

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

FIRST SECTION

CASE OF CVIKOVÁ v. SLOVAKIA

(Applications nos. 615/21, 9427/21 and 36765/21)

JUDGMENT

Art 5 § 1 (c) and Art 5 § 3 • Lawful arrest or detention • Reasonableness of pre-trial detention • Detention of judge pending trial on charges of offences linked to suspicions of corruption, abuse of official power and interference with the independence of the judiciary in the context of a large-scale investigation of alleged organised corruption in the judiciary in the Bratislava region • Detention based on a reasonable suspicion of having committed an offence • Grounds for initial detention in remand "relevant" and "sufficient" • No indication of arbitrariness • Continued detention of the applicant, upon the dismissal of her request for release, not necessary Art 5 § 4 • Review of lawfulness of detention • Supreme Court 's decision on the applicant's continued detention based on grounds not raised by the prosecution at first instance without giving the applicant an opportunity to comment

Prepared by the Registry. Does not bind the Court.

STRASBOURG

13 June 2024

FINAL

13/09/2024

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



In the case of Cviková v. Slovakia,

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

Marko Bošnjak*, President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Ivana Jelić,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the applications (nos. 615/21, 9427/21 and 36765/21) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovak national, Ms Denisa Cviková ("the applicant"), on 23 December 2020 and 3 February and 12 July 2021;

the decision to give notice to the Government of the Slovak Republic ("the Government") of the complaints under Article 5 §§ 1 (c), 3 and 4 and Article 8 of the Convention concerning the search of the applicant's home, her remand in custody and the dismissal of her request for release and to declare the remainder of the applications nos. 9427/21 and 36765/21 inadmissible;

the parties' observations;

Having deliberated in private on 21 May 2024,

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

INTRODUCTION

1. The applicant, a career judge, was targeted, with a number of others from both within and outside the judiciary, by a large-scale investigation of alleged organised corruption in the judiciary in the Bratislava region. As part of the investigation, the applicant's home was searched and she was detained pending trial, giving rise to her complaints under Article 5 §§ 1 (c), 3 and 4 and Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1970 and lives in Bratislava. She was represented by Ms E. Cubinková, a lawyer practising in Bratislava.

3. The Government were represented by their Agent, Ms M. Bálintová.

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

I. BACKGROUND

5. The applicant is a lawyer. Between 2005 and 2012 she practised at the Bar. Since 2012 she has been a judge of the Bratislava I District Court.

6. On 20 August 2019 the national organised crime investigation agency (*Národná kriminálna agentúra*) commenced an inquiry into suspected offences of accepting bribes, abusing official authority and interfering with the independence of the judiciary by an unspecified number of perpetrators within and outside the judiciary. The general parameters of the suspicion were stated to be that certain judges in courts in the Bratislava region had been delivering biased judgments in return for bribes paid on the instructions of a third person, transmitted through a judge and an agent of the Ministry of Justice.

7. As would become known later:

(i) the central figure in this scheme was a private individual, A;

(ii) the intermediaries were a certain Judge B and a career judge temporarily serving as a State Secretary (*štátna tajomníčka*) at the Ministry of Justice, C;

(iii) an essential body of evidence consisted of text messages passed among these individuals and others, exchanged through a secure instant messenger, a copy of which had been obtained from a mobile phone belonging to A that had been retrieved in the course of another investigation; and

(iv) Judge B cooperated with the inquiry, in exchange for which the bringing of charges against him had been temporarily suspended.

8. Subsequently, B, C and other judges were asked to surrender their mobile phones and the data they contained was subjected to expert analysis. That operation and the text messages from A's mobile phone were then incrementally published by the media, implicating the persons referred to above and others. The published material included messages between A and C in which the applicant was alleged to have assisted another judge, D, to deal with a case assigned to the latter and in which a company associated with A had pursued a claim for the payment of a large sum of money based on a promissory note ("the promissory-note case"). In particular, the applicant was alleged to have acted at the request of C and, in return for payment provided by A and given to her by C, the applicant was alleged to have advised D on how to handle the objections of one of the defendants, to have drafted a judgment allowing the claim, and to have supported D by attending the hearing at which she, D, had delivered that judgment.

9. The various suspicions gleaned from the communication in question were investigated by the Judicial Council of the Slovak Republic ("the Judicial Council"), the country's highest body governing the judiciary. The applicant, D and some other of the judges involved gave their explanations to the Judicial Council on 14 November 2019.

10. On 15 January 2020 the Minister of Justice asked the Judicial Council temporarily to suspend the applicant from judicial office, referring to the published information about her involvement in the promissory-note case and considering that she had not given a satisfactory explanation about it. On 23 January 2020 the applicant made observations in reply.

11. Further context to these events may be seen in the Court's decision in *Molnár v. Slovakia* ([Committee], no. 39818/20, 16 December 2020).

II. HOME SEARCH AND RELATED CONSTITUTIONAL COMPLAINT

12. On 24 January 2020 the Specialised Criminal Court ("the SCC") issued a warrant for a search of the applicant's flat, as it had concluded that there was a justified suspicion that evidence relevant to the criminal proceedings could be found there, in particular mobile phones and other information and communication technology devices ("ICT devices") and the proceeds of crime. The warrant referred to the investigation that had been commenced on 20 August 2019 and the evidential basis for it, and it was noted that the persons who had previously been asked to surrender their mobile phones (see paragraph 8 above) had handed over new or outdated devices containing no relevant messaging data. This suggested that those persons had tampered with their phones once it became known that A's phone and the messages on it had been exposed. It was nevertheless possible that those persons still had ICT devices containing relevant data, given the suspicion that judgments had been drafted by persons other than the lawful judge. That would have involved using ICT devices for the exchange of data and messages. A search could therefore have led to those suspicions being confirmed or dispelled and to establishing whether any further persons might be implicated. The interference with the applicant's privacy was therefore justified. It would not have been feasible to achieve that aim by less intrusive means. Even though a relatively long time had passed since the other suspects' phones had been obtained, reducing the potential for discovering relevant evidence, the need for the search had stemmed from the prosecution's analysis of the situation and fell within the realm of legitimate investigative strategy.

13. The warrant was served on the applicant on 29 January 2020, and it was immediately followed by the search. The search records indicate that the applicant was first asked under Article 104 of the Code of Criminal Procedure ("CCP") to surrender the objects searched for voluntarily, in response to which she stated that there were such objects on the premises. The search was then carried out and led to the seizure of two mobile phones, a laptop computer, three portable data storage devices and a document which was referred to as concerning the promissory-note case ("the seized document"). It was further noted that the applicant had no objections or reservations as to the course of the search or the behaviour of the officers carrying it out.

14. On 5 May 2020 the applicant challenged the search warrant by a complaint to the Constitutional Court, arguing that there had been no sufficient or relevant grounds for issuing the warrant and that it had been disproportionate and arbitrary to issue it. In particular, the warrant used standardised wording and the only specific reason for searching her premises had been that she had attended a hearing in the promissory-note case. She had done so in her own time as a member of the public, which had been perfectly lawful. Moreover, the court had refrained from ordering less intrusive measures, in particular the surrender under Article 89 of the CCP of an object required as evidence in the criminal proceedings, for reasons having to do with others but not with her. As a result of the execution of the warrant, "data with no substantive or personal connection with the proceedings [had] ended up at the disposal of third persons".

15. On 7 July 2020 the Constitutional Court rejected the complaint as manifestly ill-founded, finding the reasoning in the warrant "combined with the actions of which the applicant was accused" to have been adequate. It noted also that even though the SCC had not ordered the applicant to surrender the objects searched for under Article 89 of the CCP, she had been asked to do so by the investigators under Article 104 of the CCP and the search had been carried out only after her failure to respond to that request.

16. On 7 January 2022 the objects that had been seized were returned to the applicant as they had been subjected to any analysis necessary and were no longer needed for the purposes of the proceedings.

III. CHARGES, ARREST, REMAND IN CUSTODY AND RELATED CONSTITUTIONAL COMPLAINT

17. Meanwhile, on 9 March 2020, the applicant, A, C, D and fourteen judges and other persons had been charged with thirty counts of various offences linked to suspicions of corruption, abuse of official power and interfering with the independence of the judiciary in connection with the information contained in the written communication from A's phone. In addition to that written communication, the charges were based mainly on incriminating depositions made by B. The actions of which the applicant was accused consisted specifically of her alleged interference in the promissory-note case as referred to above.

18. On 11 March 2020 the applicant was arrested on the above charges, along with seven others who had also been charged, in an operation code-named "storm" (*búrka*). The Prosecutor General then asked the Constitutional Court to consent to the filing of an application for her remand in custody.

19. On 12 March 2020 the Constitutional Court acceded to the request, observing that the applicant had been charged in accordance with the relevant procedural requirements, the procedure preceding the filing of the request had

been adhered to, and the request for the consent of the Constitutional Court had been lodged within the applicable time-limit. The consent was not the decision to remand the applicant in custody itself, but merely a prerequisite for the examination of the grounds for her detention by the ordinary courts. The purpose of the constitutional proceedings was limited to examining whether the charges against the applicant were not "totally unfounded or extremely arbitrary", in order to protect the judiciary from any abuse of executive or prosecutorial power. No such abuse had been established in the applicant's case.

20. In her remand hearing, the applicant remarked on the level of media coverage of the case, although pre-trial proceedings were not supposed to be public. Because of that coverage, she had in fact known what she was being accused of since October 2019 and accordingly had had ample opportunity to interfere with the course of justice, but she had done nothing of the kind. Her ability to do so had moreover been neutralised in practice by her suspension from judicial office, which excluded her from the workplace.

21. On 13 March 2020 the SCC remanded the applicant, C, D and five others of the accused in detention. It did so in a single decision addressing the situation of all those being remanded. In view of the evidence specified above, there were no doubts that there was sufficient suspicion against them. In so far as she was specifically concerned, the applicant had a close relationship with C and was suspected of having intervened in the promissory-note case at C's request, so increasing the influence brought to bear on D. Moreover, according to the information given by B in his depositions, the applicant had been assigned to the commercial-law bench of her court at the request of A so that she would be able to cover up his unlawful activities. Just as with the other remanded persons, the actions of the applicant in individual cases had to be reviewed and there was the risk that she might attempt to frustrate the investigation. Her detention was accordingly necessary under Article 71 § 1 (b) of the CCP (see paragraph 41 below). The court considered that the purpose of the detention could not be served by alternative means, having regard to the nature of the case and the need to hear a greater number of witnesses who at that stage had not yet been identified.

22. The applicant filed an interlocutory appeal, arguing that she had no criminal record, that the charges against her were unfounded, that there was no basis for any conclusion that she as an individual would interfere with the course of justice, and that the grounds given by the court were general and abstract. She disputed having any close relationship with C and asserted that it was unclear what elements of her judicial activities were to be reviewed. Since the proceedings had commenced in 2019, the authorities had had enough time for any inquiries. Moreover, in his depositions B himself had also admitted that, while she had sat on the commercial-law bench of her court, no cases associated with A had been assigned to her. Irrespective of that, his statements were to be taken with caution because he had an obvious

motivation for saying anything he was asked to say in order to avoid being prosecuted for his own criminal activities, the charges relating to which had been temporarily suspended.

23. On 20 March 2020 the Third Appellate Section of the Supreme Court dismissed the applicant's appeal. The decision again addressed the situation of all those remanded in the earlier hearing. In the part of the decision that concerned all the accused, the court held that the level of suspicion against them justified the steps taken in the proceedings. Nevertheless, it noted that since the charges had been brought no relevant new evidence had been obtained, and in the absence of such evidence the validity of the suspicion as the prerequisite for pre-trial detention would gradually diminish.

The court also made findings about C, observing that the findings were relevant for all those on remand, including the applicant. The evidence available suggested that C had been a part of "a well-functioning machine demolishing fundamental principles of the rule of law and destroying confidence in the judiciary and in its fair and equal approach to the parties to disputes". Such conduct had given rise to a concern that, if left at liberty, the applicant would interfere with the course of justice.

As regards the applicant specifically, the court summarised the accusation against her as being that, in return for a bribe provided by A through C as intermediary, she had actively assisted D in delivering a judgment in the promissory-note case that was unlawful in that it was biased. As regards the need for concrete grounds for the concern that she would interfere with the course of justice, which was a statutory requirement for detention under Article 71 § 1 (b) of the CCP, it was observed that the concern could also stem from the person's actions, before or after charges had been brought, "on an objective view covering not only the person of the culprit and all the constitutive elements of the crime [but] also the actions and behaviour of the culprit as a whole".

The court also endorsed the findings of the first-instance court to the effect that it was not possible to replace the detention with an alternative measure and added that the level of risk of collusion exceeded the acceptable limits of the court's trust in those who were on remand.

24. The applicant subsequently turned to the Constitutional Court with an individual complaint, arguing that her detention was arbitrary in that it had been based on grounds identical to the charges against her, combined with an abstract presumption of collusion and a reference to the grounds justifying the detention of a third person, C. In other words, there had been no grounds specific to the applicant herself and no analysis as to the necessity of her detention. Contending that public opinion was not a valid ground for a detention pending trial, she reiterated her previous arguments.

25. On 9 June 2020 the Constitutional Court declared the complaint inadmissible. In so far as the applicant had contended that there was no substantiated suspicion that she had committed any offence and

no substantiated concern that she would interfere with the course of justice, that had been convincingly addressed by the Supreme Court.

IV. REQUEST FOR RELEASE AND RELATED CONSTITUTIONAL COMPLAINT

26. On 13 July 2020 the applicant asked to be released from detention, reiterating her previous arguments and referring to depositions made by Judge D on 27 April 2020. D had explained that the promissory-note case had received extensive media attention and that the applicant had been helping her as a friend to cope with that attention, including by attending the hearing. D admitted having consulted the applicant as a more experienced judge on various legal issues in the cases assigned to her, but insisted that she had drafted the judgment in the promissory-note case by herself and denied that the applicant had been involved in that in any way. The applicant argued that the level of suspicion against her had therefore diminished, that all relevant evidence had already been taken, that all her co-accused had been interviewed, and that there had been nothing to show that there had been any unlawfulness in her assignment to the commercial-law bench of her court.

The applicant also asked for alternatives to detention to be considered. She suggested that the court accept an undertaking from her that, if released, she would live in accordance with the law and respect any conditions set under Article 80 § 1 (b) of the CCP, or that her detention be replaced by the supervision of a probation officer under Article 80 § 1 (c) of the CCP. In a subsequent hearing before the SCC, the applicant also argued that there had been delays in the investigation.

27. The prosecution service opposed the request, saying that the reasons for the applicant's detention had been established at the time of her remand and remained valid, and arguing that further checks on the facts alleged by B were necessary.

28. On 5 August 2020 the SCC decided that the applicant should be released. Relying on a line of reasoning accepted by the Second Chamber of the Supreme Court in the case of two of the applicant's co-accused, it found that all the evidence with which the applicant could potentially tamper had already been taken by the investigators. That included further depositions taken from B on 22 and 25 June 2020. None of that evidence had increased the suspicion against the applicant, either as to the charges against her or as to any risk that she would interfere with the course of justice. B and another of the accused judges had testified that, at the request of C, the applicant had enquired whether they would appear before the Judicial Council to explain themselves. However, there was no indication that that had been aimed at influencing their position. B had likewise acknowledged that the applicant had been assigned to the commercial-law bench of his court at the request of A, but he had also confirmed that no cases concerning A had been assigned

to the applicant. Moreover, it was observed that Judge D was being prosecuted at liberty and that there was no concrete plan for any investigative actions to be taken in relation to the individual case of the applicant. An abstract reference by the prosecution service to a future need to take further evidence was insufficient to justify the continued detention of the applicant.

29. The prosecution appealed, arguing that the risk of influencing witnesses concerned not only any further witnesses that might need to be heard but also those that had already been interviewed but would need to be interviewed again.

30. On 24 August 2020 the Fifth Appellate Section of the Supreme Court quashed the decision of 5 August 2020 and dismissed the applicant's request for release. The decision noted that the President of that Section had obtained *ex proprio motu* the seized document from the applicant's apartment (see paragraph 13 above) and that it in fact constituted a detailed blueprint of the defence of judge D with regard to her involvement in the promissory-note case. The applicant's possession of that document and her contact with B and another judge prior to the hearing by the Judicial Council had been concrete circumstances justifying a concern that the applicant might attempt to interfere with the course of justice.

Nevertheless, the risk of collusion stemmed above all from the character of the prosecuted actions, which amounted to systemic corruption, and from the suspects' personality traits and relationships. It was possible that still more persons with relevant knowledge about the case would need to be heard as witnesses, and the crucial part of evidence-taking and assessment took place at trial and not at the pre-trial stage.

The gravity of the charges was extremely high, in particular since the alleged corruption was suspected of having been organised by C, who was an official of the Ministry of Justice and had herself previously been a judge. Instead of being a symbol of justice, honesty, and lawfulness, she had betrayed her mission. That applied also to the applicant, in that she had too previously been in charge of judicial conduct as a Director General of a Section at the Ministry of Justice. In view of all the circumstances, including the need to reassure the public that the judiciary was able to deal with attempts to trade in influence, it was inappropriate to replace the detention with any alternative measures.

As regards the alleged delays in the investigation, the court noted that it was first of all within the discretion of the investigating authorities to organise an investigation in line with its strategic objectives and that the court was only authorised to interfere with that discretion if inactivity in the investigation reached a certain threshold. The prosecution had barely given any reasoning in its interlocutory appeal against the decision of 5 August 2020 and its overall approach gave rise to doubts as to whether or not it genuinely intended

to pursue the prosecution. Maintaining that course might impact the courts' future decisions as regards the justification of continued detention.

31. The applicant then turned to the Constitutional Court, arguing mainly that the Supreme Court had decided the case on other grounds than those advanced by the prosecution and had thereby breached the principle of equality of arms. Moreover, the Supreme Court had failed to give the applicant an opportunity to comment on those new grounds, in violation of the adversarial principle.

32. On 1 December 2020 the Constitutional Court rejected the complaint as manifestly ill-founded. There was no rule limiting an appellate court's assessment of a detention case to the grounds raised in the interlocutory appeal. Even though the adversarial principle was applicable, its application was not subject to absolute rules and it had to be adapted to the stage of the proceedings. The central consideration was rather that the decision on the interlocutory appeal should only rest on elements which were known to the detainee and on which that detainee had had an opportunity to comment. Both of those conditions had been met in the case at hand.

V. RELEASE AND SUBSEQUENT DEVELOPMENTS

33. The prosecution had meanwhile applied for judicial authorisation of an extension to the applicant's detention beyond the statutory seven-month limit (ending 11 October 2020).

34. The application was dismissed at first instance by the SCC on 21 September 2020 and, on an interlocutory appeal by the prosecution, the applicant was released from detention by a decision of the First Appellate Section of the Supreme Court of 8 October 2020.

35. It was noted that the evidentiary situation had remained essentially the same since the Supreme Court's decision of 24 August 2020 (see paragraph 30 above).

36. The applicant had convincingly explained that the seized document was in fact Judge D's notes for her hearing before the Judicial Council (see paragraph 9 above), which she had accidently left behind and which the applicant had found and taken to give back to her but which she had then forgotten about. She added that even though the prosecuting authorities had known about the seized document and had had it available to them since January 2020, they had paid no attention to it since then.

Similarly, in the light of the applicant's explanations, it was confirmed that in her interactions with the other judges prior to that hearing she had merely shared her position and that of C but had sought in no way to influence theirs.

There were no significant differences between the submissions of the applicant and Judge D which would cause them to try to come to some agreement. They both told the same story, both admitting to having consulted

on general matters and both denying that the applicant had had any improper involvement in the promissory-note case.

37. Even though the suspicion against the applicant as regards the merits of the charges against her persisted, there was nothing to show that she had in fact colluded with anyone.

38. Moreover, the applicant was suspected of having had only the lowest form of involvement in the corruption under investigation and had been charged with a single offence, all the key evidence for which had already been taken. There could therefore no longer be any reason for her to seek to interfere with the course of justice.

39. In addition, it was noted that no further investigative actions were planned in relation to the charges against the applicant and that there was no apparent reason why the investigating authorities had breached the procedural rights of the accused by not allowing them access to B's depositions prior to his being charged.

40. In sum, the reasons for the applicant's detention had ceased to exist.

RELEVANT LEGAL FRAMEWORK

I. CODE OF CRIMINAL PROCEDURE

41. Under Article 71 § 1 (b), a person against whom charges have been brought (*obvinený*) may be remanded in detention pending trial only if there are facts that have previously been established suggesting that the prosecuted action or omission constitutes a criminal offence, that that offence has been committed by that person, and that that person's conduct or other specified circumstances give rise to a justified concern that that person would seek to influence witnesses, experts or the person's co-accused or would otherwise hamper the investigation.

42. Article 72 § 3 provides, *inter alia*, that at the pre-trial stage detention is decided on by a pre-trial judge on an application by the prosecution, that the judge's ruling as to the grounds for detention is not limited by the prosecution's application, and that interlocutory appeals against the judge's decision are to be determined by a higher court.

43. A person who is in possession of an object of importance in criminal proceedings must surrender it on request, which must be accompanied by a warning as to the consequences of a failure to comply, including the possibility that the object will be removed (Article 89 § 1, as in force at the relevant time).

44. A house search is governed by Articles 99 et seq. It may be carried out if, *inter alia*, there is a justifiable suspicion that an object important for the proceedings is to be found there (Article 99 § 1). At the pre-trial stage, the warrant for the search is to be issued by a pre-trial judge, on application by the prosecution (Article 100 § 1). The warrant may be executed only if

a prior request for the voluntary surrender of the object fails (Article 104 § 1).

45. The scope of the appellate review in response to an interlocutory appeal is defined in Article 192 § 1 so that the appellate court should review both the first-instance rulings being challenged and the course of the proceedings leading up to them.

II. RELEVANT INTERNATIONAL MATERIAL

46. The Council of Europe's Criminal Law Convention on Corruption of 27 January 1999 entered into force with respect to Slovakia on 1 July 2022 (Notice of the Ministry of Foreign Affairs no. 375/2002 Coll.) and, in so far as relevant, reads as follows:

> "Preamble
>
> The member States of the Council of Europe and the other States signatory hereto,
>
> ...
>
> Emphasising that corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society;
>
> ...
>
> Article 11 – Bribery of judges and officials of international courts
>
> Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct [of Active bribery of domestic public officials and Passive bribery of domestic public officials] involving any holders of judicial office or officials of any international court whose jurisdiction is accepted by the Party.
>
> ..."

THE LAW

I. JOINDER OF THE APPLICATIONS

47. Application no. 615/21 consisted of complaints under Article 5 of the Convention in respect of the applicant's remand in detention.

48. Application no. 9427/21 comprised a complaint under Article 8 of the Convention in respect of the search of the applicant's home.

49. Application no. 36765/21 contained complaints under Article 5 of the Convention in relation to the proceedings on the applicant's request for release.

50. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 (c) AND 3 OF THE CONVENTION

51. The applicant complained that her detention had been unjustified and arbitrary and had violated her rights under Article 5 §§ 1 (c) and 3 of the Convention, the relevant parts of which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 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

52. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

53. The applicant contended that for her detention to be lawful there needed to be specific facts pertaining to her individually which gave rise to a reasonable suspicion that she had committed an offence and that there was a risk that she would interfere with the course of justice. The decision to remand her in detention and the decision on her interlocutory appeal against detention had been phrased in abstract terms and had identified no such facts. In so far as these decisions had suggested that she had been close to B, that had not been true. Even if it had been, that could not have justified detaining her to prevent their colluding since B herself had been detained. Moreover, by the time she was remanded in detention, all the other suspects who had been arrested had already given evidence, both to the investigators and to the court. As regards D's suggestion that the applicant had been assigned to the commercial-law bench of her court in order to be able to cover up A.'s unlawful activities, the authorities had failed to consider the statement in D's deposition to the effect that no cases having to do with A had been assigned to the applicant. No charges had been brought against the applicant

and no inquiry had been pursued in in that connection. Nevertheless, even if there had been some suspicion of a criminal offence on that account, it would have been a different matter from that in relation which she had been remanded (the promissory-note case).

54. The applicant also contended that she had had no previous criminal record. The search of her home had in essence put her in the same position as if she had been charged with a criminal offence. Following the search and before her arrest, she had had ample opportunity to tamper with evidence, which she had not done. As she had been suspended from office and her mobile phone had been seized, she had been excluded from her workplace and had lost touch with all her telephone contacts. In the applicant's view, her detention had in fact been a response to popular demand, which she did not consider to have been legitimate. No genuine consideration had been given to finding an alternative to detaining her and her detention had been disproportionate.

55. As regards the dismissal of her request for release by the Supreme Court in its decision of 24 August 2020 (see paragraph 30 above), the applicant pointed out that the reasons on which that decision had been based were subsequently dismissed in the decisions leading to her release (see paragraphs 34 et seq. above), once she had had an opportunity to respond to them.

56. The Government referred to the decision to remand the applicant in detention and the decision on her interlocutory appeal against detention, as well as the decision dismissing her request for release and the associated decisions by the Constitutional Court, including its consent to the prosecution's making an application to have the applicant remanded in detention. Taken as a whole, these decisions were consistent, well justified, and free from any arbitrariness.

2. The Court's assessment

(a) General principles

57. The Court reiterates that under the first limb of Article 5 § 1 (c) of the Convention, a person may be detained, in the context of criminal proceedings, only for the purpose of bringing him or her before the competent legal authority on reasonable suspicion of having committed an offence. The "reasonableness" of the suspicion on which an arrest must be based forms an essential part of the safeguard laid down in Article 5 § 1 (c). Having a reasonable suspicion presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as reasonable will, however, depend on all the circumstances (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 314, 22 December 2020, with further references).

58. The Court stresses, in this connection, that in the absence of a reasonable suspicion, the arrest or detention of an individual must never be imposed for the purpose of making him confess or testify against others or to elicit facts or information which may serve to ground a reasonable suspicion against him (see *Cebotari v. Moldova*, no. 35615/06, § 48, 13 November 2007, and *İpek and Others v. Turkey*, nos. 17019/02 and 30070/02, § 29, 3 February 2009).

59. The Court has also held that Article 5 § 1 (c) of the Convention does not presuppose that the investigating authorities have obtained sufficient evidence to bring charges at the time of arrest. The purpose of questioning during detention under Article 5 § 1 (c) is to further the criminal investigation by confirming or dispelling the concrete suspicion grounding the arrest. Thus, facts that raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next stage of the process of criminal investigation (see *Selahattin Demirtaş,* cited above, § 315, with further references).

60. As a rule, problems with the "reasonableness of suspicion" arise at the level of the facts. The question then is whether the arrest and detention were based on sufficient objective elements to justify a "reasonable suspicion" that the facts in issue had actually occurred. In addition to its factual side, the existence of a "reasonable suspicion" within the meaning of Article 5 § 1 (c) requires that the facts relied on can be reasonably considered to fall under one of the sections of the law dealing with criminal behaviour. Thus, there could clearly not be a "reasonable suspicion" if the acts or facts held against a detained person did not constitute a crime at the time when they occurred (ibid., § 317, with further references).

61. The Court reiterates that when assessing the "reasonableness" of a suspicion, it must be able to ascertain whether the essence of the safeguard afforded by Article 5 § 1 (c) has been secured. Consequently, the respondent Government have to furnish at least some facts or information capable of satisfying the Court that the arrested person was reasonably suspected of having committed the alleged offence (ibid., § 319).

62. While reasonable suspicion must exist at the time of the arrest and initial detention, it must also be shown, in cases of prolonged detention, that the suspicion persisted and remained "reasonable" throughout the detention (ibid., § 320).

63. The Court also reiterates that the question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features. Continued detention can be justified in a given case only if there are actual indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among

other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110 et seq, ECHR 2000-XI, and *Idalov v. Russia* [GC], no. 5826/03, § 139, 22 May 2012).

64. According to the Court's settled case-law, the presumption under Article 5 is in favour of release. As established in *Neumeister v. Austria* (27 June 1968, § 4, Series A no. 8), the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until conviction, he must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable (see *Bykov v. Russia* [GC], no. 4378/02, § 61, 10 March 2009, and *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 89, 5 July 2016).

65. The persistence of a reasonable suspicion that the detainee has committed an offence is a *sine qua non* for the validity of his or her continued detention. But when the national judicial authorities first examine, "promptly" after the arrest, whether to place the arrestee in pre-trial detention, that suspicion no longer suffices, and the authorities must also give other relevant and sufficient grounds to justify the detention. Those other grounds may be a risk of flight, a risk of pressure being brought to bear on witnesses or of evidence being tampered with, a risk of collusion, a risk of reoffending, or a risk of public disorder and the related need to protect the detainee (see *Buzadji*, cited above, §§ 87-88 and 101-102, with further references). Those risks must be duly substantiated, and the authorities' reasoning on those points cannot be abstract, general or stereotyped (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 222, 28 November 2017, with further references).

66. The risk of pressure being brought to bear on witnesses cannot be based only on the likelihood of a severe penalty, but must be linked to specific facts (ibid., § 224, with further references).

67. It primarily falls to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. Accordingly, they must, with respect for the principle of the presumption of innocence, examine all the facts militating for or against the existence of the above-mentioned requirement of public interest or justifying a departure from the rule in Article 5, and must set them out in their decisions on applications for release (*Buzadji*, cited above, § 91, and *Idalov*, cited above, § 141).

68. It is essentially on the basis of the reasons set out in the decisions of the national judicial authorities relating to the applicant's pre-trial detention and of the arguments made by the applicant in his requests for release or appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (*Merabishvili*, cited above, § 225, with further references).

69. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 77, 22 October 2018, and *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012).

70. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I). When deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures of ensuring his appearance at trial (see *Idalov*, cited above, § 140). The pre-trial detention must be necessary (see *S., V. and A.,* cited above, § 77).

(b) Application of the general principles to the present case

(i) General considerations

71. Having regard to the close affinity between the relevant principles developed under Article 5 §§ 1 (c) and 3 of the Convention, the Court considers it appropriate, on the facts of the instant case, to examine the present complaint under both provisions simultaneously (see *Krivolapov v. Ukraine*, no. 5406/07, § 99, 2 October 2018, with further references).

72. The applicant in the present case was remanded pending trial on charges related to her involvement in the promissory-note case. She was suspected of having actively assisted D in delivering a judgment in that case unlawfully, in return for a bribe provided by A through the intermediary of C (see paragraph 23 above). That suspicion was based mainly on the written communications found in A's phone and incriminating depositions by B (see paragraphs 17 and 21 above). Its existence and its use as the justification for her detention was acknowledged in all the decisions up until her release (see paragraph 37 above). In these circumstances, the Court is satisfied that throughout its duration the applicant's detention was based on a reasonable suspicion against her.

73. The core of the applicant's complaints about her detention is that no reason for her detention was given that was specific to her and that the justification for it was abstract (see paragraphs 20, 22 and 24 above).

(ii) Remand in detention

74. As regards the applicant's remand in detention, the Court observes that the decision to remand her and the decision on her interlocutory appeal against that decision concerned the applicant together with several other defendants and that the reasons for their detention were intertwined.

75. As regards the applicant herself, when she was remanded in detention, the courts found the risk of collusion to exist in particular on the basis of her relationship with C. The applicant was considered to be part of a suspected

extensive circle of systemic, covert and organised corruption centred around C. Moreover, as it was necessary to hear further witnesses, the courts found that the purpose of the applicant's detention could not have been achieved by less invasive means (see paragraphs 21 and 23 above). Those conclusions were reviewed by the Constitutional Court. In view of the applicant's status as a judge, the decision to prosecute her was also reviewed prior to her detention for signs of manifest arbitrariness (see paragraphs 19 and 25 above).

76. Taking the situation as a whole and considering also the sensitive nature of the charges (see paragraph 46 above), the complexity of the proceedings (see paragraph 17 above) and the applicant's detention being at a very early stage in the investigation, the Court finds the grounds for remanding her in detention to have been "relevant" and "sufficient". Moreover, it is unable to identify any signs of arbitrariness within the meaning of its case-law (see, for example, *Saadi v. the United Kingdom* [GC], no. 13229/03, §§ 68 and 69, ECHR 2008 and, in an Article 5 § 1 (c) context, *Stašaitis v. Lithuania*, no. 47679/99, §§ 67 and 68, 21 March 2002; *Khudoyorov v. Russia*, no. 6847/02, §§ 25, 38, 131 and 157, ECHR 2005-X (extracts); *Nakhmanovich v. Russia*, no. 55669/00, § 70, 2 March 2006; and *Belevitskiy v. Russia*, no. 72967/01, §§ 19 and 91, 1 March 2007).

77. In sum, in so far as substantiated, the Court is unable to find that the applicant's remand in detention was contrary to her rights under Article 5 of the Convention.

(iii) Continued detention

78. However, the situation is different when it comes to the applicant's continued detention. In particular, on 5 August 2020, by which time she had already been detained for four months and twenty-five days, the SCC ordered her release on the grounds that continuing to detain her with a view to preventing her from interfering with the course of justice could no longer be justified (see paragraph 28 above). Following an appeal by the prosecution, that decision was overruled by the Supreme Court on 24 August 2020 and the applicant remained in detention (see paragraph 30 above). Irrespective of the structure and other parts of the latter decision, it appears that the gist of the reasons for keeping the applicant detained, in order to prevent her from interfering with the course of justice, was found to stem "above all from the character of the prosecuted actions ... and from the suspects' personality traits and relationships". In that regard, the Court notes that, in relation to the applicant, these findings lacked further individual substantiation and so did the grounds relied on by the courts in support of the conclusion that it was impossible to replace the applicant's detention with alternative measures (the nature of the case, the need to hear further witnesses who were however not known at the given time, and the limits on the courts' trust that those concerned had sufficiently positive personality traits).

79. In so far as the decision of 24 August 2020 relied in its reasoning on the seized document from the applicant's apartment, it did so without the prosecution's having advanced any such argument and without the applicant's having been given an opportunity to comment on it. In the subsequent course of the proceedings, once she had been allowed an opportunity to explain why the document had been in her possession, it was accepted by the Supreme Court in its decision of 8 October 2020 that the applicant's possession of that document did not in fact demonstrate any collusion. Furthermore, to the extent the decision of 24 August 2020 referred to the applicant's contact with B and another judge prior to the hearing by the Judicial Council as a concrete circumstance justifying a concern that the applicant might attempt to interfere with the course of justice, it was also dismissed in the decision of 8 October 2020 ordering her release, the Supreme Court noting that since the decision of 24 August 2020 the situation had remained essentially the same (see paragraphs 34 et seq. above).

80. In these circumstances, the Court finds questionable whether the reasons for the applicant's continued detention at the given stage of the proceedings were "relevant" and "sufficient". It will now move on to examine whether the national authorities were sufficiently diligent in the conduct of the proceedings.

81. In that regard the courts at all stages of the applicant's detention observed that there had been elements of passivity on the part of the prosecuting authorities. In its decision of 24 August 2020 the Supreme Court questioned whether the prosecution intended to pursue the case at all. The last procedural actions concerning the applicant were taken on 25 June 2020 and no further actions were planned (see paragraphs 23, 28, 30 and 39 above). The relevance of this clear inactivity is not diminished by the fact that the actions of which the applicant was accused were part of a larger suspected criminal scheme since, as pointed out specifically in the decisions concerning her release, the applicant's alleged involvement in that scheme was of the lowest order and she was being prosecuted on one single count (see paragraph 38 above).

82. In view of these considerations, the Court finds that it has not been established that, upon the dismissal of her request for release, the applicant's continued detention was necessary.

(iv) Conclusion

83. There has been no violation of Article 5 §§ 1 (c) and 3 of the Convention as regards the period until the dismissal of the applicant's request for release (decision of 24 August 2020) and a violation of these provisions as regards the period upon the dismissal of that request (decision of 24 August 2020).

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

84. The applicant complained that, in relation to her request for release, she had been denied proceedings for the review of the lawfulness of her detention compatible with the requirements of 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

85. The Court finds this complaint neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

86. The applicant argued that the Fifth Appellate Chamber of the Supreme Court, which had dealt with the prosecution's interlocutory appeal against the decision of the SCC of 5 August 2020 ordering her release, had taken over the prosecution's role in that it had quashed that decision on grounds which were different from those on which the prosecution had brought its appeal. She had also been given no opportunity to comment on those grounds and had learned of them only from the Supreme Court's decision.

87. If the Supreme Court was going to rely on additional grounds, the applicant should have been told what they were. In particular, as regards the seized document, the applicant pointed out that no argument based on them had been raised previously and that, accordingly, she could not have been expected to address them by herself.

88. The Government relied on the Constitutional Court's assessment that it was not contrary to the adversarial principle for a court hearing a detention case to decide on grounds other than those relied on by the prosecution, provided the grounds for the decision were known to the party concerned. The Supreme Court had been bound by Article 192 § 1 of the CCP to review the decision of the SCC and the proceedings leading up to it independently, and not to limit itself to the scope of the prosecution's argument. Moreover, Article 72 § 2 of the CCP provided specifically that a remand court was not limited by the grounds in a prosecution application for a detention order when determining an application for detention.

89. The Court reiterates that the requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances. Although it is not always necessary that an Article 5 § 4 procedure be attended by the same guarantees

as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question (see, among other authorities, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203, ECHR 2009).

90. The opportunity for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Idalov*, cited above, § 161).

91. The proceedings must be adversarial and must always ensure "equality of arms" between the parties (*Mooren v. Germany* [GC], no. 11364/03, § 124, 9 July 2009). While national law may satisfy this requirement in various ways, whatever method is chosen should ensure that the other party will be aware that observations have been filed and that they will have a real opportunity to comment thereon (*Lietzow v. Germany*, no. 24479/94, § 44, ECHR 2001-I).

92. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (*Idalov*, cited above, § 161). Moreover, in remand cases, since the persistence of a reasonable suspicion that the accused person has committed an offence is a *sine qua non* for the lawfulness of the continued detention, the detainee must be given an opportunity effectively to challenge the basis of the allegations against him. This may require the court to hear witnesses whose testimony appears *prima facie* to have a material bearing on the continuing lawfulness of the detention. It may also require that the detainee or his representative be given access to documents in the case file which form the basis of the prosecution case against him (see *A. and Others*, cited above, § 204, with further references).

93. Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order effectively to challenge the lawfulness of his client's detention (*Mooren*, cited above, § 124).

94. Article 5 § 4 does not compel the Contracting Parties to set up more than one level of jurisdiction for the examination of the lawfulness of detention and for hearing applications for release. Nevertheless, a State which offers a second level of jurisdiction must in principle accord to the detainees the same guarantees on appeal as at first instance, including as regards the speediness of the review by the appellate body of a detention order imposed by a lower court. The same applies to constitutional courts which decide on the legality of detention and order the release of the person concerned if the detention is not lawful (see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 254, 4 December 2018, with further references).

95. The Court observes that the specific focus of the complaint is the appellate stage of the proceedings, in relation to the applicant's request for release from detention. In particular, the applicant complained about a breach of the principle of equality of arms in that the Supreme Court had allowed the

prosecution's appeal on grounds that had not been raised by the prosecution and a breach of the adversarial principle in that the applicant had been denied an opportunity to comment on those additional grounds.

96. The proceedings were initiated by the applicant, who was asking to be released from detention. She was represented by a lawyer, and the application was heard and allowed at first instance (see paragraph 28 above). The decision to release the applicant was then challenged by the prosecution, who referred to the grounds on which her initial remand in detention had been based and contended that it was still necessary to investigate the facts alleged by B (see paragraph 29 above). When allowing the prosecution's appeal, in addition to the matters that had been considered before, the Supreme Court also relied on the seized document and the fact that it had been found in the applicant's apartment (see paragraph 30 above).

97. The Court observes that the rules relating to the grounds for detention do not limit a remand court to matters raised in a prosecution application and that that also appears to apply where a court of appeal is hearing a detention matter (see paragraph 42 and 45 above). However, the statutory rules do not provide for any special procedure where a court is deciding on grounds that had not previously been raised, when that decision is not amenable to any appeal.

98. When confronted with the applicant's complaint, the Constitutional Court held that the criterion for deciding it was whether the decision the applicant was challenging had rested on elements which had been known to her and on which she had had an opportunity to comment. It concluded that these conditions had been met in her case (see paragraph 32 above). The Court however finds this conclusion undermined by the following two factors.

99. Firstly, in the contested decision the Supreme Court itself noted the inactivity of the prosecution service and questioned whether it genuinely intended to pursue the case, which might have an impact on future decisions on the continued detention of those accused in the case. It is therefore particularly significant that the Supreme Court interfered with the principle of equality of arms by deciding on the applicant's detention on grounds which had not been raised by the prosecution (see, *mutatis mutandis*, *PSMA, spol. s r.o. v. Slovakia*, no. 42533/11, § 75, 9 June 2015).

100. Secondly, that significance is amplified by the court's reliance on the applicant's possession of the seized document, which had been obtained by the Supreme Court on its own initiative. Although the existence of that document and the applicant's possession of it had been known to the authorities since the search of her apartment on 29 January 2020 (see paragraph 13 above), there is no indication that it had been relied on by the authorities before as a ground for considering that there was a risk of collusion on the part of the applicant. She therefore could not have been expected to address that ground in August 2020 by herself.

101. The Court also finds it indicative that when later in the proceedings the applicant had been given an opportunity to explain why the seized document had been in her possession, that explanation was accepted and, with the state of the evidence essentially the same as at the time of the decision of 24 August 2020, she was released.

102. The issue in question was therefore clearly relevant and the fact that the Supreme Court based its decision on it without the prosecution service having raised it and without giving the applicant an opportunity to comment was incompatible with the requirements for an appropriate procedure for the review of the lawfulness of the applicant's detention under Article 5 § 4 of the Convention.

103. There has accordingly been a violation of Article 5 § 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

104. Lastly, the applicant argued that the search of her home had been incompatible with her rights under Article 8 of the Convention, in that the authorities had chosen the most invasive way of pursuing its aim and in that it had extended to the seizure of information manifestly unrelated to the underlying criminal proceedings.

105. The relevant part of Article 8 of the Convention provides that:

> "1. Everyone has the right to respect for his private ... life, his home ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

106. The Government referred to the scope of the applicant's complaints to the Constitutional Court. She had complained about not having first been invited to surrender the objects searched for under Article 104 of the CCP, but had raised no objections to the type and scope of material seized or to having allegedly been left uncertain as to what she was suspected of or, similarly, what had been searched for. Her constitutional complaint had been directed against the SCC and concerned the search warrant, but she had not made any complaint against the other authorities or about their involvement in the search. Those other complaints therefore could not be raised before the Court under the rule of exhaustion of domestic remedies.

107. The search had been based on Article 99 et seq. of the CCP. Having regard to the content of the warrant, combined with the events preceding it, including the applicant's hearing before the Judicial Council and the Minister's request for the applicant's suspension from office, it must have been perfectly clear to her what the search aimed at. Moreover, prior to the

execution of the warrant, the applicant had in fact been asked to surrender the objects searched for under Article 104 of the CCP.

108. The applicant replied that there had been no reason to complain separately to the Constitutional Court about the execution of the search warrant since the problems in its execution had been inherent in its disproportionately broad scope. In her submission, it was absurd to expect her to understand the aim of the search from its context and there had been no justified suspicion against her that could have provided any valid basis for a search in the first place. The warrant had put no limits on the scope of the search, even though it must or should have been known to the authorities that she was a judge and that she had previously been a practising lawyer, in view of which it was likely that her ICT devices would contain privileged or otherwise protected information. In the absence of limits to the search, it had in fact led to the seizure of such information.

109. The Court observes first of all that there is no dispute that Article 8 of the Convention is engaged and that there was an interference with the applicant's rights as protected under that provision.

110. The Court agrees with the Government that the requirement of the exhaustion of domestic remedies under Article 35 § 1 of the Convention prevents the applicant from complaining before the Court about matters other than those raised in her constitutional complaint.

111. The complaint was about the search warrant, which was based on Articles 99 et seq. of the CCP. There is no dispute that the search warrant served one or more of the interests permitted by paragraph 2 of Article 8 of the Convention and the Court finds that it did so, for the prevention of disorder or crime. What remains is to establish that it was necessary in a democratic society for the purposes of that provision.

112. Before the Constitutional Court the applicant complained that there had not been adequate grounds to issue the search warrant and that it had been disproportionate and arbitrary in that the only concrete reason it contained had been that she had lawfully attended the hearing at which Judge C had decided the promissory-note case. Moreover, the applicant contended that she had not first been invited to surrender the objects searched for under Article 89 of the CCP. The Court notes that the search warrant set out the reasons for finding that there was a justified suspicion that relevant evidence, in particular ICT devices, could be found in the applicant's flat (see paragraph 12 above) and also the findings of the Constitutional Court that the purpose of an invitation to surrender an item voluntarily under Article 89 of the CCP had been served in the applicant's case by the investigators' request for such a surrender under Article 104 of the CCP before the execution of the search warrant (see paragraph 15 above).

113. As regards any privileged material that might have been affected by the search as a result of the breadth of the search warrant, at the domestic level the applicant referred to "data with no substantive or personal

connection with the proceedings" (see paragraph 14 above). However, no existence of any such material has been demonstrated either in the domestic proceedings or in the proceedings before the Court.

114. In sum, to the extent the complaint has been substantiated and domestic remedies have been exhausted, the Court finds that the matters complained of do not disclose any appearance of a violation of the applicant's rights under Article 8 of the Convention.

The remainder of the application must therefore be rejected in accordance with Article 35 §§ 1, 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

115. 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

116. The applicant claimed 20,000 and 5,000 euros (EUR) in respect of non-pecuniary damage on account of, respectively, the conditions of her detention and the media coverage of the search of her home and the seizure there of private and personal information.

117. The Government objected that there was no causal nexus between the claim in respect of the conditions of the applicant's detention and the violation complained of and that the media coverage of the search of the applicant's home and any seizure of private and personal documents were beyond the scope of the case.

118. As the complaint under Article 8 has been rejected, no award will be made in that regard. The applicant's complaint about the conditions of her detention has no causal connection with the violation of her rights under Article 5 found above. Nevertheless, the Court accepts that, as a result of the violations found, the applicant has suffered non-pecuniary damage. Ruling on an equitable basis, it awards the applicant EUR 19,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

119. No claim in respect of costs and expenses having been made, the Court finds no need for any award.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints under Article 5 §§ 1 (c), 3 and 4 admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been no violation of Article 5 §§ 1 (c) and 3 of the Convention, as regards the period until the dismissal of the applicant's request for release (decision of 24 August 2020);

4. *Holds* that there has been a violation of Article 5 §§ 1 (c) and 3 of the Convention, as regards the period upon the dismissal of the applicant's request for release (decision of 24 August 2020);

5. *Holds* that there has been a violation of Article 5 § 4 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 19,500 (nineteen thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Marko Bošnjak President