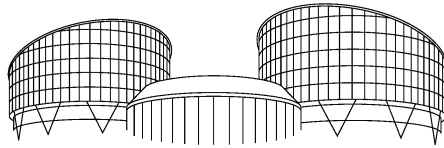

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF RADONJIĆ AND ROMIĆ v. SERBIA

(Application no. 43674/16)

JUDGMENT

Art 34 • Victim • Express acknowledgment by the Constitutional Court of Art 5 § 3 breach for second part of applicants' pre-trial detention not in itself sufficient redress in absence of compensation award • No clear and established avenue in domestic law for claiming adequate compensation
Art 5 § 3 • Reasonableness and length of pre-trial detention • Failure of competent courts, as per Constitutional Court's findings, to give relevant and sufficient reasons justifying second part of pre-trial detention for over two years resulting in overall breach
Art 5 § 4 • Speediness of review • Constitutional Court's review of lawfulness of detention lasting more than two years

STRASBOURG

4 April 2023

FINAL

04/07/2023

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Radonjić and Romić v. Serbia,

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

Gabriele Kucsko-Stadlmayer, *President*,
Tim Eicke,
Faris Vehabović,
Branko Lubarda,
Armen Harutyunyan,
Anja Seibert-Fohr,
Ana Maria Guerra Martins, *judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 43674/16) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Serbian nationals, Mr Milan Radonjić and Mr Ratko Romić ("the applicants"), on 28 June 2016;

the decision to give notice to the Serbian Government ("the Government") of the complaints concerning the length of the applicants' detention and the length of proceedings before the Constitutional Court, by which they sought to challenge the lawfulness of their detention;

the parties' observations;

Having deliberated in private on 14 March 2023,

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

INTRODUCTION

1. In 1999 the applicants were Serbian secret police officers. On 14 January 2014 they were arrested on suspicion of having committed, together with two other individuals, the murder of Mr Slavko Ćuruvija, a Serbian journalist and newspaper publisher, on 11 April 1999. His murder provoked international outrage and wide condemnation. The criminal proceedings against the applicants are still pending. They were detained on remand from 14 January 2014 until 6 July 2017, when they were placed under house arrest. Under Article 5 §§ 3 and 4 of the Convention, the applicants complained about the length of their detention on remand and about the length of the proceedings before the Constitutional Court, by which they had challenged the lawfulness of their deprivation of liberty.

THE FACTS

2. The applicants were born in 1959 and 1963, respectively, and live in Belgrade. They were represented by Ms Z. Dobričanin Nikodinović and Mr R. Kojić, lawyers practising in Belgrade.

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

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

I. THE MURDER OF MR SLAVKO ĆURUVIJA

5. Mr Slavko Ćuruvija, an influential independent newspaper owner, was shot in the back on 11 April 1999 outside his home in the centre of Belgrade. He was well known for his criticism of Slobodan Milošević's policies. Just days before his murder, the State television broadcasted allegations that Mr Ćuruvija supported NATO's attack on the then Federal Republic of Yugoslavia.

6. Mr Slobodan Milošević lost power following presidential elections at the level of the Federal Republic of Yugoslavia in 2000 and died in 2006 in The Hague while on trial before the International Criminal Tribunal for the Former Yugoslavia (ICTY).

7. In January 2013 the Serbian Government established a commission for the investigation of murders of journalists (*Komisija za razmatranje činjenica do kojih se došlo u istragama koje su vođene povodom ubistava novinara u Srbiji*). The commission was headed by Mr Veran Matić, a veteran journalist, and made up of representatives from the journalism community, the Intelligence Agency and the police. In December 2013 a public awareness campaign was launched by the commission in cooperation with the Office of the OSCE Representative on Freedom of the Media. The aim of the campaign (named "Chronicles of Threats") was to show to the public how journalists felt when threatened. For that reason, one of many authentic threats documented against journalists was selected and made public by inserting an anonymous letter of threat into 70,000 copies of the most popular Serbian newspapers. The fake threat quickly spread amongst the population. When the stunt was revealed on news channels, it opened up a large debate. As a result, forgotten cases of murdered journalists, such as Slavko Ćuruvija's case, attracted much public and media attention.

II. THE APPLICANTS' ARREST AND DETENTION ON REMAND

8. On 14 January 2014 the applicants were arrested on suspicion of having committed, together with two other suspects, the murder of Mr Slavko Ćuruvija.

9. On 15 January 2014 a pre-trial judge of the Special Department of the High Court in Belgrade for Organised Crime ("the High Court in Belgrade") heard the applicants and established, relying on intercepted communications, witness statements and other evidence obtained during the investigation, that there was a reasonable suspicion that they had committed, together with two other suspects, the murder of Mr Slavko Ćuruvija. It ordered their detention

pending trial for an initial period of thirty days (starting from the date of their arrest on 14 January 2014) relying on the risk of absconding, the risk of influencing witnesses and the preservation of public order. In that regard, the judge acknowledged the applicants' residence and family ties in Serbia. However, in view of the facts that they were former intelligence officers who had been trained how to operate and to cross borders under a false identity and that one of the suspects was at large, the judge held that the risk of the applicants' absconding was nonetheless high. Since a number of former colleagues of the applicants had to be heard as witnesses, the judge held that the risk of influencing the witnesses was also high. Lastly, since the murder of Mr Slavko Ćuruvija had attracted much public attention, including recently (see paragraph 7 above), the judge considered that the applicants had to be detained also for the preservation of public order. A chamber of the High Court in Belgrade upheld that decision on 21 January 2014.

10. On 12 February 2014 the pre-trial judge of the High Court in Belgrade extended the applicants' detention on the same grounds as those mentioned in paragraph 9 above until 14 March 2014. A chamber of the High Court in Belgrade upheld that decision on 25 February 2014.

11. On 14 March 2014 the pre-trial judge of the High Court in Belgrade extended the applicants' detention on the same grounds as those mentioned in paragraph 9 above until 13 April 2014. A chamber of the High Court in Belgrade upheld that decision on 21 March 2014.

12. On 10 April 2014 a chamber of the Special Department for Organised Crime of the Court of Appeal in Belgrade ("the Court of Appeal in Belgrade") extended the applicants' detention on the same grounds as those mentioned in paragraph 9 above until 13 June 2014. On 29 April 2014 an appeals chamber of the same court found, in view of the applicants' demeanour and family ties in Serbia, that the risk of their absconding was low. At the same time, since three more former colleagues of the applicants had to be heard as witnesses, the chamber held that the risk of influencing the witnesses was still high. Lastly, since the murder of Mr Slavko Ćuruvija still attracted much public attention, the chamber considered that the applicants had to be detained also for the preservation of public order.

13. On 6 June 2014 the public prosecutor for organised crime charged the applicants and two other individuals with aggravated murder.

14. On the same day, the High Court in Belgrade extended the applicants' detention for thirty days. Although the public prosecutor had taken statements from all the witnesses, the court held that the applicants could still hinder the conduct of the proceedings (notably, by colluding with their co-accused who was at large and concealing evidence). Since the murder of Mr Slavko Ćuruvija still attracted much public attention, the court held that the applicants had to be detained also for the preservation of public order. On 19 June 2014 the Court of Appeal in Belgrade, noting that the public prosecutor had taken statements from all the witnesses and charged the

applicants, found that the risk that the applicants, if released, would hinder the conduct of the proceedings was low. However, given that the murder of Mr Slavko Ćuruvija still attracted much public attention, it considered that the applicants had to be detained for the preservation of public order.

15. On 4 July 2014 the High Court in Belgrade extended the applicants' detention for thirty days relying on the protection of public order. On 17 July 2014 the Court of Appeal in Belgrade found that the High Court in Belgrade had failed to establish the persistence of reasons justifying the continued pre-trial detention. It held that the arguments against the applicants' release were general and pointed out that pursuant to the case-law of the European Court of Human Rights the need to continue the deprivation of liberty could not be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Accordingly, it quashed the decision of 4 July 2014 and remitted the case to the High Court in Belgrade for reconsideration.

16. On 18 July 2014 the High Court in Belgrade extended the applicants' detention for thirty days relying again on the preservation of public order. It held that there was a reasonable suspicion that the applicants had participated, together with two other persons, in the assassination of Mr Slavko Ćuruvija, who had been brutally shot in the back, during the day, in the centre of Belgrade because he had become a danger to the survival of the then political regime. According to the High Court, that murder had shocked, and continued to shock, Serbia and diminished its international standing. The fact that the applicants had been, at the time of the murder, high-ranking secret police officers was particularly disturbing for the public. For all those reasons, and the fact that the public often equated release pending trial with acquittal, the court considered that the applicants' release would provoke very strong public reaction in Serbia and abroad, which would prejudice the administration of justice in this very particular case. On 31 July 2014 the Court of Appeal in Belgrade quashed that decision and remitted the case to the High Court in Belgrade for reconsideration because the argument that release pending trial could be equated with acquittal was ambiguous and not in accordance with the applicants' right to the presumption of innocence.

17. On 1 August 2014 the High Court in Belgrade rendered a new order, extending the applicants' detention for thirty days. Pursuant to the directions of the court of appeal, it omitted the impugned argument that the public often associated release pending trial with acquittal, but nonetheless considered that the applicants had to be detained for the preservation of public order relying on the other reasons stated in its decision of 18 July 2014 (see paragraph 16 above). On 12 August 2014 the Court of Appeal in Belgrade upheld that decision.

18. On 29 August, 26 September and 24 October 2014 the High Court in Belgrade extended the applicants' detention, each time for thirty days, relying on the same grounds as in its decision of 1 August 2014 (see paragraph 17

above). On 11 September, 7 October and 6 November 2014, respectively, the Court of Appeal in Belgrade upheld those decisions.

19. On 20 November 2014 the High Court in Belgrade extended one more time the applicants' detention for thirty days, relying on the same grounds as in its decision of 1 August 2014 (see paragraph 17 above). On 4 December 2014 the Court of Appeal in Belgrade quashed the decision of 20 November 2014 and remitted the case to the High Court in Belgrade for reconsideration. It considered that the High Court in Belgrade had failed to duly substantiate that public order remained threatened eleven months after the applicants' arrest.

20. On 9 December 2014 the High Court in Belgrade extended once again the applicants' detention for thirty days relying on the preservation of public order. It held that the fact that former secret police officers had been charged with the murder of Mr Slavko Ćuruvija in 2014 had provoked very strong public reaction in Serbia which justified the applicants' detention. On 19 December 2014 the Court of Appeal in Belgrade quashed the decision of 9 December 2014 and remitted the case to the High Court in Belgrade for reconsideration. It acknowledged that the murder of Mr Slavko Ćuruvija had provoked very strong public reaction in Serbia. However, the political situation in Serbia had changed since 1999. The Court of Appeal in Belgrade emphasised that pursuant to the case-law of the European Court of Human Rights (notably, *Letellier v. France*, 26 June 1991, Series A no. 207, and *Tomasi v. France*, 27 August 1992, Series A no. 241-A), this ground could be regarded as relevant and sufficient only if it was based on facts capable of showing that the accused's release would actually disturb public order.

21. On 23 December 2014 the High Court in Belgrade extended again the applicants' detention for thirty days relying on the protection of public order. It held that the murder of Mr Slavko Ćuruvija was a despicable crime, motivated by the preservation of the then political regime. It had shocked, and continued to shock, Serbia because the victim had been a journalist and the accused had been secret police officers entrusted with the protection of public order. For those reasons, the court considered that the applicants' release would provoke very strong public reaction in Serbia and would prejudice the administration of justice in this very particular case. On 8 January 2015 the Court of Appeal in Belgrade quashed the decision of 23 December 2014 and remitted the case to the High Court in Belgrade for reconsideration. It considered that the High Court in Belgrade had failed to duly substantiate that the applicants' detention continued to be necessary for the preservation of public order.

22. The High Court in Belgrade extended again the applicants' detention, each time for thirty days, on 9 January, 6 February and 6 March 2015. It relied on the same grounds as in its decision of 23 December 2014 (see paragraph 21 above). On 21 January, 24 February and 23 March 2015, respectively, the Court of Appeal in Belgrade upheld those decisions.

23. In the meantime, the High Court in Belgrade confirmed the indictment on 20 February 2015. The indictment entered into force on 23 March 2015. The High Court in Belgrade then held eighty-three hearings and heard more than hundred witnesses.

24. On many occasions between 3 April 2015 and 12 June 2017, the High Court in Belgrade regularly extended the applicants' detention, each time for sixty days, relying on the same grounds as in its decision of 23 December 2014 (see paragraph 21 above). All those decisions were upheld by the Court of Appeal in Belgrade either directly or after a remittal.

25. In addition, on 17 April and 10 September 2015 the applicants lodged applications for their release with the High Court in Belgrade. Their applications were rejected on 21 April and 14 September 2015, respectively.

26. On 6 July 2017 the High Court in Belgrade held that the applicants' detention was no longer necessary and placed them under house arrest. The public prosecutor for organised crime appealed. On 2 August 2017 the Court of Appeal in Belgrade quashed that decision and remitted the case to the High Court in Belgrade for reconsideration. On 4 August 2017 the High Court in Belgrade decided again that the applicants' detention was no longer necessary and that the applicants should remain under house arrest. On 17 August 2017 the Court of Appeal in Belgrade upheld that decision.

III. THE APPLICANTS' APPEALS TO THE CONSTITUTIONAL COURT

27. The applicants lodged an appeal with the Constitutional Court against the decision ordering their detention and against each decision extending their detention (twenty-seven appeals in total). The Constitutional Court rendered a number of decisions. Applying the criteria laid down in the case-law of the Court (notably, *Letellier* and *Tomasi*, cited above), in decision Už-2237/2015 of 22 June 2017 it held that the length of the applicants' detention had been justified in the period from their arrest on 14 January 2014 (see paragraph 8 above) until 3 April 2015 (see paragraph 24 above). As to the subsequent period (from 3 April 2015 until 6 July 2017, when the applicants had been placed under house arrest – see paragraph 26 above), the Constitutional Court held that the competent courts had not given relevant and sufficient reasons to justify the applicants' detention (see, for example, decision Už-3518/2015 adopted on 21 December 2017 and delivered on 10 January 2018; the relevant constitutional appeal was lodged on 28 May 2015). The Constitutional Court dismissed the applicants' claims for non-pecuniary damages, considering that the mere finding of a breach constituted in itself sufficient just satisfaction. In that connection, in one of its decisions it noted that it was not excluded that the applicants would obtain damages under the Code of Criminal Procedure if all the conditions set in the relevant provisions of that Code were met (see paragraphs 39 and 40 below).

IV. THE APPLICANTS’ CONVICTION

28. On 5 April 2019 the applicants and two other persons (R.M. and M.K.) were found guilty of aggravated murder. The first applicant (Mr Milan Radonjić) and R.M. were sentenced to thirty years’ imprisonment, whereas the second applicant (Mr Ratko Romić) and M.K. were sentenced to twenty years’ imprisonment. On 15 July 2020 the Court of Appeal in Belgrade quashed that judgment and remitted the case to the High Court in Belgrade for a retrial. The High Court in Belgrade held twenty-one hearings. It rendered a judgment on 2 December 2021, finding the applicants, R.M. and M.K. guilty of aggravated murder and imposing the same sentences as in its judgment of 5 April 2019. Appeals have been lodged and were, at the date of the latest information available to the Court (30 August 2022), still pending.

29. On the same date, the applicants were still under house arrest. They did not appeal against any of the decisions extending their house arrest.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CIVIL OBLIGATIONS ACT 1978 (*ZAKON O OBLIGACIONIM ODNOSIMA*; OFFICIAL GAZETTE OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA NOS. 29/78, 39/85, 45/89 AND 57/89, OFFICIAL GAZETTE OF THE FEDERAL REPUBLIC OF YUGOSLAVIA NO. 31/93 AND OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA NO. 18/20)

30. The Civil Obligations Act 1978 entered into force on 1 October 1978.

31. In accordance with section 200 of this Act, anyone who has suffered mental distress caused by, *inter alia*, damage to reputation, honour, a breach of liberty or personality rights (*prava ličnosti*) is entitled to fair compensation for non-pecuniary damage. Section 172 of this Act provides that a legal entity, which includes the State, is liable for any tort committed *vis-à-vis* a third party by its organs in the course of, or in connection with, the exercise of their functions (see, for example, Supreme Court judgments Rev. 6203/02 of 10 November 2002 and Rev. 1118/03 of 10 April 2003).

II. CONSTITUTIONAL COURT ACT 2007 (*ZAKON O USTAVNOM SUDU*; OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA NOS. 109/07, 99/11 AND 103/15)

32. The Constitutional Court Act 2007 entered into force on 6 December 2007.

33. Pursuant to section 7 of this Act, decisions of the Constitutional Court are final and binding.

34. Section 89 of this Act provides that when the Constitutional Court finds that an individual act or action has violated human rights and freedoms set forth in the Constitution, it may quash that act, order the cessation of that action, or order the removal of all adverse consequences in any other manner (see, for example, decision Už-8018/2013 of 28 November 2013 in which the Constitutional Court held that the Court of Appeal in Belgrade had not given relevant and sufficient reasons to justify the detention of a person, and ordered that court to reconsider the case). Since 4 January 2012, when the amendments published in the Official Gazette of the Republic of Serbia no. 99/11 entered into force (see section 89 (3) of the Constitutional Court Act 2007), the Constitutional Court may also award compensation for pecuniary and non-pecuniary damage. Until that date, damages could not have been awarded by the Constitutional Court, but an appellant who had obtained a Constitutional Court decision in his or her favour was entitled to lodge a compensation claim with a commission for compensation and, if the commission had not ruled favourably in respect of the claim or had failed to issue any decision within thirty days, the appellant was entitled to lodge a civil claim for damages with the competent court (see former section 90 of the Constitutional Court Act 2007).

III. CODE OF CRIMINAL PROCEDURE 2011 (*ZAKONIK O KRIVIČNOM POSTUPKU*; OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA NOS. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14 AND 35/19)

35. The Code of Criminal Procedure 2011 entered into force on 6 October 2011. Its application was postponed until 15 January 2012 in respect of war crimes and organised crime and until 1 October 2013 in respect of all other criminal offences.

36. Article 188 of the Code provides that the following measures may be applied against the defendant to secure his or her presence and the unhindered conduct of proceedings: summons; bench warrant; order to “stay away” from a person; ban to leave the place of residence; bail; house arrest; and detention. Pursuant to Article 189 of the Code, a stricter measure must not be applied if the same purpose may be achieved with a more lenient one. Furthermore, all the authorities involved in criminal proceedings must act with particular diligence if the defendant is in detention (see Article 210 of the Code).

37. In accordance with Article 211 of the Code, detention may be ordered, if there is a reasonable suspicion that the defendant has committed a criminal offence, on the following grounds: (a) the risk of absconding; (b) the risk that the defendant will conceal evidence, bring pressure on witnesses or otherwise hinder the conduct of proceedings; (c) the risk of reoffending; and/or (d) for the preservation of public order (when the offence with which the defendant is charged is punishable by a term of imprisonment of more than ten years, or a term of imprisonment of more than five years for an offence with elements

of violence, and the way of commission or the gravity of consequences of the offence have disturbed the public to such an extent that this may threaten the unhindered and fair conduct of the proceedings).

38. Pursuant to Article 215 of the Code, "pre-indictment detention", that is judicial detention until the defendant's indictment by the public prosecutor, cannot last more than six months. Following the indictment of the defendant until the adoption of the judgement at first instance, detention is automatically reviewed every thirty days until the indictment is confirmed and subsequently every sixty days (see Article 216 of the Code). The detention order and each decision extending the defendant's detention are subject to appeal; the appeal does not have a suspensive effect (see Articles 214 and 216 of the Code). The defendant is also entitled to submit a request for release at any moment (see Articles 214 § 2 and 216 § 2 of the Code). A decision rejecting such a request is not subject to appeal.

39. Article 584 § 1 of the Code reads as follows:

> "A person shall be deemed to have been wrongfully deprived of liberty in the following cases:
>
> 1. when deprived of liberty and no proceedings were instituted, the proceedings were discontinued, or the proceedings were concluded with a judgment of acquittal;
>
> 2. when he or she served a prison sentence, and following a request for the reopening of proceedings or a request for the protection of legality he or she was sentenced to a term of imprisonment of a shorter duration, or was sentenced to a criminal sanction that did not include a deprivation of liberty, or was declared guilty but relieved from penalty;
>
> 3. when deprived of liberty for a period longer than the duration of the actual criminal sanction eventually imposed;
>
> 4. when deprived of liberty, or the deprivation of liberty lasted longer, due to an error or unlawful conduct of the authority conducting proceedings."

40. Any claim for damages in respect of a wrongful deprivation of liberty must first be submitted to a commission within the Ministry of Justice (see Article 588 of the Code). If the commission does not accept the claim or does not decide within three months, the person may lodge a claim for pecuniary and/or non-pecuniary damages against the State under the Civil Obligations Act 1978 (see Article 589 of the Code). In accordance with Article 591 of the Code, the statute of limitations for claiming damages is three years from the final decision in the criminal case in question.

IV. RELEVANT PRACTICE OF THE CONSTITUTIONAL COURT

41. In accordance with the well-established case-law of the Constitutional Court, as from 4 January 2012 (see paragraph 34 above) no court other than the Constitutional Court has jurisdiction to deal with claims for damages in respect of violations of human rights established by that court (see decisions Už-9428/2017 of 27 September 2017 and Už-6544/2016 of 6 December 2018).

V. RELEVANT DOMESTIC LEGAL LITERATURE

42. In an article entitled "State Liability for Damage relating to Wrongful Conviction and Wrongful Deprivation of Liberty" (*Odgovornost države za štetu zbog neosnovane osude i neosnovanog lišenja slobode*; published in the Bulletin of the Supreme Court of Cassation 3/2012, p. 215), Judge Jasminka Stanojević explained that the expression "deprivation of liberty lasted longer due to an error or unlawful conduct of the authority conducting proceedings", used in Article 584 § 1 (4) of the Code of Criminal Procedure (see paragraph 39 above), applied to situations in which the deprivation of liberty had exceeded the time-limits set in the Code of Criminal Procedure. According to Judge Stanojević, Article 584 § 1 (4) was not intended to be used to obtain damages for a violation of the right to liberty and security, which included the right to trial within a reasonable time or to release pending trial, set forth in the Constitution. The Constitutional Court only had jurisdiction to award damages in such situations, on condition that it had found a breach of that right and that the appellant had claimed damages in his or her constitutional appeal.

THE LAW

I. PRELIMINARY REMARKS

43. The Court notes at the outset that on 6 July 2017 the applicants have been released from prison and placed under house arrest (see paragraph 26 above). While house arrest is considered to amount to deprivation of liberty within the meaning of Article 5 of the Convention (see, for example, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 104, 5 July 2016), the Court will deal with the issue of the applicants' detention on remand only, because the applicants did not raise the issue of their house arrest either before the domestic courts (see paragraph 29 above) or before this Court.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

44. The applicants submitted that the national courts had acted arbitrarily when ordering and extending their detention and in particular that their continued detention had been excessive and had not been based on relevant and sufficient reasons. They relied on Article 5 § 3 of the Convention.

In so far as relevant, Article 5 reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...

> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal, authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> ...”

A. Admissibility

1. *As concerns the period from 14 January 2014 until 3 April 2015*

45. The Government did not raise any admissibility objection with regard to the initial period of the applicants’ detention, which is from 14 January 2014 until 3 April 2015. As this part of the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention, it must be declared admissible.

2. *As concerns the period from 3 April 2015 until 6 July 2017*

(a) Victim status

46. The Government maintained that the applicants could no longer claim to be victims for the purposes of Article 34 of the Convention, given that the Constitutional Court had found a breach of the right guaranteed by Article 5 § 3 of the Convention in respect of the period of their detention from 3 April 2015 until 6 July 2017. While it was true that the Constitutional Court had not awarded any compensation for non-pecuniary damage, the Government asserted that the applicants were entitled to seek damages under the Code of Criminal Procedure. In that regard, they referred to *Klinkel v. Germany* ((dec.), no. 47156/16, § 29, 11 December 2018).

47. The applicants stated that they could still claim to be victims because they had not received any compensation. As regards the avenue to which the Government referred, they maintained that it was available only to those who fell into one of the situations listed in Article 584 § 1 of the Code of Criminal Procedure (notably, those who had been acquitted – see paragraph 39 above), which was not their case.

48. The Court recalls that a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a “victim” for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, among many authorities, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 180, ECHR 2006-V). Moreover, the redress afforded by the national authorities

must be appropriate and sufficient (see *Kudić v. Bosnia and Herzegovina*, no. 28971/05, § 17, 9 December 2008).

49. Turning to the present case, the Court observes that the Constitutional Court indeed expressly acknowledged the alleged breach of the Convention, but it did not award any compensation for non-pecuniary damage (see paragraph 27 above). The Court has previously found a breach of Article 5 § 3 of the Convention due to the length of the applicants' detention on remand in a number of cases against Serbia (see *Vrenčev v. Serbia*, no. 2361/05, 23 September 2008; *Đermanović v. Serbia*, no. 48497/06, 23 February 2010; *Lakatoš and Others v. Serbia*, no. 3363/08, 7 January 2014; *Grujović v. Serbia*, no. 25381/12, 21 July 2015; and *Stevan Petrović v. Serbia*, nos. 6097/16 and 28999/19, 20 April 2021; see also, for illustrative purposes, *Purić and R.B. v. Serbia* [Committee], nos. 27929/10 and 52120/13, 15 October 2019). In those cases, it did not deem the finding of a breach to constitute in itself sufficient just satisfaction but made awards in respect of non-pecuniary damage. The Court sees no reason to hold otherwise in the present case. Accordingly, it considers that the acknowledgement of the alleged breach by the Constitutional Court does not in itself constitute sufficient redress for that violation and does not deprive the applicants of their status as victims for the purposes of Article 34 of the Convention. Compensation in respect of non-pecuniary damage in an adequate amount would be required to that end (see, *mutatis mutandis* and in respect of a complaint under Article 5 § 1 of the Convention, *Klinkel*, cited above, § 28).

50. The Court has also held, in the context of Article 5 of the Convention, that in specific circumstances it can accept that the existence of a clear and established avenue under domestic law, under which an adequate amount of compensation can be claimed, may constitute sufficient redress within the meaning of the Court's case-law on Article 34 of the Convention (see *Klinkel*, cited above, § 29; *Al Husin v. Bosnia and Herzegovina (no. 2)*, no. 10112/16, § 89, 25 June 2019; and *Udaltsov v. Russia,* no. 76695/11, § 157, 6 October 2020; see also, for illustrative purposes, *Husar v. Serbia* (dec.) [Committee], no. 60951/12, §§ 6-9, 26 April 2022).

51. Under Serbian law, as of 4 January 2012 only the Constitutional Court has jurisdiction to deal with claims for damages in respect of violations of human rights established by that court (see paragraphs 34, 41 and 42 above). Indeed, the Government have not submitted any domestic case-law showing that damages had been awarded by another court for a violation of human rights established by the Constitutional Court. It is true that the Constitutional Court noted in one of its decisions rendered in the present case that it was not excluded that the applicants would obtain damages under the Code of Criminal Procedure if all the statutory conditions were met (see paragraph 27 above). However, the applicants rightly stated that those conditions had simply not been met in their case, as they had been convicted, and not acquitted, at the outset of the criminal proceedings against them (see

paragraph 47 above). Therefore, unlike in *Klinkel*, the Court finds that there is no clear and established avenue under domestic law under which an adequate amount of compensation can be claimed in the circumstances of the present case (that is, when the Constitutional Court finds a breach of the right guaranteed by Article 5 § 3 of the Convention but holds that the decision in itself constitutes just satisfaction). In that regard, the case at hand must be distinguished from *Husar*, cited above, which concerned the period before 4 January 2012 (see paragraph 34 above).

52. The Government's objection of loss of victim status must thus be dismissed.

(b) Exhaustion of domestic remedies

53. The Government further maintained that the applicants had failed to exhaust all effective remedies since they had not sought damages under either the Code of Criminal Procedure (see paragraphs 35-40 above) or the Civil Obligations Act (see paragraphs 30-31 above) for the violation of their human rights established by the Constitutional Court.

54. The applicants submitted that those remedies were not effective.

55. The general principles concerning the rule of exhaustion of domestic remedies were summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

56. For the reasons set out in paragraph 51 above, the Court agrees with the applicants that the remedies invoked by the Government are not effective in the circumstances of the present case.

57. Therefore, the Court also dismisses this objection of the Government.

(c) Conclusion

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

B. Merits

1. The parties' arguments

59. The applicants argued that the domestic courts had not given relevant and sufficient reasons to justify their detention. In particular, they submitted that the domestic courts' understanding of the disturbance of public order had been unclear and that their reasoning had been arbitrary. In their view, there had been nothing to justify the fear that their release from detention would disturb the public order. Such conduct on the part of the domestic courts had rendered the overall period of their detention unlawful and unjustified.

60. The Government made submissions about the merits of this complaint only in respect of the period from 14 January 2014 until 3 April 2015, since

the Constitutional Court had already found a violation of the right guaranteed by Article 5 § 3 of the Convention in respect of the subsequent period. They maintained that the domestic decisions had referred to the specific facts and the applicants' personal circumstances justifying their detention (notably, the facts that the applicants had been former secret police officers and that the victim had been a well-known journalist and newspaper publisher). They also submitted that the domestic courts were best placed to assess risks of public disorder in Serbia.

2. *The Court's assessment*

(a) General principles

61. The period of detention to be taken into consideration under Article 5 § 3 of the Convention starts when a person is arrested or remanded in custody and ends when he or she is released and/or the charge is determined, even if only by a court of first instance (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 290, 22 December 2020).

62. The Court reiterates that the question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features. Continued detention can be justified in a given case only if there are actual indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110 et seq, ECHR 2000-XI, and *Idalov v. Russia* [GC], no. 5826/03, § 139, 22 May 2012).

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

64. The persistence of a reasonable suspicion that the detainee has committed an offence is a *sine qua non* for the validity of his or her continued detention. But when the national judicial authorities first examine, "promptly" after the arrest, whether to place the arrestee in pre-trial detention, that suspicion no longer suffices, and the authorities must also give other relevant and sufficient grounds to justify the detention. Those other grounds may be a risk of flight, a risk of pressure being brought to bear on witnesses or of evidence being tampered with, a risk of collusion, a risk of reoffending,

or a risk of public disorder and the related need to protect the detainee (see *Buzadji*, cited above, §§ 87-88 and 101-102, with further references). Those risks must be duly substantiated, and the authorities' reasoning on those points cannot be abstract, general or stereotyped (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 222, 28 November 2017, with further references).

65. The risk of flight cannot be gauged solely on the basis of the severity of the possible sentence; it must be assessed with reference to a number of other factors, such as the accused's character, morals, assets, links with the jurisdiction, and international contacts. Moreover, the last sentence of Article 5 § 3 of the Convention shows that, when the only remaining reason for detention is the fear that the accused will flee and thus avoid appearing for trial, he or she must be released pending trial if it is possible to obtain guarantees that that appearance will be ensured (ibid., § 223, with further references).

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

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

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

69. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 77, 22 October 2018, and *Idalov*, cited above, § 140).

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

(b) Application of these principles to the present case

71. The Court notes that the period to be taken into consideration began on 14 January 2014, when the applicants were arrested (see paragraph 8 above), and ended on 6 July 2017, when they were put under house arrest (see paragraphs 26 and 43 above). It thus lasted for almost three and a half years.

72. The present case concerns a serious crime – the murder of a journalist by secret service officers. It was within the special jurisdiction for organised crime (see paragraph 9 above). Such crimes present more difficulties for the investigative authorities and the courts in determining the facts and the degree of responsibility of each participant in the criminal enterprise. It is obvious that in cases of this kind, continuous control and limitation of the defendants' ability to contact each other and other individuals may be essential to avoid their absconding, tampering with evidence and influencing, or threatening, witnesses. Longer periods of detention than in other cases may therefore be reasonable (compare *Tomecki v. Poland*, no. 47944/06, § 29, 20 May 2008, and *Luković v. Serbia*, no. 43808/07, § 46, 26 March 2013; contrast *Grujović*, cited above, § 54).

73. The Court notes that the reasonable suspicion on which the domestic courts based their decisions followed from the extensive evidence obtained during the investigation, including intercepted communications and witness statements (see paragraph 9 above). In view of the findings of the domestic courts, which are based on reasonable and convincing grounds and were not contested by the applicants, the Court accepts that throughout the period of the applicants' detention on remand a reasonable suspicion existed that they had committed the crime at issue. That being the case, the Court will examine whether the other grounds cited by the judicial authorities continued to justify the applicants' detention.

74. In their decisions ordering and extending the applicants' detention the judicial authorities initially relied on the following grounds: the risk of absconding; the risk of obstructing the course of justice by exerting pressure on witnesses; and the preservation of public order (see paragraphs 9-12 above). As the Government rightly pointed out in their observations summarised in paragraph 60 above, those decisions referred to the specific facts of the case and the applicants' personal circumstances and did not use abstract, general or stereotyped arguments for their continued detention (contrast *Lakatoš and Others*, cited above, § 97, and *Stevan Petrović*, cited above, § 148). They examined each specific ground for detention at regular intervals and gave detailed reasons why the detention should be further extended.

75. The Court also notes that with the passing of time the domestic courts' reasoning evolved to reflect the developing situation and to verify whether these grounds remained valid at the later stages of the proceedings. Namely, on 29 April and 19 June 2014 the Court of Appeal in Belgrade found that the

risk of absconding and the risk of obstructing the course of justice by exerting pressure on witnesses had ceased to exist (see paragraphs 12 and 14 above).

76. As from 19 June 2014 the applicants' detention was based, apart from the persisting reasonable suspicion that the applicants had committed murder (see paragraph 73 above), only on the nature and gravity of the charges, associated with the possibility of public disturbance.

77. The Court accepts that, by reason of their particular gravity and public reaction to them, certain offences may give rise to a social disturbance capable of justifying pre-trial detention, at least for a time. In exceptional circumstances this factor may therefore be taken into account for the purposes of the Convention, in any event in so far as domestic law recognises the notion of disturbance to public order caused by an offence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207). However, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the accused's release would actually disturb public order. In addition, detention will continue to be legitimate only if public order remains actually threatened (see *Letellier*, cited above, § 51, and *Milanković and Bošnjak v. Croatia*, nos. 37762/12 and 23530/13, § 155, 26 April 2016).

78. In the present case, the conclusions of the domestic courts were based on the specific facts pertinent to the concrete charges against the applicants. The courts in particular relied on the fact that the crime at issue had shocked, and continued to shock, Serbia and that the applicants' release would provoke very strong public reaction in Serbia and abroad which would prejudice the administration of justice (see for instance paragraph 16 above). They justified such findings by the facts that the accused were former secret police officers entrusted with the protection of public order, that the victim was a journalist, and that there was reasonable suspicion that the crime had been motivated by the preservation of the then political regime (see, in particular, paragraph 21 above).

79. Moreover, unlike some other legal systems where the sentence faced by the accused is determined by the prosecution without judicial review of whether the evidence obtained supports a reasonable suspicion that the defendant has committed the alleged offence, in the Serbian legal system, although the public prosecution is responsible for drawing up the indictment, it is for the domestic courts to verify regularly during the pre-trial detention the existence of a reasonable suspicion that the offence at issue was committed. In so doing, they must review whether the particular charges against the accused are supported by the relevant evidence (see, for instance, paragraphs 9 and 23 above; compare also *J.M. v. Denmark*, no. 34421/09, § 62, 13 November 2012, and *Milanković and Bošnjak*, cited above, § 152).

80. Lastly, upon the applicants' numerous appeals, the Court of Appeal in Belgrade and the Constitutional Court carried out a detailed assessment of all the relevant circumstances of the case and addressed the specific concerns related to their continued detention (see paragraphs 12, 14-16, 19-21 and 27

above). Notably, the Constitutional Court found that the applicants' detention had continued to be justified until 3 April 2015, but that it had not been shown that their release would have indeed disturbed public order after that date (see paragraph 27 above).

81. In view of all the above, the Court sees no reason to disagree with the finding of the Constitutional Court. Therefore, it considers that there has been a violation of Article 5 § 3 of the Convention.

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

82. The applicants submitted that the proceedings they had brought before the Constitutional Court with a view to challenging the lawfulness of their detention had not complied with the requirement of "speediness" in Article 5 § 4 of the Convention.

This provision reads as follows:

> "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

83. Without going into any details, the Government stated that Article 5 § 4 was not applicable to proceedings before the Constitutional Court of Serbia.

84. The applicants disagreed, relying on *Žúbor v. Slovakia* (no. 7711/06, 6 December 2011).

85. The Court has already held Article 5 § 4 of the Convention to be applicable to proceedings before domestic constitutional courts (see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, §§ 265-275, 4 December 2018; *Smatana v. the Czech Republic*, no. 18642/04, §§ 122-123, 27 September 2007; *Peša v. Croatia*, no. 40523/08, §§ 122-126, 8 April 2010; *Žúbor*, cited above, §§ 71-77 and 90; *Čović v. Bosnia and Herzegovina*, no. 61287/12, § 35, 3 October 2017; *Şahin Alpay v. Turkey*, no. 16538/17, § 131, 20 March 2018).

86. In its examination of the compliance of a detention order with the right to liberty, the Constitutional Court of Serbia reviews, as do the lower courts, the lawfulness of an appellant's detention. Having regard to its jurisdiction to quash a detention order issued by an ordinary court (see paragraph 34 above), the Court considers that decisions of the Constitutional Court of Serbia, which are final and binding (see paragraph 33 above), are capable of leading, where appropriate, to the release of an appellant. Article 5 § 4 of the Convention is, therefore, applicable to the proceedings before the Constitutional Court in the present case (see also, *mutatis mutandis*, *Stevan Petrović v. Serbia*, nos. 6097/16 and 28999/19, § 178, 20 April 2021).

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

B. Merits

1. The parties' arguments

88. While the Constitutional Court had given a number of decisions in this case, the applicants focused on those in which it had found a violation of their right to liberty (see paragraph 27 above) and, in particular, on its decision of 21 December 2017 in which the Constitutional Court had found for the first time a breach of that right. Since those proceedings had lasted more than two and a half years, the applicants maintained that they had not been "speedy" within the meaning of Article 5 § 4 of the Convention.

89. Referring to official statistics on the Constitutional Court's caseload, the Government submitted that in 2015, 2016 and 2017, respectively, 24,496, 23,779 and 26,639 cases had been pending before that court. Only in 2017, 12,487 new cases had been introduced. Bearing in mind this very large workload of the Constitutional Court, the Government claimed that it could not be concluded that that court had failed to comply with the requirement of speediness.

2. The Court's assessment

(a) General principles

90. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to detained persons the right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and the ordering of its termination if it proves unlawful (see *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, § 187, 1 June 2021, with further references).

91. Proceedings concerning issues of deprivation of liberty require particular expedition, and any exceptions to the requirement of "speedy" review of the lawfulness of a measure of detention call for strict interpretation (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 131, 15 December 2016).

92. The Court considers that there is a special need for a swift decision determining the lawfulness of a detention in cases where a trial is pending, as the defendant should benefit fully from the principle of the presumption of innocence (see *Idalov*, cited above, § 155).

93. The question of whether the right to a speedy decision has been respected must be determined in the light of the circumstances of each case and – as is the case for the "reasonable time" stipulation in Articles 5 § 3

and 6 § 1 of the Convention – including the complexity of the proceedings, their conduct by the domestic authorities and by the applicant, and what was at stake for the latter (see *Ilnseher*, cited above, § 252, with further references).

94. In principle, however, since the liberty of the individual is at stake, the State must ensure that the proceedings are conducted as quickly as possible (see *Khlaifia and Others*, cited above, § 131).

95. The Court accepts that the complexity of issues involved in an examination of an application for release can be a factor which may be taken into account when assessing compliance with the requirement of "speediness" laid down in Article 5 § 4. It does not mean, however, that the complexity of a given dossier – even exceptional – absolves the national authorities from their essential obligations under this provision (see *Ilnseher*, cited above, § 253).

96. In order to determine whether the requirement that a decision be given "speedily" has been complied with, it is necessary to perform an overall assessment where the proceedings were conducted at more than one level of jurisdiction. Where the original detention order was imposed by a court (that is, by an independent and impartial judicial body) in a procedure offering appropriate guarantees of due process, and where the domestic law provides for a system of appeal, the Court is prepared to tolerate longer periods of review in proceedings before a second-instance court. These considerations also apply in respect of complaints under Article 5 § 4 concerning proceedings before constitutional courts which were separate from proceedings before ordinary courts (ibid., § 255, and *Şahin Alpay*, cited above, § 135).

(b) Application of these principles to the present case

97. The Court observes that the Constitutional Court's decision challenged by the applicants (see paragraph 88 above) was adopted on 21 December 2017 and delivered on 10 January 2018 and that the relevant constitutional appeal was lodged on 28 May 2015 (see paragraph 27 above). According to the Court's established case-law, the relevant period for the purposes of Article 5 § 4 begins when an appeal is lodged with a court and ends on the day on which the decision is communicated to the applicant or to his lawyer, where the decision is not delivered in public (see *Smatana*, cited above, § 117). The period to be taken into consideration thus amounted to more than two years.

98. The Court further observes that in the Serbian legal system, anyone in detention on remand may apply for release at any stage of the proceedings (see paragraph 38 above). The applicants made one such application while the impugned Constitutional Court proceedings were pending; the application for release was examined in conformity with the "speediness" requirement (see paragraph 25 above). In addition, the question of the applicants'

detention was automatically reviewed at regular intervals of no more than sixty days even while the Constitutional Court proceedings at issue were still pending (see paragraph 24 above). In a system of that kind, the Court can tolerate longer periods of review by the Constitutional Court. Where an initial or further detention order was imposed by a court in a procedure offering appropriate guarantees of due process, the subsequent proceedings are less concerned with arbitrariness, but provide additional guarantees based primarily on an evaluation of the appropriateness of continued detention (see *Şahin Alpay*, cited above, § 137). Nevertheless, the Court considers that even in the light of those principles, in normal circumstances a period of more than two years cannot be regarded as "speedy" (see *Žúbor*, cited above, § 90, in which the Court held that constitutional court proceedings lasting more than eight months were not in conformity with the "speediness" requirement, and *Kavala v. Turkey*, no. 28749/18, §§ 185 and 194, 10 December 2019, in which the Court concluded that constitutional court proceedings lasting more than seventeen months were "extremely long").

99. Admittedly, the Court has found it acceptable that constitutional court review may take longer in some exceptional circumstances, such as under the state of emergency (see *Şahin Alpay*, cited above, § 137, in which the Court held that constitutional court proceedings lasting more than sixteen months were in conformity with the "speediness" requirement). The Court considers that the present case does not fall into that category. Indeed, the issues raised by the present case are relatively straightforward. The Court is mindful of the very large caseload of the Constitutional Court (see paragraph 89 above) and that significant resources must have been deployed in order to keep the volume of pending cases under control, in spite of the large number of new applications. Nevertheless, in the Court's opinion, the excessive workload of the Constitutional Court cannot be used as justification for excessively long procedures, as in the present case. It is for the State to organise its judicial system in such a way as to enable its courts to comply with the requirements of Article 5 § 4 of the Convention (see, among many other authorities, *G.B. v. Switzerland*, no. 27426/95, § 38, 30 November 2000, and *Kavala*, cited above, § 188).

100. Lastly, the Court observes that the applicants have not contributed to the duration of the Constitutional Court proceedings at issue.

101. The foregoing considerations are sufficient to enable the Court to conclude that the proceedings by which the Constitutional Court ruled on the lawfulness of the applicants' detention cannot be considered compatible with the "speediness" requirement of Article 5 § 4 of the Convention.

102. There has accordingly been a violation of that Article.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. 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

104. The applicants claimed 20,000 euros (EUR) each in respect of non-pecuniary damage.

105. The Government maintained that their claim was excessive.

106. The Court awards the applicants EUR 1,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

107. The applicants also claimed EUR 40,000 for the costs and expenses incurred before the domestic courts and EUR 2,300 each for those incurred before the Court.

108. The Government considered that claim to be unsubstantiated.

109. 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 were actually and necessarily incurred and are reasonable as to quantum. That is to say, 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 breaches found or to obtain redress. The Court requires itemised bills and invoices that are sufficiently detailed to enable it to determine to what extent the above requirements have been met (see *註ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 158, ECHR 2014). Simple reference to the tariff fixed by the local bar associations, for example, is insufficient in this regard (see *Pinkas and Others v. Bosnia and Herzegovina*, no. 8701/21, § 77, 4 October 2022). In the present case, the Court notes that the applicants have not submitted any evidence (bills or invoices) about the costs and expenses incurred. Therefore, their claim is rejected for lack of substantiation.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

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

4. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

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

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President