective medical expertise, the Court reiterates that, despite the fact that the national authorities have a certain discretion, in particular on the merits of clinical diagnoses, the permissible grounds for deprivation of liberty listed in Article 5 § 1 are to be interpreted narrowly. A mental condition has to be of a certain severity in order to be considered as a "true" mental disorder for the purposes of sub-paragraph (e) of Article 5 § 1, as it has to be so serious as to necessitate treatment in an institution for mental health patients (see *Ilnseher*, cited above, § 129, and *Denis and Irvine*, cited above, § 136).

83. No deprivation of liberty of a person considered to be of unsound mind may be deemed in conformity with Article 5 § 1 (e) of the Convention if it has been ordered without seeking the opinion of a medical expert. Any other approach falls short of the required protection against arbitrariness, inherent in Article 5 of the Convention (see *Kadusic v. Switzerland*, no. 43977/13, § 43, 9 January 2018, with further references). The particular

form and procedure in this respect may vary depending on the circumstances. It may be acceptable, in urgent cases or where a person is arrested because of his violent behaviour, that such an opinion be obtained immediately after the arrest. In all other cases, a prior consultation is necessary. Where no other possibility exists, for instance owing to a refusal of the person concerned to appear for an examination, at least an assessment by a medical expert on the basis of the file must be sought, failing which it cannot be maintained that the person has reliably been shown to be of unsound mind (see *Varbanov v. Bulgaria*, no. 31365/96, § 47, ECHR 2000-X, and *Constancia v. the Netherlands* (dec.), no. 73560/12, § 26, 3 March 2015).

84. As for the requirements to be met by an "objective medical expertise", the Court considers in general that the national authorities are better placed than itself to evaluate the qualifications of the medical expert in question. However, in certain specific cases, it has considered it necessary for the medical experts in question to have a specific qualification, and has in particular required the assessment to be carried out by a psychiatric expert where the person confined as being "of unsound mind" had no history of mental disorders, as well as, sometimes, the assessment to be made by an external expert (see *Ilnseher*, cited above, § 130, and the references therein).

85. Moreover, the objectivity of the medical expertise entails a requirement that it was sufficiently recent. The question whether the medical expertise was sufficiently recent depends on the specific circumstances of the case before it (ibid., § 131, and the references therein).

86. As regards the second requirement for an individual to be deprived of his liberty as being of "unsound mind" – namely, that the mental disorder must be of a kind or degree warranting compulsory confinement, the Court reiterates that a mental disorder may be considered as being of a degree warranting compulsory confinement if it is found that the confinement of the person concerned is necessary because the person needs therapy, medication or other clinical treatment to cure or alleviate his condition, but also where the person needs control and supervision to prevent him from, for example, causing harm to himself or other persons (ibid., § 133; see also *Stanev v. Bulgaria* [GC], no. 36760/06, § 146, ECHR 2012).

87. The relevant time at which a person must be reliably established to be of unsound mind, for the requirements of sub-paragraph (e) of Article 5 § 1, is the date of the adoption of the measure depriving that person of his liberty as a result of that condition. However, as shown by the third minimum condition for the detention of a person for being of unsound mind to be justified, namely, that the validity of continued confinement must depend on the persistence of the mental disorder, changes, if any, to the mental condition of the detainee following the adoption of the detention order must be taken into account (see *Denis and Irvine*, cited above, § 137).

(ii) Review of the "lawfulness" of detention

88. Article 5 § 4 guarantees a remedy that must be accessible to the person concerned and must afford the possibility of reviewing compliance with the conditions to be satisfied if the detention of a person of unsound mind is to be regarded as "lawful" for the purposes of Article 5 § 1 (e). The Convention requirement for an act of deprivation of liberty to be amenable to independent judicial scrutiny is of fundamental importance in the context of the underlying purpose of Article 5 of the Convention to provide safeguards against arbitrariness. What is at stake is both the protection of the physical liberty of individuals and their personal security. In the case of detention on the ground of mental illness, special procedural safeguards may be called for in order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves (see *Stanev*, cited above, § 170, and *N. v. Romania*, no. 59152/08, § 186, 28 November 2017).

89. Among the principles emerging from the Court's case-law under Article 5 § 4 concerning "persons of unsound mind" are the following:

(a) a person detained for an indefinite or lengthy period is in principle entitled, at any rate where there is no automatic periodic review of a judicial character, to take proceedings "at reasonable intervals" before a court to put in issue the "lawfulness" – within the meaning of the Convention – of his detention;

(b) Article 5 § 4 requires the procedure followed to have a judicial character and to afford the individual concerned guarantees appropriate to the kind of deprivation of liberty in question; in order to determine whether proceedings provide adequate guarantees, regard must be had to the particular nature of the circumstances in which they take place;

(c) the judicial proceedings referred to in Article 5 § 4 need not always be attended by the same guarantees as those required under Article 6 § 1 for civil or criminal litigation. Nonetheless, it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation (see *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A; *Stanev*, cited above, § 171; and *N. v. Romania*, cited above, § 187).

90. The criteria for "lawful detention" under sub-paragraph (e) of Article 5 § 1 (see paragraph 80 above) entail that the review of lawfulness guaranteed by Article 5 § 4 in relation to the continuing detention of a person of unsound mind should be made by reference to the person's contemporaneous state of health, including his or her dangerousness, as evidenced by up-to-date medical assessments, and not by reference to past events at the origin of the initial decision to detain (see *Juncal v. the United Kingdom* (dec.), no. 32357/09, § 30, 17 September 2013; see also paragraph 85 above).

(b) Application of these principles to the present case

91. The Court notes at the outset that the applicant's confinement in an institution for mentally ill offenders was ordered by the Regional Court together with his conviction for several crimes committed against his family members. It reiterates that the applicability of one ground listed in Article 5 § 1 does not necessarily preclude the applicability of another and that a detention may be justified under more than one sub-paragraph of that provision (see *Eriksen v. Norway*, 27 May 1997, § 76, *Reports of Judgments and Decisions* 1997-III, and *Johnson v. the United Kingdom*, 24 October 1997, § 58, *Reports of Judgments and Decisions* 1997-VII). The applicant's confinement might therefore be analysed under both sub-paragraph (a) of Article 5 § 1 as detention of a person after conviction by a competent court and under sub-paragraph (e) of that provision as detention of a person of "unsound mind". The Court observes that the Government have argued that the applicant's confinement was justified under sub-paragraph (e) of Article 5 § 1 and that the applicant has specifically contested that he was suffering from a mental disorder within the meaning of that sub-paragraph (see paragraphs 69 and 75 above). Moreover, it notes that if a person is sentenced to both imprisonment and confinement, the relevant domestic legislation provides that the confinement is to be carried out before a prison sentence, and that the time spent in confinement is to be credited toward the sentence (see paragraph 58 above). Indeed, the applicant is currently held in confinement in a specialised institution rather than in detention in a regular prison (see paragraphs 35 and 40 above).

92. Consequently, and in the light of the above-noted principles, the Court will first examine whether the requirements under sub-paragraph (e) of Article 5 § 1 of the Convention were complied with and whether the review proceedings, as regards the applicant's psychiatric examination, met the particular procedural requirements of Article 5 § 4 of the Convention invoked by the applicant (see paragraph 69 above). As the Court for the following reasons finds these requirements to have been complied with, it is unnecessary to determine whether the applicant's confinement could also be justified under sub-paragraph (a) of Article 5 § 1 of the Convention (for an example of a similar approach, see *Puttrus v. Germany* (dec.), no. 1241/06, 24 March 2009).

(i) Grounds for depriving the applicant of his liberty

93. According to the Court's well-established case-law (see paragraph 80 above), the detention of the applicant for being of "unsound mind" firstly requires that, at the times of the decisions ordering his confinement on 17 December 2021 and its continuation on 13 February 2024, he was reliably shown to be of unsound mind. That is to say a "true" mental disorder must

have been established before the relevant authority on the basis of objective medical expertise.

94. The Court observes that the domestic courts, on the basis of expert reports prepared by Dr K. – a specialist in psychiatry and neurology and the head of the Forensic Department of the Neuromed Campus of the Kepler University Hospital in Linz (see paragraph 20 above) – were convinced that the applicant suffered from a personality structure that was highly narcissistic, exclusively dominance-oriented within the family nucleus, and marked by sadistic tendencies and an incapacity for empathy. It followed that the applicant suffered from a severe mental disorder for the purposes of Article 21 § 2 of the Criminal Code, in both its previous version (as in force until 1 March 2023) and its amended version.

95. The Court notes that the applicant did not call into question Dr K.'s qualifications as a psychiatric expert, either in the domestic proceedings or before the Court. It is also undisputed between the parties, and the Court does not consider otherwise, that Dr K.'s expert reports were sufficiently recent with regard to the domestic courts' decisions ordering the applicant's confinement and its continuation. During the criminal proceedings, Dr K. submitted her first expert report on 29 September 2021 – that is to say only three months before the judgment of the Regional Court of 17 December 2021. Moreover, during the first day of the trial hearing on 10 December 2021 Dr K. explained her written expert report and answered questions posed by the court, the prosecution and the defence (see paragraphs 21 and 28 above). During the review proceedings, Dr K. submitted her second expert report on the applicant's mental condition on 24 September 2023, that is to say five months before the Regional Court delivered its decision on 13 February 2024. During that period, the court also granted the private experts Dr F. and P.F. commissioned by the defence the opportunity to comment on Dr K.'s second expert report (see paragraphs 47-49 above).

96. The applicant, however, argued that Dr K. had not diagnosed him with a mental disorder that had accorded with the current state of medical science. In that regard, the domestic courts' interpretation of Article 21 of the Criminal Code had not been in line with the Court's case-law on Article 5 § 1 (e) of the Convention.

97. As regards the establishment of a mental disorder on the basis of Dr K.'s expert reports, the Court reiterates that it is in the first place for the domestic courts to evaluate the evidence adduced before them in a particular case, and that they have a certain discretion regarding the merits of clinical diagnoses (see paragraphs 81-82 above). In the present case, the Court notes that Dr K. explicitly stated in her first expert report of 29 September 2021 that an examination of the applicant had been practically impossible because he either had not answered the questions posed to him by talking about something else or had responded with vague and redundant statements. However, she added that if the statements of B., C. and D. were to be

considered credible by the court, it would have to be assumed that the applicant had committed the alleged offences under the influence of a severe mental disorder that did not exclude criminal responsibility. Moreover, it was highly likely that the applicant would seriously injure or kill the children who had testified against him if he were to be released (see paragraphs 21-25 above). In her second expert report of 24 September 2023, Dr K. emphasised that the applicant had depicted himself the same way that he had during his examination two years earlier (see paragraph 47 above).

98. The Court has repeatedly confirmed in its case-law (see paragraph 83) that a medical expert assessment of the person's state of mental health on the basis of case files, as in the present case (see paragraph 21 above), is necessary and furthermore sufficient, in the event that the examination of the person concerned is not possible. In the present case, Dr K. clearly stated that owing to the applicant's lack of openness the diagnosis of his mental health depended on whether the witness statements of his children should be deemed credible by the court. In the criminal proceedings, the first Regional Court gave thorough reasons in its judgment of 17 December 2021 as to why it considered the statements of B., C. and D. to be credible and accordingly found that the applicant suffered from a mental disorder that required his confinement (see paragraphs 35-36 above).

99. The Court does not overlook in this regard the fact that during the review proceedings the applicant submitted a privately-commissioned expert report prepared by Dr F. (a specialist in psychiatry) and P.F. (a specialist in psychology) according to which he suffered both from an adjustment disorder with prolonged depressive reaction and from a suspected mild mental retardation and should be released from confinement. However, with regard to Dr K.'s diagnosis of the applicant's condition, the private experts only stated that it did not accord with the categorisation systems of the ICD of the or the DSM – which, according to their legal understanding, was required by Article 21 of the Criminal Code. They further noted that the scope of the potential danger posed by the applicant was restricted to the family nucleus (see paragraphs 44 and 48 above).

100. Contrary to this legal opinion, as expressed by the private experts on psychiatry and psychology, the domestic courts conclusively held that domestic law did not stipulate that a diagnosis of a mental disorder had to accord with the ICD or the DSM categorisation system in order to justify confinement. By referring to the explanatory notes on the amendment of Article 21 of the Criminal Code, the Court of Appeal also held that the introduction of more neutral terminology did not change the legal criteria justifying confinement in that regard. In sum, the privately-commissioned expert report could not cast any doubt on Dr K.'s statements, which the domestic courts found to be conclusive and comprehensible (see paragraphs 50 and 54). Noteworthy is that during the review proceedings, the court also received a written statement from the Garsten forensic-therapeutic

centre, where the applicant was confined, which opposed the applicant's conditional release (see paragraph 45 above). The head of that centre also attended the oral hearing when the court ordered the continuation of the applicant's confinement (see paragraph 49 above). The Court is therefore satisfied that the domestic courts, as the competent authorities, established on the basis of objective medical expertise that the applicant suffered from a severe mental disorder for the purposes of Article 21 § 2 of the Criminal Code, in both its previous version (as in force until 1 March 2023) and in its amended version (as in force since 1 March 2023).

101. As to the question of whether the domestic courts' interpretation of Article 21 of the Criminal Code was in line with the Court's case-law, the Court reiterates that the Convention does not require that the notions used in domestic law be defined or interpreted in the same manner as terms used in Article 5 § 1 (e) of the Convention. What is decisive, in the Court's view, is whether the domestic courts, in the case before them, established a disorder that could be said to amount to a "true" mental disorder, as defined by this Court's case-law (see *Ilnseher*, cited above, § 150).

102. The Court reiterates in this regard that it has not established in its case-law a precise definition of the term "persons of unsound mind", which does not lend itself to such a definition since its meaning is continually evolving as research in psychiatry progresses. It must further be given an autonomous meaning, without the Court being bound by the interpretation of the same or similar terms in the domestic legal orders (see *Glien v. Germany*, no. 7345/12, §§ 83-84, 28 November 2013; see also paragraph 79 above). Against this background, the Court finds that it was not a precondition, for the applicant to be considered as being "of unsound mind" for the purposes of Article 5 § 1 (e) of the Convention, that Dr K.'s diagnosis of his mental condition (which the domestic courts referred to) should correspond with the ICD or the DSM categorisation systems.

103. According to the Court's case-law, a mental condition has to be of a certain severity in order to be considered to constitute a "true" mental disorder, as it has to be so serious as to necessitate treatment in an institution for mental health patients (see paragraph 82 above). The therapeutic purpose of such treatment should, in so far as possible, be specifically aimed at curing or alleviating the mental-health condition of the person concerned – including, where appropriate, bringing about a reduction in or control over the danger posed by him or her. This applies even where the illness or condition is not curable or where the person concerned is not amenable to treatment (see *Rooman*, cited above, §§ 193 and 208).

104. Turning to the present case, the Court has no doubt that the applicant's mental condition, as established by the domestic courts on the basis of expert evidence, amounted to a "true" mental disorder for the purposes of Article 5 § 1 (e) of the Convention. According to the domestic courts' findings, the applicant had committed numerous acts of domestic

violence against his wife and children over a period of more than ten years. The reason for the applicant's violent behaviour within the family nucleus was his highly narcissistic, exclusively dominance-oriented personality structure, which was marked by sadistic tendencies and dysfunctional deep-rooted convictions according to which he was entitled to exercise unrestricted power of control over all other family members (see paragraphs 36, 39 and 49-51). His alcohol abuse rendered the effects of that disorder even more serious, as it increased the likelihood of acts of domestic violence (see paragraph 29 above). Dr K. stated that it was necessary to attempt therapeutic measures – even though successful treatment of the applicant was not likely (see paragraphs 23 and 30 above; see also *Petschulies v. Germany*, no. 6281/13, § 78, 2 June 2016).

105. As regards the second requirement for the detention of the applicant for being of "unsound mind", the Court is further satisfied that his mental disorder was of a kind or degree warranting compulsory confinement. Referring to the expert reports of Dr K. and her oral explanations given at the trial, the domestic courts found that there was a high risk that the applicant would commit further assaults against his family members as a result of his mental disorder if he were to be released. In particular, it was highly probable that he would seriously injure or kill his children, B., C. and D., who had testified against him (see paragraphs 29, 39 and 51 above). In this context, the statement of the Garsten forensic-therapeutic centre did not find that the level of danger posed by the applicant had decreased to an extent that would justify his conditional release (see paragraph 45 above). Accordingly, the domestic courts conclusively held that there was no viable alternative to the applicant's confinement. In the light of the Court's case-law, it is evident that the applicant requires control and supervision in order to prevent him causing harm to his family (see paragraph 86 above).

106. It is noteworthy in this regard that the privately-commissioned experts, Dr F. and P.F. – who argued for the applicant's release from confinement – stated that the scope of the danger posed by the applicant was restricted to his family and that, given that the children had grown up, the only person left at risk was his wife (who had, however, also distanced herself from her husband – see paragraphs 44 and 48 above). The Court has repeatedly emphasised the particular vulnerability of the victims of domestic violence and the need for active State involvement in their protection. Domestic violence – which can take various forms, ranging from physical assault to sexual, economic, emotional or verbal abuse – is a general problem which affects, to a varying degree, all member States and which does not always surface into the public sphere since it often takes place within personal relationships or closed circuits and affects different family members, although women make up an overwhelming majority of victims. The authorities have a positive obligation under the Convention to protect the victims' human rights (in particular, to life and to physical and psychological

integrity) by taking appropriate operational measures to prevent acts of domestic violence. This includes the duty to carry out a lethality risk assessment; furthermore, any risk assessment must be apt to systematically identify and address all the potential victims (see, among other authorities, *Kurt v. Austria* [GC], no. 62903/15, §§ 161-90, 15 June 2021; *Levchuk v. Ukraine*, no. 17496/19, § 79, 3 September 2020; and *Volodina v. Russia*, no. 41261/17, §§ 71-72, 9 July 2019). The Court has already stated that Article 5 § 1 (e) of the Convention may in certain circumstances be relevant for the assessment of preventive operational measures in the context of domestic violence (see *Kurt*, cited above, § 189), provided that the accused is found to be of unsound mind. The present case appears to fall squarely into these kinds of circumstances.

107. As regards the third requirement for a person's detention to be justified under Article 5 § 1 (e) of the Convention, the Court is also satisfied that the validity of the applicant's continued confinement depended on the persistence of his mental disorder which was reliably verified by objective medical evidence. Under Article 25 of the Criminal Code, preventive measures (including confinement in a forensic-therapeutic centre) are only to be enforced for as long as their purpose requires, and the continued necessity of such confinement must be reviewed and decided on by a court of its own motion at least once a year. Moreover, a confined person may also apply for a review of the lawfulness of his or her confinement (see paragraph 59 above; see also *P.W. v. Austria*, no. 10425/19, § 65, 21 June 2022).

(ii) Review of the "lawfulness" of the applicant's detention

108. Under Article 5 § 4 of the Convention the applicant complained that his psychiatric examination during the review proceedings by the court-appointed expert Dr K. had been conducted without the assistance of an interpreter, even though he hardly understood any German. The Court notes that this complaint is closely linked to the applicant's allegations under Article 5 § 1 (e) of the Convention regarding the establishment of a "true" mental disorder on the basis of objective medical expertise (see paragraphs 96-107 above).

109. Under the Court's case-law, the three minimum conditions for "lawful detention" under Article 5 § 1 (e) of the Convention entail that the review of lawfulness guaranteed by Article 5 § 4 in relation to the applicant's continuing confinement has to be made by reference to his current state of health, including the danger posed by him, as evidenced by an up-to-date medical assessment (see paragraph 90 above). The applicant argued in this regard that a thorough psychiatric examination of his mental condition conducted in German had not been possible owing to his limited language proficiency.

110. The Court observes that Dr K. had already conducted a face-to-face examination of the applicant with the assistance of an Albanian-language

interpreter in 2021 in the course of the criminal proceedings. During this first examination, the applicant had answered her questions vaguely and redundantly or had talked about something else, which is why the diagnosis of his mental condition had depended on the witness statements of his children (see paragraphs 22-23 and 97 above). She further stated that the applicant's disorder was difficult to treat owing to his lack of insight and the language barrier, but it was not the case that he did not understand any German (see paragraph 30 above). Since Dr K. already knew the applicant personally, she was in a position to assess whether an interpretation was necessary for her second face-to-face examination in 2023.

111. During the second examination, which was conducted without the assistance of an interpreter, the applicant again answered evasively and requested Dr K. to review the transcripts of the witness statements of his children, which he claimed would show that he was innocent (see paragraph 47 above). The fact that he portrayed himself in the same manner as during Dr K.'s first examination was the reason why the Appeal Court did not regard it as a procedural error (see paragraph 50 above). The Court notes that there are no indications in the documents submitted by the applicant that would support his allegations that a meaningful examination by the expert Dr K. had not been possible owing to the language barrier. As the applicant showed in the trial hearing, he was able to understand German to a certain degree. For example, after the audio-video recording of B.'s cross-examination had been played, the applicant confirmed to the presiding judge that he had largely understood his daughter's statement and requested only the translation of specific passages of the transcript thereof (see paragraph 34 above). This means that it did not seem necessary for Dr K. to require the presence of an interpreter for the re-examination. Even Dr F. and P.F. stated in their privately-commissioned expert report that the applicant understood German to a large extent but did not speak it fluently (see paragraph 44 above).

112. Against this background, the Court is satisfied that the domestic courts reviewed the persistence of the applicant's mental disorder by referring to an up-to-date medical assessment and therefore also complied with the procedural requirements of Article 5 § 4 of the Convention.

(iii) Conclusion

113. The foregoing considerations are sufficient to enable the Court to conclude that at the times of the decisions ordering the applicant's confinement on 17 December 2021 and its continuation on 13 February 2024, he had been reliably shown to be of unsound mind within the meaning of Article 5 § 1 (e) of the Convention – that is, a "true" mental disorder had been established before the competent authorities on the basis of objective medical expertise, and that his mental disorder was of a kind or degree warranting compulsory confinement. Furthermore, before his continued confinement

was approved on 13 February 2024, the persistence of his mental disorder was reliably verified on the basis of an up-to-date medical assessment, as required by Article 5 § 4 of the Convention.

114. There has accordingly been no violation of Article 5 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

115. The applicant alleged that in both the criminal proceedings and the subsequent review proceedings his right to a fair trial had been violated owing to the admission of untested evidence and inadequate or missing interpretation assistance. He relied on Article 6 §§ 1 and 3 (d) and (e) of the Convention, which reads, in so far as relevant, as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

A. The parties' submissions

1. The Government

116. In the Government's view, the criminal proceedings against the applicant had met the requirements of a fair trial, as provided for in Article 6 of the Convention. As close relatives of the accused – and as particularly vulnerable victims who had been cross-examined at the pre-trial stage – B., C. and D. had had the right to refuse to give testimony during the trial hearing, in accordance with Article 156 of the Code of Criminal Procedure. The applicant and his defence lawyer had been present throughout the cross-examinations of the children (pursuant to Article 165 of the Code of Criminal Procedure), they had had the opportunity to ask questions, and an Albanian-language interpreter had provided summary translations of the children's statements to the applicant. During the cross-examinations, neither the applicant nor his defence lawyer had complained about the translation provided.

117. As regards the review proceedings, the Government argued that Article 5 § 4 constituted a *lex specialis* in relation to Article 6 of the Convention and that, in any event, the court-appointed expert and the

applicant had been able to communicate sufficiently for the purposes of the psychiatric examination.

2. The applicant

118. The applicant argued that during the criminal proceedings he had not been able to challenge and question the witnesses for the prosecution, whose statements had constituted the sole and decisive evidence for his conviction. During the cross-examinations, the interpreter had not translated most of the statements provided by B., C. and D. but had only summarised them – even though the applicant hardly understood any German. Nevertheless, B., C. and D. had not been summoned for an additional examination during the trial hearing.

119. With regard to the review proceedings, the applicant reiterated his allegations under Article 5 § 4 that the court-appointed expert had examined him without the assistance of an interpreter (see paragraphs 69 and 108 above).

B. The Court's assessment

1. The criminal proceedings

120. At the outset, the Court reiterates that Article 6 § 1 of the Convention does not lay down any rules on the admissibility of evidence or the way in which evidence should be assessed, these being primarily matters for regulation by national law and the domestic courts (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 83, 11 July 2017, and *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 302, 26 September 2023). Nevertheless, the Court has to ascertain whether the way in which the evidence was taken was fair. The "fairness" principle requires that all evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument (see *Mirilashvili v. Russia*, no. 6293/04, § 162, 11 December 2008).

121. The admission in evidence of witness statements obtained at the stage of a pre-trial investigation is not in itself inconsistent with Article 6 §§ 1 and 3 (d) of the Convention, provided that the rights of the defence have been respected. In such cases, the Court must examine whether there was a good reason for the non-attendance of the witness and, consequently, for the admission of the absent witness's statements as evidence, whether it was the sole or decisive basis for the conviction, and whether there were sufficient counterbalancing factors to permit a fair and proper assessment of the reliability of that evidence (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, §§ 118-47, ECHR 2011; *Aigner v. Austria*, no. 28328/03, § 35, 10 May 2012; and *Schatschaschwili v. Germany* [GC], no. 9154/10, §§ 102-31, ECHR 2015). The Court has

referred to a number of reasons why a witness may not attend a trial, such as absence owing to death or fear, absence on health grounds or the witness's unreachability (ibid., § 119), and absence on grounds related to the special features of the criminal proceedings such as, for instance, domestic violence or sexual offences, which features are even more prominent when minors are involved (see *S.N. v. Sweden*, no. 34209/96, § 47, ECHR 2002-V, and, in the context of sexual abuse within the family as a form of domestic violence, *D.T. v. the Netherlands* (dec.), no. 25307/10, § 47, 2 April 2013).

122. Turning to the present case, the Court notes that the witnesses B., C. and D. exercised their right under domestic law to refuse testimony in the trial hearing on the ground that any further statement would be emotionally too distressing (see paragraph 31 above). Under Article 156 § 1 of the Code of Criminal Procedure, close relatives of the accused (such as children) or particularly vulnerable victims who have already been cross-examined at the pre-trial stage pursuant to Article 165 of the Code of Criminal Procedure are exempted from the duty to testify as a witness (see paragraphs 64-66 above). The Court agrees that children who are victims of domestic violence are particularly vulnerable individuals and therefore accepts that in criminal proceedings certain measures may be taken for the purpose of protecting them, provided that such measures can be reconciled with the adequate and effective exercise of the rights of the defence (see *Kurt*, cited above, § 163; see also, with regard to sexual abuse cases, *Aigner*, cited above, § 37; similarly, albeit not in relation to minors but with regard to victims of human trafficking and sexual exploitation, see *Vasile Pruteanu and Others v. Romania*, no. 9308/18, §§ 63-67, 14 January 2025). Against this background, the Regional Court had good factual and legal reasons for admitting the recordings of the cross-examinations in evidence and for not securing the attendance of B., C. and D. at the trial hearing (see, *mutatis mutandis* in the context of the right to protection against self-incrimination, *Sievert v. Germany*, no. 29881/07, § 61, 19 July 2012, and *Cabral v. the Netherlands*, no. 37617/10, § 34, 28 August 2018, and similarly in the context of the right relied on by a spouse in order to avoid giving evidence, *Sofri and Others v. Italy* (dec.), no. 37235/97, ECHR 2003-VIII; see also paragraph 67 above).

123. It has further not been disputed between the parties – and the Court has no reason to conclude otherwise – that the domestic courts based the applicant's conviction solely or at least to a decisive extent on the statements provided by the witnesses B., C. and D. during their cross-examinations (see paragraphs 36-38 above).

124. As to whether there were sufficient factors capable of counterbalancing the witnesses' absence in the trial hearing, the Court observes that cross-examinations conducted pursuant to Article 165 of the Code of Criminal Procedure are of an adversarial character (see paragraph 66 above). In the present case, the witnesses B., C. and D. were cross-examined

by a judge at the pre-trial investigation stage on 30 June 2021 who was in the same courtroom as the witnesses. The applicant, his defence lawyer and the public prosecutor were also present but physically located in a separate room, where they could follow the examinations via an undistorted audio-video facility and also had the opportunity to question the witnesses. Accordingly, they could all see and hear the witnesses B., C. and D. give evidence. They were therefore able to observe the witnesses' demeanour in order to make their own assessment of the veracity of the accounts being given (compare the above-cited cases of *Schatschaschwili*, § 127, and *Sievert*, § 59; see also paragraph 38 above).

125. During the cross-examinations, the applicant was assisted by E.B., an Albanian-language interpreter. E.B. provided summary translations of the children's statements to the applicant and facilitated the applicant's communication with his defence lawyer (see paragraphs 15-18 above). The applicant, however, alleged that the interpreter's approach to summarising the witness statements had not complied with the requirements of Article 6 §§ 1 and 3 (e) of the Convention. In this regard, the Court reiterates that any interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him or her and to defend himself or herself (see *Hermi v. Italy* [GC], no. 18114/02, §§ 69-72, ECHR 2006-XII, and *Kamasinski v. Austria*, no. 9783/82, § 74, 19 December 1989). According to the information in the case file, during the cross-examinations neither the applicant nor his defence counsel complained about E.B.'s interpretation assistance. Moreover, the applicant was asked repeatedly if he wanted to pose any questions to his children, but he only reproached his daughter B. and denied that he had hit his son (see paragraphs 16-18 above). The Supreme Court did not consider that the summary translations provided by E.B. had interfered with the applicant's right to question the prosecution witnesses (see paragraph 38 above). The Court also notes that the applicant did not substantiate his submission that E.B.'s approach to providing summary translations had been insufficient or which questions the defence had therefore failed to ask. In the Court's view, there is nothing in the case file to indicate that the interpretation assistance provided was inadequate for the purposes of enabling the applicant and his defence counsel to effectively challenge the children's statements during the cross-examinations (see *Palchik v. Ukraine*, no. 16980/06, § 50, 2 March 2017).

126. A further considerable factor capable of safeguarding the applicant's defence rights was the availability of audio-video recordings of the cross-examinations, which were played during the trial hearing (see paragraphs 34 and 67 above). These recordings allowed the Regional Court to observe the witnesses' demeanour under questioning and to form their own impression of their reliability (see the above-cited cases of *Schatschaschwili*, § 127, and *Sievert*, § 59).

127. During the trial hearing, the applicant also had ample opportunity to give his own version of the events and to cast doubt on the credibility of the absent witnesses B., C. and D., pointing out any incoherence or inconsistency between their statements (see the above-cited cases of *Schatschaschwili*, § 131, and *Aigner* § 43). The applicant was again assisted by the interpreter E.B. who, at the applicant's request, translated the statements of the absent witnesses in detail (see paragraphs 32 and 34 above). However, his requests for the children's examination at the trial did not raise any points requiring further clarification (see paragraphs 33 and 37 above). In such circumstances, the Regional Court found the witnesses' account credible, comprehensible, and detailed (see paragraph 36 above).

128. Having regard to the above considerations – and in particular to the adversarial character of the cross-examinations, which were conducted in accordance with Article 165 of the Code of Criminal Procedure – the Court has no doubt that the Regional Court was able to conduct a fair and proper assessment of the reliability of the statements provided by the witnesses B., C. and D. at the pre-trial stage. It follows that the complaints under Article 6 of the Convention regarding the criminal proceedings are manifestly ill-founded, in accordance with Article 35 § 3 (a) of the Convention.

2. The review proceedings

129. The Court observes that the aim of the review proceedings was to establish, *inter alia*, whether the applicant's confinement in a forensic-therapeutic centre was still necessary to deter him from committing further offences under the influence of a severe and persistent mental disorder (see paragraphs 53 and 59 above). At this stage there was no longer a criminal case pending against the applicant, who had already been convicted in the earlier criminal proceedings. Since the review of the lawfulness of the applicant's confinement did not involve the determination of a "criminal charge" (see paragraphs 49-51 above), the criminal limb of Article 6 of the Convention (in particular, sub-paragraph (e) of Article 6 § 3) is not applicable to the subsequent review proceedings (see *De Tommaso v. Italy* [GC], no. 43395/09, § 143, 23 February 2017; *Reinprecht v. Austria*, no. 67175/01, § 48, ECHR 2005-XII; and *Antoine v. the United Kingdom* (dec.), no. 62960/00, 13 May 2003). It follows that the applicant's complaint under Article 6 of the Convention in its criminal aspect, as regards the review proceedings, is incompatible *ratione materiae*, in accordance with Article 35 § 3 (a) of the Convention.

130. However, the Regional Court was called upon to decide on matters related to the applicant's "right to liberty", which, according to the Court's case-law, can fall under the civil limb of Article 6 § 1 of the Convention, for example in the context of proceedings where an applicant who is at liberty challenges the decisions that should lead to his or her placement in a psychiatric institution (see *Hodžić v. Croatia*, no. 28932/14, §§ 44-53,

4 April 2019). The Court reiterates that Article 5 § 4 of the Convention contains specific procedural guarantees in respect of matters concerning deprivation of liberty and is therefore a *lex specialis* in relation to Article 6 § 1 of the Convention in its civil aspect (see *Manzano Diaz v. Belgium*, no. 26402/17, § 26, 18 May 2021; *Claes v. Belgium*, no. 43418/09, § 123, 10 January 2013; and *Reinprecht*, cited above, § 55). Accordingly, the Court concludes that no separate issue arises concerning the applicant's complaint under the civil limb of Article 6 § 1 of the Convention (ibid.).

3. Conclusion

131. In conclusion, it follows from the above-noted considerations that, as regards the criminal proceedings, the applicant's complaints under Article 6 §§ 1 and 3 (d) and (e) of the Convention and, as regards the subsequent review proceedings, his complaints under Article 6 § 1 of the Convention in its criminal limb must be rejected, in accordance with Article 35 § 4 of the Convention, while no separate issue arises under Article 6 § 1 of the Convention in its civil limb in so far as it concerns the review proceedings.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints concerning the applicant's confinement in a forensic-therapeutic centre and the subsequent review proceedings under Article 5 §§ 1 and 4 of the Convention admissible and, as regards the criminal proceedings, the complaints under Article 6 §§ 1 and 3 (d) and (e) of the Convention and, as regards the review proceedings, the complaints under Article 6 § 1 in its criminal limb inadmissible;

3. *Holds* that there has been no violation of Article 5 §§ 1 and 4 of the Convention;

4. *Holds* that there is no separate issue under Article 6 § 1 of the Convention in its civil limb as regards the review proceedings.

Done in English, and notified in writing on 19 May 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Lado Chanturia President