



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

FIRST SECTION

CASE OF PEŠA v. CROATIA

(Application no. 40523/08)

JUDGMENT

STRASBOURG

8 April 2010

FINAL

08/07/2010

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

In the case of Peša v. Croatia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 40523/08) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Robert Peša (“the applicant”), on 25 August 2008.

2. The applicant was represented by Ms V. Drenški Lasan, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. On 26 August 2008 the President of the First Section decided to give priority treatment to the application in accordance with Rule 41 of the Rules of Court.

4. On 25 November 2008 the President of the First Section decided to communicate to the Government the applicant's complaints concerning the conditions of and grounds for his detention, the proceedings concerning its lawfulness, and his right to a fair trial and to be presumed innocent. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Zagreb.

1. Criminal proceedings against the applicant

(a) Investigation

6. The applicant was a vice-president of the Croatian Privatisation Fund (*Hrvatski Fond za privatizaciju* – “the CPF”), a State-run agency which is in charge of privatisation of all publicly owned property. On 16 June 2007 the applicant was arrested and remanded in custody on suspicion of accepting bribes. The applicant was placed in Zagreb Prison, where he stayed until 18 March 2009, when he was released. The case was known in the national press as the “Maestro” affair.

7. Following a request filed on 19 June 2007 by the Anti-Corruption and Prevention of Organised Crime Office (*Ured za suzbijanje korupcije i organiziranog kriminala* – “the Anti-Corruption Office”), on 20 June 2007 an investigating judge of the Zagreb County Court opened an investigation in respect of the applicant, several other employees of the CPF and some other persons. As regards the applicant, a reasonable suspicion was established that he had accepted bribes. Several times the investigation was extended to cover further criminal acts discovered subsequently.

8. Several defendants lodged an appeal against the decision ordering the investigation.

9. Between 12 and 21 June 2007 the police carried out searches of the offices the defendants used in the CPF, certain other premises, computer equipment and some of the vehicles the defendants used, and confiscated a large number of documents which were eventually submitted to the prosecuting and investigating authorities.

10. Between 21 and 26 June 2007 the State Attorney's Office carried out interviews with two persons.

11. On 2 July 2007 the Zagreb County Court dismissed the appeals against the decision ordering the investigation.

12. Between 4 and 13 July 2007, following warrants issued by the investigation judge assigned to the case, searches of computer software and cellular telephones of some of the defendants and other persons were carried out.

13. On 5 July 2007 the investigation judge ordered the Zagreb Bank and the Erste & Steiermärkische Bank to submit data concerning the defendants' accounts.

14. On 11 July 2007 the police informed the Anti-Corruption Office, which acted as prosecuting authority in the case, of the steps taken, such as informative interviews with two persons and confiscation of further voluminous documentation relevant to the case. During August and September 2007 the police collected further documentation connected to the defendant's alleged criminal activities. On 20 September 2007 the police interviewed another person.

15. On 3 October 2007 the investigation in respect of the applicant was extended to charges of abuse of his position.

16. On 29 November 2007 the police interviewed another witness.

17. On 30 November 2007 the investigation judge ordered an expert to make a transcript of 100 video recordings and 219 audio recordings and numerous telephone calls.

18. During the investigation, the investigation judge heard evidence from the defendants on 18 and 20 June 2007, 2, 3 and 22 October 2007, and 3, 12 and 14 December 2007. He also heard evidence from fifty-four witnesses on 17, 19, 23 and 24 July 2007, 17, 19 and 21 September 2007, 3 October 2007, 19, 21 and 26 November 2007, 3 and 4 December 2007, and 8, 9 and 11 January 2008.

(b) Criminal trial

19. On 13 February 2008 the Anti-Corruption Office submitted an indictment against ten persons, including the applicant. The charges preferred against the applicant consisted of the criminal offences of accepting bribes and abuse of his position as a vice-president of the CPF. On 19 February 2008 the indictment was served on the defendants, all but one of whom lodged objections against it between 21 February and 6 March 2008.

20. On 30 April 2008 the Zagreb County Court returned the indictment to the Anti-Corruption Office in order to rectify it within three days. A rectification of the indictment was lodged with the Zagreb County Court on 9 May 2008. The indictment became final on 27 May 2008.

21. On 27 May 2008 a non-trial panel of the Zagreb County Court excluded certain documents from the case file. On 6 June 2008 one of the defendants lodged an appeal, which was dismissed by the Supreme Court on 9 June 2008.

22. On 24 October 2008 the trial court ordered an expert report on further audio and video recordings. The report was submitted on 7 November 2008.

23. A number of hearings were held between 10 November 2008 and 12 May 2009, when the Zagreb County Court adopted a judgment finding the applicant guilty of taking bribes and sentenced him to two years' imprisonment. On 15 May 2009 the judgment was delivered publicly. The defendants lodged their respective appeals and the appeal proceedings are currently pending.

2. Conditions of the applicant's detention

24. From 18 June 2007 to 10 October 2008 the applicant shared a cell measuring 21.10 square metres with six other inmates.

25. According to the applicant, the toilet area was not completely secluded and sometimes in the morning the inmates had to use bottles to

urinate since they could not wait for their turn. The inmates smoked in the cell although there was no ventilation. All this created an unbearable foul smell, especially in the summer when temperatures rose above 30 degrees Celsius. Also, access to natural light was very poor. Food was served in the cell. However, since there was not enough space for all the inmates to consume food at the same time, quarrels over the food were frequent. The cell was furnished with seven beds, a table and four chairs. The cell was so overcrowded that there was no space to move about although movement was necessary for the applicant since he suffered from a vein ailment. Furthermore, he had problems with his prostate, for which he received no medical assistance. In April 2008 one other inmate attempted suicide and another broke the window pane with his hand. There were no recreational activities. The applicant alleged that these conditions had caused him mental problems but he had not seen a psychiatrist although he had requested to do so.

26. According to the Government, the cell had four windows, each measuring 86 cm by 87 cm. The applicant had received three meals a day. He had been seen by a psychiatrist on several occasions and prescribed sleeping pills, which he had stopped taking in December 2008. He had also been seen by a surgeon in connection with the problems he had had with varicose veins and appropriate medication had been prescribed and administered. The applicant's request to obtain herbal medicine from outside the prison had been allowed.

27. From 10 October to 18 December 2008 the applicant shared another cell of the same size and in similar conditions with five other inmates.

28. From 18 December 2008 to 18 March 2008 the applicant was placed in a single-occupancy cell measuring 9.97 square metres.

29. According to the applicant, he had requested to be placed in solitary confinement in order to be able to prepare his defence, which had been impossible for him in his previous cells owing to the overcrowded conditions described above and also in view of the complexity of the criminal case against him. As an illustration of the latter, the applicant submitted that the criminal case file against him consisted of over eight thousand pages and in his previous cells there had not been enough space even to keep a copy of all relevant documents from the file, let alone to study them.

30. During his entire detention the applicant was allowed to spend two hours a day in the fresh air.

3. Decisions concerning the applicant's detention

31. On 17 June 2007 an investigation judge of the Zagreb County Court remanded the applicant in police custody until 4.45 p.m. on 18 June 2007, pursuant to Article 98 § 1 of the Code of Criminal Procedure.

32. On 18 June 2007 an investigation judge of the Zagreb County Court remanded the applicant in custody until 5.45 p.m. on 19 June 2007, pursuant to Article 98 § 2 of the Code of Criminal Procedure.

33. On 20 June 2007 an investigation judge of the Zagreb County Court remanded the applicant in custody pursuant to Article 102 § 1(2) and (3) of the Code of Criminal Procedure and stated that his detention was to be counted from 16 June 2007 at 4.45 p.m. and could last one month at most. The relevant part of the decision reads as follows:

“I find that there are grounds for ordering the suspects' detention under Article 102 § 1(2) of the Code of Criminal Procedure in view of the fact that a large number of witnesses due to give evidence during these criminal proceedings have obtained information from the suspects about the criminal offences. The first, second, third and fourth suspects are employees of the Croatian Privatisation Fund, as are the witnesses G.I., the President of the CPF, F.J., the Registrar of the CPF, B.S., a secretary in the CPF, M.B., an administrator in the CPF, Z.R. and V.S., also employed in the CPF, Lj.Ž. and J.I., employed in the Sales Department of the CPF, and other individuals well known to the first to fourth suspects. Therefore, there is a reasonable fear that the suspects, if released, might suborn these and other witnesses so as to adjust the witnesses' evidence with their defence.

...

The second suspect, Robert Peša, showed a high degree of criminal resolve in undertaking a number of illegal steps over a long period of time by which he caused substantial material damage when he, in his capacity as an employee of the CPF, violated the statutory code of conduct.

...

The above-mentioned acts of the suspects justify the fear that they, and particularly the first to fourth suspects, who are still employees of the CPF, in view of their functions and the influence they exert in their capacity as the vice-presidents of the CPF, ... if released, would continue their criminal activity...”

34. On 29 June 2007 the applicant was dismissed from his post by a decision of the President of the CPF.

35. The applicant and the other suspects appealed against the above decision. On 2 July 2007 a three-judge panel of the Zagreb County Court upheld the applicant's detention, relying on Article 102 § 1(2) of the Code of Criminal Procedure and quashed the impugned decision as regards the ground under Article 102 § 1 (3) of the Code of Criminal Procedure. In that part the impugned decision was remitted to the investigation judge for fresh consideration. The relevant part of the appellate decision reads as follows:

“The appeals of the accused in respect of the ground for ordering detention under Article 102 § 1(3) of the Code of Criminal Procedure

This panel considers that the ground for detention under Article 102 § 1(3) of the Code of Criminal Procedure in respect of the ... second ... accused exists.

The decision ordering an investigation [is based on a] suspicion that ... the second accused had committed the criminal offence under Article 347 § 1 of the Criminal Code ...

... There is a well-founded suspicion that the second accused, as a vice-president of the CPF, that is to say a high-ranking State official, abused his position by accepting a proffered gift in order to undertake an official act ... which he was not supposed to undertake because his primary duty was to protect the economic interests of the Republic of Croatia. He showed a high degree of criminal resolve and determination in his unlawful activities. ... In the opinion of this panel the foregoing amounts to specific circumstances which justify a genuine fear that ... the second ... accused, if released, might continue his criminal activity in committing the same or similar criminal offences. Therefore, the measure of detention is necessary in respect of ... the second accused ... also on the ground under Article 102 § 1(3) of the Code of Criminal Procedure.

Ex officio, in respect of the ground for detention under Article 102 § 1(2) of the Code of Criminal Procedure

...

In the operative part of the impugned decision the detention against ... the second accused ... is ordered on the ground under Article 102 § 1(3) of the Code of Criminal Procedure, while the reasoning of the impugned decision ... refers to the ground under Article 102 § 1(2) of the Code of Criminal Procedure. In view of this contradiction, it is not possible to examine whether the appeals were founded or not because it is not clear whether the investigation judge ordered detention solely on the ground under Article 102 § 1(3) of the Code of Criminal Procedure or also on the ground under Article 102 § 1(2) of the same Code.”

36. In a decision of 5 July 2007 the investigation judge of the Zagreb County Court ordered the applicant's detention also on the ground under Article 102 § 1(2) of the Code of Criminal Procedure. He reiterated the same reasons as in his previous decision of 20 June 2007.

37. On 12 July 2007 the same judge extended the applicant's detention until 16 September 2007 on the ground under Article 102 § 1(2) and (3) of the Code of Criminal Procedure.

38. On 13 February 2008 an indictment was filed against the applicant and other defendants before the Zagreb County Court.

39. On 15 February 2008 a three-judge panel of the Zagreb County Court extended the applicant's detention on the ground under Article 102 § 1(4) of the Code of Criminal Procedure. The relevant part of the decision reads as follows:

“The indictment reveals a well-founded suspicion that the first to fifth ... defendants committed the criminal offences listed, which is a general statutory condition under Article 102 § 1 of the Code of Criminal Procedure for ordering detention.

... the second defendant Robert Peša is indicted for having committed criminal offences in his capacity as a vice-president of the Croatian Privatisation Fund (‘the CPF’) ...

Section 3 of the CPF Act (Official Gazette nos. 84/1992, 70/1993, 76/1993, 19/1994, 52/1994 and 87/1996) provides that the CPF was founded for the purpose of conducting and completing the process of privatisation of assets which were temporarily transferred to the CPF ...

Section 4 of the CPF Act entrusts the CPF with expert and administrative tasks concerning privatisation ...

The importance of the CPF in the economic life of the Republic of Croatia, the role of the defendants in the activities of which they are accused, the fact that they held certain functions in the CPF and that, according to the indictment, they abused those functions by committing various wrongful acts and falsely presenting their acts as legal in order to secure substantial material gain by which they harmed the reputation of the CPF, which was entrusted, *inter alia*, with conducting and completing the process of privatisation and managing the assets of the Republic of Croatia, and the distrust, [the defendants] stirred up among the public as regards the legality of the CPF's activities, amount, in the opinion of this panel, to particularly grave circumstances which justify the necessity of extending the detention of ... the second defendant ... on the grounds under Article 102 § 1(4) of the Code of Criminal Procedure.”

40. Both the applicant and the State Attorney's Office lodged appeals against the above decision. On 14 March 2008 the Supreme Court dismissed the applicant's appeal. It allowed the State Attorney's appeal and ordered the applicant's detention also on the ground under Article 102 § 1(2) of the Code of Criminal Procedure. The relevant part of the decision read as follows:

“The acts of the defendants show that they were motivated by personal gain and acted in a corrupt manner contrary to their duties in the process of privatisation and thus also contrary to the purposes for which the Fund was established. These activities, apart from securing substantial material gain to the defendants, also presented a public image of the deviant nature of privatisation, by which the defendants harmed the reputation of the basic State institutions.

In the privatisation process these defendants were obliged to protect the economic interests of the CPF and the Republic of Croatia as the owner of the immovable property which is the subject of the accusations. In the context of the market economy, their duties included securing fair competition, enabling all bidders to participate under equal conditions in public tenders and making proposals to the Government as regards the best offers exclusively in the interest of the seller, the Croatian Privatisation Fund, that is to say the Republic of Croatia and the companies which were the subject of the sale, and all that in order to achieve the purposes defined in the Privatisation Act. Given the functions of the defendants in the Croatian Privatisation Fund, it being of exceptional importance in the process of privatisation, they significantly damaged the reputation of the Croatian Privatisation Fund in conducting and completing the privatisation process and managing the assets of the Republic of Croatia. All this resulted in arousing public doubts as to the legality and correctness of the entirety of the activities of the Croatian Privatisation Fund. These circumstances taken as a whole surpass by far the essential elements ... of the criminal offence in respect of which these proceedings are conducted. Thus, they amount to particularly grave circumstances in relation to a criminal offence, justifying the

necessity of extending the detention against ... Robert Peša ... on the grounds under Article 102 § 1(4) of the Code of Criminal Procedure.

...

... this court considers that ... a legal ground for the extension of detention in respect of the defendant ... Robert Peša also exists under Article 102 § 1(2) of the Code of Criminal Procedure ...

... the witness J.K. has not given his evidence yet. This witness is to testify about crucial facts concerning the alleged activities of the defendants who know him ... which justify a fear that these defendants, if released, might suborn that witness ...”

41. On 9 April 2008 the applicant lodged a constitutional complaint. On 30 April 2008 the Constitutional Court upheld the part of the Supreme Court's decision extending the applicant's detention on the ground under Article 102 § 1(4) of the Code of Criminal Procedure. However, it quashed the part of the impugned decision as regards the grounds under Article 102 § 1(2) of the Code of Criminal Procedure. In that part the case was remitted to the Supreme Court for fresh consideration.

42. On 12 May 2008 the Supreme Court dismissed an appeal lodged by the State Attorney's Office against the Zagreb County Court's decision of 15 February 2008. Thus, the applicant's further detention was ordered only on the ground under Article 102 § 1(4) of the Code of Criminal Procedure.

43. On 12 May 2008 the applicant lodged an application for the detention order against him to be lifted.

44. On 14 May 2008 a three-judge panel of the Zagreb County Court extended the applicant's detention on the ground under Article 102 § 1(4) of the Code of Criminal Procedure and at the same time dismissed his application for the detention order against him to be lifted.

45. On 20 May 2008 the applicant appealed against the above-mentioned decision. On 9 June 2008 the Supreme Court dismissed the applicant's appeal. On 24 June 2008 the applicant lodged a constitutional complaint against the above-mentioned decisions of the County and Supreme Courts. The applicant also alleged that the conditions of his detention had been inhuman.

46. On 10 July 2008 the Zagreb Prison Administration allowed supervised telephone calls between the applicant and his defence counsel, Mrs V.D.L.

47. On 8 August 2008, a three-judge panel of the Zagreb County Court extended the applicant's detention on the grounds under Article 102 § 1(4) of the Code of Criminal Procedure, repeating the same reasoning as in its decision of 15 February 2008. On 11 August 2008 the applicant lodged an appeal in which, *inter alia*, he repeated his allegations that the conditions of his detention were inhuman. On 19 September 2008 the Supreme Court dismissed the applicant's appeal, without referring to the applicant's

allegations about the conditions of his detention. It addressed the issue of the legality of the applicant's detention and analysed in detail the gravity of the charges and the specific circumstance of the alleged manner in which the offences had been committed.

48. The applicant's constitutional complaint of 24 June 2008 was declared inadmissible on 25 September 2008 on the ground that the impugned decisions were no longer in effect since, meanwhile, a fresh decision on his detention had been adopted on 8 August 2008.

49. On 29 September 2008 the applicant lodged a constitutional complaint against the Zagreb County Court's decision of 8 August 2008 and the Supreme Court's decision of 19 September 2008. Among other things, he reiterated his complaints about the conditions of his detention.

50. On 24 October 2008 the Zagreb Prison Administration allowed unsupervised telephone calls between the applicant and his defence counsel. Mrs V.D.L.

51. On 19 November 2008 the Zagreb County Court extended the applicant's detention. The applicant appealed.

52. On 18 December 2008 the Constitutional Court declared the applicant's constitutional complaint of 29 September 2008 inadmissible on the ground that the impugned decisions were no longer in effect since, meanwhile, a fresh decision on his detention had been adopted on 29 November 2008.

53. On 4 February 2009 the Supreme Court upheld the Zagreb County Court's decision of 19 November 2008. The applicant lodged a constitutional complaint.

54. On 17 March 2009 the Constitutional Court accepted the applicant's complaint and quashed the Supreme Court's decision of 4 February 2009 and the Zagreb County Court's decision of 19 November 2008. In the operative part of the decision it found a violation of the applicant's right to human treatment and respect for his dignity. It also ordered the Government to adjust the facilities at Zagreb Prison to the needs of detainees within a reasonable time, not exceeding five years. The relevant part of the decision reads:

“[As to the right to personal liberty]

4. ... the impugned decision of the Supreme Court found that these rights of the applicant had not been infringed since the first condition for ordering detention had undoubtedly been met by the fact that the existence of a reasonable suspicion that the applicant had committed criminal offences had been established with certainty, which was a general requirement for ordering detention under Article 102, paragraph 1, of the C[ode of] C[riminal] P[rocedure]. The Supreme Court also deemed unfounded [the applicant's] understanding that detention under Article 102 paragraph 1(4) of the C[ode of] C[riminal] P[rocedure] should be in keeping with the aim of ensuring the attendance of an accused in criminal proceedings and was to be ordered only where the same aim could not be achieved by another measure.

...

8. ...when a person is deprived of liberty only owing to the reasonable suspicion that he or she has committed a specific (grave) criminal offence, then the requirement for the bodies conducting the criminal proceedings to examine with special diligence any extension of detention on such grounds carries even greater weight. The persistence of a reasonable suspicion as such no longer suffices after a certain lapse of time for justifying detention. According to the case-law of the European Court of Human Rights, in such cases it is necessary to establish two conditions for ordering [further detention]: (a) whether the grounds justifying [deprivation of liberty] are still 'relevant and sufficient'; and (b) whether the competent authorities displayed 'special diligence' in the conduct of the proceedings. Only where both conditions are met can the duration of continued detention be seen as reasonable...

9. ...By disregarding, without a good reason, the principle of proportionality as to the appropriateness, necessity and adequacy of the applicant's continued detention on the grounds under Article 102, paragraph 1(4), of the C[ode of] C[riminal] P[rocedure] and by limiting its findings to saying that '... the applicant's placement in detention has not for the time being jeopardised this principle', the Supreme Court has, in the view of the Constitutional Court, infringed the applicant's constitutional right to personal liberty.

...

9.2. ... the Supreme Court correctly noted that the principle of proportionality required, 'apart from the duration of detention, an assessment of the relationship between the gravity and the number of the criminal offences held against the accused and [the severity of] the penalty he risked on the basis of the case file in the event of being found guilty'. However, it overlooked two important factors: (a) the fact that the applicant is accused of criminal offences punishable by one to ten years' imprisonment and that ... under Article 109, paragraph 1(4), of the C[ode of] C[riminal] P[rocedure] his detention, before the adoption of the first-instance judgment, cannot exceed two years, while section 28, paragraph 3, of the Anti-corruption Office Act ... allows for its extension for a further six months; and (b) the fact that the applicant has so far spent more than a year and eight months in detention and at this time it is not possible to say with any certainty how much longer the taking of evidence and the trial before the first-instance court might last. Paying full regard to the principle of proportionality, as to its above-mentioned test of appropriateness, necessity and adequacy, surely requires consideration of these two factors. Only then can the question whether in the case at issue the public interest in the applicant's continued detention during the criminal proceedings against him – in which the judgment as to his guilt is yet to be given – outweighs the right to personal liberty guaranteed by the Constitution and the Convention be correctly assessed.

...

[As to the right not to be ill-treated]

17.1. ... the Constitutional Court notes that section 74, paragraph 3, of the Enforcement of Prison Sentences Act, *inter alia*, defines the standard occupancy space per prisoner in the following terms:

'Premises in which the prisoners dwell shall be clean, dry and sufficiently spacious. There shall be a minimum space of 4 square metres and 10 cubic metres per prisoner in each dormitory.'

... overcrowded conditions in Zagreb Prison cannot serve as acceptable justification for the poor condition of the cell the applicant occupies. In the light of the principle of presumption of innocence, the Constitutional Court stresses that the applicant's right to personal freedom, since he is in pre-trial detention and not convicted, must not be restricted to a more severe degree than that of a convicted person.

17.2. In assessing the quality of medical care, the Constitutional Court accepts the allegations of the Zagreb Prison Administration that it is at a satisfactory level. However, the Prison Administration must, taking into account the need to minimise any damaging consequences of overcrowded conditions, establish standards in respect of additional medical care for detainees by employing the services of out-of-prison medical assistance not dependent on the discretionary assessment of the Prison Administration.

17.3. Lastly, the Constitutional Court finds the family visits regime inadequate, in view of the overcrowded conditions, both as regards the duration of visits and the procedure applied in respect of family members, which, ..., significantly diminishes the purpose of such contact ...

...

22. For the reasons set out in points ... 17 [of this decision] the Constitutional Court finds that the general conditions of the applicant's detention amount to degrading treatment and thus infringe his constitutional rights guaranteed under Article 23 and Article 25(1) of the Constitution as well as his rights under Article 3 of the Convention.

The Constitutional Court has not addressed the possibility of granting the applicant just satisfaction for the above infringements of his constitutional and Convention rights because in the Croatian legal system there exists another, effective legal remedy in that respect (see the Constitutional Court's decision no. U-III-1437/07 of 23 April 2008).

..."

55. On 18 March 2009 the applicant was released.

56. On 29 April 2009 the applicant filed a claim for damages with the State Attorney's Office, asking that a settlement be reached in the matter.

4. Statements by certain high-ranking State officials in the media

57. On 17 June 2007 an article entitled "Bribery in the CPF – 6 arrested" was published in a Sunday edition of the national daily newspaper *Nedjeljni Jutarnji*. The article starts as follows:

"ZAGREB – six arrested, three of whom are vice-presidents of the Croatian Privatisation Fund, the search for the seventh person [still on] and more than 800,000 or maybe even 1.3 million euros from the State budget given as bribes to individuals in the CPF: these are the results of a year-long criminal investigation ..."

58. In the article the following statement by the Head of the Police was quoted:

“To have a coffee with you and allow you into the game, into making deals for purchasing CFP property, a sum of 50,000 euros was required in payment,' said Marijan Benko, the Head of the Police ...”

59. On 17 June 2007 an article entitled “They took millions of euros” was published in the national daily newspaper *24 sata*. It quoted the following statement by the State Attorney:

“Just for listening to you, that is to say having a coffee with you, they asked for 50,000 euros.”

60. On 18 June 2007 an article entitled “The biggest corruption scandal” was published in the national daily newspaper *24 sata*. It again quoted the following statement by the State Attorney:

“The State Attorney Mladen Bajić said that the investigation [showed that] the suspects were ravenously greedy. Just for initiating any conversation about business they asked for 50,000 euros, for coffee, as they said.”

61. On 21 June 2007 the following quotation from a statement made by Mr Ivo Sanader, the Prime Minister, was published in the national daily newspaper *Večernji list*:

“There was organised crime in the Privatisation Fund,' said Prime Minister Sanader. 'The three vice-presidents did not necessarily participate in each project of the Fund but it is probable that each of them acted together with a number of other individuals and in that sense it is possible to talk about organised crime.”

62. On 22 June 2007 an article entitled “President Mesić: The three tenors will be supplied with an orchestra” was published in the national daily newspaper *Jutarnji list*. The relevant part of the article reads:

“ZAGREB – The investigation of corruption will be extended to other institutions; it is not enough to deal with the Croatian Privatisation Fund only. It is the centre of corruption, but extends further like an octopus. The Maestro action is only one of the leads to follow, and there will be more. The melody is known and is now practised and the parts are allocated. The three tenors will be supplied with an orchestra, said President Stjepan Mesić.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

63. The relevant articles of the Croatian Constitution (*Ustav Republike Hrvatske*) provide:

Article 23

“No one shall be subjected to any form of ill-treatment ...”

Article 25

“All detainees and convicted persons shall be treated in a human manner and with respect for their dignity.

...”

Article 28

“Everyone shall be presumed innocent and nobody shall be held guilty of a criminal offence until his or her guilt has been established in a final judgment of a court of law.”

64. Section 62(1) of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu*, Official Gazette no. 29/2002) reads:

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

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

Article 3

“Everyone shall be presumed innocent and nobody shall be held guilty of a criminal offence until his or her guilt has been established in a final judgment of a court of law.”

Preventive Measures**Article 90**

“(1) Where the conditions for ordering detention under Article 102 of this Code have been fulfilled, and where the same purpose may be achieved by other preventive measures under this Article, the court shall order that one or more preventive measures are to be applied ...

(2) Preventive measures are:

- 1) prohibition on leaving one's place of residence;
- 2) prohibition on being in a certain place or area;

3) obligation on the defendant to report periodically to a certain person or a State body;

4) prohibition on access to a certain person or on establishing or maintaining contact with a certain person;

5) prohibition on undertaking a certain business activity;

6) temporary seizure of a passport or other document necessary for crossing the State border;

7) temporary seizure of a driving licence.

...”

8. General Provisions on Detention

Article 101

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

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

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

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

9. Grounds for Ordering Detention

Article 102

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

...

(2) there is a reasonable suspicion that the person concerned may destroy, hide, alter or forge evidence or traces important for the criminal proceedings or may impede the proceedings by suborning witnesses, accomplices or accessories after the offence.

(3) special circumstances justify the fear that the person concerned will repeat a criminal offence ...

(4) the charges involved relate to murder, robbery, rape, terrorism, kidnapping, abuse of narcotic drugs, extortion or any other offence carrying a sentence of at least twelve years' imprisonment, when detention is justified by the *modus operandi* or other especially grave circumstances of the offence.”

Article 106

“(1) Detention ordered by an investigation judge ... shall not exceed one month ...

(2) During the investigation the investigation judge ... may, for justified reasons, extend detention for the first time for a maximum of two months and then for a further maximum of three months.

(3) The maximum detention during the investigation shall not exceed six months ...”

Article 107

“... ”

(2) After the indictment has been lodged ... a [judicial] panel ... shall examine every two months whether the statutory conditions for detention have continued to exist ...”

Grounds for appeal against a [first-instance] judgment

Article 366

“An appeal against a [first-instance] judgment may be lodged on account of:

(1) grave procedural errors;

(2) infringements of the Criminal Code;

(3) an incorrect or insufficient assessment of the facts;

(4) decisions on criminal sanctions, forfeiture, costs of proceedings and pecuniary claims and orders to publish a judgment in the media.”

66. The relevant provisions of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette nos. 35/2005 and 42/2008) read as follows:

Section 19

“(1) Every legal entity and every natural person has the right to respect for their personal integrity under the conditions prescribed by this Act.

(2) The right to respect for one's personal integrity within the meaning of this Act includes the right to life, physical and mental health, good reputation and honour, the right to be respected, the right to respect for one's name and privacy of personal and family life, freedom *et alia*.

...”

Section 1046

“Damage is ... infringement of the right to respect for one's personal dignity (non-pecuniary damage).”

67. The relevant part of section 186(a) of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette nos. 53/91, 91/92, 58/93, 112/99, 88/01 and 117/03) reads as follows:

“A person intending to bring a civil suit against the Republic of Croatia shall first submit a request for a settlement to the competent State Attorney's Office.

...

Where the request has been refused or no decision has been taken within three months of its submission, the person concerned may file an action with the competent court.

...”

68. The relevant provisions of the Enforcement of Prison Sentences Act (*Zakon o izvršavanju kazne zatvora*, Official Gazette nos. 128/1999 and 190/2003) read as follows:

JUDICIAL PROTECTION AGAINST ACTS AND DECISIONS OF THE PRISON ADMINISTRATION

Section 17

“(1) An inmate may lodge a request for judicial protection against any acts or decisions unlawfully denying him, or limiting him in, any of the rights guaranteed by this Act.

(2) Requests for judicial protection shall be decided by the judge responsible for the execution of sentences.”

Section 74

“...

Premises in which the prisoners dwell shall be clean, dry and sufficiently spacious. There shall be a minimum space of 4 square metres and 10 cubic metres per prisoner in each dormitory.

...”

69. In decision no. U-III-1437/2007 of 23 April 2008 the Constitutional Court found that the conditions of detention of a prisoner, P.M., in Lepoglava State Prison amounted to inhuman treatment. It also addressed

the question of P.M.'s claim for just satisfaction. The relevant parts of the decision read:

“In particular, the Constitutional Court finds unacceptable the [lower] courts' opinion that in this case a claim for non-pecuniary damage cannot be awarded under section 200 of the Civil Obligations Act on the ground that such a compensation claim is unfounded in law.

...

Section 1046 of the Civil Obligations Act defines non-pecuniary damage as infringement of the right to respect for one's personal integrity. In other words, every infringement with one's right to personal integrity amounts to non-pecuniary damage.

Section 19(2) of the Civil Obligations Act defines the right to personal integrity for the purposes of that Act as: the right to life, physical and mental health, reputation, honour, respect for one's dignity and name, privacy of personal and family life, freedom and other aspects.

... it is to be concluded that in this case there has been a violation of human, constitutional and personal values because the applicant was in prison conditions which were incompatible with the standards prescribed by the Enforcement of Prison Sentences Act and also with the legal standards under Article 25 § 1 of the Constitution. For that reason the courts are obliged to award compensation for the infringement of the applicant's dignity.

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 AND ARTICLE 5 § 3 OF THE CONVENTION

70. The applicant complained under Article 3 of the Convention of the conditions of his detention. He further complained under Article 5 § 3 of the duration of his detention and submitted that the reasons relied on by the national courts for ordering and extending his detention had been insufficient and inadequate throughout his detention. Article 3 and Article 5 § 3 read:

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 5 § 3

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. Admissibility

71. The Government argued that, following the decision of the Constitutional Court of 17 March 2009, the applicant could no longer claim to be a victim of the violations alleged under Article 3 and Article 5 § 3 of the Convention because the Constitutional Court had found a violation of those provisions. Furthermore, as regards the applicant's complaint under Article 3 of the Convention (conditions of his detention), the national law had subsequently offered the applicant the possibility of seeking compensation in civil proceedings against the State.

72. The applicant disputed these arguments.

1. General principles

73. The Court considers that the issues of the applicant's victim status and the exhaustion of domestic remedies are intrinsically linked in the circumstances of the present case and should therefore be addressed together.

74. As to the applicant's victim status, the Court reiterates that under Article 34 of the Convention it “may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto”. It falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see *Burdov v. Russia*, no. 59498/00, § 30, ECHR 2002-III, and *Trepashkin v. Russia*, no. 36898/03, § 67, 19 July 2007).

75. The Court also reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). Such acknowledgment and redress are usually the result of the process of exhaustion of domestic remedies (see *Koç and Tambaş v. Turkey* (dec.), no. 46947/99, 24 February 2005).

76. The Court further reiterates that the machinery for the protection of fundamental rights established by the Convention is subsidiary to the

national systems safeguarding human rights. The Convention does not lay down for the Contracting States any given manner for ensuring within their internal law the effective implementation of the Convention. The choice as to the most appropriate means of achieving this is in principle a matter for the domestic authorities, who are in continuous contact with the vital forces of their countries and are better placed to assess the possibilities and resources afforded by their respective domestic legal systems (see *Swedish Engine Drivers' Union v. Sweden*, 6 February 1976, § 50, Series A no. 20; *Chapman v. the United Kingdom* [GC], no. 27238/95, § 91, ECHR 2001-I; and *Sisojeva and Others v. Latvia* [GC], no. 60654/00, § 90, ECHR 2007-II).

77. As to the exhaustion of domestic remedies, the Court reiterates that, in accordance with Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, *Hentrich v. France*, 22 September 1994, § 33, Series A no. 296-A, and *Remli v. France*, 23 April 1996, § 33, *Reports* 1996-II). Thus, the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits. To hold otherwise would mean to duplicate the domestic process with proceedings before the Court, which would be hardly compatible with the subsidiary character of the Convention (see *Gavril Yosifov v. Bulgaria*, no. 74012/01, § 42, 6 November 2008). Nevertheless, the obligation to exhaust domestic remedies requires only that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *John Sammut and Visa Investments Limited v. Malta* (dec.), no. 27023/03, 28 June 2005).

2. Application of these principles to the present case

(a) Article 3

78. The Court notes that in its decision of 17 March 2009 the Constitutional Court expressly found a violation of the Article 3 of the Convention as regards the conditions of the applicant's detention. It held that the general conditions of his detention amounted to degrading treatment. The Constitutional Court's findings covered the entire period of the applicant's detention.

79. In the Court's view these findings of the Constitutional Court undoubtedly represent a decision in the applicant's favour by which the relevant national authorities expressly acknowledged a breach of his right not to be subjected to treatment contrary to Article 3 of the Convention.

80. The Court considers that redress in the applicant's circumstances has two aspects: one is removal of the applicant from the conditions of detention that ran counter to Article 3 of the Convention and the other is the possible award of damages for the time he was detained in such conditions. In this connection, the Court notes that the applicant was released immediately following the Constitutional Court's decision. Furthermore, the Court notes that the right to respect for one's "personal integrity" is protected under section 19 of the Civil Obligations Act and that any infringements of such a right are recognised as grounds for awarding damages under section 1046 of the same Act in respect of non-pecuniary damage. The Court also takes note of a decision by the Constitutional Court (no. U-III-1437/2007 of 23 April 2008 – see paragraph 73 above), submitted by the Government, in which the Constitutional Court expressly stated that where it found that an applicant had been detained in unacceptable conditions, there was a right to obtain damages from the State. This approach by the Constitutional Court clearly indicates that a person in the applicant's position has a recognised right under domestic law to seek compensation from the State.

81. The Court notes that the applicant has indeed sought damages from the State and that the related proceedings are at present pending before the competent civil court. While the institution of civil proceedings for damages in itself cannot be regarded as an effective remedy in respect of adverse prison conditions, such proceedings in combination with the decision of the Constitutional Court ordering the applicant's immediate release, in the circumstances of the present case, do satisfy the requirements of effectiveness (see, *mutatis mutandis*, *Štitić v. Croatia* (dec.), no. 9660/03, 9 November 2006).

82. Therefore, as the proceedings concerning the applicant's claim for damages are still pending, this part of the application is premature. It follows that it must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) Article 5 § 3

83. The Court notes firstly that the applicant complained that the reasons relied on by the national courts for ordering and extending his detention had been insufficient and inadequate throughout his detention. As to the decision of the Constitutional Court of 17 March 2009, it quashed the Supreme Court's decision of 4 February 2009 on the grounds that it failed to establish two conditions for ordering further detention: (a) whether the grounds justifying deprivation of liberty were still "relevant and sufficient"; and (b) whether the competent authorities displayed "special diligence" in the conduct of the proceedings. In the opinion of the Constitutional Court, "only where both conditions are met can the duration of continued detention be seen as reasonable."

84. Prior to the Constitutional Court's decision of 17 March 2009, in the proceedings before the national courts, the applicant lodged several constitutional complaints which were either dismissed or declared inadmissible. In its decision of 17 March 2009 the Constitutional Court made no reference to the applicant's overall detention. It only quashed the Supreme Court's decision of 4 February 2009, without any findings as to whether there had been a violation of the applicant's rights under Article 5 § 3 of the Convention. Of even greater importance for the issue of the applicant's victim status is that he has no right under the national law to claim any compensation in connection with his complaint about the duration of his detention. Therefore, in the circumstances of the present case it cannot be said that the applicant has lost his victim status as to his complaint under Article 5 § 3 of the Convention.

85. It follows that the Government's objection must be dismissed.

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

B. Merits

1. The parties' arguments

87. The applicant argued that the grounds for ordering and extending his detention had been insufficient, in particular the grounds under Article 102 § 1(4) of the Code of Criminal Procedure.

88. The Government argued that the reasons relied on by the national courts for ordering and extending the applicant's detention – those being, prior to his indictment, the danger that he might suborn witnesses, the danger that he might reoffend and the gravity of the charges, and, after the indictment, the gravity of the charges only – had been relevant and sufficient.

89. The Government also argued that, owing to the gravity of the charges against the applicant, his release could have caused public disorder. They explained that the applicant had been one of the vice-presidents of the CPF, an institution which had been in charge of the privatisation process in Croatia and had had a significant role in the economic life of the country. As such, the applicant had enjoyed public trust, which he had harmed by abusing his position. At the same time several high-level managers of the CPF had been arrested on suspicion of corruption, which had added to the gravity of the charges.

90. They submitted further that the criminal proceedings against the applicant had been very complex since they had concerned a number of allegations of criminal activity on the part of ten defendants.

2. *The Court's assessment*

91. The Court reiterates that under the second limb of Article 5 § 3, a person charged with an offence must always be released pending trial unless the State can show that there are “relevant and sufficient” reasons to justify his continuing detention (see *Yağcı and Sargin v. Turkey*, 8 June 1995, § 52, Series A no. 319-A). Moreover, the domestic courts “must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release” (see *Letellier v. France*, 26 June 1991, § 35, Series A no. 207).

92. The Court further reiterates that the persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. A court decision extending detention requires a more solid basis to show not only that there was genuinely “a reasonable suspicion”, but also that there were other serious public-interest considerations which, notwithstanding the presumption of innocence, outweighed the right to liberty (see, among other authorities, *I.A. v. France*, 23 September 1998, § 102, *Reports* 1998-VII), given that the primary purpose of the second limb of Article 5 § 3 is to require the provisional release of the accused pending trial (see *Garycki v. Poland*, no. 14348/02, § 39, 6 February 2007, and *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X).

93. The Court observes that the period of the applicant's detention began on 16 June 2007, when he was first arrested, and ended on 18 March 2009, when he was released. It thus lasted one year, nine months and two days.

94. In their decisions extending the applicant's detention the authorities relied principally on three grounds, namely the serious nature of the offence with which he had been charged, the danger that he might suborn witnesses and the danger that, if at large, he might reoffend.

(a) **The danger of reoffending**

95. The Court considers that the seriousness of a charge may lead the judicial authorities to place and leave a suspect in detention on remand in order to prevent any attempts to commit further offences. It is, however, necessary, among other conditions, for the danger to be a plausible one and the measure appropriate, in the light of the circumstances of the case and in particular the past history and the personality of the person concerned (see *Clooth v. Belgium*, 12 December 1991, § 40, Series A no. 225).

96. The Court notes that the applicant had no previous criminal record and that no expert assessment of the likelihood of his reoffending was carried out. Furthermore, as he was charged with committing criminal

offences closely related to his position as one of the vice-presidents of the CPF, after he had been dismissed from that position on 29 June 2007, no danger of his reoffending persisted.

97. The ground based on the risk of reoffending did not therefore in itself justify the continuation of the applicant's detention after 29 June 2007.

(b) The danger of suborning witnesses

98. The Court acknowledges that the applicant's case was a very complicated one, necessitating difficult inquiries. Some of the witnesses were employees of the CPF, in which the applicant had held a high-ranking position. The authorities' belief that he should consequently be kept in detention in order to prevent him from being able to suborn those witnesses is easy to understand, at least at the outset.

99. In the long term, however, the requirements of the investigation do not suffice to justify the detention of a suspect: in the normal course of events the risks alleged diminish with the passing of time as the inquiries are conducted, statements taken and verifications carried out (see *Clooth*, cited above, § 43).

100. The Court notes that by 13 February 2008, when the indictment was lodged, all witnesses who were employees of the CPF had already given their evidence before the investigation judge. Therefore, the danger that the applicant might suborn witnesses no longer persisted after that date. It must be inferred from this that after 13 February 2008, the date on which the applicant was indicted, the risk in question disappeared and could no longer serve as justification for his detention.

(c) Protection of public order

101. The Court notes that the Government also relied on the protection of public order as a ground for the applicant's detention, although it was not expressly mentioned by the national courts. The latter did rely, however, on the harm which the applicant's alleged conduct had caused to public trust. In any event, the Court accepts that, by reason of their particular gravity and the public reaction to them, certain offences may give rise to public disquiet capable of justifying pre-trial detention, at least for a certain time.

102. In exceptional circumstances – and subject, obviously, to there being sufficient evidence – this factor may therefore be taken into account for the purposes of the Convention. However, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the accused's release would actually prejudice public order. In addition, detention will continue to be legitimate only if public order actually remains threatened; its continuation cannot be used to anticipate a custodial sentence (see *Kemmache v. France*, 27 November 1991, § 52, Series A no. 218, and *Tomasi v. France*, 27 August 1992, § 91, Series A no. 241-A).

103. The Court firstly notes that Croatian law does not recognise the notion of prejudice to public order caused by an offence as a ground for detention. Furthermore, the national courts did not explain why continued detention of the applicant was necessary in order to prevent public disquiet and did not examine whether the applicant presented a danger for public safety. Therefore, the arguments of the Government referring to the protection of public order cannot be seen as sufficient for ordering or extending the applicant's detention.

(d) Seriousness of the alleged offences

104. The Court has repeatedly held that although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Belevitskiy v. Russia*, no. 72967/01, § 101, 1 March 2007; *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Khudoyorov v. Russia*, no. 6847/02, § 180, ECHR 2005-X; and *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001).

105. In the present case, from 15 February 2008, immediately after the trial had commenced, to 18 March 2009, the domestic courts extended the applicant's detention solely on the ground of the particularly grave circumstances under which he had allegedly committed the offences at issue. This period lasted one year, one month and three days.

106. As to the nature of the offences held against the applicant in the present case, the Court notes that he was charged with committing offences related to accepting bribes in his capacity as one of the vice-presidents of the CPF. While the Court accepts that the charges against the applicant were serious and that the national courts found that the alleged offences entailed a high degree of criminal resolve in undertaking a number of illegal steps over a long period, it notes that the explanations given by the national courts in this connection were not sufficient and relevant for extending the applicant's detention after 15 February 2008. No elements adduced by the national courts were capable of showing that the applicant presented a continued danger or that his release would in any manner harm the conduct of the criminal proceedings against him.

107. The Court further emphasises that, when deciding whether a person is to be released or detained, the authorities are obliged under Article 5 § 3 to consider alternative means of guaranteeing his appearance at the trial. Indeed, that Article lays down not only the right to “trial within a reasonable time or release pending trial” but also provides that “release may be conditioned by guarantees to appear for trial” (see *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). In the present case, the Court notes

that there is no express indication that during the entire period of the applicant's detention the authorities envisaged any other guarantees designed to secure his appearance at the trial. Nor did they give any consideration to the possibility of ensuring his presence at the trial by imposing on him, under Article 90 of the Code of Criminal Procedure, other "preventive measures" expressly intended to ensure the proper conduct of criminal proceedings.

108. The Court notes that the applicant was not a habitual offender and that he was charged with financial offences and not with crimes containing a violent element. The Court finds, therefore, that by relying solely on the gravity of the charges, the authorities prolonged the applicant's detention in the period from 15 February 2008 to 18 March 2009 on grounds which cannot be regarded as "sufficient". In those circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

109. There has accordingly been a violation of Article 5 § 3 of the Convention.

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

110. The applicant complained that the proceedings concerning the lawfulness of his detention had not been in conformity with the guarantees under Article 5 § 4 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

1. The parties' arguments

112. The applicant maintained that, when reviewing the decision of the Zagreb County Court of 8 August 2008 which had extended his detention, the Supreme Court, in its decision of 19 September 2008, had failed to address his allegations that the conditions of his detention had been inhuman. He further argued that in the same proceedings the Constitutional

Court had declared his constitutional complaint of 29 September 2008 inadmissible solely on the ground that meanwhile a fresh decision extending his detention had been adopted. The same had happened with his constitutional complaint of 24 June 2008. In the applicant's view, such a practice ran counter to the requirements of Article 5 § 4 of the Convention.

113. The Government argued that the applicant's detention had been frequently reviewed by the competent courts of their own motion and that the applicant also had the possibility under domestic law of applying for his detention order to be lifted. The applicant had always been able to lodge an appeal with the Supreme Court against each decision extending his detention and his appeals had been speedily decided. As regards the powers of the Constitutional Court in matters concerning detention, the Government submitted that it was empowered to review decisions ordering and extending detention and to quash such decisions where it found that they had contravened the right to personal liberty, guaranteed by the Constitution and the Convention. However, the requirements of Article 5 § 4 in Croatia were satisfied through judicial protection by lower courts, including the Supreme Court, and could not go so far as to be applicable to proceedings concerning a constitutional complaint.

2. The Court's assessment

(a) General principles

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

(b) Application of these principles in the present case

115. The Court firstly notes that under the relevant domestic law, detention during an investigation must be reviewed by the investigation judge after one month and then again after two months and three months (Article 107 of the Code of Criminal Procedure). After the indictment has been lodged, detention must be judicially reviewed every two months. The Court notes that in the circumstances of the present case the lawfulness of the applicant's detention was considered by the domestic courts on many occasions.

116. The applicant was able to lodge requests for his release. He was able to lodge an appeal with the Supreme Court against each decision of the Zagreb County Court ordering, and later on extending, his detention. The Court finds that the national courts periodically and automatically reviewed the applicant's detention and gave reasons for its extension. Each time the applicant was able to lodge an appeal with the Supreme Court and a constitutional complaint. However, the Court will address the question of the compliance of the Supreme Court's decision of 19 September 2008 and the Constitutional Court's decisions of 25 September and 18 December 2008 with the requirements of Article 5 § 4 of the Convention.

(i) The Supreme Court's decision of 19 September 2008

117. The Court notes that in his appeal to the Supreme Court of 11 August 2008, the applicant challenged the lawfulness of his detention and also complained that the conditions of his detention were inhuman. The Supreme Court, in dismissing the appeal on 19 September 2008, did not address these allegations. In this connection the Court reiterates that Article 5 § 4 of the Convention entitles arrested or detained persons to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements of domestic law but also the reasonableness of the suspicion underpinning the arrest, and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Butkevičius v. Lithuania*, no. 48297/99, § 43, ECHR 2002-II).

118. The Court notes that in the proceedings culminating in the Supreme Court's decision of 19 September 2008, the Zagreb County Court, acting as the court of first instance, extended the applicant's detention on 8 August 2008. It cited the relevant procedural provisions setting out grounds for extending detention and gave reasons justifying the applicant's further detention, these being the "particularly grave circumstances" in which he had allegedly committed the criminal offence held against him, which circumstances were described in detail (see paragraph 47, referring to paragraph 39, above).

119. As regards the Supreme Court's decision of 19 September 2008, it confirmed the findings of the impugned decision of the Zagreb County Court and once again set out in detail the specific circumstances in which the offences had allegedly been committed.

120. In the Court's view, the Zagreb County Court and the Supreme Court both satisfied the requirements set out in the Court's case-law since they addressed the procedural and substantive conditions which were essential for the "lawfulness" of the applicant's further detention in Convention terms.

121. In view of the above considerations, the Court finds that there has been no violation of Article 5 § 4 of the Convention as regards the Supreme Court's decision of 19 September 2008.

(ii) The Constitutional Court's decisions of 25 September and 18 December 2008

122. The Court notes further that the national system also allows for a constitutional complaint against each appeal decision of the Supreme Court concerning detention. However, the Court notes that the practice of the Constitutional Court is to declare inadmissible each constitutional complaint where, before it has given its decision, a fresh decision extending detention has been adopted in the meantime. Thus, the applicant's constitutional complaints of 24 June and 29 September 2008 were declared inadmissible on such grounds.

123. In this connection the Court reiterates that, according to its case-law, Article 5 § 4 enshrines, as does Article 6 § 1, the right of access to a court, which can only be subject to reasonable limitations that do not impair its very essence (see *Shishkov v. Bulgaria*, no. 38822/97, §§ 82-90, ECHR 2003-I, and *Bochev v. Bulgaria*, no. 73481/01, § 70, 13 November 2008).

124. Furthermore, Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of applications for release from detention. Nevertheless, a State which institutes such a system must in principle accord detainees the same guarantees on appeal as at first instance (see *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224; see also *Rutten v. the Netherlands*, no. 32605/96, § 53, 24 July 2001; *Lanz v. Austria*, no. 24430/94, § 42, 31 January 2002; and *Svipsta v. Latvia*, no. 66820/01, § 129, ECHR 2006-III). The Court considers that the same applies in a system which provides for a constitutional complaint against decisions ordering and extending detention.

125. However, the Croatian system, although allowing for a constitutional complaint, leaves it to the Constitutional Court to await a fresh decision on extending detention and then to declare the complaint against the previous decision on detention inadmissible. Thus, although the applicant lodged a constitutional complaint against the decision of the Supreme Court of 9 June 2008, the Constitutional Court did not decide on

the applicant's complaint until 25 September 2008, only to declare the complaint inadmissible because a fresh decision had meanwhile been adopted. The same situation was repeated with the applicant's constitutional complaint of 29 September 2008, declared inadmissible by the Constitutional Court on 18 December 2008 (see paragraphs 48 and 52). The Court finds that the applicant's constitutional complaints of 24 June and 29 September 2008 were not decided upon speedily and that the issue of the constitutionality of his detention was allowed to remain unaddressed.

126. In the Court's opinion, the Constitutional Court's failure to decide speedily on the applicant's constitutional complaints of 24 June and 29 September 2008 made it impossible to ensure the proper and meaningful functioning of the system for the review of his detention, as provided for under the national law. By declaring the applicant's constitutional complaints inadmissible simply because fresh decisions extending his detention had meanwhile been adopted, the Constitutional Court did not satisfy the requirement "that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy" (see paragraph 92 above). Thus, it fell short of its obligation under Article 5 § 4 of the Convention to review the lawfulness of the applicant's detention. There has accordingly been a violation of that provision.

III. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

127. The applicant further complained that the criminal proceedings against him had been unfair in that the courts had not been impartial, he had not been afforded adequate time and facilities to prepare his defence and he had not been able to defend himself through legal assistance of his own choosing, in particular in view of the poor conditions of his detention, which had prevented him from preparing his defence. He also complained that the statements of some high-ranking State officials to the media ran counter to the presumption of innocence.

He relied on Article 6 §§ 1, 2 and 3(b) and (c) of the Convention, the relevant parts of which read:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require ...”

A. Admissibility

1. The parties' arguments

128. The Government argued that the applicant's complaints under Article 6 were premature because the criminal proceedings against him were still pending and he would be able to raise the same complaints by using various remedies envisaged under the relevant domestic law, such as an appeal against the first-instance judgment and a constitutional complaint. All the rights the applicant was invoking before the Court were guaranteed in various provisions of the Code of Criminal Procedure and the Constitution, and besides, in Croatia the Convention was directly applicable.

129. The applicant agreed that he was able to raise the same complaints in his appeal, save for the complaint under Article 6 § 2 of the Convention.

2. The Court's assessment

(a) Article 6 §§ 1 and 3 (b) and (c) of the Convention

130. The Court notes that the criminal proceedings against the applicant are at present pending before the Supreme Court as the appeal court in the matter. The applicant is able to put forward his complaints under Article 6 §§ 1 and 3(b) and (c) of the Convention both in his appeal and, eventually, in his constitutional complaint. For these reasons, and in view of the principle of the subsidiary nature of the Convention mechanism, the Court agrees with the Government that this part of the application is premature since the criminal proceedings against the applicant are still pending.

131. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(b) Article 6 § 2 of the Convention

132. The Court notes that the impugned statements were made by certain high-ranking State officials and published in newspapers. Contrary to the Government's assertion, these statements cannot serve as grounds for an appeal or for any other remedy in the context of the criminal proceedings against the applicant since, under the relevant domestic laws, such grounds consist of errors of fact and law as well as procedural errors. The impugned statements do not fall within any of these categories. Furthermore, the

remedies available to the applicant in the context of the criminal proceedings against him may be used in respect of judgments and other decisions adopted in those proceedings and not in respect of statements made by public officials in the media.

133. As regards the possibility of lodging a constitutional complaint on account of the alleged violation of the applicant's right to be presumed innocent, the Court notes that, although such a right is guaranteed under the Constitution, a constitutional complaint may be lodged only against a decision issued by a competent authority. However, as regards the impugned statements, no decision has been adopted and therefore no constitutional complaint lies against them.

134. It follows that the Government's objection as to the exhaustion of domestic remedies must be dismissed.

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

B. Merits

1. The parties' arguments

136. The applicant argued that the impugned statements by four high-ranking State officials, published in the days immediately following his arrest, amounted to the pronouncement of his guilt before he had been found guilty by a court of law, in violation of his right to be presumed innocent.

137. The Government stressed the importance of the CFP in the economic and public life of Croatia, which justified the public interest in being informed of its activities. As regards the impugned statements, the Government emphasised that the names of the suspects had not been mentioned and that at the time when the articles in question had been published, it had still not been revealed which of the four CFP vice-presidents had been arrested. The impugned statements did not indicate that the State officials in question had mentioned any criminal activities or given their opinion on the guilt of the applicant in respect of any criminal offence.

2. The Court's assessment

(a) General principles

138. The Court reiterates that the presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of the fair criminal trial that is required by paragraph 1 (see *Deweert v. Belgium*, 27 February 1980, Series A no. 35, § 56, and *Allenet de Ribemont v. France*, 10 February

1995, Series A no. 308, § 35). Article 6 § 2, in its relevant aspect, is aimed at preventing the undermining of a fair criminal trial by prejudicial statements made in close connection with those proceedings (see *Khuzhin and Others v. Russia*, no. 13470/02, § 93, 23 October 2008, and *Matijašević v. Serbia*, no. 23037/04, § 45, ECHR 2006-X). It prohibits the premature expression by the tribunal itself of the opinion that the person “charged with a criminal offence” is guilty before he has been so proved according to law (see *Minelli v. Switzerland*, 25 March 1983, Series A no. 62) but also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudice the assessment of the facts by the competent judicial authority (see *Allenet de Ribemont*, cited above, § 41; *Daktaras v. Lithuania*, no. 42095/98, §§ 41-43, ECHR 2000-X; and *Butkevičius v. Lithuania*, no. 48297/99, § 49, ECHR 2002-II).

139. The freedom of expression, guaranteed by Article 10 of the Convention, includes the freedom to receive and impart information. Article 6 § 2 cannot therefore prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (see *Allenet de Ribemont*, cited above, § 38, and *Karakaş and Yeşilirmak v. Turkey*, no. 43925/985, § 50, 28 June 2005).

140. The Court has considered that in a democratic society it is inevitable that information is imparted when a serious charge of misconduct in office is brought (see *Arrigo and Vella v. Malta* (dec.), no. 6569/04, 10 May 2005). It has acknowledged that in cases where an applicant was an important political figure at the time of the alleged offence, the highest State officials, including the Prosecutor General, were required to keep the public informed of the alleged offence and the ensuing criminal proceedings. However, this circumstance could not justify all possible choices of words by the officials in their interviews with the press (see *Butkevičius*, cited above, § 50).

141. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The Court has consistently emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Daktaras*, cited above, § 41; *Böhmer v. Germany*, no. 37568/97, §§ 54 and 56, 3 October 2002; and *Nešťák v. Slovakia*, no. 65559/01, §§ 88 and 89, 27 February 2007). It has also asserted the importance of respect for the presumption of innocence during press conferences by State officials (see *Butkevičius*, cited above, §§ 50-52; *Lavents v. Latvia*, no. 58442/00, § 122, 28 November 2002; and *Y.B. and Others v. Turkey*, nos. 48173/99 and 48319/99, §§ 49 51, 28 October 2004).

Nevertheless, whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see *Adolf v. Austria*, 26 March 1982, §§ 36-41, Series A no. 49). In any event, the opinions expressed cannot amount to declarations by a public official of the applicant's guilt which would encourage the public to believe him or her guilty and prejudice the assessment of the facts by the competent judicial authority (see *Butkevičius*, cited above, § 53).

(b) Application of these principles in the present case

142. The Court acknowledges that the applicant held an important position in a State agency dealing with privatisation of all State-owned property and that his activities were of great interest to the general public. At the time of the alleged offence the highest State officials, including in particular the State Attorney and the Head of the Police, were required to keep the public informed of the alleged offence and the ensuing criminal proceedings. However, this duty to inform the public cannot justify all possible choices of words, but has to be carried out with a view to respecting the right of the suspects to be presumed innocent.

143. The Court is also mindful that the statements at issue were made only a day (in the case of the Head of the Police and the Attorney General) and four days (in the other cases) following the applicant's arrest. However, it was particularly important at this initial stage, even before a criminal case had been brought against the applicant, not to make any public allegations which could have been interpreted as confirming his guilt in the opinion of certain important public officials (see, *mutatis mutandis*, *Butkevičius*, cited above, § 51).

144. The Court notes that in the present case the impugned statements were made by the State Attorney, the Head of the Police, the Prime Minister and the State President in a context independent of the criminal proceedings themselves. The Court shall now proceed by examining separately each of the statements by the persons concerned.

145. The Court notes that the Head of Police was quoted as having said that “just to ... allow you into the game, into making deals for purchasing CFP property, a sum of 50,000 euros was required in payment”, a statement which referred to the already arrested vice-presidents of the CPF. The State Attorney was quoted as having said that “the suspects were ravenously greedy. Just for initiating any conversation about business they asked for 50,000 euros.”

146. The Court cannot accept the Government's arguments that the applicant's name had not been mentioned and that at the time the identity of suspects had not been known. The Court notes that the applicant was arrested on suspicion of having taken bribes in his capacity as one of the vice-presidents of the CPF on 16 June 2007 and that therefore the impugned

statements by the Head of the Police and the State Attorney, published on 18 June 2007 in an article concerning the alleged criminal activities of highly positioned employees of the CPF, clearly referred, *inter alia*, to the applicant.

147. The statements of the Head of the Police and the State Attorney were not limited to describing the status of the pending proceedings or a “state of suspicion” against the applicant but were presented as an established fact, without any reservation as to whether the act of taking bribes had actually been committed by the suspects, one of whom was the applicant.

148. As to the statement by the Prime Minister, the Court notes that he asserted that there had been organised crime in the CPF and while he conceded that the three vice presidents might have not participated in each project, he also implied that they had been involved in the organised crime. The Court notes that it is clear that this statement also concerned the applicant since he was one of the three vice-presidents of the CPF and the impugned statements referred to the criminal activity in connection with which the applicant had been arrested.

149. As regards the impugned statement of President Mesić, the Court notes that he named the CPF as the centre of corruption and implied that the three tenors had been a part of it. Although he used metaphorical terms it is clear that the expression “three tenors” referred to the three arrested vice-presidents of the CPF, one of whom was the applicant. The Court considers that the wording of the impugned statement goes further than just saying that the applicant was a suspect as regards charges of corruption. The expressions used put a certain label on the three vice-presidents of the CPF, implying that they had been part of the corruption in the CPF.

150. The Court considers that those statements by public officials amounted to a declaration of the applicant's guilt and prejudged the assessment of the facts by the competent judicial authority. Given that the officials in question held high positions, they should have exercised particular caution in their choice of words for describing pending criminal proceedings against the applicant. However, having regard to the contents of their statements as outlined above, the Court finds that their statements could not but have encouraged the public to believe the applicant guilty before he had been proved guilty according to law.

151. Accordingly, the Court finds that there was a breach of the applicant's right to be presumed innocent. There has therefore been a violation of Article 6 § 2 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

152. Lastly, the applicant complained that he had been discriminated against.

153. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this complaint does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

154. Article 41 of the Convention provides:

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

A. Damage

155. The applicant claimed 60,000 euros (EUR) in respect of non-pecuniary damage in connection with his complaint under Article 3 of the Convention. He also claimed EUR 12,862 in respect of pecuniary damage on account of the costs he had incurred for medical treatment he had needed owing to the deterioration of his health during his detention.

156. The Government argued that, following the Constitutional Court's findings as regards his complaints under Article 3 of the Convention, the applicant was able to seek compensation from the State. In any event, the compensation claimed was excessive.

157. The Court notes that the applicant's complaints under Article 3 of the Convention have been declared inadmissible and that he has not submitted any claim for pecuniary or non-pecuniary damage in connection with his other complaints. It therefore dismisses this claim.

B. Costs and expenses

158. The applicant also claimed EUR 5,605 for the costs and expenses incurred before the domestic courts in the proceedings concerning the ordering and extension of the applicant's detention and EUR 4,388.45 for those incurred before the Court.

159. The Government argued that the applicant had no right to the costs and expenses incurred before the domestic courts.

160. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. As to the domestic proceedings concerning the decisions on

ordering and extending the applicant's detention, the Court agrees that, as they were essentially aimed at remedying some of the violations of the Convention alleged before the Court, these domestic legal costs may be taken into account in assessing the claim for costs (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 284, ECHR 2006-V). In the present case, regard being had to the information in its possession and the above criteria, the Court awards the applicant the sum of EUR 5,600 for costs and expenses in the proceedings before the national authorities. As to the Convention proceedings, making its assessment on an equitable basis and in the light of its practice in comparable cases, the Court considers it reasonable to award the applicant, who was represented by counsel, the sum of EUR 4,300, plus any tax that may be chargeable to him on these amounts.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the grounds for the applicant's detention; the applicant's right to a review of his detention; as well as his right to be presumed innocent, admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been no violation of Article 5 § 4 of the Convention in respect of the Supreme Court's decision of 19 September 2008;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention as regards the Constitutional Court's decisions of 25 September and 18 December 2008;
5. *Holds* that there has been a violation of Article 6 § 2 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,900 (nine thousand nine

hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President