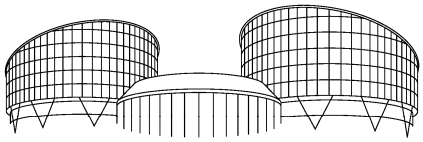

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF STEVAN PETROVIĆ v. SERBIA

(Applications nos. 6097/16 and and 28999/19)

JUDGMENT

Art 3 (procedural and substantive) • Absence of effective investigation concerning the complaint of police abuse not proved "beyond reasonable doubt" Art 5 § 1 • Applicant's deprivation of liberty fully in compliance with domestic law Art 5 § 3 • Abstract and formalistic assessment by the national judicial authorities of the need to continue the applicant's pre-trial detention Art 5 § 4 • Applicant only heard in person on four occasions over approximately three years of his pre-trial detention • No amount of written arguments remedying this deficiency Art 6 § 3 (c) • No demonstration by the applicant of how exactly the absence of legal assistance of his own choosing had affected the overall fairness of the proceedings

STRASBOURG

20 April 2021

FINAL

20/07/2021

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

In the case of Stevan Petrović v. Serbia,

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

Jon Fridrik Kjølbro, *President,*
Aleš Pejchal,
Valeriu Griţco,
Egidijus Kūris,
Branko Lubarda,
Carlo Ranzoni,
Saadet Yüksel, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the applications (nos. 6097/16 and 28999/19) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, Mr Stevan Petrović ("the applicant"), on 26 December 2015 and 16 May 2019, respectively, additional complaints in the context of the former application having also been lodged on 11 March 2016;

the decision to give notice to the Serbian Government ("the Government") of those applications;

the parties' observations;

Having deliberated in private on 23 March 2021,

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

INTRODUCTION

1. The applicant complains of being ill-treated while in police custody, together with another suspect, his inability to appoint a lawyer of his own choosing during this time and the subsequent lack of an effective official investigation into his abuse. The applicant furthermore complains, in a number of ways, in respect of his police detention and his court-ordered detention thereafter. Lastly, the applicant complains about the length and effectiveness of the proceedings before the Constitutional Court.

THE FACTS

2. The applicant was born in 1987. He was represented by Mr V. Juhas Đurić, a lawyer practising in Subotica.

3. The Government were represented by their Agent, Ms Z. Jadrijević Mladar.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE EVENTS OF 20 AND 21 FEBRUARY 2013

5. On 20 February 2013 the investigating judge of the Zrenjanin High Court (*Viši sud u Zrenjaninu*) ordered that the applicant's flat be searched. The order stated that it was probable that the search would result in the uncovering of traces of a robbery or in the seizure of evidence of importance to the criminal investigation.

6. On the same day, at around 12.50 p.m. or 1.00 p.m., the police, having searched his home, took the applicant to the Novi Kneževac police station. According to the Government, the applicant went of his own free will. According to the applicant, however, he did not. In any event, by 1.45 p.m. at the latest, the applicant arrived at the Novi Kneževac police station.

7. In the meantime, at around 1.30 p.m., the applicant's mother had contacted a lawyer, Viktor Juhas Đuric (V.J.Đ.), in order to retain his services as her son's defence counsel. By 2.45 p.m. she signed the authorisation form and V.J.Đ. arrived at the police station.

8. According to V.J.Đ., the police informed him that the applicant was not being held as a suspect, but rather as a witness, and that as such he was in no need of a lawyer. V.J.Đ. nevertheless insisted that he be allowed to talk to the applicant. Some 10 minutes later, V.J.Đ. saw the applicant in a room where there was a police officer present. V.J.Đ. objected to this, but the officers reaffirmed that the applicant was there merely as a witness and showed V.J.Đ. the summons served on the applicant in this regard.

9. According to V.J.Đ., the applicant was served with the said summons at 2.45 p.m. According to the Government, however, the applicant was served therewith immediately after the search of his home.

10. The summons itself was dated 20 February 2013. It invited the applicant, "as a citizen", to come to the Novi Kneževac police station on that date, at 1.00 p.m., and provide information about a robbery. He was also informed that should he fail to appear, he would be brought forcibly. There was no indication in this document as to when the applicant was served therewith.

11. The police thereafter issued a provisional detention order (*rešenje o zadržavanju*) and served it on the applicant at 3.50 p.m. The order stated that, in connection with a robbery, the applicant, who was suspected thereof, could be held for a period of 48 hours, starting at 3.50 p.m., which was "when he had been deprived of his liberty, that is when he had complied with the summons" (*kada je lišen slobode, odnosno kada se odazvao na poziv*). According to the police, there were also indications to the effect that the applicant could tamper with evidence or influence witnesses and/or other participants in the criminal proceedings.

12. According to V.J.Đ., at 3.50 p.m. a police officer informed him that the applicant would, after all, be charged with robbery, but the officer refused to provide him with any information as regards the evidence against

his client. In fact, the officers stated that the applicant would be taken to Zrenjanin, a town some 100 kilometres away, in order to be questioned by the police there and for the purposes of taking part in an identity parade.

13. According to V.J.Đ., this was only a ploy to get the applicant to give a statement in his absence and to confess under duress. According to the Government, however, the applicant's stay in the Novi Kneževac police station was only temporary since the local police had merely acted under the instructions of the Zrenjanin police because of the applicant's place of residence. The idea was always for the latter to question the applicant, since they were the ones in charge of the investigation against him. In any event, there was never an intention to interrogate the applicant in the absence of his lawyer. The applicant was also suspected of committing robberies in various locations, including in the territory of the Zrenjanin Municipality.

14. According to V.J.Đ., he opposed the applicant's transfer to Zrenjanin and requested that the applicant be interviewed by the police at the Novi Kneževac police station, but the officers refused to do so. At around 4.15 p.m. - 4.30 p.m., V.J.Đ. stated that it was too late in the day for him to travel to Zrenjanin. At around 4.40 p.m. he left the police station, having before that advised the applicant to refuse to answer questions in Zrenjanin and remain silent, whatever the charges.

15. According to the applicant, at around 5.30 p.m. - 6.00 p.m. he was taken to the Zrenjanin police station, where he was physically ill-treated in order to elicit his confession. At 9.20 p.m., the applicant's police-appointed lawyer, I.K., arrived. Fearing additional police abuse, the applicant confessed in his presence, as well as in the presence of a deputy public prosecutor, to a number of robberies but did not inform him of the ill-treatment already suffered. According to the Government, no ill-treatment took place.

16. On 21 February 2013 the applicant was again interviewed by the police and, according to him, was again severely beaten by the officers in order to extort his confession as regards various robberies. He therefore had no choice but to confess to some, in the presence of his police-appointed lawyer and on record, but still denied others. According to the Government, no ill-treatment took place on this occasion either.

17. On the same day, V.J.Đ. informed the Zrenjanin High Court, by means of a written submission, of what had transpired in respect of the applicant's arrest, detention and transfer to Zrenjanin. He also stated, *inter alia*, that, being based in Subotica, he could not have travelled to Zrenjanin as it was too far. V.J.Đ. could not therefore attend the applicant's questioning before the investigating judge either, but still wished to defend his client. In conclusion, V.J.Đ. requested that he be informed of all procedural developments so that he could make use of the relevant remedies on the applicant's behalf.

18. On 21 February 2013, while in the Zrenjanin District Prison (*Okružni zatvor u Zrenjaninu*), the applicant was visited by a prison doctor. According to the applicant, he complained about having chest pains and coughing up blood as a consequence of the police ill-treatment. The doctor, for his part, noted that the applicant's lungs required further examination but gave no reasons therefor. There is likewise no indication in the available documents as to at what time exactly this examination took place. According to the Government, all this was merely a routine medical examination prior to the applicant's admission into a detention facility.

II. THE JUDICIAL INVESTIGATION PROCEEDINGS BROUGHT AGAINST THE APPLICANT AND OTHER RELEVANT DEVELOPMENTS

19. On 22 February 2013 the applicant was heard by the investigating judge of the Zrenjanin High Court, on which occasion he renounced the power of attorney given to V.J.Đ. and opted in favour of keeping his legal aid lawyer. The applicant recounted that he had been beaten by the police officers in Zrenjanin, but accepted that he had committed the crime at issue. The applicant also stressed that he had rib and chest pain and was spitting up blood as a consequence of the police abuse. In response to a question put to him by his legal aid lawyer, as to why he would now admit to the commission of the offence yet at the same time maintain that he had been ill-treated by the police when he had confessed to it earlier, the applicant responded by saying that he had had to do so at that time since he had feared additional police abuse. Following a question by the investigating judge, the applicant said that he could nevertheless not say that he had not committed the crime at issue since he had in fact done so. According to the applicant, however, he had never had a confidential conversation with his legal aid lawyer before giving his statement to the investigating judge on 22 February 2013.

20. On the same day the investigating judge of the Zrenjanin High Court opened a formal judicial investigation in respect of the applicant and several other persons for the crime of robbery. As part of this decision, the applicant's detention for a period of up to thirty days, as well as the detention of the other defendants involved, was also extended based on: (a) the existence of a reasonable suspicion that they had taken part in the commission of the crime in question; (b) the "specific circumstances indicating" that if released they could influence witnesses who had not yet been heard; and (c) the "specific circumstances indicating" that if released they could reoffend, since they had already been convicted in the past.

21. On 25 February 2013 the police took the applicant to a medical facility in order for an x-ray and spirometry to be carried out. The doctors concluded that the applicant had been suffering from bronchitis. According

to the applicant, however, the doctors refused to diagnose other police abuse-related injuries in order to protect the officers involved. The Government, for their part, contested this assertion.

22. On 27 February 2013, according to the applicant, he experienced stomach pains as a consequence of the police ill-treatment to which he had been subjected. On the same day he was examined by a doctor, allegedly in the presence of police officers. The doctor apparently found no visible injuries. The doctor's handwritten report which was prepared on this occasion was largely illegible, as was the applicant's prison medical record which was kept thereafter.

23. On 5 March 2013 the applicant asked V.J.Đ. to represent him in the criminal proceedings and the latter accepted to do so. On the same occasion the investigating judge of the Subotica High Court (*Viši sud u Subotici*) informed the applicant that he had been charged with another three robberies to which he had already confessed before the police. The applicant, in response, stated that he had been ill-treated by the police on those occasions and that the confessions in question had thus been extorted. Specifically, on 20 February 2013 he had had a gun pointed at him by the officers and been kicked in the face and beaten across the ribcage. At 10.00 p.m. he had finally been provided with a legal aid lawyer, but before that had been told by the police to confess in his presence. Ultimately, the applicant had done so knowing that the lawyer would leave at some point and that he would then again be left alone with the abusing officers. The next day, on 21 February 2013, the applicant had been beaten once again by the police and his father had witnessed this. As regards the charges themselves, the applicant wished to remain silent.

24. On 22 March 2013 the applicant's mother told the investigating judge of the Subotica High Court that she had been in the police station during her son's interrogation "on 11 or 12 March 2013". Her other son had also been scheduled to be heard by the police on the same date. As regards the applicant, she had heard the applicant's father, who had also been there but in another room, threaten to jump out of a window if his son's abuse did not stop. She had then heard the applicant begging the police officers to stop beating him and that he would confess to whatever offence they wanted. One of the officers had also cursed the applicant's Romani origin. At one point, the door of the interrogation room had opened and the applicant's mother could see the applicant on his knees, with blood around his mouth. The investigating judge noted, on record, that the applicant's mother had been crying while giving her testimony. Based on official records, the applicant's other son, however, had not in fact been heard by the police on 11 or 12 March 2013, as stated by the applicants mother, but on 21 February 2013, that is on the same date as the applicant.

25. On 22 March 2013 the investigating judge of the Subotica High Court also heard the applicant's father. He stated that he too had been in the

police station during his son's interrogation on 21 February 2013 and had witnessed the police abuse in question. Specifically, the applicant's father had been in the corridor next to the interrogation room and had heard the applicant begging the officers not to beat him since, in any event, he had nothing to confess. At one point, however, the door of the interrogation room had been left ajar and the applicant's father had been able to see his son being kicked in his chest and stomach and punched in his face. The applicant had also been pressed by the officers to sign a document but he had continued begging them to stop the abuse. The applicant's father had also personally asked for the violence to cease and had even threatened to jump out of a window if it did not.

26. On 12 April 2013 the investigating judge of the Subotica High Court heard the officers involved in the applicant's interrogation on 21 February 2013. All officers denied that there had been any ill-treatment, while one of them also confirmed that the applicant's parents had in fact been present in the police station. The applicant's father, in particular, had been disrespectful and had caused scenes requiring his removal from the premises. The officer lastly stated that he did not know why the applicant's father had acted in such a way.

III. THE INDICTMENT AND THE PROCEEDINGS THEREAFTER

27. On 12 August 2013 the applicant and another four persons were indicted on four counts of robbery before the Zrenjanin High Court.

28. Between 21 October 2013 and 30 June 2015 this court held or adjourned numerous hearings. There were also, *inter alia*, a number of other notable procedural developments.

29. In particular, the hearing of 21 October 2013 was adjourned because the presiding judge had been elected to another court in the meantime.

30. On 28 October 2013 the applicant requested that he be provided with specified evidence referred to in the indictment.

31. On 22 November 2013 the applicant requested the recusal of the new presiding judge.

32. On 25 November 2013 the applicant proposed that the upcoming hearing be adjourned since he had still not been provided with the evidence requested earlier and could not mount an effective defence. The hearing of 28 November 2013 was therefore adjourned.

33. On 3 December 2013 the President of the Zrenjanin High Court rejected the above-mentioned request that the presiding judge be recused.

34. On 3 February 2014 the applicant's lawyer proposed that the upcoming hearing be adjourned due to weather conditions and because he had still not been provided with the evidence requested earlier.

35. The hearing of 11 February 2014 was adjourned at the initiative of the presiding judge himself since he acknowledged not having adequate

qualifications in the field of youth delinquency, one of the defendants being a minor. The case was then assigned to yet another presiding judge.

36. On 13 February 2014 the applicant's lawyer was provided with part of the evidence requested earlier.

37. On 21 May 2014 a lawyer acting on behalf of one of the other defendants requested the recusal of the presiding judge. The hearing of 21 May 2014 was thus adjourned.

38. On 22 May 2014 the President of the Zrenjanin High Court rejected the said request for recusal.

39. The hearing of 19 June 2014 was adjourned at the initiative of the applicant's lawyer, who maintained that he had not received the summons in good time. Apparently the applicant personally received the summons on 11 June 2014.

40. At the hearing of 7 July 2014 the applicant's lawyer, having been provided with the remaining evidence requested earlier, stated that he needed additional time to prepare the applicant's defence. The hearing was thus adjourned.

41. At the hearing of 8 September 2014 the applicant was heard by the trial chamber.

42. During the proceedings the applicant stood by his earlier allegations of police abuse, as did his mother, the latter repeating that the abuse in question happened "on 12 or 13 March 2013". The applicant's father had apparently passed away in the meantime. The applicant's lawyer noted, on record, that the dates mentioned by the applicant's mother were clearly erroneous. At the same time, the police officers concerned continued denying any wrongdoing.

43. On 30 June 2015 the Zrenjanin High Court found the applicant guilty and sentenced him to 7 years' imprisonment.

44. On 22 December 2015 the Novi Sad Appeals Court (*Apelacioni sud u Novom Sadu*) quashed this judgment and ordered a retrial.

45. The Zrenjanin High Court held or adjourned several hearings thereafter. Notably, as regards the latter, the hearing scheduled for 27 May 2016 was adjourned since the applicant and his co-defendants could not be brought before the court due to logistical reasons, as confirmed by the detaining authorities themselves.

46. At the hearing of 25 April 2016 the applicant was heard again by the trial chamber. He also requested to be released from detention, but the chamber refused this request.

47. On 17 August 2016 the Zrenjanin High Court found the applicant guilty but sentenced him to 5 years' and 6 months' imprisonment.

48. On 22 March 2017 the Novi Sad Appeals Court upheld this conviction but amended the sentence to 7 years' imprisonment.

IV. THE APPLICANT'S DETENTION FOLLOWING THE INVESTIGATING JUDGE'S DECISION OF 22 FEBRUARY 2013

49. Between 18 March 2013 and 30 June 2015, the latter being the date of his initial conviction, the Zrenjanin High Court or the Novi Sad Appeals Court extended the applicant's detention on thirteen separate occasions for periods of thirty days, sixty days, two months or three months. Each time, notwithstanding one remittal, those extensions were ultimately upheld at second instance. The reasoning offered on those occasions was essentially that there was a reasonable suspicion that the applicant had committed a number of violent crimes within a short period of time and that if released he could reoffend since he had already been convicted in the past of a property-related offence.

50. In addition to the above, the Zrenjanin High Court and the Novi Sad Appeals Court stated, on 18 March 2013, 17 May 2013 and 3 July 2013 respectively, that: (a) the investigating judge had not yet heard all of the witnesses and obtained other relevant evidence; (b) an expert's report was still being prepared; and (c) the said report was yet to be obtained.

51. The courts in question did not hear the applicant in person whenever the extension of his pre-trial detention was being considered, at first or second instance.

52. During this time, the applicant lodged three separate requests for the protection of legality (*zahteva za zaštitu zakonitosti*). The requests concerned a number of court decisions extending his detention, but were all rejected as inadmissible by the Supreme Court of Cassation (*Vrhovni kasacioni sud*) on 19 December 2013, 12 June 2014 and 6 August 2014 respectively. It would seem that it took the said court approximately a month to decide on each request, during which time the case file itself was also in its possession.

53. On 30 June 2015, as already noted above, the applicant was found guilty and sentenced by the Zrenjanin High Court to 7 years' imprisonment. His detention was extended until the judgment became final.

54. On 22 December 2015, also as already noted above, the Novi Sad Appeals Court quashed this judgment and ordered a retrial. The applicant's detention was extended, pending a further court decision.

55. On 24 March 2016 and 23 May 2016 the applicant's detention was extended by the Zrenjanin High Court. On both occasions those extensions were upheld at second instance. The reasoning offered was that there were reasonable grounds to suspect that the applicant had committed a number of violent crimes within a short period of time and that if released he could reoffend since he had already been convicted in the past of a property-related offence. In so deciding, the courts involved did not hear the applicant in person.

56. By 22 March 2017, as noted above, the applicant's conviction of 17 August 2016 became final and he was sentenced to 7 years' imprisonment.

V. THE SEPARATE PROCEEDINGS REGARDING THE APPLICANT'S ALLEGATIONS OF POLICE ABUSE

57. On an unspecified date, the applicant's sister reported the incidents of 20 and 21 February 2013 to the Provincial Ombudsman's Office (*Pokrajinski ombudsman*).

58. On 3 June 2013 this office ("the Ombudsman") interviewed the applicant, who repeated his allegations of police abuse.

59. On 14 June 2013 the Ombudsman informed the Zrenjanin High Court, the Ministry of Internal Affairs (*Ministarstvo unutrašnjih poslova*) – the Police Internal Control Sector (*Sektor unutrašnje kontrole policije*), and the Zrenjanin High Public Prosecutor's Office (*Više javno tužilaštvo u Zrenjaninu*) of the applicant's serious allegations of police ill-treatment.

60. On 8 July 2013 the Zrenjanin High Public Prosecutor's Office informed the Zrenjanin First Instance Public Prosecutor's Office (*Osnovno javno tužilaštvo u Zrenjaninu*) of the allegations in question.

61. On 11 July 2013 the latter prosecutor's office requested from the Zrenjanin District Prison information as regards the applicant's medical examinations, if any, and asked the Police Internal Control Sector to carry out an investigation into the applicant's claims of police abuse.

62. On 12 July 2013 the District Prison provided the Zrenjanin First Instance Public Prosecutor's Office with copies of the applicant's relevant medical documentation and a copy of an official note prepared by a medical assistant on the same date. The note stated that the applicant had been first examined by a doctor on 21 February 2013. The doctor had found no visible injuries on the applicant's body. The applicant had also complained that he had had breathing difficulties and had thus been sent to a specialist who confirmed that he was suffering from bronchitis and prescribed him antibiotics.

63. The Police Internal Control Sector thereafter interviewed the applicant, who repeated his allegations of police abuse. On 11 and 15 July 2013 they also questioned the officers involved, but they all denied any wrongdoing.

64. On 31 July 2013 the Police Internal Control Sector informed the Ombudsman of their activities and submitted a report to the Zrenjanin First Instance Public Prosecutor's Office in this regard. That report was also forwarded to the Minister of Internal Affairs.

65. On 15 August 2013 the Zrenjanin First Instance Public Prosecutor's Office proposed to the investigating judge of the Zrenjanin Court of First

Instance (*Osnovni sud u Zrenjaninu*) to hear the applicant personally, with respect to his allegations of police abuse, but this hearing never took place.

66. On 16 August 2013 the Zrenjanin First Instance Public Prosecutor's Office ordered the Police Internal Control Sector to interview the applicant's family members who may have been present in the police station at the relevant time.

67. On 22 August 2013 the Police Internal Control Sector heard the applicant's mother. She essentially repeated her earlier statement given to the investigating judge and noted that the applicant's father had passed away in the meantime. The applicant's mother also recalled that the applicant's police abuse had "occurred in late February 2013".

68. On 11 September 2013 the Ombudsman addressed the Novi Sad Appellate Public Prosecutor's Office (*Apelaciono javno tužilaštvo u Novom Sadu*). It recalled, *inter alia*, what had taken place in the course of the investigation regarding the applicant's allegations of police abuse and requested that formal criminal proceedings be instituted against the officers concerned. According to the Ombudsman, the applicant maintained that he could also identify the alleged perpetrators. The Ombudsman lastly noted that the applicant was of Romani origin and had attended only seven years of school, in a "special class".

69. In October 2013 the Novi Sad Appellate Public Prosecutor's Office informed the Ombudsman that the Zrenjanin High Public Prosecutor's Office and the Zrenjanin First Instance Public Prosecutor's Office were of the opinion that the applicant's allegations of police abuse remained unsubstantiated. Additional evidence, however, would be obtained.

70. On 4 May 2014 the Zrenjanin First Instance Public Prosecutor's Office asked the investigating judge of the Zrenjanin Court of First Instance to order a forensic medical examination of the injuries allegedly sustained by the applicant.

71. On 9 May 2014 the investigating judge so ordered.

72. On 27 May 2014 the forensic expert submitted his findings. He took into account the applicant's statements, as well as the existing medical documentation, and concluded that although the applicant had alleged that he had been extensively beaten all over his body there was no medical documentation that would corroborate those assertions. The alleged abuse, if true, would have caused many visible and severe injuries.

73. On 24 June 2014 the Zrenjanin First Instance Public Prosecutor's Office rejected the criminal complaint concerning the applicant's alleged ill-treatment at the hands of the police.

74. The applicant thereafter lodged a formal objection against that decision.

75. On 5 August 2014 the objection was rejected by the Sombor High Public Prosecutor's Office (*Više javno tužilaštvo u Somboru*) which explained that: (a) it took into account the statements given by all those

concerned and the relevant medical evidence; (b) the Police Internal Control Sector's report of 31 July 2013 had also established no wrongdoing on the part of the officers involved; and (c) neither the investigating judge who had heard the applicant personally nor the deputy public prosecutor who had been present on this occasion had reported noticing any injuries. Ultimately, the Sombor High Public Prosecutor's Office held that there was no evidence that a crime prosecuted *ex officio* had been committed.

VI. OTHER RELEVANT FACTS

76. On 14 November 2013 the Police Internal Control Sector refused to provide the applicant with any information as regards the course of the proceedings before it. However, by 21 July 2015 and based on the Freedom of Information Act, the applicant obtained the records of those proceedings, but even then certain parts were blacked out.

77. On 22 March 2013 the applicant lodged an appeal with the Constitutional Court (*Ustavni sud*) regarding his ill-treatment, free choice of counsel and detention, but on 24 September 2015 the said court rejected that appeal as unsubstantiated.

78. On 23 May 2014 and 14 July 2014 the applicant lodged two separate, *inter alia*, detention-related appeals with the Constitutional Court, but on 5 November 2015 it rejected them both as unsubstantiated.

79. On 28 June 2016 the applicant lodged yet another, *inter alia*, detention-related appeal with the Constitutional Court, but on 4 April 2019 the said court rejected that appeal as unsubstantiated. This decision was sent to the applicant on 30 April 2019 and received by him on 6 May 2019.

80. While in the Zrenjanin police station on 20 and 21 February 2013, one of the applicant's co-defendants was allegedly also ill-treated by the police. It would appear that the applicant and this person had not directly witnessed each other's alleged ill-treatment.

81. On 21 February 2013 yet another one of the applicant's co-defendants was in the Zrenjanin police station. It remains unclear, however, whether he personally had witnessed the applicant's alleged abuse by the police.

82. The Government maintained that the applicant had been photographed upon admission to the District Prison and that those photographs showed no traces of ill-treatment. The Government, however, did not provide the Court with the photographs in question.

83. In any event, according to the Government, the applicant was at all times fully informed of his rights by the police and was likewise never ill-treated by them.

RELEVANT LEGAL FRAMEWORK

I. THE 2001 CODE OF CRIMINAL PROCEDURE (*ZAKONIK O KRIVIČNOM POSTUPKU*, PUBLISHED IN THE OFFICIAL GAZETTE OF THE FEDERAL REPUBLIC OF YUGOSLAVIA – OG FRY – NO. 70/01, AMENDMENTS PUBLISHED IN OG FRY NO. 68/02 AND IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA – OG RS – NOS. 58/04, 85/05, 115/05, 49/07, 20/09, 72/09 AND 76/10)

84. Articles 12 and 89 § 8 prohibited, *inter alia*, any and all violence aimed at extorting a confession or a statement from a suspect or a defendant.

85. Article 226 §§ 1, 2, 3 and 8 provided, *inter alia*, that any person could be invited by the police to provide relevant information about a crime which had been committed. However, the summons sent to this person had to indicate the capacity in which he or she was to be heard. Also, this person could only be placed in police custody if he or she had not responded to an earlier summons containing a warning to this effect. In any event, the person concerned could be held by the police for up to a maximum of four hours. Where the police subsequently concluded that person being interviewed was in fact to be deemed a suspect, he or she was to be immediately informed of the relevant charges, the right to a lawyer who would be present during the questioning and the right not to answer any questions in the absence thereof.

86. Articles 5 § 2, 142, 227 and 229, taken together, provided, *inter alia*, that a suspect could be arrested by the police, without an attempt to be summoned first, if: (i) he or she was in hiding or there was a danger of him or her absconding; (ii) there were circumstances indicating that he or she could tamper with evidence or influence witnesses and/or other participants in the criminal proceedings; and (iii) there were grounds to believe that he or she may reoffend. The suspect, however, then had to either be brought before an investigating judge or be formally detained by the police, which detention could not exceed forty-eight hours. In the latter case, the suspect had to be served with the provisional detention order within two hours as of his or her arrest and could lodge an appeal against it with the investigating judge, who would have to decide upon it within another four hours. Should the appeal be rejected and after the forty-eight hours have expired, the suspect would either be released or be brought to the investigating judge for questioning. The said provisional detention order had to contain, *inter alia*, the date and time of the suspect's initial deprivation of liberty or of his or her wilful compliance with the summons, as well as the time when the detention based on the provisional detention order had commenced.

87. Articles 226 § 8, 228 § 1 and 229 § 5, taken together, provided that, *inter alia*, a person arrested by the police would have the right to contact his or her lawyer, directly or through family members.

88. Article 229 § 6 provided, *inter alia*, that a suspect had to have a lawyer once his or her forty-eight hour long provisional detention had been ordered by the police. If he or she was unable to retain counsel personally, the police could provide assistance in this respect. In any event, the suspect's questioning by the police would be postponed until his or her lawyer arrived, the maximum delay for this being a period of eight hours in all. If the presence of a lawyer was not secured during this time, the police had to either release the suspect or bring him or her before an investigating judge.

89. Article 228 § 7 provided, *inter alia*, that the suspect was entitled to request that his medical examination be ordered by the investigating judge. The investigating judge's decision to this effect, as well as the medical doctor's subsequent opinion, were to be included in the case file.

90. Article 75 § 2 provided that, while in detention, such a person would have the right to a confidential consultation with his or her legal counsel before giving his or her first statement. This consultation could further only be overseen by means of visual, not audio, monitoring.

91. Articles 5 § 1, 71, 72, 226 §§ 8 and 9, 227 § 2, 228 § 1 and 229 §§ 6, 7 and 8, read in conjunction, provided, *inter alia*, that a person arrested by the police would have the right to remain silent, as well as the right to be heard in the presence of his or her chosen counsel, or, in the absence thereof and depending on the seriousness of the charges, to be provided with a legal aid lawyer paid for by the State. When the arrested person's questioning was carried out in accordance with the law, a statement given by him or her on this occasion could be used as evidence in the subsequent criminal proceedings.

92. Article 142 § 1 provided that a person could be remanded in custody on reasonable suspicion of having committed a crime if, *inter alia*, the conditions set out in paragraph 86 above, under (i), (ii) and/or (iii) in particular, were fulfilled.

93. According to Articles 143-145, *inter alia*, the investigating judge could order detention for up to one month. Throughout the judicial investigation stage of the proceedings, the defendant was not explicitly entitled to request his release, but the investigating judge could release the defendant with the consent of the public prosecutor. If there was a disagreement between the two, the issue had to be resolved by a three-judge panel of the same court, within 48 hours. The same three-judge panel could also extend the defendant's detention for another two months, following the initial one month ordered by the investigating judge. The defendant and his counsel could lodge an appeal against this decision to a higher court thereafter. As regards crimes punishable by more than five years' imprisonment, the three-judge panel of the immediately higher court could extend the defendant's detention for an additional period of three months. The defendant and his counsel could, again, lodge an appeal against this

decision if they so wished. Following the expiration of these three months, the defendant had to be indicted or released. Domestic law, therefore, provided that pre-indictment detention could not last more than six months in all.

94. Article 262 provided, *inter alia*, that whenever called upon to decide in the course of a judicial investigation the above-mentioned three-judge panel could, but was not obliged to, invite the parties to the proceedings, including the defendant, and the defendant's counsel to personally attend its meetings and orally present their arguments.

95. Article 146 provided, *inter alia*, that, following the indictment of the defendant and until the adoption of the judgement at first instance, all detention-related issues were for the relevant chamber to decide. Apart from that, detention was automatically reviewed every thirty days until the indictment was confirmed and every two months following this confirmation until the adoption of the judgment at first instance.

96. Article 142a provided, *inter alia*, that before ordering his or her detention the investigating judge or the chamber concerned had to hear the defendant personally. The public prosecutor and the defendant's counsel could attend the hearing. The court also had a duty to properly inform them of the time and place of the hearing, but could still conduct it without them if they were properly informed but failed to appear in court. Exceptionally, detention could be ordered without the defendant being heard in person if the summons could not be properly served because of his or her "unavailability", a failure to report a change of address or if there was a "danger in postponing" the adoption of a decision in this regard. With respect to the extension of one's detention or his or her release therefrom, this was, with a single exception related to the judicial investigation stage of the proceedings, to be decided by the relevant chamber.

II. THE 2011 CODE OF CRIMINAL PROCEDURE (*ZAKONIK O KRIVIČNOM POSTUPKU*, PUBLISHED IN OG RS NO. 72/11, AMENDMENTS PUBLISHED IN OG RS NOS. 101/11, 121/12, 32/13, 45/13 AND 55/14)

97. Article 86 § 2 provides that during a hearing a defendant shall be entitled to give his or her views regarding all of the circumstances which are held against him or her and present all of the facts which can be used in his or her defence.

98. Articles 211 § 1, 212 §§ 1-4 and 216 §§ 1 and 3 of this Code, in so far as relevant, essentially correspond to Articles 142 § 1, 142a and 146 of the 2001 Code of Criminal Procedure, as described in paragraphs 86, 92, 95 and 96 above.

99. Article 216 § 2 provides that detention may be ordered, extended or terminated by the court *ex officio*, at the request of the parties to the proceedings or at the request of the defendant's counsel.

100. Articles 216 § 3 and 467 § 2, taken together, provide, *inter alia*, that when deciding on appeals lodged against detention-related decisions, rendered at first instance and as part of the post-indictment automatic detention review procedure, a second instance court is not obliged to but may invite the parties to the proceedings, hence including the defendant, to attend its session if it considers that their presence might be useful for the purposes of "clarifying matters".

101. The 2011 Code of Criminal Procedure entered into force on 1 October 2013, thereby repealing the 2001 Code of Criminal Procedure.

THE LAW

I. JOINDER OF THE APPLICATIONS

102. Having regard to the related subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

103. The applicant complained, under Article 3 of the Convention, of having been ill-treated while in police custody on 20 and 21 February 2013 and of the respondent State's subsequent failure to conduct an effective official investigation in that regard. Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

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

B. Merits

1. The parties' submissions

105. The applicant reaffirmed his complaints and maintained that the facts of the case disclosed a violation of Article 3 of the Convention, in terms of its substantive as well as its procedural aspects.

106. The Government averred that there was no evidence that the applicant had in fact been ill-treated by the police. The investigation into his

allegations of police abuse had also been thorough, independent, prompt and well co-ordinated. It could not, however, have resulted in any formal charges being brought against the officers concerned given the absence of any proper substantiation of the allegations in question.

2. The Court's assessment

(a) The procedural aspect

(i) General principles

107. The Court reiterates that where a person raises an arguable claim or makes a credible assertion that he or she has suffered treatment contrary to Article 3 at the hands of State agents, that provision, read in conjunction with the general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see, among many authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII; *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV; *Bouyid v. Belgium* [GC], no. 23380/09, § 124, ECHR 2015; and *Almaši v. Serbia*, no. 21388/15, § 60, 8 October 2019).

108. Whatever the method of investigation, the authorities must act as soon as an official complaint has been lodged. Even when, strictly speaking, no complaint has been made, an investigation must be started if there are sufficiently clear indications that ill-treatment has been used (see, for example, *Stanimirović v. Serbia*, no. 26088/06, § 39, 18 October 2011, and *Almaši*, cited above, § 61).

109. The Court has also held that the investigation should be capable of leading to the identification and – if appropriate – punishment of those responsible (see, for example, *Aghdgomelashvili and Japaridze v. Georgia*, no. 7224/11, § 37, 8 October 2020). If not, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for State agents to abuse the rights of those within their control with virtual impunity (see *Labita*, cited above, § 131). The investigation must also be thorough: the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. Furthermore, the investigation must be prompt and independent. Lastly, it must afford a sufficient element of public scrutiny to secure accountability. While the degree of public scrutiny required may vary, the complainant must be afforded effective access to the investigatory procedure in all cases (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 137, ECHR 2004-IV; *Krsmanović v. Serbia*, no. 19796/14, § 74, 19 December 2017; and *Almaši*, cited above, § 62). More specifically,

in order to ensure sufficiency of public scrutiny, the victim or his or her family must be involved in the procedure to the extent necessary to safeguard their legitimate interests (see, for example, *Yatsenko v. Ukraine*, no. 75345/01, § 43, 16 February 2012; see also, albeit in the context of Article 2 of the Convention, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 179, 14 April 2015; *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 133, *in fine*, 4 May 2001; *Cangöz and Others v. Turkey*, no. 7469/06, § 144, 26 April 2016; and *Karataş and Others v. Turkey*, no. 46820/09, § 86, 12 September 2017). However, the disclosure or publication of police reports and investigative materials may involve sensitive issues with possible prejudicial effects for private individuals or other investigations. It cannot therefore be regarded as an automatic requirement that a victim or his or her next-of-kin be granted access to the investigation as it goes along. The requisite access may be provided for in other stages of the available procedures and the investigating authorities do not have a duty to satisfy every request for a particular investigative measure in the course of an investigation (see, for example and among other authorities, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 347, ECHR 2007-II, and *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 236, 30 March 2016, albeit both in the context of Article 2 of the Convention).

(ii) Application of these principles to the present case

110. The Court considers that the applicant's complaint of police abuse was such as to require an effective official investigation (see paragraphs 19 and 23 above), it being noted that even where there is insufficient evidence to show that an applicant was in fact ill-treated the procedural obligation to investigate may still arise, particularly when, as in the present case, there is a potential for abuse in a detention context (see, *mutatis mutandis*, *Stepuleac v. Moldova*, no. 8207/06, § 64, 6 November 2007).

111. Turning to the investigation itself, the Court observes a somewhat inconsistent approach to the assessment of evidence by the national prosecuting authorities in dealing with the applicant's allegations of police ill-treatment. Notably, the public prosecutor's office partly based its conclusions on the statements given by the police officers involved in the incident and discounted the testimony offered by the applicant's parents and the applicant personally, apparently because they were considered as inherently biased (see paragraph 75 above). At the same time, however, the prosecuting authorities accepted the credibility of the police officers' statements, without giving a convincing explanation and despite the fact that those statements might also have been subjective and aimed at evading the latter's criminal liability (see, *mutatis mutandis*, *Ognyanova and Choban v. Bulgaria*; no. 46317/99, § 99, 23 February 2006, and *Antipenkov v. Russia*, no. 33470/03, § 69, 15 October 2009).

112. The Court notes that on 22 February 2013 the applicant complained about his abuse by the police before the investigating judge, but that the said judge failed to promptly order a medical examination (see paragraph 19 above). The applicant was furthermore allegedly capable of identifying his purported abusers but an identity parade in this connection was never carried out (see paragraph 68 above). Also, neither the doctors who had examined the applicant nor one of the applicant's co-defendants, who had likewise been in the police station on 21 February 2013, were heard in the course of the investigation even though they might have been able to shed some light on the matters being investigated (see paragraphs 18, 21, 22 and 81 above). It is, of course, understood that had those witnesses been heard it would ultimately have been up to the relevant domestic authorities themselves to consider those statements in conjunction with the other available evidence and to assess their probative value.

113. Lastly, on 14 November 2013 the internal police investigation department refused to provide the applicant with any information as regards the course of the proceedings before it. By 21 July 2015 the applicant managed to obtain the records of those proceedings (see paragraph 76 above). All this, in the Court's view and in the specific circumstances, cannot but be deemed as having hindered the applicant's effective access to the investigatory procedure. It is of course understood that the disclosure or publication of police reports or investigative materials may at times involve sensitive issues with possible prejudicial effects on private individuals or other investigations, so that it cannot be regarded as an automatic requirement in all situations (see, albeit in the context of Article 2 of the Convention, *Fountas v. Greece*, no. 50283/13, §§ 71, 94 and 95, 3 October 2019). In the present case, however, there was no indication of any of those issues.

114. In the light of the foregoing, the Court concludes that the respondent State's authorities failed to carry out an effective official investigation into the applicant's allegations of ill-treatment. There has, consequently, been a violation of Article 3 of the Convention under its procedural limb.

(b) The substantive aspect

(i) General principles

115. The Court reiterates that Article 3 of the Convention must be regarded as one of the most fundamental provisions of the Convention and as enshrining core values of the democratic societies making up the Council of Europe (see, for example, *Pretty v. the United Kingdom,* no. 2346/02, § 49, ECHR 2002-III, and *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, § 124, 21 November 2019). In contrast to the other provisions of the Convention, it is cast in absolute terms, without exception or proviso, or the

possibility of derogation under Article 15 of the Convention (see, *inter alia*, *Chahal v. the United Kingdom*, judgment of 15 November 1996, § 79, *Reports* 1996-V, and *Rooman v. Belgium* [GC], no. 18052/11, § 141, 31 January 2019).

116. According to the Court's settled case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 88, ECHR 2010; *Price v. the United Kingdom,* no. 33394/96, § 24, ECHR 2001-VII; *Jalloh v. Germany* [GC], no. 54810/00, § 67, 11 July 2006; and *Z.A. and Others v. Russia* [GC], nos. 61411/15 and 3 others, § 181, 21 November 2019).

117. Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering (see *Labita*, cited above, § 120). It has been considered "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance (see *Hurtado v. Switzerland*, 28 January 1994, opinion of the Commission, § 67, Series A no. 280, and *Wieser v. Austria*, no. 2293/03, § 36, 22 February 2007). Torture, however, involves deliberate inhuman treatment causing very serious and cruel suffering (see, for example, *Aydın v. Turkey*, 25 September 1997, §§ 83-84 and 86, *Reports* 1997-VI, and *Habimi and Others v. Serbia*, no. 19072/08, § 85, 3 June 2014).

118. In the context of detainees, the Court has emphasised that individuals in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see, among other authorities, *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX; *Habimi and Others*, cited above, § 86; and *Jevtović v. Serbia*, no. 29896/14, § 76, 3 December 2019). Any recourse to physical force in respect of a person deprived of his or her liberty which has not been made strictly necessary by his or her own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Bouyid*, cited above, § 100). The Court emphasises that the words "in principle" cannot be taken to mean that there might be situations in which such a finding of a violation is not called for, because the above-mentioned severity threshold has not been attained. Any interference with human dignity strikes at the very essence of the Convention. For that reason any conduct by law-enforcement officers *vis-à-vis* an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against

an individual where it is not made strictly necessary by his or her conduct, whatever the impact on the person in question (ibid., § 101).

119. Allegations of ill-treatment have to be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof of "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events at issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of individuals within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII) while in the absence of such explanation the Court may draw inferences which may be unfavourable for the Government (see, among other authorities, *Bouyid*, cited above, § 83). Whilst it is not, in principle, the Court's task to substitute its own assessment of the facts for that of the domestic courts, the Court is nevertheless not bound by the domestic courts' findings in this regard (see, for example, *Jevtović*, cited above, § 77).

(ii) Application of these principles to the present case

120. The Court notes that the applicant alleged that he had been abused by the police on 20 and 21 February 2013 and that his parents allegedly witnessed his abuse on the latter occasion. The applicant also maintained that this had been done in order to elicit his confession in respect of the crimes with which he had been charged. It must in the Court's view, however, be noted that the applicant only complained of the said ill-treatment on 22 February 2013 before the investigating judge, but did not mention it to his legal aid lawyer on 20 or 21 February 2013 (see paragraphs 15, 16 and 19 above). In fact, the police interview of 20 February 2013 was attended by the deputy public prosecutor personally, who would, at least legally speaking, have been duty-bound to investigate any allegations of police brutality (see paragraph 15 above).

121. Furthermore, in his statement given to the investigating judge on 22 February 2013 the applicant simultaneously yet somewhat confusingly said that he had had to confess to the crimes in question for fear of additional police abuse but that he could not say that he had not committed those crimes since he had in fact done so (see paragraph 19 above). Once, however, the applicant had rehired V.J.Đ. as his lawyer he decided to exercise his right to remain silent as regards the charges, in an attempt to put forth a new defence strategy (see paragraph 23 above). On 22 February 2013 the investigating judge also apparently noticed no visible injuries on the applicant or he would otherwise have been legally required to take

appropriate action (see paragraph 19 above). There is no evidence in the case file that either the investigating judge or the deputy public prosecutor would have had a reason to be negatively predisposed toward the applicant and the Court cannot engage in speculation. Similarly, as regards the applicant's legal aid lawyer, the Court notes that the applicant did not remove him before 5 March 2013, which would indicate the absence of a pressing need on his part to distance himself from a person who might not have had his best interests at heart (see paragraph 23 above).

122. Lastly, as regards medical examinations, the Court notes that on 21 February 2013, while in the Zrenjanin District Prison, the applicant was visited by a prison doctor who, in response to the applicant's complaints, noted that his lungs required further examination (see paragraph 18 above). On 25 February 2013 the police took the applicant to a medical facility in order for an x-ray and spirometry to be carried out. The doctors concluded that the applicant was suffering from bronchitis (see paragraph 21 above). On 27 February 2013 the applicant was again examined by a doctor, who found no visible injuries (see paragraph 22 above). Lastly, on 27 May 2014 a forensic expert submitted his findings. He took into account the applicant's statements, as well as the existing medical documentation, and concluded that although the applicant had alleged that he had been extensively beaten all over his body there was no medical documentation that would corroborate those assertions (see paragraph 72 above). In these circumstances, the Court cannot but conclude that the existing medical evidence does not support the applicant's allegation to the effect that he was ill-treated while in police custody. At the same time, however, the Court notes with some concern the possibility that there may have been a significant deficiency in the way in which some of the medical examinations in question may have been carried out (see paragraph 22 above, as regards the presence of police officers during at least one of the medical examinations which might have effected its findings).

123. In view of the foregoing and applying the standard of proof of "beyond reasonable doubt" (as explained in some detail in paragraph 119 above), the Court cannot find a violation of the substantive aspect of Article 3 of the Convention, the failings in the investigation carried out by the Serbian authorities not being such as to allow the Court to draw any inferences in this regard (see, *mutatis mutandis*, *Habimi and Others,* cited above, § 91).

III. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

124. The applicant complained that he had suffered multiple violations of Article 5 of the Convention, in particular that: (a) his police detention had been partly unlawful; (b) the length of his overall pre-trial detention had been excessive; (c) the reasoning offered by the domestic authorities

therefor had been abstract and repetitive; and (d) the domestic courts had also failed to hear him in person whenever the extension of his pre-trial detention had been considered.

125. The Court, being the master of the characterisation to be given in law to the facts of the cases before it (see, among many other authorities, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), is of the opinion that the complaint described under (a) above falls to be examined under Article 5 § 1 (c) of the Convention, the complaints under (b) and (c) above fall to be examined under Article 5 § 3 of the Convention, and, lastly, that the complaint under (d) above falls to be examined under Article 5 § 4 of the Convention, which provisions read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 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

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

B. Merits

1. As regards the lawfulness of the applicant's detention by the police examined under Article 5 § 1 (c) of the Convention

(a) The parties' submissions

127. The applicant maintained that his police detention between 12.50 p.m. or 1.00 p.m. and 3.50 p.m. on 20 February 2013 and between 9.00 p.m.

on 20 February 2013 and 22 February 2013 had been in breach of the relevant domestic legislation (see paragraphs 85, 86 and 88 above).

128. The Government maintained that the applicant's detention by the police had been fully in accordance with the applicable domestic law, as well as the relevant Convention requirements. Furthermore, on 20 February 2013 the applicant had been properly summoned, immediately following the search of his home, to be heard by the police shortly thereafter. Since the applicant's residence was some 22 kilometres from the Novi Kneževac police station, "he was [then] transported there by the police officers" themselves. The applicant had never opposed this and had also been free to leave the police station at any point before his formal detention, although he had never attempted to do so.

(b) The Court's assessment

(i) General principles

129. The key purpose of Article 5 is to prevent arbitrary or unjustified deprivations of liberty. Where the "lawfulness" of detention is at issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. While it is normally in the first place for the national authorities, notably the courts, to interpret and apply domestic law, it is otherwise in relation to cases where, as under Article 5 § 1, failure to comply with that law entails a breach of the Convention. In such cases the Court can and should exercise a certain power to review whether national law has been observed (see, among other authorities, *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports of Judgments and Decisions* 1996-III; *Douiyeb v. the Netherlands* [GC], no. 31464/96, §§ 44-45, 4 August 1999; and *Šaranović v. Montenegro*, no. 31775/16, § 68, 5 March 2019).

130. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among many other authorities, *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33; *Witold Litwa v. Poland*, no. 26629/95, §§ 72-73, ECHR 2000-III; and *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 74, 22 October 2018). Detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see, for example, *Bozano v. France*, 18 December 1986, § 59, Series A no. 111, and *Mooren v. Germany* [GC], no. 11364/03, §§ 77-79, 9 July 2009) or where the domestic authorities neglected to attempt to apply the relevant legislation correctly (see *Benham*, cited above, § 47; *Liu v. Russia*, no. 42086/05, § 82,

6 December 2007; and *Marturana v. Italy*, no. 63154/00, § 80, 4 March 2008).

(ii) Application of these principles to the present case

131. On 20 February 2013, at around 12.50 p.m. or 1.00 p.m., the police, having searched his home, took the applicant to the Novi Kneževac police station. According to the Government, the applicant went there of his own free will. According to the applicant, however, he did not. In any event, by 1.45 p.m. at the latest, the applicant arrived at the police station (see paragraph 6 above).

132. According to V.J.Đ., who arrived in the police station by 2.45 p.m., the police informed him that the applicant was not being held as a suspect, but rather as a witness and that as such he was in no need of a lawyer (see paragraph 8 above).

133. The applicant, again according to V.J.Đ., was served with the summons for his police interview at 2.45 p.m. According to the Government, however, the applicant was served therewith immediately after the search of his home (see paragraph 9 above). The summons itself was dated 20 February 2013. It invited the applicant, "as a citizen", to come to the Novi Kneževac police station on that date, at 1.00 p.m., and provide information about a robbery. He was also informed that should he fail to appear, he would be brought forcibly. There was no indication on this document as to when the applicant was served therewith (see paragraph 10 above).

134. The police thereafter issued a detention order and served it on the applicant at 3.50 p.m. The order stated that the applicant could be held by the police for a period of 48 hours, starting at 3.50 p.m., which was "when he had been deprived of his liberty, that is when he had complied with the summons" (see paragraph 11 above). At 9.20 p.m. the applicant was interviewed by the Zrenjanin police in the presence of his legal aid lawyer (see paragraph 15 above). Two days later, on 22 February 2013, the investigating judge of the Zrenjanin High Court ordered the applicant's detention for a period of up to thirty days (see paragraph 20 above).

135. In view of the above, the Court notes that there is no evidence in the case file, apart from the applicant's own allegations to this effect, that he had indeed been brought forcibly to the police station in Novi Kneževac, following the search of his home on 20 February 2013, or that he had been held there against his will before 3.50 p.m., which was when the police issued their 48-hour provisional detention order. Furthermore, within that time frame, on 22 February 2013, the investigating judge extended the applicant's detention for another thirty days. In those circumstances, the applicant's deprivation of liberty was fully in compliance with the relevant domestic legislation (see paragraphs 85, 86 and 93 above). The applicant was also not questioned by the police before the arrival of his lawyer and

was ultimately interviewed by them in Zrenjanin on 20 February 2013 at 9.20 p.m., in the presence of his legal aid lawyer and less than six hours after being detained on the basis of the said provisional detention order. The requirements of Article 229 § 6 of the Code of Criminal Procedure were therefore likewise complied with in the present case (see paragraphs 87 and 88 above).

136. In view of the foregoing, there has been no violation of Article 5 § 1 of the Convention.

2. As regards the length of the applicant's overall pre-trial detention and the reasoning offered by the domestic authorities therefor examined under Article 5 § 3 of the Convention

(a) The parties' submissions

(i) The applicant

137. The applicant reaffirmed his complaint. He further noted that the domestic authorities had not conducted the proceedings in question with the necessary diligence, which had decisively contributed to the length of his pre-trial detention.

138. According to the applicant, his detention had also been repeatedly extended on the basis of repetitive and abstract reasoning and thus in a "quasi-automatic" manner. The applicant's situation had changed over time, procedurally and otherwise, but this had not been taken into account by the domestic courts.

(ii) The Government

139. The Government maintained that the length of the applicant's pre-trial detention had been reasonable bearing in mind the complexity of the case and the severity of the crimes in question. There had also been five defendants and fifteen victims involved. One of the defendants had been a minor, which meant that the domestic judicial authorities had to comply with very specific procedural requirements. The victims had also been mostly elderly and weak and had lived in various municipalities but still had to travel to court in order to give their statements. Any delays in the proceedings had been caused by the conduct of the defendants' own counsel, except on one occasion when it had been the court's responsibility (see paragraph 35 above). Allegations of police ill-treatment likewise required an investigation, adding to the overall length of the proceedings and hence to the duration of the pre-trial detention in question. The applicant's repeated lodging of requests for the protection of legality had the same effect.

140. Finally, the Government maintained that the reasons offered for the applicant's detention had been relevant and sufficient and that their very nature had been such that their compelling quality had persisted throughout

the proceedings. In any event, while the reasoning was generally similar it was certainly not identical at all times (see paragraph 20 above).

(b) The Court's assessment

(i) General principles

141. As established in *Neumeister v. Austria* (judgment of 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 or her provisional release pending trial. Until conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require the individual's provisional release once continued detention ceases to be reasonable (see also *Lakatoš and Others v. Serbia*, no. 3363/08, § 91, 7 January 2014).

142. This form of detention can only be justified in a given case if there are specific indications of a genuine requirement of public interest which 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).

143. The responsibility falls in the first place on the national judicial authorities to ensure that the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of an important public interest justifying a departure from the rule in Article 5 and must set them out in their decisions on the applications for release (see, for example, *Weinsztal v. Poland*, no. 43748/98, judgment of 30 May 2006, § 50). It is essentially on the basis of the reasons given in these decisions and of the facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see *Labita*, cited above, § 152, and *Lakatoš and Others*, cited above, § 93).

144. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but "promptly after arrest", that is as of the adoption of the first decision ordering detention on remand, it no longer suffices in itself and the Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 102, 5 July 2016). Where such grounds were "relevant" and "sufficient", the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings at issue (see, among other authorities, *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 35, and *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, § 50, Series A no. 319-A).

145. Unlike the first limb of Article 5 § 3, there is no express requirement of "promptness" in its second limb. However, the required scrutiny, whether on application by the applicant or by the judge of his or her own motion, must take place with due expedition, in order to keep any unjustified deprivation of liberty to an acceptable minimum (see, for example, *Lakatoš and Others*, cited above, § 95).

(ii) Application of these principles to the present case

146. The applicant's pre-trial detention began when he was placed in provisional police custody on 20 February 2013 (see paragraph 11 above). He was then detained for the purposes of Article 5 § 3 until his conviction by the Zrenjanin High Court on 30 June 2015 (see paragraph 43 above; see also, for example, *Stanimirović v. Serbia*, no. 26088/06, § 43, 18 October 2011). From that date until 22 December 2015, when the Novi Sad Appeals Court quashed the first-instance decision (see paragraph 44 above), he was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and therefore that period of his detention falls outside the scope of Article 5 § 3 (see *Solmaz v. Turkey*, no. 27561/02, § 34, ECHR 2007-II). From 22 December 2015, however, until his fresh conviction by the Zrenjanin High Court on 17 August 2016 (see paragraph 47 above), the applicant was again in pre-trial detention for the purposes of Article 5 § 3 of the Convention (see *Stanimirović*, cited above, § 43). It follows that the applicant's pre-trial detention, including the period prior to his initial conviction, lasted for approximately three years in all (see, *mutatis mutandis*, *Yaroshovets and Others v. Ukraine*, nos. 74820/10 and 4 others, §§ 115-16, 3 December 2015; also, compare and contrast, for example, *Idalov v. Russia* [GC], no. 5826/03, §§ 129, 130 and 134, 22 May 2012, where the applicant, unlike the applicant in the present case, had been released from his pre-trial detention and then re-arrested).

147. During this time, following the initial police-issued provisional detention order the national judicial authorities extended the applicant's pre-trial detention on fifteen separate occasions for periods of thirty days, sixty days, two months, three months or until a further court decision. Each time, notwithstanding one remittal, those extensions were ultimately upheld at second instance (see paragraphs 49-56 above). On all but four of those occasions the reasoning offered was essentially that there was reasonable suspicion that the applicant had committed a number of violent crimes within a short period of time and that if released he could reoffend since he had already been convicted in the past of a property-related offence (see paragraphs 49 and 55 above). As regards the said four occasions, on 22 February 2013, 18 March 2013, 17 May 2013 and 3 July 2013 respectively, to the above reasoning the Zrenjanin High Court and the Novi Sad Appeals Court added that if released the applicant could influence witnesses who had not yet been heard in the proceedings, that there was

other relevant evidence that was yet to be obtained and that an expert's report was still being prepared (see paragraphs 20 and 50 above).

148. In these circumstances, the Court cannot but conclude that the national judicial authorities assessed the need to continue the applicant's pre-trial detention from a rather abstract and formalistic point of view, taking into consideration, as they did for the overwhelming part, only that if released he could reoffend. While this ground for detention on remand, as such, cannot be deemed as being in breach of Convention requirements, a repeated yet formulaic reference to it alone cannot justify almost three years of pre-trial detention in the present case, particularly since the domestic courts did not offer any assessment as to how the applicant's overall detention-related situation may have changed over time. To hold otherwise would imply a possibility of indefinite pre-trial detention on this basis alone. Concerning the four occasions where there was some mention of other reasons for the applicant's detention (see paragraphs 20 and 50 above), they too were abstract. Specifically, there was no substantiation on the part of the domestic courts, for example, as to why the witnesses in question had not yet been heard or what the indications were that the applicant if released would try to influence them. With respect to the other "relevant evidence" and the "expert's report" in question, the domestic judicial authorities likewise failed to explain what this evidence consisted of and/or what made it relevant, as well as why that evidence and the expert's report itself had not yet been obtained. Both matters were, in any event, something that the domestic authorities themselves had to secure.

149. The Court further considers that the criminal proceedings brought against the applicant were not of unusual complexity given the crimes in question and that, ultimately, the length of proceedings in a criminal case does not necessarily have to correspond to the length of a defendant's pre-trial detention. Also, the applicant cannot be blamed for making use of domestic remedies and especially not for complaining about alleged police abuse. It is up to the respondent State's authorities, after all, to deal with those efficiently. Lastly, the Court notes that even if the applicant's lawyer did arguably cause some delay on two specific occasions, this did not account for more than a month's delay in all (see paragraphs 34 and 39 above) and cannot as such be of any bearing on the Court's conclusions as expressed above.

150. In view of the foregoing, there has been a violation of Article 5 § 3 of the Convention.

3. As regards the domestic courts' alleged failure to hear the applicant in person when considering the extension of his pre-trial detention examined under Article 5 § 4 of the Convention

(a) The parties' submissions

(i) The applicant

151. The applicant reaffirmed his complaint. He further averred that he had been heard in person only once as regards the extension of his pre-trial detention and that this had happened on 22 February 2013 before the investigating judge of the Zrenjanin High Court (see paragraph 19 above). Since then, up until his ultimate conviction in 2016, neither he nor his defence counsel had been heard in person on such occasions or in the related appeals proceedings thereafter. While it was true that the applicant was heard in person on 8 September 2014 and 25 April 2016, that had to do with the presentation of his defence against the charges pressed against him rather than any detention-related issues (see paragraphs 41 and 46 above).

(ii) The Government

152. The Government maintained that there had been no violation of this provision. In particular, on 22 February 2013 and 5 March 2013 the applicant had been heard by the investigating judge in person and the same happened on 8 September 2014 and 25 April 2016 before the Zrenjanin High Court's trial chamber (see paragraphs 19, 23, 41 and 46 above). On all of those occasions the applicant had been able to request the re-examination of his detention, as well as his release, even though some of those hearings may not have been primarily related to his detention (see paragraphs 97 and 99 above). In any event, the Convention did not require that a detainee be heard in person each and every time when the extension of his detention was being considered. In the specific circumstances of the present case, the applicant had thus been heard at reasonable intervals and had also made extensive use of the available appeals procedures wherein he had been able to put forth all of his detention-related arguments. Lastly, the Government maintained that the applicant had never lodged his own separate request aimed at the termination of his detention, that is one apart from the periodic extension procedure, in which connection he could also have asked to be heard in person (see paragraph 99 above).

(b) The Court's assessment

153. The Court reiterates that Article 5 § 4 entitles an arrested or detained person to institute proceedings bearing on the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty. Although it is not always necessary that the procedure under Article 5 § 4 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 kind of deprivation of liberty in question (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203, ECHR 2009). In the context of the review of a detained person's continued detention pursuant to Article 5 § 4 of the Convention, the proceedings must be adversarial and must ensure "equality of arms" between the parties, namely the prosecutor *vis-à-vis* the detainee (see *Nikolova v. Bulgaria* [GC], no 31195/96, § 58, ECHR 1999-II, and *Çatal v. Turkey*, no. 26808/08, § 32, 17 April 2012).

154. The first fundamental guarantee which flows naturally from Article 5 § 4 of the Convention is the right to an effective hearing by a judge in the review of the lawfulness of a detention. On the other hand, this provision equally guarantees an expeditious determination by the authorities of the necessity of a person's continued detention. Taking into account these two principles, the Court has held that Article 5 § 4 of the Convention does not require that a detained person be heard every time he or she lodges an appeal against a decision extending his or her detention but that it should be possible to exercise the right to be heard at reasonable intervals (see *Knebl v. the Czech Republic*, no. 20157/05, § 85, 28 October 2010, and *Çatal*, cited above, § 33). Thus, the Court has already accepted that, in certain circumstances, for example when the person concerned has been able to appear before the court ruling on his or her application for release at first instance, compliance with the procedural requirements inherent in Article 5 § 4 did not require that he or she appear again before the appeals court (see *Altınok v. Turkey*, no. 31610/08, §§ 46 and 47, 29 November 2011, with further references; see conversely, for example and *mutatis mutandis*, *Khodorkovskiy v. Russia*, no. 5829/04, § 235, 31 May 2011). Also, where the detained person had been able to appear at first instance before the judge ruled on his detention, the failure to appear on appeal did not in itself infringe Article 5 § 4 of the Convention. Nevertheless, there may be situations where the court deciding on an appeal will be required to hold a hearing with the personal appearance of the detainee; this may depend on the nature of the issues to be decided, the importance of the decision for the detainee, whether the detainee appeared in person when the contested decision was made or whether his or her appearance is necessary to ensure respect for the right to an adversarial procedure (see *Venet v. Belgium*, no. 27703/16, § 35, 22 October 2019).

155. Turning to the present case the Court notes that, following the investigating judge's detention order of 22 February 2013, when the applicant was indeed heard in person (see paragraphs 19 and 20 above), the national judicial authorities extended the applicant's pre-trial detention on fifteen separate occasions for periods of thirty days, sixty days, two months, three months or until a further court decision. Each time those extensions were upheld at second instance. Furthermore, the courts in question, at first

or second instance, did not hear the applicant personally on any of those occasions (see paragraphs 49, 51 and 55 above). Even accepting that the applicant could have requested his release from detention when heard on 5 March 2013, 8 September 2014 and 25 April 2016, as argued by the Government (see paragraph 152 above), it follows that the applicant was heard in person, in a detention-related or possibly detention-related context, only on four occasions over a period of approximately three years, which is how long his pre-trial detention lasted (see also paragraphs 94, 96, 98 and 100 above in this context). This, in the Court's view, cannot be deemed as having been in compliance with the "reasonable interval" requirement referred to in its own case law (see paragraph 154 above) and, moreover, no amount of written arguments, as part of the appeals proceedings or otherwise, could remedy this deficiency.

156. Article 5 § 4 applies to proceedings before a court following the lodging of an appeal against the lawfulness of the detention, that is to say in respect of the proceedings concerning requests for release as well as proceedings relating to appeals against decisions on the extension of one's detention. It follows that Article 5 § 4 does not apply when a decision on the extension of detention is adopted *ex proprio motu* – which aims to set a maximum period of detention and to "renew" the legal basis for this measure within the meaning of Article 5 § 1 (c) of the Convention, and not to review the legality of the detention – but only from the moment an appeal is lodged against such a decision (see, for example, *Altınok*, cited above, § 39, with further references).

157. In view of the above, there has been a violation of Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 3 (C) OF THE CONVENTION

158. The applicant complained, under Article 6 § 3 (c) of the Convention, that while in police custody he had not been able to appoint a lawyer of his own choosing. The provision in question reads as follows:

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

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

B. Merits

1. The parties' submissions

(a) The applicant

160. The applicant reaffirmed his complaint. He further maintained that several police officers from the Zrenjanin police department had been present in the Novi Kneževac police station on 20 February 2013 at the same time when he and V.J.Đ had also been there. The applicant should therefore have been questioned by them at that time, there being no need to take him to Zrenjanin. Instead, the police clearly wanted to interrogate the applicant in the absence of V.J.Đ and provide him with a legal aid lawyer who would not be genuinely interested in protecting his interests.

161. Furthermore, V.J.Đ. could not attend the hearing before the investigating judge in Zrenjanin on 22 February 2013 since at the same time he already had other hearings to attend before the Subotica Court of First Instance (*Osnovni sud u Subotici*). The hearings had been scheduled earlier and V.J.Đ. could not find a replacement at such short notice. The fact that he had been "defending the applicant" on a "*pro bono*" basis made this only more difficult. In any event, had the applicant been able to heed the advice of V.J.Đ. and remain silent, he would have suffered no harm as a consequence of his chosen lawyer's absence. V.J.Đ. had informed the investigating judge of the entire situation in his written submission of 21 February 2013 (see paragraph 17 above).

162. Lastly, when properly given the freedom to choose, the applicant had chosen V.J.Đ over his legal aid lawyer (see paragraph 23 above). The applicant, however, had never lodged a formal objection against the latter because he did not know exactly what his legal aid lawyer's professional obligations were.

(b) The Government

163. The Government maintained that the applicant had freely exercised his right to appoint a lawyer of his own choosing in the course of the proceedings. If fact, it was V.J.Đ.'s own unprofessional conduct, that is his unwillingness to travel to Zrenjanin, that led to the applicant's decision, at one point, to opt in favour of being represented by the legal aid lawyer against whom, incidentally, he had never lodged any objections (see paragraph 19 above).

164. The Government further stated that V.J.Đ. had not only been absent from one hearing but had in fact been absent from the police hearings held on 20 and 21 February 2013, as well as the subsequent hearing of 22 February 2013 before the investigating judge (see paragraphs 15, 16 and 19 above).

165. It should, in conclusion, also be noted that it was the Zrenjanin police who were in charge of the applicant's case and that it was hence natural that the applicant would be questioned by them in Zrenjanin rather than at the Novi Kneževac police station. The applicant's interrogation in Zrenjanin had also made it possible for the deputy public prosecutor to be present and, ultimately, it was the Zrenjanin High Court which had been in charge of the criminal proceedings brought against the applicant.

2. The Court's assessment

(a) General principles

166. The Court reiterates that, even if the primary purpose of Article 6 of the Convention, as far as criminal proceedings are concerned, is to ensure a fair trial by a "tribunal" competent to determine "any criminal charge", it does not follow that the Article has no application to pre-trial proceedings. Thus, Article 6 – especially paragraph 3 thereof – may be relevant before a case is sent for trial if and in so far as the fairness of the trial is liable to be seriously prejudiced by an initial failure to comply with its provisions (see *Imbrioscia v. Switzerland*, 24 November 1993, §§ 36-37, Series A no. 275; *Salduz v. Turkey* [GC], no. 36391/02, § 50, ECHR 2008; *Dvorski v. Croatia* [GC], no. 25703/11, § 76, ECHR 2015; and *Beuze v. Belgium* [GC], no. 71409/10, § 121, 9 November 2018).

167. In order to exercise his right of defence, the accused should normally be allowed to have the effective benefit of the assistance of a lawyer from the initial stages of the proceedings because national laws may attach consequences to the attitude of an accused at the initial stages of police questioning that are decisive for the prospects of the defence in any subsequent criminal proceedings (see *Salduz*, cited above, § 52). The Court has also recognised that an accused often finds himself in a particularly vulnerable position at that stage of the proceedings, and in most cases this can only be properly compensated for by the assistance of a lawyer, whose task is, among other things, to help to ensure that the right of an accused not to incriminate himself is respected (ibid., § 54; see also *Pavlenko v. Russia*, no. 42371/02, § 101, 1 April 2010, and *Dvorski*, cited above, § 77). Of course, it is also important that from the initial stages of proceedings a person charged with a criminal offence who does not wish to defend himself in person must be able to have recourse to legal assistance of his own choosing (see *Dvorski*, cited above, § 78).

168. However, notwithstanding the importance of the relationship of confidence between a lawyer and his client, this right is not absolute. It is necessarily subject to certain limitations where free legal aid is concerned and also where it is for the courts to decide whether the interests of justice require that the accused be defended by counsel appointed by them (see *Croissant v. Germany*, 25 September 1992, § 29, Series A no. 237-B). The Court has consistently held that the national authorities must have regard to the defendant's wishes as to his or her choice of legal representation, but may override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice. Where such grounds are lacking, a restriction on the free choice of defence counsel would entail a violation of Article 6 § 1 together with paragraph 3 (c) if it adversely affected the applicant's defence, regard being had to the proceedings as a whole (see *Dvorski*, cited above, § 79, with further references therein).

(b) Application of these principles to the present case

169. Unlike in *Salduz*, where the accused, who was being held in custody, had been denied access to a lawyer during police questioning, the present case concerns a situation where the applicant was afforded access to a lawyer from the time when he was first questioned, but not (according to his complaint) a lawyer of his own choosing – just like in the case of *Dvorski*. In contrast to the cases involving denial of access, the more lenient requirement of "relevant and sufficient" reasons has been applied in situations raising the less serious issue of "denial of choice". In such cases the Court's task is to assess whether, in the light of the proceedings as a whole, the rights of the defence have been "adversely affected" to such an extent as to undermine their overall fairness (see *Dvorski*, cited above, § 81, with further references cited therein).

170. The Court considers, as regards the latter test, that the first step should normally be to assess whether it has been demonstrated in the light of the particular circumstances of each case that a defendant wished to have a lawyer of his or her own and, where that wish was overridden, that there were relevant and sufficient grounds for overriding or obstructing the defendant's wish as to his or her choice of legal representation. Where no such reasons exist, the Court should proceed to evaluate the overall fairness of the criminal proceedings (see, among many other authorities, *Dvorski*, cited above, § 82).

171. Being mindful of the above and even assuming that the applicant's wish to have a lawyer of his own choosing had been overridden by the domestic authorities, as well as that the reasons for this had themselves not been relevant and/or sufficient, the Court notes that the applicant did not elaborate in his complaint as to how exactly had this affected the overall fairness of the proceedings against him (see paragraphs 160-162 above). In

fact, the applicant had lodged his complaint with the Court, under Article 6 § 3 (c) of the Convention, on 11 March 2016 while the criminal trial against him only ended on 22 March 2017 (see paragraph 48 above), meaning that any such assessment prior to the latter date would by the nature of things have been purely speculative. Furthermore, the applicant did not elaborate on any such fairness issues in his later observations submitted to the Court in the course of the proceedings before it.

172. In such circumstances, the Court cannot but conclude that there has been no violation of Article 6 § 1 (c) of the Convention, it further being noted that the Court was also unable to find a violation of the substantive aspect of Article 3 of the Convention as regards the applicant's related allegations involving a forced confession (see paragraphs 120-123 above).

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

173. The applicant lastly complained, under Articles 6 § 1, 5 § 4 and 13 of the Convention, that the duration of the proceedings before the Constitutional Court, described in paragraph 79 above, had been excessive, which in turn had rendered that particular avenue of redress ineffective as regards his pre-trial detention.

174. The Court, being the master of the characterisation to be given in law to the facts of the cases before it (see, among many other authorities, *Radomilja and Others*, cited above, §§ 114 and 126), considers that the applicant's complaint falls to be examined under Article 5 § 4 of the Convention (see, for example, *Žúbor v. Slovakia*, no. 7711/06, §§ 68, 71, 76, 77, 89 and 101, 6 December 2011).

A. The parties' submissions

175. The Government maintained that the proceedings before the Constitutional Court had been completed within a reasonable period of time. They noted that, in any event, the applicant's pre-trial detention had ended less than two months after he had lodged his appeal with the Constitutional Court, rendering the adjudication of his case somewhat less pressing than it otherwise would have been.

176. The applicant reaffirmed his complaint and pointed out that at the time when he had lodged his appeal with the Constitutional Court he had already been in pre-trial detention for a period of approximately forty months. The Constitutional Court should therefore have proceeded with utmost urgency irrespective of the fact that he had been convicted for the second time some two months later.

B. The Court's assessment

177. The Court reiterates that Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. Nevertheless, where domestic law provides for a system of appeal, the appellate body must also comply with the requirements of Article 5 § 4, in particular as concerns the speediness of the review by the appellate body of a detention order imposed by the lower court. However, the standard of "speediness" is less stringent when it comes to proceedings before the court of appeal (see *Starokadomskiy v. Russia*, no. 42239/02, § 80, 31 July 2008, with further references). The above considerations are also relevant, by analogy, in respect of complaints under Article 5 § 4 about constitutional proceedings which are separate from proceedings before ordinary courts under the relevant provisions of the Code of Criminal Procedure (see *Žúbor*, cited above, § 89).

178. Turning to the matter at hand, the Court notes that, as pointed out by the Government, the applicant's pre-trial detention did in fact end less than two months after he had lodged his appeal with the Constitutional Court (see paragraphs 47 and 79 above). In that respect, the Court recalls that the primary purpose of Article 5 § 4 is to ensure to a person deprived of liberty a speedy judicial review of the lawfulness of the detention capable of leading, where appropriate, to his or her release, and that the guarantee of speediness is no longer relevant for that primary purpose after the person's release (*Žúbor*, cited above, § 83). It takes the view that the same principle applies when pre-trial detention ends with the detainee's conviction, which similarly puts to an end the alleged breach of Article 5 § 4 resulting from the purported failure to speedily examine the lawfulness of the pre-trial detention in question, as the review itself can no longer lead to his or her release. In the present case, therefore, the speediness requirement applied only until the date of the applicant's conviction and in the circumstances of the case the Court does not consider that the period of two months during which the matter was pending before the Constitutional Court breached the requirement of a speedy review (compare and contrast to *Žúbor*, cited above, § 90). For this reason, the constitutional appeal avenue cannot either be deemed as having been deprived of its effectiveness as alleged by the applicant in his complaint.

179. In view of the foregoing, the applicant's complaint considered under Article 5 § 4 of the Convention is manifestly ill-founded and must, as such, be rejected in accordance with Article 35 §§ 3 (a) and 4 thereof.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

180. 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

181. The applicant claimed compensation for the non-pecuniary damage suffered as follows: (i) for the substantive violation of Article 3, 10,000 euros (EUR); (ii) for the procedural violation of Article 3, EUR 4,000; (iii) for the violation of Article 5 in connection with his police detention, EUR 1,000; (iv) for the violation of Article 5 in connection with the length of and the reasoning for his overall pre-trial detention, EUR 8,000; and (v) for the violation of Article 6 § 3 (c), EUR 3,000.

182. The Government contested these claims.

183. The Court considers that the applicant has certainly suffered some non-pecuniary damage. Having regard to the nature of the violations found in the present case and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 6,000 in this connection, plus any tax that may be chargeable on that amount.

B. Costs and expenses

184. The applicant also claimed a total of EUR 9,004 for the costs and expenses incurred before the domestic courts and EUR 2,487 for those incurred before the Court. The applicant's lawyer, V.J.Đ., asserted that the applicant was indeed bound to pay him those amounts based on a contractual obligation between them.

185. The Government contested these claims. In particular, they noted that the applicant's counsel had himself declared that he had represented the applicant on a *pro bono* basis which was why the costs and expenses claimed were not real and should not, consequently, be recognised as such. The Government further pointed out that the applicant had not provided the Court with a copy of the alleged contract between him and his lawyer.

186. 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 were also reasonable as to their quantum. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress (see, among other authorities, *Hajnal*, cited above, § 154).

187. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses incurred in the domestic proceedings but considers it reasonable to award the sum of EUR 2,000 for the costs and expenses incurred in the proceedings before it, plus any tax that may be chargeable to the applicant. In particular, as regards the domestic costs and expenses and as pointed out by the Government in their observations, the applicant's counsel had in fact admitted that he had been representing the applicant on a *pro bono* basis (see paragraph 161 above). At the same time and as regards the costs and expenses incurred before the Court, however, it is noted that even in the absence of a written contract between the applicant and his counsel the former remains bound to cover the costs and expenses of his legal representation according to the applicable lawyers' tariffs. There is, lastly, no evidence in the case-file to the effect that the applicant's counsel had also accepted to represent him before this Court on a *pro bono* basis as he had done domestically.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaint concerning the speediness and effectiveness of the proceedings before the Constitutional Court, considered under Article 5 § 4 of the Convention, inadmissible, and the remainder of the applications admissible;

3. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention;

4. *Holds* that there has been no violation of the substantive aspect of Article 3 of the Convention;

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

6. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

7. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

8. *Holds* that there has been no violation of Article 6 § 3 (c) of the Convention;

9. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 20 April 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Jon Fridrik Kjølbro
President