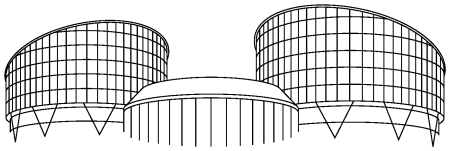

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MARGARETIĆ v. CROATIA

(Application no. 16115/13)

JUDGMENT

STRASBOURG

5 June 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Margaretić v. Croatia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 13 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 16115/13) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Mr Bruno Margaretić ("the applicant"), on 22 February 2013.

2. The applicant was represented by Mr D. Margaretić, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. On 28 March 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1969 and lives in Osijek. Prior to his arrest and detention, which gave rise to the case at issue, the applicant worked as a police officer in the Osijek-Baranja Police Department (*Policijska uprava Osječko-baranjska*).

A. The applicant's pre-trial detention

5. On 23 March 2012 the applicant was arrested on suspicion of conspiracy and abuse of power and authority.

6. The following day he was brought before an investigating judge (*sudac istrage*) of the Zagreb County Court (*Županijski sud u Zagrebu*) who ordered that he be placed in pre-trial detention (*istražni zatvor*) for a further two months under Article 123 § 1(2) and (3) of the Code of Criminal Procedure (risk of collusion and risk of reoffending) or, alternatively, released on bail, which was set at 700,000 Croatian kunas (HRK). The judge held that the applicant's detention was necessary because some further physical evidence had to be collected, and in order to prevent him from coordinating his defence with the second suspect, who was still at large. She also considered that there was a risk that the applicant might suborn witnesses and, given the circumstances of the case and his employment as a police officer, that he might reoffend.

7. On the same day the State Attorney's Office for the Suppression of Corruption and Organised Crime (*Ured za suzbijanje korupcije i organiziranog kriminaliteta*; hereinafter: the "State Attorney's Office") opened an investigation against the applicant and six others persons in connection with suspected conspiracy and abuse of power and authority.

8. The applicant and the State Attorney's Office also lodged appeals against the investigating judge's decision on the applicant's detention. The applicant challenged the reasons for his pre-trial detention while the State Attorney's Office challenged the part of the investigating judge's decision allowing for the applicant's conditional release on bail.

9. On 4 April 2012 a three-judge panel of the Zagreb County Court allowed the appeal of the State Attorney's Office and reversed the investigating judge's decision allowing for the applicant's conditional release on bail. It held that the circumstances of the case suggested that detaining the applicant was the only way to prevent the risk of collusion and reoffending.

10. On 6 April 2012 the same three-judge panel of the Zagreb County Court dismissed the applicant's appeal as ill-founded. It held that the circumstances of the case suggested that the applicant might coordinate his defence with the second suspect, who was still at large, and that he might interfere with the seizure of further physical evidence and suborn nine witnesses (M.I., I.R., T.P., M.H., Z.N., S.K., Z.L., D.J. and S.P.) who worked as police officers in the Osijek-Baranja Police Department. It also endorsed the investigating judge's finding as to the possibility of the applicant's reoffending.

11. On 23 April 2012 the State Attorney's Office requested the investigating judge to extend the applicant's pre-trial detention on the grounds of the risk of collusion and risk of reoffending, relying on the same grounds on which the applicant had initially been detained.

12. The investigating judge extended on the same day the applicant's pre-trial detention for a further two months under Article 123 § 1(2) of the Code of Criminal Procedure (risk of collusion) and dismissed the request to

extend his detention under Article 123 § 1(3) of the Code of Criminal Procedure (risk of reoffending). She held that there were sufficient reasons to believe that, if at large, the applicant could suborn witnesses and coordinate his defence with the second suspect, who still had not been apprehended. However, the judge found that in the meantime the applicant had been suspended from service and therefore she considered that there was no longer a risk that he might reoffend.

13. The decision of the investigating judge was upheld by a three-judge panel of the Zagreb County Court on 11 May 2012.

14. At a detention hearing on 20 June 2012 the State Attorney's Office again motioned for the extension of the applicant's detention. The applicant objected, pointing out that there was sufficient time for the questioning of the witnesses and that it was no longer necessary to keep him in detention.

15. The investigating judge accepted the request of the State Attorney's Office and extended the applicant's detention for a further two months under Article 123 § 1(2) of the Code of Criminal Procedure (risk of collusion) reiterating the arguments that there was a risk that the applicant might suborn witnesses and coordinate his defence with the second suspect.

16. The applicant appealed against this decision, and on 12 July 2012 a three-judge panel of the Zagreb County Court allowed his appeal and remitted the case to the investigating judge for re-examination but without releasing the applicant from detention. It held that the decision lacked the relevant reasoning as it was not clear whom exactly the applicant might suborn and under what circumstances.

17. At a detention hearing on 25 July 2012 the applicant pointed out that his detention depended on the questioning of witnesses whom the State Attorney's Office had had sufficient time to question and that there was no reason to believe that he might suborn the second suspect. He also asked the investigating judge to examine the possibility of his conditional release under preventive measures.

18. The investigating judge extended the applicant's detention for a further two months under Article 123 § 1(2) of the Code of Criminal Procedure (risk of collusion). She pointed out that in fact it had been necessary to question nine witnesses (I.R., D.J., T.P., S.K., M.I., M.H. and Z.N – noted above in paragraph 10; and two others, M.Ke and M.Ko.) who worked as police officers in the Osijek-Baranja Police Department and that there was a risk that the applicant might suborn them. However, the judge dismissed the request to keep the applicant in detention on the grounds that he might coordinate his defence with the second suspect, who was still at large, holding that he had given his defence and therefore there was no risk that he might coordinate it with the second suspect. The judge noted that:

> ".. all the suspects have given their defence so there is no risk that, if at large, they could coordinate their defences with the second suspect, and the fact that they might be questioned as suspects again during the proceedings is not a reason to extend their

detention now under Article 123 § 1(2) of the Code of Criminal Procedure with regard to the second suspect ...”

19. The applicant appealed against that decision, arguing that the investigating judge had failed to show that he might suborn the witnesses.

20. On 23 August 2012 at a detention hearing the State Attorney’s Office asked the investigating judge to extend the applicant’s detention on the grounds that he might suborn the above-mentioned nine witnesses (see paragraph 18 above). It also considered, pointing out that a number of witnesses had to be questioned and that a considerable amount of other evidence had to be taken during the investigation, that the investigation had not lasted an unreasonably long time.

21. The investigating judge accepted the request and extended the applicant’s detention for one month under Article 123 § 1(2) of the Code of Criminal Procedure (risk of collusion) on the grounds that there was a danger that he might suborn the witnesses. She also considered that the danger of his suborning the witnesses could not be averted by the application of preventive measures.

22. The applicant appealed against this decision and on 12 September 2012 a three-judge panel of the Zagreb County Court dismissed his appeal as ill-founded.

23. On 20 September 2012 a three-judge panel of the Zagreb County Court dismissed the applicant’s appeal against the investigating judge’s decision of 25 July 2012 (see paragraphs 17-19 above) as ill-founded.

24. On the same day the State Attorney’s Office of the Republic of Croatia (*Državno odvjetništvo Republike Hrvatske*) extended the investigation, based on a proposal made by the lower State Attorney’s Office conducting the proceedings, for a further twelve months on the grounds that it was necessary to question a number of witnesses and take other evidence and to request international assistance in obtaining the relevant information.

25. At a detention hearing on 21 September 2012 the applicant contended that there had been sufficient time for the State Attorney’s Office to question the witnesses against him and asked the investigating judge to order that the witnesses be questioned without any further delay.

26. The investigating judge extended the applicant’s detention for a further two months under Article 123 § 1(2) of the Code of Criminal Procedure (risk of collusion) reiterating the same reasoning that the applicant might suborn the nine witnesses referred to above and holding that his detention could not be replaced by preventive measures.

27. On an unspecified date in September 2012 the applicant lodged an appeal against that decision, arguing that there had been more than sufficient time to question the witnesses and that his detention was no longer reasonable and justified.

28. On 24 September 2012 the applicant submitted a request asking the investigating judge to order the State Attorney's Office to question the nine witnesses, pointing out that he had already been detained for more than six months and that the witnesses had still not been questioned. He also argued that his detention had been ordered and extended only in relation to the questioning of those witnesses and no action had been taken in that respect.

29. On 9 October 2012 the investigating judge accepted the applicant's request and ordered the State Attorney's Office to question the witnesses within fourteen days. In her order, the judge noted:

> "The suspect Bruno Margaretić has been detained since 23 March 2012 and his detention was extended [several times] based on the decisions of this court.
>
> Bearing in mind that the suspect has been detained for more than six months, and that throughout that period the State Attorney's Office has repeatedly relied on the need to question those very witnesses, it is beyond doubt that in the said period those witnesses could have been questioned.
>
> Since in the period at issue the above-mentioned witnesses have not been questioned and the suspect Bruno Margaretić has been detained [for the entire time] it is necessary to question the witnesses promptly. This is because detention is a measure of last resort and as such it must be reduced to a minimum while all procedural actions must be taken without delay.
>
> This judge considers that a time-limit of fourteen days is sufficient for the questioning of the witnesses since there are only nine of them."

30. On 10 October 2012 a three-judge panel of the Zagreb County Court dismissed the applicant's appeal against the decision on his detention of 21 September 2012 (see paragraphs 25-27 above), reiterating the arguments they had used to order the applicant's detention pending the questioning of the witnesses.

31. On 15 October 2012 the applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) against the decision of the three-judge panel of 20 September 2012 dismissing his appeal against the decision on his detention of 25 July 2012 (see paragraph 23 above) and against the decision of a three-judge panel of 12 September 2012 dismissing his appeal against the decision on his detention of 23 August 2012 (see paragraph 22 above). The applicant argued that his detention was arbitrary, since although the investigating judge had found that the witnesses could be questioned within fourteen days, he had been detained on the ground that they needed questioning for almost seven months.

32. On an unspecified date in 2012 the applicant lodged a further constitutional complaint against the decision of the three-judge panel of 10 October 2012 dismissing his appeal against the decision on his detention of 21 September 2012 (see paragraph 30 above), reiterating the same reasoning.

33. On 25 October 2012 the Constitutional Court declared the applicant's constitutional complaint of 15 October 2012 inadmissible on the grounds that in the meantime, on 21 September 2012 (see paragraphs 25 and 26 above), a new decision on the applicant's detention had been adopted and that he was no longer detained in connection with the decisions complained of.

34. On 6 November 2012 the Constitutional Court dismissed the applicant's constitutional complaint against the decision of the three-judge panel of 10 October 2012 (see paragraphs 30 and 32 above) as ill-founded, endorsing the reasoning of the lower courts.

35. In the meantime, the State Attorney's Office complied with the order of the investigating judge of 9 October 2012 (see paragraph 29 above) and questioned eight of the nine witnesses in one day (on 20 October 2012) and the remaining one on 24 October 2012. On the same day it applied for the extension of the applicant's detention under Article 123 § 1(2) of the Code of Criminal Procedure (risk of collusion) on the grounds that he could coordinate his defence with the second suspect, who was still at large.

36. On 6 November 2012 the applicant requested to be released from detention, arguing that no relevant reasons for keeping him in custody existed.

37. A hearing concerning the applicant's request was held on 21 November 2012, at which the applicant reiterated his arguments and the Deputy State Attorney pointed out that the second suspect was still at large and that the prosecuting authorities were doing their utmost to apprehend him. She therefore considered that the applicant should be kept in detention in order to prevent him from coordinating his defence with the second suspect.

38. The investigating judge dismissed the applicant's request for release on the grounds that the applicant could contact the second suspect and that they could coordinate their defences. The relevant part of the decision reads:

> "The second suspect is still at large and he has had contact with the fifth suspect, Bruno Margaretić, which means that the fifth suspect, if released, could get in touch with the second suspect, which would allow them to coordinate their defences and to obstruct the conduct of the proceedings."

39. A further detention hearing was held on 23 November 2012, at which the applicant pointed out that he had been detained on the sole ground that he might suborn the witnesses, while no other reason, in particular the possibility of his coordinating his defence with the second suspect, had been adduced, and that it was only now, after the witnesses had been questioned, that an extension of his detention was requested on the ground that he might collude with the second suspect. The applicant considered that that was not possible, because according to the available information the second suspect lived in Serbia and, given the media coverage of the proceedings at issue, it was unlikely that he would come to

Croatia. The applicant therefore asked the investigating judge, if she considered that there was a possibility of them contacting each other, to release him on condition that his passport be seized and other preventive measures which would prevent him from contacting the second suspect be applied if necessary.

40. The investigating judge extended the applicant's pre-trial detention for a further two months under Article 123 § 1(2) of the Code of Criminal Procedure (risk of collusion) on the grounds that there was a danger that he might contact the second accused. The relevant part of the decision reads:

> "As regards the fifth suspect [Bruno Margaretić] and the sixth suspect, the investigating judge finds that a risk of collusion with the second suspect, D.G., who is at large, still exists. The defence arguments that the detention could be replaced by preventive measures and that D.G. is a citizen of Serbia and has not come to Croatia since 11 January 2012 are of no relevance at this stage of the proceedings. It should be noted that that the suspects at issue were police officers who most certainly knew a lot of people and could therefore easily get in touch with the second suspect, D.G. This risk could not be averted by the seizure of their passports, because they could travel to certain countries with their identity cards alone and could easily meet the second suspect somewhere else. The analysis of the telephone conversations shows that the fifth suspect [Bruno Margaretić] previously contacted the second suspect and that therefore he more or less knows where to find him and how to reach him, while the sixth suspect is his colleague and friend, and [therefore] they could both get in touch with the second suspect without difficulty. That risk can be averted only by their detention and therefore the conditions under Article 123 § 1(2) of the Code of Criminal Procedure have been met."

41. The applicant appealed against that decision and on 12 December 2012 a three-judge panel of the Zagreb County Court dismissed his appeal as ill-founded, endorsing the reasoning of the investigating judge.

42. On 8 January 2013 the applicant lodged a constitutional complaint against that decision and on 15 January 2013 the Constitutional Court dismissed it as ill-founded, endorsing the arguments of the lower courts.

43. On 22 January 2013 a detention hearing was held at which the parties reiterated their previous arguments. The investigating judge extended the applicant's detention for a further two months under Article 123 § 1(2) of the Code of Criminal Procedure (risk of collusion), or alternatively, set bail for his release at HRK 1,500,000. The judge held that there was a risk that the applicant would contact the second suspect, which warranted his detention. He could, however, be released on bail, the amount of which the judge held to be appropriate given the circumstances of the case and the applicant's personal situation, namely, the fact that he was in employment, owned property and had a family who could support him financially.

44. The applicant appealed against that decision, arguing that there were no relevant reasons to keep him in detention and that the amount set for bail was excessive.

45. On 7 February 2013 a three-judge panel of the Zagreb County Court dismissed his appeal as ill-founded, endorsing the reasoning of the investigating judge.

46. On 26 February 2013 the applicant lodged a constitutional complaint against that decision with the Constitutional Court, arguing that the lower courts had failed to provide relevant and sufficient reasons for his detention.

47. On 28 February 2013 the Constitutional Court dismissed the applicant's constitutional complaint as ill-founded, endorsing the reasoning of the lower courts.

48. On 22 March 2013 a three-judge panel of the Zagreb County Court extended the applicant's detention for a further two months under Article 123 § 1(2) of the Code of Criminal Procedure (risk of collusion) and set bail for his release at HRK 1,500,000. It held that there was a risk that the applicant might contact the second suspect and that they could coordinate their defences. It also considered that the risk could be averted by the deposit of bail in an amount which corresponded to the circumstances of the offence and the fact that the applicant was employed and had a regular income.

49. The applicant appealed against that decision to the Supreme Court (*Vrhovni sud Republike Hrvatske*), reiterating his previous arguments and asking that his detention be replaced with preventive measures.

50. On 12 April 2013 the Supreme Court quashed the decision of the three-judge panel of the Zagreb County Court extending the applicant's detention and remitted the case for re-examination but without releasing the applicant from detention. The Supreme Court held that the Zagreb County Court had not given consideration to the possibility of imposing less severe preventive measures on the applicant and that the amount of bail requested for his release had been excessive.

51. On 22 April 2013 a three-judge panel of the Zagreb County Court again extended the applicant's detention under Article 123 § 1(2) of the Code of Criminal Procedure (risk of collusion) on the grounds that the applicant could contact the second suspect and that they could coordinate their defences. It also found that the circumstances of the case suggested that the applicant could not be released from detention under any of the applicable preventive measures.

52. On 23 April 2013 the State Attorney's Office indicted the applicant and six other persons in the Zagreb County Court on the charges of conspiracy and abuse of power and authority. The State Attorney's Office also requested that the applicant be kept in detention pending trial.

53. On 2 May 2013 the applicant lodged an appeal with the Supreme Court challenging the decision of the Zagreb County Court of 22 April 2013 extending his detention, arguing that the Zagreb County Court had failed to comply with the instructions provided in the Supreme Court's decision of 12 April 2013 (see paragraph 50 above).

54. On 10 May 2013 the Supreme Court accepted the applicant's appeal and, without releasing the applicant from detention, remitted the case to the Zagreb County Court for re-examination on the grounds that the decision of the Zagreb County Court lacked the relevant reasoning.

55. On 21 May 2013 a three-judge panel of the Zagreb County Court released the applicant from detention on condition that he refrain from contacting the second accused and ordered the seizure of his travel documents. It held that the applicant had been detained for almost fifteen months whereas it was uncertain when, and indeed if, the second accused would be arrested. It also found that the applicant's financial situation was not secure, as he was a divorced father of two and was without employment or income. Therefore, there were no grounds to request that bail be posted for his release.

56. The State Attorney's Office lodged an appeal against that decision, arguing that the applicant should be kept in detention and on 12 June 2013 the Supreme Court dismissed the appeal as ill-founded, endorsing the reasoning of the Zagreb County Court.

57. The criminal proceedings against the applicant are still pending.

B. The administrative disciplinary proceedings against the applicant

58. Parallel to the criminal proceedings, on 24 March 2012 the Chief of the Osijek-baranja Police Department ordered the applicant's suspension from duty pending the outcome of the criminal proceedings.

59. On an unspecified date in 2012 the applicant, represented by a lawyer, challenged that decision before an appeal panel of the Ministry of the Interior (*Ministartsvo unutarnjih poslova Republike Hrvatske*), arguing that there had been no reason for his suspension.

60. On 17 April 2012 the appeal panel of the Ministry of the Interior dismissed the applicant's appeal as ill-founded. The relevant part of the decision reads:

> "The suspension was ordered under section 112(3) of the Police Act, which provides that the minister or a commanding officer, which is in the case at issue the Chief of the Police Department, can order the suspension of a police officer even before disciplinary proceedings have been opened ... when he or she considers that the breach of duty at issue is of such a nature that keeping the police officer on duty could harm the interests of the service.
>
> ...
>
> Taking into account the circumstances of the present case, namely, the reasonable suspicion that the appellant had abused [his] power and authority, for which reason he was arrested, this panel considers that the first-instance body correctly and lawfully suspended him from service under section 112 of the Police Act ..."

61. Through his lawyer the applicant lodged an administrative action against that decision with the Osijek Administrative Court (*Upravni sud u*

Osijeku) challenging the reasons for his suspension and arguing that the decisions of the lower bodies had not been sufficiently reasoned.

62. On 17 September 2012 the applicant's lawyer submitted further written observations on the merits of the case and requested that a hearing scheduled for 18 September 2012 be adjourned until the applicant's release from detention.

63. On 18 September 2012 the Osijek Administrative Court held a hearing in the absence of the applicant and his representative and dismissed the applicant's administrative action as ill-founded. It found that the request for the adjournment of the hearing had been no more than an attempt to delay the proceedings and that the applicant's representative, although duly informed, had failed to appear at the hearing without providing any relevant reasons. As to the merits of the case, the Osijek Administrative Court noted:

> "There is no dispute between the parties that the plaintiff was suspended due to a reasonable suspicion that he had committed a grave breach of his official duty.
>
> The dispute between the parties relates to the question of whether the defendant [had the right to] suspend the plaintiff from duty on the basis of the reasonable suspicion alone.
>
> ... [T]he fact that the plaintiff has been remanded in custody on a reasonable suspicion that he has committed an offence under Article 337 of the Criminal Code (abuse of power and authority) justifies the decision of the defendant, because the placing of a police officer in detention for the offence at issue could be damaging for the interests of the service and therefore his suspension is justified."

64. Through his lawyer the applicant lodged an appeal with the High Administrative Court (*Visoki upravni sud Republike Hrvatske*) and on 11 October 2012 that court declared his appeal inadmissible on the grounds that the Osijek Administrative Court had not itself decided on the merits of the applicant's rights and obligations but only dismissed his administrative action.

65. On 14 December 2012 the applicant's lawyer lodged a constitutional complaint on behalf of the applicant with the Constitutional Court, challenging the lower courts' decisions.

66. On 31 January 2013 the Constitutional Court declared the applicant's constitutional complaint inadmissible as manifestly ill-founded.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic law

1. Constitution

67. The relevant provisions of the Croatian Constitution (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998,

113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010, 85/2010) provide:

Article 22

"Personal freedom and integrity are inviolable.

No one shall be deprived of his liberty save in accordance with the law, and any deprivation of liberty must be examined by a court."

2. Constitutional Court Act

68. The relevant part of the Constitutional Court Act (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 49/2002) reads as follows:

Section 62

"1. Anyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that the individual act of a state body, a body of local and regional self-government, or a legal person with public authority, concerning his or her rights and obligations, or a suspicion or an accusation of a criminal act, has violated his or her human rights or fundamental freedoms or his or her right to local and regional self-government guaranteed by the Constitution (hereinafter: a constitutional right) ...

2. If another legal remedy exists in respect of the violation of the constitutional right [complained of], a constitutional complaint may be lodged only after that remedy has been used."

Section 72

"The Constitutional Court shall declare a constitutional complaint inadmissible if it does not have competence in the matter, if the constitutional complaint has not been lodged within the relevant time-limit, or if it is incomplete, not understandable or not permissible. The constitutional complaint is not permissible: if the relevant legal remedies have not been exhausted, that is, if the applicant omitted to use them in the proceedings before the lower courts, with the exception provided for in Article 62 of this Constitutional Act; if the complaint has been lodged by a person not entitled to submit it; and if the complaint has been lodged by a legal entity not vested with constitutional rights."

3. Criminal Code

69. The relevant provisions of the Criminal Code (*Kazneni zakon*, Official Gazette nos. 110/1997, 27/1998, 50/2000, 129/2000, 51/2001, 111/2003, 190/2003, 105/2004, 84/2005, 71/2006, 110/2007, 152/2008) provide:

Conspiracy

Article 333

(1) Whoever organises a group of people or in some other way associates three or more persons in a joint action with an aim to commit criminal offences for which,

according to the law, imprisonment of three years or a more severe punishment may be imposed, shall be punished by a term of imprisonment of six months to five years.

(2) Whoever organises a criminal organization or manages it shall be punished by a term of imprisonment of one to eight years.

(3) A member of the group referred to in paragraph 1 of this Article shall be fined or punished by a term of imprisonment not exceeding three years.

(4) A member of the group referred to in paragraph 2 of this Article shall be punished by a term of imprisonment of six months to five years. ...”

Abuse of power and authority

Article 337

“(1) An official or person in a position of authority who, in order to acquire for himself or another physical or legal person any non-pecuniary gain, or who, in order to cause damage to another, uses his position of power, oversteps his authority or fails in his duty, shall be punished by a term of imprisonment of three months to three years.

(2) If the criminal offence referred to in paragraph 1 of this Article causes significant damage to others or a serious breach of their rights, the perpetrator shall be punished by a term of imprisonment of six months to five years.

(3) If a pecuniary gain is acquired as a result of the criminal offence referred to in paragraph 1 of this Article, the perpetrator shall be punished by a term of imprisonment of one to five years.

(4) If a considerable pecuniary gain is acquired as a result of the criminal offence referred to in paragraph 1 of this Article and the perpetrator acted with intent to acquire such gain, or if [the offence] resulted in large-scale damage, he or she shall be punished by a term of imprisonment of one to ten years."

4. Code of Criminal Procedure

70. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 152/2008, 76/2009, 80/2011, 121/2011, 91/2012, 143/2012) provide:

Preventive Measures

Article 98

“(1) Where the conditions for ordering detention under Article 123 of this Code have been fulfilled, and where the same purpose may be achieved by other preventive measures, the court or the state attorney shall order that one or more preventive measures are to be applied ...

(2) Preventive measures are:

1) prohibition on leaving one’s place of residence;

2) prohibition on being in a certain place or area;

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

4) prohibition on contact with a certain person;

5) prohibition on establishing or maintaining contact with a certain person;

6) prohibition on undertaking a certain business activity;

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

8) temporary seizure of a driving licence ...”

Bail

Article 102

“(1) The detention under Article 123 paragraphs 1 to 4 of this Act may be terminated provided that the defendant personally, or another person on his behalf, posts bail and the defendant personally promises that he will not hide or leave his place of residence without permission, that he will not interfere with criminal proceedings and that he will not commit a new criminal offence.

(2) In the decision on detention, the court may set the amount of bail which could replace the detention. Bail shall always be set in a pecuniary amount determined with regard to the gravity of the criminal offence and the personal circumstances and financial situation of the defendant.

(3) If the court considers that bail cannot substitute detention, it shall set out the reasons why it considers that [to be so].

(4) Complementary to the bail, the court may order application of one or more preventive measures.”

Grounds for Ordering Detention

Article 123

“(1) Where a reasonable suspicion exists that a person has committed an offence, that person may be placed in detention:

...

2. if there is a risk that he or she might destroy, hide, alter or forge evidence or traces relevant for the criminal proceedings or might suborn witnesses, or where there is a risk of collusion;

3. special circumstances justify the suspicion that the person concerned might reoffend; ...”

Termination and lifting of detention

Article 125

“(1) The court shall lift the detention and order the defendant’s release:

...

5) when the State Attorney, even after a notification to the higher State Attorney, unjustifiably fails to take actions during the proceedings;

...

(3) Before terminating the detention under paragraph 1(5) of this Article, the court shall notify the higher State Attorney about the lack of diligence in the conduct of the proceedings and shall determine a time-limit in which the relevant action should be taken. If after the expiry of this time-limit the action was not taken, the court shall proceed under paragraph 1(5) of this Article."

INVESTIGATION

The institution, course and conclusion of an investigation

Article 230

"(1) If an investigation is not concluded within six months, the competent State Attorney shall inform the higher State Attorney of the reasons for [that].

(2) The higher State Attorney shall undertake measures in order to conclude the investigation. In a complex case, the higher State Attorney may, upon a reasoned proposal by the competent State Attorney, extend the term referred to in paragraph 1 of this Article for another six months. In especially complex and difficult cases, the State Attorney General of the Republic of Croatia may, based on a reasoned proposal by the competent State Attorney, extend the time-limit for the conclusion of the investigation referred to in paragraph 1 of this Article for twelve months.

(3) The defendant and the victim may always submit complaints to the higher State Attorney regarding any delay in the proceedings or other irregularities in the course of the investigation.

(4) The higher State Attorney shall examine the allegations and, if the person who submitted the complaint so requests, shall inform him or her of any action taken.

(5) If the investigation is conducted by the investigating judge, the defendant and the subsidiary prosecutor may submit complaints to the president of the court regarding any delay in the proceedings or other irregularities in the course of the investigation. If the person who submitted the complaint so requests, the president of the court shall inform him or her of any action taken."

5. Police Act

71. The relevant provision of the Police Act (*Zakon o policiji*, Official Gazette nos. 34/111, 13/2012) provide:

Section 112

"The Minister or the commanding officer shall suspend a police officer in respect of whom criminal proceedings or disciplinary proceedings for a serious breach of official duty with an element of corruption have been opened.

A police officer may also be suspended if criminal proceedings or disciplinary proceedings for serious breach of official duty have been opened in respect of him and the breach of duty at issue is such that his staying on duty during the proceedings could be damaging for the service.

The Minister or the commanding officer may suspend the police officer even before the disciplinary proceedings under paragraph 2 of this section have been opened, but [those proceedings] must then be instituted within a period of eight days from the time of suspension.

The suspension may last until the end of the criminal or disciplinary proceedings."

6. Administrative Disputes Act

72. The relevant provisions of the Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette nos. 20/2010 and 143/2012) read:

Section 6

"(1) Before adopting its decision the court shall ensure that the parties have the possibility to comment on all the arguments adduced and all relevant factual and legal issues.

(2) The court may decide without allowing a party the possibility to comment [on all the arguments adduced and all relevant factual and legal issues] only if that [possibility] is provided for under this Act."

Section 7

"(1) An administrative dispute shall be decided in an oral, direct and public hearing.

(2) The court may decide not to hold a hearing only under the conditions laid down in this Act."

Section 39

" ...

(3) When a party to or other participant in the proceedings fails to appear at the hearing without any relevant reason, the hearing may be held in their absence. ..."

B. Relevant practice

73. The Constitutional Court in its decision nos. U-I-448/2009, U-I-602/2009, U-I-1710/2009, U-I-18153/2009, U-I-5813/2010 and U-I-2871/2011 of 19 July 2012 quashed forty-three provisions of the 2008 Code of Criminal Procedure (see paragraph 70 above) on the grounds that they were not in conformity with the Constitution. The deadline for the adoption of the amendments to the Code of Criminal Procedure was set as 15 December 2013. However, by the operative provisions of the Constitutional Court's decision, the quashed provisions of the 2008 Code of Criminal Procedure remained in force in the transitional period with the exclusion of the possibility of invoking their unconstitutionality in the individual cases brought before that court which concerned final decisions adopted under the 2008 Code of Criminal Procedure or pending proceedings in which it was applicable.

74. The Constitutional Court also found the provisions of Article 230 §§ 3, 4 and 5 of the 2008 Code of Criminal Procedure, relevant to this case, contrary to the Constitution and the Convention. In particular, it noted:

" ... there is no reason to doubt *a priori* the effectiveness of the complaint under Article 230 §§ 3, 4 and 5 of the Code of Criminal Procedure concerning irregularities

in the work of the state attorney or the investigating judge affecting the efficiency of pre-trial proceedings. There is, however, no doubt that it cannot adequately remedy damage caused by the irregular work of the state attorney or the investigating judge which have already occurred (such as in the case of protracted proceedings). Therefore, the remedy under Article 230 §§ 3-5 of the Code of Criminal Procedure in itself does not meet the requirements of Article 13 of the Convention."

THE LAW

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

75. The applicant complained that the national courts had acted arbitrarily when extending his pre-trial detention and in particular that his continued detention had been excessive and had not been based on relevant and sufficient reasons. He relied on Article 5 §§ 1 (c) and 3 of the Convention. The Court, being the master of characterisation to be given in law to the facts of the case, considers that this complaint falls to be examined under Article 5 § 3 of the Convention, which reads as follows:

"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. ..."

A. Admissibility

1. The applicant's victim status

76. The Court notes from the outset that the Government have not raised an objection as to whether, in the circumstances of the case, the applicant could still claim to be a victim of the violation alleged. The Court will examine this issue of its own motion (see, *mutatis mutandis*, *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 27, ECHR 2009).

77. In this connection the Court reiterates that under Article 34 of the Convention it "may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto ...". It falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention. A decision or measure favourable to an applicant is not, in principle, sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance,

and then afforded redress for, the breach of the Convention. Redress so afforded must be appropriate and sufficient, failing which a party can continue to claim to be a victim of the violation (see, among others, *Burdov v. Russia (no. 2)*, no. 33509/04, §§ 54-56, ECHR 2009, with further references).

78. The Court observes in the case at issue that on 12 April and 10 May 2013 the Supreme Court carefully considered the reasons of the Zagreb County Court in the detention orders of 22 March and 22 April 2013 and quashed them having found that those decisions lacked the relevant reasoning and had not given the consideration to the possibility of imposing a less severe preventive measures on the applicant (see paragraphs 50 and 54 above). This resulted in the Zagreb County Court releasing the applicant from detention on 21 May 2013 by imposing less severe preventive measures on him.

79. The Court welcomes the approach adopted by the Supreme Court in the present case, which was in conformity with the requirements of Article 5 § 3 of the Convention. However, even assuming that the Supreme Court's decisions could have been regarded as an acknowledgment of a violation of the applicant's rights under that provision, this acknowledgment related only to a part of his pre-trial detention. By 12 April 2013 the applicant had already been deprived of his liberty for more than a year and his release was ordered only on 21 May 2013. The Court also notes that the applicant was not awarded any compensation at the national level (compare *Peša v. Croatia*, no. 40523/08, § 84, 8 April 2010).

80. Having regard to the above, the Court considers that the applicant can still claim to be a victim in respect of his complaint under Article 5 § 3 of the Convention.

2. Non-exhaustion of domestic remedies

(a) The parties' arguments

81. The Government submitted that as regards the applicant's complaint that the domestic authorities had not displayed the necessary diligence in the conduct of the proceedings by questioning the witnesses, the applicant could have complained to the higher State Attorney's Office under Article 230 of the Code of Criminal Procedure, and could have urged the Zagreb County Court to order the questioning of the witnesses even before 24 September 2012.

82. The applicant considered that by lodging appeals and constitutional complaints against the decisions on his detention he had used all available and effective domestic remedies. In his view, a complaint to the higher State Attorney's Office would not have been an effective remedy because that would not have led to an impartial and independent examination of his complaints, and in any event the State Attorney's Office had been well

aware of the course of the proceedings and had repeatedly requested the extension of his detention. The applicant also contended that urging the Zagreb County Court to expedite the proceedings would not have been an effective remedy because the necessary diligence in the conduct of the proceedings had been an *ex officio* duty of the courts, a duty which they had manifestly disregarded in his case.

(b) The Court's assessment

83. The Court considers that the question of exhaustion of domestic remedies as argued by the parties should be joined to the merits, since it is closely linked to the substance of the applicant's complaints.

3. Conclusion

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

B. Merits

1. The parties' arguments

85. The applicant argued that throughout the proceedings his detention had been extended on the same grounds, and using identical stereotyped reasoning, by the investigating judge and the three-judge panels of the Zagreb County Court. It was only when the case had been brought before the Supreme Court that his arguments had been taken into account and he had been released from detention. The particular problem in his case was a manifest lack of diligence on the part of the prosecuting authorities in the conduct of the proceedings and the failure of the courts to address that problem effectively. Therefore, he was able to accept that the complexity of the case and the need to question the witnesses could have warranted his detention for the two initial months, but after that there had been no relevant reasons for not questioning the witnesses and for keeping him in detention for a further year. The applicant also pointed out that the Supreme Court had recognised that bail on condition of payment of a surety was not appropriate in the circumstances of his case and that the lower courts had not given proper consideration to the possibility of releasing him under preventive measures until they had been forced to do so by the Supreme Court. Lastly, the applicant stressed that his detention on the grounds that there was a risk of him coordinating his defence with the second accused had been arbitrary and had had no relevant basis in the facts of the case.

86. The Government considered that the applicant's detention had been based on the relevant domestic law and that the decisions of the domestic

courts ordering and extending his detention had been sufficiently reasoned and had always taken into account the particular circumstances of the case. Given the seriousness of the offences at issue, there had been a sufficient public interest warranting the applicant's continued detention which had twice been confirmed by the Constitutional Court. It was true that the investigating judge had first ordered, then dismissed, and then again ordered the applicant's detention on the grounds that he could coordinate his defence with the second accused, but that had been done after the assessment of the evidence, namely, the analysis of the telephone conversations, which had suggested a possibility of the two contacting each other. Furthermore, the domestic courts had examined the possibility of imposing less severe preventive measures on the applicant and of releasing him on bail, but he had failed to deposit the sum requested. In the Government's view the length of the applicant's detention had not been excessive and, given the complexity of the case, the domestic authorities had displayed the necessary diligence in the conduct of the proceedings.

2. The Court's assessment

(a) General principles

87. The Court reiterates that under its constant case-law the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case. Continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, 26 January 1993, Series A no. 254-A, and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI).

88. The presumption is in favour of release. 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 his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require him to be released provisionally once his continuing detention ceases to be reasonable (see *Vlasov v. Russia*, no. 78146/01, § 104, 12 June 2008, with further references).

89. It falls in the first place 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. To this end, they must examine all the evidence for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions dismissing the applications for release. It is essentially

on the basis of the reasons given in these decisions and the facts cited 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 of the Convention (see *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV).

90. The arguments for and against release must not be "general and abstract" (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX). Where the law provides for a presumption in respect of factors relevant to the grounds for continued detention, the existence of the specific facts outweighing the rule of respect for individual liberty must be convincingly demonstrated (see *Ilijkov v. Bulgaria*, no. 33977/96, § 84 *in fine*, 26 July 2001).

91. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see, amongst many others, *Contrada v. Italy*, 24 August 1998, § 54, *Reports of Judgments and Decisions* 1998-V; *I.A. v. France*, 23 September 1998, § 102, *Reports* 1998-VII; *Toth v. Austria*, 12 December 1991, § 67, Series A no. 224; and *B. v. Austria*, 28 March 1990, § 42, Series A no. 175).

92. As regards the issue of bail, the Court reiterates that the guarantee, provided for by Article 5 § 3 of the Convention, is designed to ensure, in particular, the appearance of the accused at the hearing. Its amount must be assessed principally by reference to the accused and his assets. Thus the authorities must take as much care in fixing appropriate bail as in deciding whether or not the accused's continued detention is indispensable. They must duly justify the amount in the decision fixing bail, and they must take into account the accused's means and his capacity to pay the sum required (see *Mangouras v. Spain* [GC], no. 12050/04, §§ 78-80, ECHR 2010).

(b) Application of these principles to the present case

93. As to the period to be taken into account in the present case, the Court reiterates that according to its well-established case-law, in determining the length of detention under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when he is released (see, for example, *Fešar v. the Czech Republic*, no. 76576/01, § 44, 13 November 2008) or when the charge was determined, even if only by a court of first instance (see *Belevitskiy v. Russia*, no. 72967/01, § 99, 1 March 2007).

94. It follows that the period of the applicant's detention to be taken into consideration began on 23 March 2012, the date when the applicant was

taken into custody, and ended on 21 May 2013 when he was conditionally released under preventive measures (see paragraphs 5 and 55 above), which in total amounts to one year, one month and twenty-eight days.

95. The Court notes that in March 2012 the applicant was initially detained on the grounds of the risk of collusion and risk of reoffending. The former reason was justified by the fact that certain witnesses had to be questioned and that there was a risk that the applicant might contact and thus coordinate his defence with the second defendant, who was at large at the time. The fear of the applicant reoffending was justified with reference to the circumstances of the case and the applicant's employment as a police officer. However, very soon, as early as April 2012, this reason lost validity as the applicant had in the meantime been suspended from service (see paragraphs 6 and 12 above).

96. The investigating judge's further decision of 20 June 2012 extending the applicant's detention on the grounds that he might suborn the witnesses and coordinate his defence with the second defendant was quashed by a three-judge panel of the Zagreb County Court on the grounds that it was not clear whom, and under what circumstances, the applicant could suborn (see paragraph 16 above). Therefore, after the re-examination of the case on 25 July 2012, the investigating judge extended the applicant's detention only on the grounds that the applicant might suborn the nine witnesses who still had to be questioned, and not the second accused. The investigating judge explained this by referring to the fact that the applicant had been questioned and that therefore there was no risk of him coordinating his defence with the second defendant (see paragraphs 17 and 18 above).

97. Several times in the course of the proceedings, namely, on 20 June 2012 (see paragraph 14 above), 25 July 2012 (see paragraph 17 above), 21 September 2012 (see paragraphs 25 and 27 above) and 24 September 2012 (see paragraph 28 above), the applicant complained that the prosecuting authorities had had sufficient time to question the witnesses at issue but his complaints were not addressed by the domestic authorities until 9 October 2012, when the investigating judge ordered the State Attorney's Office to question the witnesses (see paragraph 29 above). Moreover, in the meantime, the higher State Attorney's Office had been informed of the course of the proceedings, which resulted in it extending the time-limit for the investigation (see paragraph 24 above). The Court therefore considers that the problem of the alleged lack of diligence in the questioning of the witnesses was sufficiently brought to the attention of the domestic authorities and therefore, also noting the Constitutional Court's decision of 19 July 2012 (see paragraph 73 above), rejects the Government's objection of non-exhaustion of domestic remedies previously joined to the merits (see paragraph 83 above).

98. In her order of 9 October 2012 the investigating judge found that the prosecuting authorities had failed to display the necessary diligence in the

questioning of witnesses and that, bearing in mind that by then the applicant had been detained for more than six months on that ground, there was no relevant reason to justify the manner in which the proceedings had been conducted. Moreover, the judge noted that a period of fourteen days would be sufficient for the questioning of the witnesses, given that there were only nine of them (see paragraph 29 above). The judge, however, made no other decision addressing further the question of reasonableness of the applicant's detention although he had been detained throughout that period only on the grounds of fear that he might suborn the witnesses.

99. The Court sees no reason not to concur with the findings of the investigating judge, which establish a lack of diligence on the part of the prosecuting authorities in the conduct of the proceedings. Moreover, it notes that all the witnesses at issue, who had not previously been questioned in the period of more than six months, were eventually questioned in only two days (see paragraph 35 above).

100. Furthermore, the Court notes that at the time when the witnesses were questioned the only reason for the applicant's detention was a fear that he might suborn them. The reference of the prosecution to the possibility of the applicant coordinating his defence with the second defendant was rejected by the investigating judge on 25 July 2012 (see paragraphs 17 and 18 above). The State Attorney's Office neither appealed nor insisted on that ground for the applicant's detention until all the witnesses had been questioned and no other relevant reason remained for keeping the applicant in detention (see paragraphs 19-35 above).

101. On 21 November 2012 the same investigating judge who, in July 2012, had rejected the possibility that the applicant could be detained because there was a risk that he might contact and coordinate his defence with the second defendant, extended the applicant's detention solely on that basis (see paragraphs 37 and 38 above). Consequently, for a further six months this remained the only reason for which the applicant was detained (see paragraphs 39-51 above).

102. While it goes without saying that the domestic authorities are allowed to assess and reassess the reasons for a defendant's detention, the Court reiterates that Article 5 § 3 requires that any measure depriving an individual of his liberty must be compatible with the purpose of Article 5 and based on the relevant and sufficient reasons (see paragraph 91 above).

103. The Court notes that the investigating judge, in respect of the same grounds and having been aware of the same facts, acted differently when ordering the applicant's detention on two separate occasions, a practice which has already caused concern to the Court in the cases brought before it (see *Dervishi v. Croatia*, no. 67341/10, § 134, 25 September 2012). The domestic courts gave no relevant reasons in their decisions on the applicant's detention which could have prompted them to change their previous position. The Court observes that the request for the applicant's

detention on the grounds that he might coordinate his defence with the second defendant was rejected by the investigating judge owing to the fact that the applicant had been questioned and could not therefore coordinate his defence with the second suspect. In such circumstances no consideration was given to the question of whether the two defendants could contact each other or not (see paragraph 18 above). However, when subsequently reaching the opposite conclusion, the investigating judge focused only on the possibility of the applicant contacting the second suspect, without referring to the fact that the applicant had been questioned and without explaining the relevance of this fact in the light of the change from her previous decision (see paragraphs 38 and 40 above).

104. In the Court's view, having in mind that justification for any period of detention, no matter of its length, must be convincingly demonstrated by the authorities (see *Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004; and *Castravet v. Moldova*, no. 23393/05, § 33, 13 March 2007), this unexplained departure from the previous decisions and the ambiguous reasoning of the domestic courts' decisions extending the applicant's detention, cannot be considered as relevant and sufficient to justify the applicant's continued detention as required under Article 5 § 3 of the Convention.

105. Lastly, the Court cannot accept the Government's argument that the domestic authorities allowed for the applicant's conditional release on bail but that he had failed to deposit the sum requested. In this respect the Court notes that the first investigating judge's decision on the applicant's release on bail was quashed by a three-judge panel of the Zagreb County Court, thus initially excluding any such possibility (see paragraphs 6 and 9 above). At a later stage of the proceedings first the investigating judge, and then a three-judge panel of the Zagreb County Court, set the bail at HRK 1,500,000, concluding that it corresponded to the circumstances of the case, the applicant's employment, his regular earnings and the possibility of his family providing financial support (see paragraphs 43 and 48 above).

106. That decision was quashed by the Supreme Court, which found the amount of the bail excessive in the circumstances of the case (see paragraph 50 above). Following the Supreme Court's decision, a three-judge panel of the Zagreb County Court found that in fact the applicant was unemployed, had no income, had two children and was divorced (see paragraph 55 above).

107. In such circumstances, the Court finds that the Zagreb County Court failed to assess the correct amount of bail applicable in the circumstances of the applicant's case (compare *Georgieva v. Bulgaria*, no. 16085/02, § 30, 3 July 2008) and thus agrees with the Supreme Court that the amount of bail set was excessive (compare *Piotr Osuch v. Poland*, no. 30028/06, § 47, 3 November 2009). Similarly, the Court sees no reason not to accept the Supreme Court's finding that the Zagreb County Court

gave no real consideration to the possibility of releasing the applicant from detention under less severe preventive measures once when his detention ceased to be reasonable as required under Article 5 § 3 (see paragraphs 50 and 54 above; and, for example, *Vlasov v. Russia*, no. 78146/01, § 104, 12 June 2008, and *Aleksandr Makarov v. Russia*, no. 15217/07, § 117, 12 March 2009).

108. Against the above background, the Court considers that there has been a violation of Article 5 § 3 of the Convention.

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

109. The applicant complained that the procedure by which he sought to challenge the lawfulness of his detention before the Constitutional Court on 15 October 2012 (see paragraphs 31 and 33 above) was not in conformity with Article 5 § 4 of the Convention, which 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

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

B. Merits

1. The parties' arguments

111. The applicant complained that the Constitutional Court had either refused to examine the merits of his complaints concerning the lawfulness and reasonableness of his pre-trial detention or dismissed them without providing any relevant reasoning. Therefore, he had not had been able to take proceedings before the Constitutional Court to effectively challenge the lower courts' decisions on his detention. This had resulted in him being detained without relevant and sufficient reasons for a considerable period of time. In the applicant's view, the Constitutional Court's practice of declaring complaints against decisions on detention inadmissible merely because a new decision on detention had been adopted in the meantime had had detrimental consequences for the effective respect for human rights in Croatia. In his particular case, that practice had allowed the lower courts to continue to extend his detention without relevant reasons, which had rendered the protection he was entitled to before that court ineffective.

112. The Government argued that the domestic legal system had provided an effective procedure for the applicant to contest the grounds and duration of his detention before the Constitutional Court. They pointed out that the procedural requirements for the Constitutional Court to decide on the merits of the constitutional complaint depended on two conditions: that the applicant was detained and that the impugned decision on his detention was in force at the moment of the Constitutional Court's decision. Such practice had a legal and procedural justification in that the Constitutional Court wanted to keep its powers of review practical and effective by confining its examination and, if appropriate, response to, existing decisions on detention. As the applicant had lodged his constitutional complaint against the decisions on his detention of 25 July 2012 and 23 August 2012 after the adoption of a new decision on his detention on 21 September 2012 (see paragraph 31 above), the Constitutional Court had declared his complaints inadmissible without examining them on the merits.

2. The Court's assessment

(a) General principles

113. The Court reiterates that the purpose of Article 5 § 4 is to assure to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp*, cited above, § 76, and *Ismoilov and Others v. Russia*, no. 2947/06, § 145, 24 April 2008). A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of the lawfulness of the detention, capable of leading where appropriate to his or her release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see, *mutatis mutandis*, *Stoichkov v. Bulgaria*, no. 9808/02, § 66 *in fine*, 24 March 2005, and *Vachev v. Bulgaria*, no. 42987/98, § 71, ECHR 2004-VIII).

114. The accessibility of a remedy implies, *inter alia*, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy (see, *mutatis mutandis*, *Čonka v. Belgium*, no. 51564/99, §§ 46 and 55, ECHR 2002-I).

115. Furthermore, Article 5 § 4 enshrines, as does Article 6 § 1, the right of access to a court, which can only be subject to reasonable limitations that do not impair its very essence (see *Shishkov v. Bulgaria*, no. 38822/97, §§ 82-90, ECHR 2003-I, and *Bochev v. Bulgaria*, no. 73481/01, § 70, 13 November 2008). While Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of applications for release from detention, it nevertheless requires that a State

which institutes such a system must in principle accord detainees the same guarantees on appeal as at first instance (see *Peša*, cited above, § 126).

(b) Application of these principles to the present case

116. The Court notes that the applicant's constitutional complaint of 15 October 2012 against the Zagreb County Court's decisions extending his detention on 25 July 2012 and 23 August 2012 was declared inadmissible by the Constitutional Court, on the grounds that a fresh decision extending his detention had been adopted on 21 September 2012 (see paragraph 33 above).

117. The Court has already examined, in other Croatian cases, the practice of the Constitutional Court of declaring inadmissible each constitutional complaint where, before it has given its decision, a fresh decision extending detention has been adopted in the meantime. In this respect the Court has found a violation of Article 5 § 4 of the Convention in that the Constitutional Court's failure to decide on the applicants' constitutional complaints on the merits made it impossible to ensure the proper and meaningful functioning of the system for the review of their detention provided for by the national law (see *Peša*, cited above, § 126; *Hađi v. Croatia*, no. 42998/08, § 47, 1 July 2010; *Bernobić v. Croatia*, no. 57180/09, § 93, 21 June 2011; *Krnjak v. Croatia*, no. 11228/10, § 54, 28 June 2011; *Šebalj v. Croatia*, no. 4429/09, § 223, 28 June 2011; *Getoš-Magdić v. Croatia*, no. 56305/08, § 106, 2 December 2010; and *Trifković v. Croatia*, no. 36653/09, § 140, 6 November 2012).

118. The Court sees no reason to depart from these principles in the circumstances of the present case, in which the applicant sought to challenge the decisions on his detention after his detention had been extended by a new decision.

119. It notes that under section 62 of the Constitutional Court Act, anyone who deems that an individual act of a State body determining his or her rights and obligations, or a suspicion or accusation of a criminal act, has violated his or her human rights or fundamental freedoms may lodge a constitutional complaint against such act and reasonably expect that his complaint will be examined and accordingly decided (see paragraph 68 above).

120. The Act does not provide for any limitation to this right on which the Constitutional Court could have relied. Thus, the applicant was denied access to the Constitutional Court in order to challenge the lawfulness and reasonableness of his detention, in the period covered by the decisions of 25 July 2012 and 23 August 2012, on grounds not provided for by the domestic law. In any event, the Court considers the denial of judicial review of the applicant's detention on the sole basis that the applicant was at the time detained under a new decision an unjustified restriction on his right to

take proceedings under Article 5 § 4 (compare *Poghosyan v. Armenia*, no. 44068/07, § 79, 20 December 2011).

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

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

122. The applicant complained that he had not had an effective opportunity to participate in the administrative disciplinary proceedings against him, contrary to Article 6 § 1 of the Convention, which, in so far as relevant, reads:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

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

B. Merits

1. The parties' arguments

124. The applicant argued that under the relevant domestic law he had had a right to be present at the hearing before the Osijek Administrative Court and he had therefore requested that court to adjourn the hearing until his release from detention. However, the Osijek Administrative Court had arbitrarily dismissed his request because his representative had failed to appear at the hearing, even though that should not have affected his right to appear and to be heard in person before the court. Moreover, the Higher Administrative Court had erroneously rejected his appeal against the decision of the Osijek Administrative Court and therefore it had failed to remedy the existing situation.

125. The Government pointed out that in his submissions to the Osijek Administrative Court the applicant had put forward all his arguments concerning the merits of the case and had failed to specify the reasons for which his presence at the hearing had been necessary. The proceedings at issue had concerned the question of whether the applicant's suspension from the service had been in compliance with the Police Act and no factual issues had been in dispute. Therefore, it had not been necessary to adjourn the hearing as the applicant had submitted all his relevant arguments in his

administrative action and in his subsequent submissions. Moreover, the applicant had been represented during the proceedings and although his representative could have argued his case adequately, he had decided not to appear at the hearing. Lastly, the Government pointed out that the Higher Administrative Court had rejected the applicant's appeal against the judgment of the Osijek Administrative Court based on the relevant domestic law and its consistent and foreseeable practice.

2. The Court's assessment

(a) General principles

126. The Court notes at the outset that the proceedings which form the basis of the applicant's complaint are administrative disciplinary proceedings against a police officer. Such proceedings fall to be examined under the civil head of Article 6 of the Convention (see *Vanjak v. Croatia*, no. 29889/04, § 33, 14 January 2010; *Šikić v. Croatia*, no. 9143/08, § 20, 15 July 2010; and *Trubić v. Croatia* (dec.), no. 44887/10, § 26, 2 October 2012).

127. The Court reiterates that Article 6 of the Convention does not guarantee a right to personal presence before a civil court, but rather a more general right to present one's case effectively before the court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights (see *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II).

128. Thus, representation may be an appropriate solution in cases where a party cannot appear in person before a civil court. Given the obvious difficulties involved in transporting detained persons from one location to another, the Court can in principle accept that in cases where the claim is not based on the plaintiff's personal experiences, representation of the detainee by an advocate would not be in breach of the principle of equality of arms (see, *mutatis mutandis*, *Gryaznov v. Russia*, no. 19673/03, § 45, 12 June 2012). To that end, the Court must examine whether the applicant's submissions in person would have been "an important part of the plaintiff's presentation of the case and virtually the only way to ensure adversarial proceedings" (see *Khuzhin and Others v. Russia*, no. 13470/02, § 105, 23 October 2008).

(b) Application of these principles to the present case

129. The Court notes that the central issue in dispute between the applicant and the Ministry of the Interior in the proceedings before the Osijek Administrative Court was the legal question of whether the applicant could be suspended from service on the sole basis of a reasonable suspicion that he had committed an offence amounting to a breach of his official duty.

The answer to this question was relevant for the interpretation and application of the relevant provisions of the Police Act, namely, section 112, which allows for the possibility of suspension (see paragraphs 60 and 63 above).

130. At the same time no factual issues between the parties were in dispute which required the Osijek Administrative Court to hear witnesses or take other oral evidence (compare *Saccoccia v. Austria*, no. 69917/01, § 79, 18 December 2008, and *Belan v. Russia* (dec.), no. 56786/00, 2 September 2004) nor was the applicant's claim, by its nature, based on the details of his personal experience, but on the allegations of the erroneous application of the relevant law by the Ministry of the Interior (see, by contrast, *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007).

131. Throughout the proceedings the applicant was represented by a lawyer who submitted the appeal against the first-instance decision of the Chief of the Osijek-Baranja Police Department and the administrative action against the Ministry of the Interior's decision as well as further written pleadings commenting on the merits of the case. He also had an effective opportunity to participate at the hearing and thus to represent all the applicant's legal arguments before the Osijek Administrative Court. However, without providing any reason, he decided not to appear at the hearing and therefore there was no reason for the Osijek Administrative Court to adjourn it (see paragraph 63 above, and compare *Milovanova v. Ukraine* (dec.), no. 16411/03, 2 October 2007).

132. Against that background, in view of the fact that at the time the applicant was detained and could not appear in person before the Osijek Administrative Court and that his claim did not depend on the details of his personal experience but rather on the resolution of matters of legal nature (contrast, for example, *Kovalev*, cited above, § 37; *Sokur v. Russia*, no. 23243/03, § 35, 15 October 2009; *Shilbergs v. Russia*, no. 20075/03, § 111, 17 December 2009; *Artyomov v. Russia*, no. 14146/02, § 205, 27 May 2010) as well as the fact that he was given a reasonable opportunity to present his case effectively through a representative, the Court finds that by holding a hearing in the applicant's absence the Osijek Administrative Court did not breach the applicant's right to present his case effectively.

133. There has, accordingly, been no violation of Article 6 § 1 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

134. The applicant brought the same complaints under Article 6 §§ 2 and 3 of the Convention.

135. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation

of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded, and must be rejected pursuant to Article 35 § 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

136. 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

137. The applicant claimed 300 Croatian kunas (HRK) for every day he had spent in pre-trial detention on account of non-pecuniary damage.

138. The Government considered the applicant's claim excessive, unfounded and unsubstantiated.

139. Having regard to all the circumstances of the present case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant 1,400 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

B. Costs and expenses

140. The applicant also claimed costs and expenses in an unspecified amount.

141. The Government considered that the applicant had failed to substantiate his claims for costs and expenses in any way.

142. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Whereas the applicant failed to specify his clam for costs and expenses, the Court notes that the applicant was represented by a lawyer in the proceedings before it and that the required observations and documents were submitted. In these circumstances the Court finds it appropriate to award the applicant EUR 850 in respect of costs and expenses, plus any tax that may be chargeable to him on that amount.

C. Default interest

143. 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 to the merits the Government's objection as to the exhaustion of domestic remedies concerning the complaints under Articles 5 § 3 of the Convention and *rejects* it;

2. *Declares* the applicant's complaints concerning the length of his pre-trial detention, lack of an effective domestic remedy before the Constitutional Court with regard to his constitutional complaint of 15 October 2012, and the alleged lack of fairness of the administrative disciplinary proceedings, under Article 5 §§ 3 and 4 and Article 6 § 1 of the Convention, admissible and the remainder of the application inadmissible;

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

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

5. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amount, to be converted into Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 1,400 (one thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 850 (eight hundred fifty euros), plus any tax that may be chargeable, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 5 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President