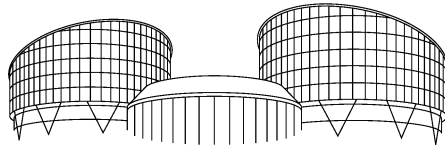

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF SINIŠTAJ AND OTHERS v. MONTENEGRO

(Applications nos. 1451/10, 7260/10 and 7382/10)

JUDGMENT

STRASBOURG

24 November 2015

FINAL

02/05/2016

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 Siništaj and others v. Montenegro,

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

Işıl Karakaş, *President,*
Nebojša Vučinić,
Julia Laffranque,
Valeriu Griţco,
Ksenija Turković,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 3 November 2015,

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

PROCEDURE

1. The case originated in three applications (nos. 1451/10, 7260/10 and 7382/10) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Albanian nationals, Mr Anton Siništaj ("the first applicant") and Mr Viktor Siništaj ("the second applicant") on 29 December 2009, three Montenegrin nationals, Mr Pjetar Dedvukaj ("the third applicant"), Mr Djon Dedvuković ("the fourth applicant"), and Mr Nikola Ljekočević ("the fifth applicant") on 31 January 2010, and two US nationals of Albanian origin, Mr Kola Dedvukaj ("the sixth applicant") and Mr Rok Dedvukaj ("the seventh applicant") on 26 January 2010, respectively.

2. The first and second applicants were represented by Mr R. Prelević, the third, fourth and fifth applicants were represented by Mr K. Camaj, both lawyers practising in Podgorica, and the sixth and seventh applicants were represented by Mr S. Powles, a lawyer practising in London. The Montenegrin Government ("the Government") were represented by their Agent at the time, Mr Z. Pažin.

3. The applicants complained, in particular, that they had been tortured and ill-treated between 9 and 15 September 2006 and that there had been no effective investigation in that regard. The sixth and seventh applicants also complained that they had been convicted on the basis of a statement extorted from the first applicant, his diary obtained in an unlawful search and a subsequent inadequate translation of the diary. They also complained about having been convicted at first instance by a bench composed of three judges instead of five. In addition, the sixth applicant alleged a lack of medical care while in detention.

4. On 29 May 2012 the applications were communicated to the Government.

5. Notified under Article 36 § 1 of the Convention and Rule 44 § 1 (a) of their right to intervene in the present case, the Albanian Government did not state any wish to do so.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1959, 1964, 1968, 1946, 1980, 1948, and 1958 respectively. The first, second, fourth and fifth applicants live in Podgorica (Montenegro), the third applicant lives in Windsor (Canada), the sixth applicant lives in Farmington Hills (USA) and the seventh applicant lives in Troy (USA).

7. The facts of the cases as submitted by the parties may be summarised as follows.

A. The alleged ill-treatment and subsequent criminal complaints

8. In the early morning hours of 9 September 2006 a special anti-terrorist unit arrested seventeen persons, including the applicants, on suspicion of associating for the purpose of anti-constitutional activities (*udruživanje radi protivustavne djelatnosti*), preparing actions against the constitutional order and security of Montenegro (*pripremanje djela protiv ustavnog uređenja i bezbjednosti Crne Gore*) and illegal possession of weapons and explosives (*nedozovoljeno držanje oružja i eksplozivnih materija*).

9. The applicants maintain that as of the moment of their arrest and during the next few days, during police detention as well as when being taken to the investigating judge, they were ill-treated with the aim of extorting statements. In particular, they were beaten, deprived of food, verbally abused, including on the basis of their ethnic origin, and threatened by police officers.

10. On 11 and 12 September 2006, when interrogated by the investigating judge of the High Court, the applicants made statements to that effect. The investigating judge included these statements in the interrogation minutes, as well as the following: (a) the third applicant had a bandage on his head beneath which there was a visible cut (*razderotina*), as well as a haematoma (*krvni podliv*) on the upper part of his left cheekbone (*jagodica*); (b) the fourth applicant admitted that he did not have any injuries; (c) the fifth applicant had a haematoma on both shoulders, in the

area above both elbows, a scratch on the outside part of his left ankle (*skočni zglob*), and a haematoma on the left ankle as well as on the outside part of the left thigh, the dimensions of which were 10x1.5 cm; the fifth applicant also maintained that he had a pain in his right ear; and (d) the seventh applicant had scratches on his left elbow and left knee, and a haematoma on the left part of his back above the hip, and complained that his ribs hurt and that he could barely move and breathe.

11. On 12 September 2006 a prison doctor examined the third and sixth applicants. He noted in a medical report that the third applicant had a 5 cm long scratch on top of his head, a dark blue haematoma on the left cheekbone measuring 4x0.3 cm, a dark blue haematoma stretching from his left nipple to his armpit measuring 25x3 cm and a large hematoma above the left elbow. The doctor noted that there were no visible injuries on the sixth applicant's body.

12. On 14 September 2006 the first, second, fourth, fifth and seventh applicants filed a criminal complaint (*podnijeli krivičnu prijavu*) with the investigating judge against unknown police officers for extorting their statements (*iznuđivanje iskaza*), torture and ill-treatment in the period between 9 and 11 September 2006.

13. Between 27 and 29 September 2006 all the applicants save for the third one signed written statements to their lawyers describing the ill-treatment they had been subjected to.

14. On 13 October 2006 the above criminal complaint was amended so as to include the sixth applicant's complaint to the same effect. The applicants also expressed their readiness to identify the officers who had ill-treated them. In addition, the first and second applicants complained against police officers who had taken them to the investigating judge on 11 September and 15 September 2006 for ill-treating, beating and insulting the two of them on those occasions.

15. It would appear that on 28 October 2006 the third applicant lodged a criminal complaint with the investigating judge against D.R. and several other unidentified police officers. No copy of this complaint has been provided.

16. On 17 November 2006 the Internal Control Division of the Police Directorate issued a report concerning the legality of police actions during the arrest and pre-trial proceedings. According to the report, a special internal control team was formed, which identified all the police officers involved in the action. A total of 136 interviews were conducted, both with the police officers and with family members of some of the arrested persons, apparently including the father of the first applicant as well as the owner of the house in which the seventh applicant had been arrested. None of the two latter mentioned any force being used against the first and seventh applicants. The police officers involved denied all unlawful actions. The Special Prosecutor for Prevention of Organised Crime stated that none

of the arrested persons had been tortured to her knowledge. The investigating judge stated that they had complained about torture and that their statements to that effect had been noted in the interrogation minutes. Medical reports issued in prison stated that the first, second and sixth applicants had no visible injuries, the fifth applicant had "several scratches and suffusion" and the seventh applicant "redness the size of 1 euro" on his left shoulder. The report suggested that the injuries observed in respect of two other detainees arrested on the same occasion had been inflicted when these persons had confronted the police officers during the arrest, on which a special official record had been made. On the basis of such findings the Internal Control Division could not confirm that there were any grounds for establishing the involved officers' responsibility. However, it was decided that all the relevant documents should be submitted to the State Prosecutor for further consideration.

17. On 15 June 2007, during the main hearing (*glavni pretres*), the fourth applicant stated that he had been beaten at the police station on his head and body, and his ribs had been broken.

18. On 30 October 2007 the first applicant submitted to the State Prosecutor (*Osnovni državni tužilac*) the name of M.L., a police officer who had been on the same shift as the officer who had allegedly ill-treated him on 9 September 2006 and who therefore presumably knew the name of that officer.

19. On 14 January 2008 the first and second applicants urged the State Prosecution Department (*Osnovno državno tužilaštvo*) in Podgorica to act upon their criminal complaint. The first applicant also submitted the number of the police badge of one of the officers who allegedly had boasted in front of another detainee of having personally beaten the first applicant.

20. On 30 May 2008 the third applicant submitted to the Supreme State Prosecutor the name of one of the officers who had been present during his questioning in the police station. At the same time he urged the Prosecutor to deal with his criminal complaint, to identify all the officers who had been involved in his arrest as well as to establish the treatment meted out to him during police detention.

21. On 16 June 2008 the second applicant urged the State Prosecution Department to deal with his complaints. He also submitted the names of some of the police and prison officers who had allegedly ill-treated the applicants on 9, 11 and 12 September 2006. He reiterated that there had been other officers and special unit members who had ill-treated them, who were still unidentified.

22. On 25 September 2008 a prison doctor examined the seventh applicant and noted in a medical report that he had reported pain in his spine going back ten years, which pain had become more acute over the last 12 months, that he was urinating more often, his blood pressure was 110/70, he

could not walk on his toes, and that his lungs were fine. A part of the medical report was illegible due to bad handwriting.

23. The fourth applicant submitted to the Court a medical report issued by a private hospital in Podgorica on 9 June 2010. During this medical examination the fourth applicant stated, *inter alia*, that he had been beaten by the police in 2006, but that he had not consulted a doctor about that. The medical report stated, *inter alia*, that he had an old double fracture of the fourth rib, as well as an old fracture of the right clavicle (*klavikula*). The doctor had diagnosed high blood pressure and prescribed treatment for him.

24. On 10 November 2010 the fifth applicant was examined in a private ambulance, and the medical report issued on that occasion stated that he had a chronic post-traumatic stress disorder.

25. It would appear that none of the above criminal complaints or their further supplements has been processed by the authorities to date.

26. The applicants did not lodge a compensation claim with regard to the alleged ill-treatment.

B. The ensuing criminal proceedings

1. The judgment of the High Court

27. On 5 August 2008 the High Court, in a chamber composed of three judges, found the first, second, third, sixth and seventh applicants guilty of associating for the purposes of anti-constitutional activities and preparing actions against the constitutional order and security of Montenegro. In particular, it was established that in the period between mid-2004 and 9 September 2006 the first and second applicants, with two other co-accused, had met with some members of the so-called Kosovo Liberation Army ("KLA") in the wider area of Podgorica, Kosovo[1], Albania and the USA, and created an association the aim of which was to undermine the constitutional order and security of Montenegro and create within Montenegro a territory with special status, inhabited by persons of Albanian ethnicity, contrary to the Montenegrin constitutional order. Subsequently, the third, sixth and seventh applicants had become members of this organisation. The fourth and fifth applicants were found guilty of illegal possession of weapons and explosives.

28. The first applicant was sentenced to six years' imprisonment, the second applicant to five years, the third, sixth and seventh applicants to three years each, the fourth applicant to three months and the fifth applicant to six months. By virtue of the same judgment a large variety of weapons, ammunition, and various other objects, such as military clothes, caps,

[1] All references to Kosovo, whether to the territory, institutions or population, in this draft shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

gloves, binoculars, and flags with the KLA logo, were confiscated from the first and second applicants, as well as a diary belonging to the first applicant. A certain number of weapons and some explosives were confiscated from the fourth and fifth applicants. All the applicants, save for the third one, were ordered to pay court fees (*po osnovu paušala*).

29. The judgment was based on the following evidence: the statement made by the first applicant to the police, his diary and its translation done by the first applicant at the police station, written confirmation of the search of the first and second applicants' flats and other premises, minutes of the searches, an official report on the weapons found, an official receipt on objects seized from the first and second applicants and relevant photo-documentation, terrain search, including in caves, weapons, ammunition and explosives found there and relevant photo-documentation, minutes of the searches of some of the other co-accuseds' flats and other premises, statements of some of the other co-accused, evidence obtained through measures of secret surveillance, including transcripts of a number of telephone calls, reports on border crossings, the statements of three police officers who had conducted the searches, a statement of the first applicant's police-appointed lawyer who was present during the first applicant's interrogation at the police station, the opinion of expert witnesses and a search warrant issued by the High Court investigating judge on 8 September 2009.

30. The High Court did not take into account other evidence, such as, *inter alia*: the statements given by the second, third, fourth and fifth applicants at the police station, as these applicants had not been properly advised that they were entitled to use their own language and to have the assistance of an interpreter; and the minutes of the searches of several other co-accuseds' flats, as the witnesses who had attended the searches were related to those whose flats had been searched (wife, son, sister-in-law).

31. The High Court considered that the first applicant's rights had not been breached in the pre-trial proceedings (*u pretkrivičnom postupku*) and that the search of his flat and other premises had been conducted in accordance with the relevant provisions of the Criminal Procedure Code. In particular, the search warrant had been issued by the investigating judge on 8 September 2006 at 1.40 p.m., and the search had been conducted on 9 September between 6 and 8 a.m. While the search had not been attended by two witnesses, this was allowed by a relevant provision of the Criminal Procedure Code, which provided for a search without witnesses if it was impossible to secure the presence of any at once and there was a danger that the relevant action would be postponed (*postoji opasnost od odlaganja*). The reasons why the search had been conducted without witnesses had to be noted in the search minutes (*moraju se naznačiti u zapisniku*). One of the police officers who had conducted the search testified that it had been impossible to find two witnesses at the time as the search had been

conducted early in the morning. According to him, this was not mentioned in the search minutes as the minutes had been made on the spot (*zapisnik o pretresanju sačinjen na licu mjesta i zbog toga nijesu navedeni razlozi za pretresanje bez prisustva svjedoka*). However, the search had been attended by the first applicant himself, who had duly signed the minutes and had no objections to them.

32. The High Court further established that the first applicant had been questioned at the police station on 9 September 2009 at 5 p.m. in the presence of a police-appointed lawyer with whom he had consulted before making a statement. The lawyer testified that the first applicant had been questioned in accordance with the law and that he had not noticed any injuries on him. The first applicant had confirmed during the questioning that he had been writing a diary, and that he could translate it as it was written in Albanian. The lawyer was present during the translation of the diary as well.

33. The sixth and seventh applicants were convicted on the basis of the first applicant's statement made at the police station and the contents of his diary, the two being compatible. In particular, it was established, on the basis of these two pieces of evidence, that the seventh applicant had arrived from the USA in Albania on 30 March 2006, that he had been informed about the plans of the association and had attended a subsequent meeting. In this way, the court concluded, the seventh applicant had manifested his membership of the association and participation in its preparatory work. It was further found, on the basis of the same evidence, that on 1 September 2006 the sixth and seventh applicants had been informed that the war in the relevant part of Montenegro should begin on 10 September 2006, in which way the sixth applicant had manifested his membership of the association, as well as by accepting an invitation to go to the next meeting taking place in Skadar (Shkodër, Albania). On 4 September 2006 several persons, including the sixth and seventh applicants, had met in Skadar and had agreed on how to carry out the planned acts. In particular, the seventh applicant had expressed his support, said he had been to Kosovo himself to explore the realisation of the plan (*radi izviđanja mogućnosti realizacije plana*), and wondered if their plans would affect Kosovo's independence. The meeting was concluded by another co-accused's statement that the Kosovo army would enter Montenegro "around Saturday, that is on 9 September 2006, and [that] they want[ed] to do their job". The High Court concluded that the first applicant's defence during the pre-trial proceedings was in logical connection with the contents of his diary. This evidence was found to be further supported by a report on their border crossings, which data entirely coincided with the dates and times of border crossings mentioned in the first applicant's diary and his statement made at the police station. Lastly, both the statement and the diary were further supported by an official police

report of 30 November 2006, which confirmed the existence of all the objects and places described in the diary.

34. Finally, the first-instance court did not accept that the criminal offences contained in the indictment had been committed in an organised manner as the indictment did not claim that the motive was profit or power, this being one of the mandatory conditions for a criminal offence to fall within the notion of organised crime.

2. *The judgment of the Court of Appeals*

35. All the applicants appealed against the High Court judgment. The first, second, fifth, sixth and seventh applicants' appeals, contained in the case-file, included a complaint about the torture and ill-treatment, and a lack of an investigation in that respect.

36. On 18 June 2009 the High Court judgment was upheld by the Court of Appeals. In particular, it was held that there had been no procedural violations in the first-instance proceedings and that the first-instance judgment was based on legally valid evidence, including the statement made by the first applicant at the police station, the minutes of the search conducted in his flat and other premises, as well as the evidence obtained by that search, including his diary.

37. The first applicant was considered to have been interrogated in accordance with all the procedural guarantees, as confirmed by his police-appointed lawyer, who had not noticed any injuries on him. The same lawyer had also been present when the first applicant had translated the diary, and had signed the interrogation minutes afterwards.

38. The search of the first applicant's flat was held to have been conducted in accordance with the law and, therefore, all the evidence obtained thereby was legally valid, including the diary. In particular, the investigating judge had issued the search warrant the day before the search. The search had not been witnessed by two adults as it was impossible to find any witnesses in the early morning hours. No statement to this effect was included in the minutes as they had been drafted on the spot. This conclusion was based on the testimony of one of the officers who had conducted the search. As regards the diary, it contained a clear and convincing description of the criminal acts undertaken. The contents of the diary were further supported by the first applicant's defence in the pre-trial proceedings, and were further compatible with the border crossing reports, the evidence obtained through measures of secret surveillance, transcripts of telephone conversations, and the weapons found on the terrain (in caves).

39. The first-instance court had established all the facts, in particular on the basis of the statement the first applicant had made in the pre-trial proceedings and his diary. The first applicant had admittedly changed his statement during the main hearing claiming, in substance, that what he had said during the pre-trial procedure had been extorted by torture. However,

this was rebutted by a statement of his police-appointed lawyer, who had been present at the time when the statement had been made. The validity of this evidence was not called into question (*nije dovedena u pitanje*) by any other evidence, but was actually further supported thereby. Membership of an association could be manifested in various ways, and the sixth and seventh applicants, in particular, had manifested it by taking part in the meetings where the activities for achieving the association's goal were discussed.

40. The Court of Appeals agreed that the criminal acts of which the accused were convicted had not been committed in an organised manner as the indictment did not allege that their motive was profit or power.

41. This decision was served on the applicants on 30 July 2009 at the earliest.

3. Proceedings in the Supreme Court

42. On 25 December 2009 the Supreme Court ruled on the first, second, third and fourth applicants' appeal on points of law (*zahtjev za ispitivanje zakonitosti pravosnažne presude*). They challenged, *inter alia*, the conclusion that there had been no time to find two adults to witness the search of the first applicant's flat and the composition of the first-instance court. The Supreme Court, in substance, endorsed the reasoning of the High Court and the Court of Appeals. In particular, the composition of the first-instance court was in accordance with the law, as Article 510 of the Criminal Procedure Code explicitly provided that a three-judge bench would try criminal acts of organised crime, and the trial of all the accused was based on an indictment of the Supreme State Prosecutor – Section for Suppression of Organised Crime, Corruption, Terrorism and War Crimes. The fifth, sixth and seventh applicants did not lodge an appeal on points of law.

4. Proceedings in the Constitutional Court

43. Between 26 March and 24 May 2010 the first, second, third and fourth applicants lodged constitutional appeals with the Constitutional Court. The third and fourth applicants complained, *inter alia*, about torture, inhuman and degrading treatment. On 23 July 2014 the Constitutional Court dismissed the constitutional appeal considering, in particular, that the complaint about torture, inhuman and degrading treatment was unsubstantiated given that the applicants had failed to submit any evidence in that regard. The fifth, sixth and the seventh applicants would not appear to have lodged a constitutional appeal.

C. The sixth applicant's health

44. The sixth applicant submitted two medical reports, issued by a prison doctor on 10 December 2007 and 16 September 2008, respectively.

45. The report issued in December 2007 is largely illegible. The legible part states that the sixth applicant complained about pain in his right shoulder and problems in moving it (*otežane pokrete*). There was a diagnosis of *naevus sebaceus*, i.e. a mole on a sebaceous gland.

46. The copy of the medical report issued on 16 September 2008 is partly illegible. The legible parts state that the applicant had pain all over his body with frequent headaches and poor sleep. His blood pressure was 140/85, walking on toes and heels was nearly impossible, and it was recommended that an X-ray of the spine be done. Two medications were prescribed together "with the usual treatment he [was] taking". He was diagnosed with "HTA, lumbago, and suspected kind of (illegible) discus".

47. The Government submitted the entire medical file of the sixth applicant. While part of the medical reports is illegible, from the legible part transpires the following.

48. On 12 September 2006, when he was remanded in custody, the sixth applicant was examined by a prison doctor. On that occasion the sixth applicant claimed that he had been beaten and that he had high cholesterol. The doctor noted that there were no visible injuries on the sixth applicant's body, and that he already had the treatment prescribed for high cholesterol.

49. Between 2 October 2006 and 24 December 2008 the applicant was examined 35 times in total: twice in 2006, 15 times in 2007 and 18 times in 2008.

50. During the examinations in 2006 the applicant complained about pain in his right shoulder and in general in his arms and joints. He was diagnosed with chronic rheumatism and sinusitis, and the necessary treatment was prescribed. Both times his blood pressure was optimal, and his heart, lungs and other organs were free of any illness.

51. In 2007 and 2008 the sixth applicant was examined by a number of specialists including a dermatologist, a psychiatrist, a physiatrist, and a specialist in internal medicine, who all prescribed the necessary treatments. He also had a number of tests done, such as laboratory blood analysis, five ultra-sounds of the kidneys and abdomen, ECG, and an X-ray of the upper part of the spine and three X-rays of the right shoulder, and his blood pressure was checked on various occasions.

52. The examinations showed that the sixth applicant had slightly increased triglycerides and high cholesterol and that he had been under treatment for high blood pressure and high cholesterol for five years already; he had an ongoing ossification in his right shoulder, which was stated to be usual for his age, as well as in his neck; he also had a cyst in the right kidney, and the mole on the sebaceous gland for which the treatment

was surgery but not urgently required. The medical analysis of his liver, spleen, and left kidney were fine.

D. Other relevant information

53. Between 11 and 15 September 2006, during the interrogation by the investigating judge, and in the presence of lawyers of their own choice, the first, second and fifth applicants confirmed that their mother tongue was Albanian, but that they spoke Serbian well and that they did not need an interpreter. It is also clear from the case file that the first applicant is a school teacher of the Serbian language in Montenegro. The other applicants were interrogated with the assistance of an interpreter. The first and second applicants confirmed that they had officially-appointed lawyers in the police station. While the first applicant had consulted his police-appointed lawyer before having made a statement, the second applicant would appear to have spoken with his after having made a statement. After having consulted the lawyers of their own choice at the interrogation before the investigating judge the first, second, third and seventh applicants said they would not answer any questions or present their defence.

54. On 14 May 2008 the State Prosecutor indicted five police officers for torturing and ill-treating the father of the first and second applicants on the occasion of their arrest. On 21 October 2010, after a remittal, the defendants were acquitted, which judgment was upheld by the High Court on 18 May 2011. On 14 February 2014 the Constitutional Court dismissed a constitutional appeal, which had been lodged against these decisions on 15 August 2011 by the first applicant on behalf of his father, who had passed away in the meantime.

55. In a statement made to his lawyer on 1 February 2008 the sixth applicant wrote that the medical report issued in 2007 contained a recommendation that he should have another dermatological check-up in two months, which check-up had not taken place, and that, contrary to what was in the report, he had not had any physiotherapy. He also maintained that he could not communicate with the doctor as the doctor could not speak English or Albanian. The sixth applicant claimed that his health situation was far from regular and referred to the shoulder pain, high blood pressure, high cholesterol, permanent headache, sleeplessness, dizziness and total exhaustion. He stated that "numerous appeals" made by him personally, his lawyer and US Embassy personnel, seeking a competent medical examination, had remained unanswered. No details with regard to these appeals have been provided in the case file. There is also no evidence that this statement of the sixth applicant has ever been submitted to anyone except his lawyer.

56. The sixth applicant also submitted a letter addressed to the President of the High Court, apparently written by a Consular Officer of the

US Embassy in Montenegro on 1 February 2008. The letter stated that the sixth applicant, during regular visits of a representative of the US Embassy, consistently complained about his medical problems, in particular about the growth of a mole on his face and a shoulder pain. It further transpires from the letter that the sixth applicant had been visited by a dermatologist on 10 December 2007, but that it was impossible to take a sample of the mole as no appropriate equipment was available in the prison. The letter went on to say that the sixth applicant had been prescribed treatment for the shoulder pain, but that he had stopped taking it as it made him nauseous. The submitted copy of the letter bears no logo of the US Embassy, no signature of an authorised person, and no stamp indicating that it has ever been submitted to the High Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Republic of Montenegro 1992 (*Ustav Republike Crne Gore,* published in the Official Gazette of the Republic of Montenegro - OG RM - no. 48/92)

57. Article 9 of the 1992 Constitution provided, *inter alia*, that Serbian was the language in official use. The 1992 Constitution was repealed by 2007 Constitution.

B. Constitution of Montenegro 2007 (*Ustav Crne Gore,* published in the Official Gazette of Montenegro - OGM - no. 01/07)

58. Article 13 of the 2007 Constitution provides, *inter alia*, that the official language is Montenegrin, while Serbian, Bosnian, Albanian and Croatian are also in official use.

59. Article 32 provides for the right to a fair trial.

60. Article 149 provides that the Constitutional Court shall rule on a constitutional appeal lodged in respect of an alleged violation of a human right or freedom guaranteed by the Constitution, after all other effective legal remedies have been exhausted.

61. The Constitution entered into force on 22 October 2007.

C. Montenegro Constitutional Court Act 2008 (*Zakon o Ustavnom sudu Crne Gore*, published in the OGM nos. 64/08, 46/13, and 51/13)

62. Section 48 provided that a constitutional appeal might be lodged against an "individual act" of a State body, an administrative body, a local self-government body or a legal person exercising public authority, in

respect of violations of human rights and freedoms guaranteed by the Constitution, after all other effective legal remedies had been exhausted.

63. Sections 49-59 provided additional details as regards the processing of constitutional appeals. In particular, section 56 provided that when the Constitutional Court found a violation of a human right or freedom, it would quash the impugned "act", entirely or partially, and order that the case be re-examined by the same body which had rendered the quashed "act".

64. This Act entered into force in November 2008 and was repealed by the Constitutional Court Act 2015.

D. Montenegro Constitutional Court Act 2015 (*Zakon o Ustavnom sudu Crne Gore*, published in the OGM no. 11/15)

65. Section 68 provides that a constitutional appeal can be lodged by a physical person or legal entity, organisation, a community (*naselje*), a group of persons and other forms of organisation, which do not have a status of legal entity, if they consider that their human right or freedom guaranteed by the Constitution was violated by an individual decision, action or omission of a State body, an administrative body, a local self-government body or a legal person exercising public authority, after all other effective legal remedies have been exhausted.

66. Sections 69-78 provide further details as regards the processing of constitutional appeals. In particular, section 69 provides, *inter alia*, that a constitutional appeal can be lodged within 60 days as of the day when an impugned action violating a human right or freedom ceased. Section 76 provides that if in the course of proceedings before the Constitutional Court an impugned decision ceased to be in force, and the Constitutional Court finds a violation of a human right or freedom, it will adopt a constitutional appeal and award the appellant just satisfaction.

67. Section 38 provides that the Constitutional Court must decide within 18 months as of the day when the proceedings before that court were initiated.

68. This Act entered into force on 20 March 2015 thereby repealing the Constitutional Court Act 2008.

E. The Criminal Code 2003 (*Krivični zakonik*; published in the OG RM nos. 70/03, 13/04, 47/06, 40/08, 25/10 and 32/11)

69. Article 365 describes a criminal act of "terrorism" and provides for a sentence of imprisonment of between 3 and 15 years.

70. Article 372 § 1 provides, *inter alia*, that whoever establishes a group or other association with the aim of committing one of the criminal offences defined in Articles 365-367 of this Code, shall be punished by the sanction envisaged for the criminal offence for which the association has been

established. Article 372 § 3 provides that whoever becomes a member of an association described in paragraph 1 of this Article shall be sentenced to imprisonment of between 6 months and 5 years.

71. Article 373 § 2 provides that whoever sends or transports to the territory of Montenegro persons or weapon, explosive, poisons, equipment, ammunition or other material for the purposes of execution of one or more criminal offences from this Chapter, shall be sentenced to imprisonment lasting between 2 and 10 years.

F. The Criminal Procedure Code 2003 (*Zakonik o krivičnom postupku*; published in OG RM nos. 71/03, 07/04 and 47/06)

72. Article 12 § 1 provides that the use of force against a person deprived of liberty, and the extortion of a confession or any other statement from an accused or another person taking part in the proceedings, is prohibited and punishable. Paragraph 2 provides that a judicial decision cannot be based on a confession or another statement obtained by extortion, torture or inhuman treatment.

73. Article 24 § 1 provides that, except as otherwise provided in this Code, a case shall be tried at first instance by a five-judge bench when dealing with criminal offences for which imprisonment for fifteen years or more is provided, and by a three-judge bench when dealing with criminal offences for which the sanction is milder. Paragraph 2 provides that, at second-instance, a case shall be tried by a five-judge bench when the potential sanction is imprisonment for fifteen years or more, and by a three-judge bench when the possible sanction is milder.

74. Article 31 § 6 provides for a single set of proceedings and a single judgment in a case where there are several persons accused of a plurality of criminal offences, provided that there is a connection between the offences committed and the evidence is the same. If a higher court is competent for some of those criminal offences and a lower court for the others, combined proceedings can be conducted only before the higher court. The same applies when deciding which judicial formation within a court is competent to rule on the case at issue.

75. Articles 75-80 regulate search of premises, property and persons. In particular, Article 77 § 3 provides that the search of a flat shall be attended by two adults as witnesses. Article 79 § 4 provides that the search of a flat can also be conducted without witnesses if it is not possible to secure their presence at the relevant time and there is a danger that the search will have to be postponed. The reasons why the search was conducted without witnesses shall be noted in the search minutes. Article 79 § 5 provides that authorised police officers can search persons they are arresting, without a warrant and without witnesses if there is a suspicion that that person possesses a weapon or if there is a fear that he will discard, hide or destroy

objects that should be seized from him as evidence in a criminal proceedings.

76. Article 156 provides that, upon a request of a detainee and with the approval of an investigating judge, detainees can be visited by, *inter alia*, a doctor.

77. Article 158 provides that the president of the competent court shall supervise the execution of detention. The president of the competent court, or another judge designated by him, shall, at least once a month, visit the detainees and inform himself on how they are treated. He shall undertake any measures to remove irregularities observed during his visit. The president of the court and the investigating judge can, at all times, visit all the detainees, talk to them and receive their complaints.

78. Article 319 provides that if, during the main hearing before a three-judge bench, it turns out that the facts on which the indictment is based indicate a criminal offence for which a five-judge bench is competent, the bench shall be supplemented and the main hearing shall start anew (*glavni pretres će početi iznova*).

79. Article 376 § 1(1) provides, *inter alia*, that there shall be a breach of the rules of criminal procedure if the composition of the court was irregular.

80. Article 388 § 1 (1) provides, *inter alia*, that the second-instance court shall *ex officio* examine if there have been breaches of criminal proceedings provided in Article 376 § 1.

81. Articles 507-529 regulate proceedings with regard to criminal offences committed in an organised manner. In particular, Article 507 § 3 provides that these provisions shall be applied if there is a reasonable suspicion that the offence committed is the result of organised acting of more than two persons whose aim is to commit serious crimes for the purposes of profit or power (*radi sticanja dobiti ili moći*). Article 510 provides that criminal acts of organised crime shall be tried by a three-judge bench at first instance, and by a five-judge bench at second instance.

G. The Criminal Sanctions Enforcement Act (*Zakon o izvršenju krivičnih sankcija;* published in OG RM nos. 25/94, 29/94, 69/03 and 65/04)

82. Section 31 provides, *inter alia*, that the convict's medical condition shall be established when he is admitted to the prison.

83. Section 61 provides that force can be used against convicts only when necessary, *inter alia*, to prevent their absconding, physical attack against an official or another convict, inflicting injuries on another person, self-injuring or causing material damage, as well as to prevent resistance to an official executing a lawful order. The force includes, *inter alia*, physical force and the use of a baton. Pursuant to section 181, section 61 also applies in respect of detainees.

H. Detention Rules (*Pravilnik o kućnom redu za izdržavanje pritvora,* published in the Official Gazette of the Socialist Republic of Montenegro no. 10/87)

84. Rule 14 provides that a detainee will be examined by a general practitioner immediately on admission to prison. A medical report will be included in the detainee's medical file.

85. Rule 21(2) provides that a prison doctor will visit detainees at least once a week and, where necessary, suggest adequate measures for the removal of any irregularities observed.

86. Rule 23 provides that in the event of illness the detainee will receive medical treatment in the prison infirmary. If he needs to be hospitalised he will be transferred to a prison with a hospital department. In urgent cases he will be transferred to the nearest hospital. The body conducting the proceedings against the detainee will decide on the transfer to another prison, following a proposal by the prison doctor. In urgent cases, this decision will be made by a prison director, who must immediately inform the body conducting the proceedings.

87. Rule 24 provides that, if a detainee so requests and with the approval of the conducting body and under its surveillance, the detainee may be examined by a doctor of his own choice. Such an examination is, in principle, conducted in the prison in the presence of the prison doctor. Prior to the examination the detainee must first be examined by the prison doctor.

88. Rule 53(3) provides that the prison doctor will examine the detainee at the time of his release, and the medical report will be included in the detainee's medical file.

I. The Obligations Act 1978 (*Zakon o obligacionim odnosima;* published in the Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/78, 39/85, 45/89, 57/89 and the Official Gazette of the Federal Republic of Yugoslavia no. 31/93)

89. Sections 154 and 155 set out different grounds for claiming civil compensation, including pecuniary and non-pecuniary damage.

90. Section 172 (1) provided that a legal entity, which includes the State, was liable for any damage caused by one of "its bodies".

91. Sections 199 and 200 of the Obligations Act provided, *inter alia*, that anyone who had suffered fear, physical pain or, indeed, mental anguish as a consequence of a breach of personal rights (*prava ličnosti*) was entitled, depending on their duration and intensity, to sue for financial compensation in the civil courts and, in addition, to request other forms of redress "which might be capable" of affording adequate non-pecuniary satisfaction.

J. The Obligations Act 2008 (*Zakon o obligacionim odnosima*; published in the OGM nos. 47/08 and 04/11)

92. This Act entered into force on 15 August 2008 thereby repealing the Obligations Act 1978. Sections 148-149, 166 (1), and 206-207, however, correspond to sections 154-155, 172 (1), and 199-200 of the previous Act.

93. Section 151 (1) provides that everyone is entitled to request the court or another competent body to order termination (*prestanak*) of an action violating, *inter alia*, personal integrity, personal and family life and other personal rights (*prava njegove ličnosti*).

K. Constitutional Court case-law

94. The Government submitted that between 1 January 2008 and 31 December 2012 the Constitutional Court received 2,171 constitutional appeals, out of which 1,395 were examined and 1,391 decisions issued: 32 constitutional appeals were accepted, 617 were dismissed on the merits (*odbio*), 737 were rejected on procedural grounds (*odbacio*), and in five cases proceedings were terminated (*obustavio*).

95. It transpires from the Constitutional Court's website that between 1 January 2013 and 1 July 2015 an additional 1,473 constitutional appeals were examined: 55 were accepted, 561 were dismissed on the merits, 847 were rejected on procedural grounds, in five cases the court terminated the proceedings and seven cases were adjourned.

96. All the decisions issued upon constitutional appeals by the end of 2012 are available on the website of the Constitutional Court. It would appear that all the decisions accepting constitutional appeals between 1 January 2013 and 1 July 2015 were published in the Official Gazettes. On 1 July 2015 no decision from 2013 and 2015, and two decisions from 2014 (Už-III br. 387/10 and Už-III br. 122/10 i 228/10) were published on the Constitutional Court's website.

97. All constitutional appeals lodged by 1 July 2015 had been submitted against various decisions of domestic courts and other bodies, except for two[1]. One of these two constitutional appeals was submitted for an alleged failure of the domestic courts to serve a decision of the Supreme Court on an appellant personally, which was examined on the merits and a relevant decision, Už-III br. 588/11, was issued on 20 September 2012. The other one was submitted by the third and fourth applicants, raising, *inter alia*, an issue of ill-treatment between 9 and 15 September 2006. As noted above, this complaint on ill-treatment was also examined on the merits and dismissed on 23 July 2014 (see paragraph 43 above).

[1] For four other constitutional appeals it is not specified against what they were submitted (notably Už. br. 729/14, Už. br. 738/14, Už. br. 126/15 and Už. br. 168/15).

98. Prior to 20 September 2012 the Constitutional Court held in a number of decisions (see, for example, U. br. 117/07, Už-III br. 69/09, Už-III brt.677/11, Už-III br.126/09 and Už-III br. 187/12 issued on 24 September 2009, 11 February 2010, 9 February 2012, 1 March 2012 and 29 May 2012 respectively) that "only a decision by which a competent body decided on the merits, that is on a right or freedom of an appellant, was an 'individual act' within the meaning of the cited provisions of the Constitutional Court Act, upon which the Constitutional Court, in a procedure initiated by a constitutional appeal, was competent to protect human rights and freedoms guaranteed by the Constitution". It also rejected on procedural grounds constitutional appeals where appellants failed to specify, *inter alia*, the number and the date of the individual "act" against which they had submitted a constitutional appeal, the name of the body which had issued it, or failed to submit proof of when it had been served on them, and a certified copy thereof (see, for example, decisions U. br. 1/08, Už-III br.26/09 and 93/09, issued on 12 February 2009 and 24 December 2009, respectively).

III. RELEVANT INTERNATIONAL DOCUMENT – REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN AND DEGARDING TREATMENT IN RESPECT OF MONTENEGRO

99. Between 15 and 22 September 2008 the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment ("the CPT") visited Montenegro.[1]

100. During its visit the CPT noted, *inter alia*, that the situation in terms of health-care staff resources was far from satisfactory. General health care was provided by only one doctor who was on call continuously, which could lead to long delays in dispensing health care and affect its quality (see paragraph 62 of the CPT report).

101. There was no systematic approach to the handling of complaints by prisoners, nor was there any register of complaints. The prisoners' complaints and the reactions to them were kept in the personal files of the inmates concerned, some of the complaints having remained without a written answer (see paragraph 81 of the CPT report).

102. The CPT noted that prison establishments were visited by investigating judges, the Ombudsman and NGOs, but that such visits appeared to be rather infrequent and limited in scope as the visitors did not have any direct contact with prisoners (see paragraph 82 of the CPT report).

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[1] The Report prepared by the CPT after the said visit, CPT/Inf (2010) 3, is available at http://www.cpt.coe.int/documents/mne/2010-03-inf-eng.htm.

103. It was recommended that the Montenegrin authorities take a number of steps with regard to the above issues (see paragraphs 26, 64, 81 and 82 of the CPT report).

THE LAW

I. JOINDER OF THE APPLICATIONS

104. The Court notes that the applications under examination are interrelated and based on a single set of facts. It is therefore appropriate to join them, in accordance with Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

105. All the applicants complained about having been tortured and ill-treated by police officers between 9 and 15 September 2006, as well as about a lack of an effective investigation in this connection. The sixth applicant also complained about a lack of adequate medical care in detention. They relied on Article 3 of the Convention, which reads as follows:

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

106. The Government denied that there had been any such violation.

A. Alleged ill-treatment between 9 and 15 September 2006

107. This complaint was submitted by all seven applicants.

1. Admissibility

a. The parties' submissions

108. The Government maintained that the applicants had failed to make use of all available domestic remedies. In particular, they had failed to lodge a compensation claim pursuant to the relevant provisions of the Obligations Act (see paragraphs 89-93 above) and to avail themselves of a constitutional appeal.

109. They argued, in the first place, that the applicants could have brought a civil action for non-pecuniary damages. They submitted a domestic court judgment in which claimants complaining about ill-treatment by prison guards had been awarded 1,500 euros (EUR) each for

non-pecuniary damage (see *Milić and Nikezić v. Montenegro*, nos. 54999/10 and 10609/11, §§ 39-42, 28 April 2015).

110. In the second place, they also maintained that a constitutional appeal was an available and effective remedy not only against decisions but also in respect of actions and omissions. They submitted in this regard the statistics of the Constitutional Court as well as a decision issued on 20 September 2012 in which a constitutional appeal against an alleged omission of the Supreme Court was examined on the merits (see paragraph 97 above).

111. The applicants submitted that a compensation claim and a constitutional appeal were not effective domestic remedies.

112. As regards a compensation claim, all the applicants submitted that the Government had failed to prove the effectiveness of this remedy. The first, second, third, fourth and fifth applicants submitted that a compensation claim would have prospects of success only where criminal liability was established beforehand. The respondent State's failure effectively to investigate the applicants' criminal complaints was a clear indication that civil proceedings would not have been effective either. The sixth and seventh applicants maintained that they had raised the issue of ill-treatment in their criminal complaints as well as during the criminal proceedings against them, but to no avail. They submitted that in the absence of a criminal prosecution in connection with their complaints they were not required to embark on another attempt to obtain redress by bringing a civil action for damages.

113. As regards a constitutional appeal the first and second applicants submitted that it could be lodged only against a decision, that any other suggestion was contrary to the statutory provisions in force at the time and that there was no case-law to the contrary. Furthermore, between 1 January 2008 and 31 December 2012 the Constitutional Court admitted less than 3% of the constitutional appeals submitted to it, which further proved the ineffectiveness of this remedy. The third, fourth and fifth applicants submitted that the Constitutional Court had been given an opportunity to rule on the complaints and had dismissed them on the merits on 23 July 2014 (see paragraph 43 above). The sixth and seventh applicants maintained that the relevant date for assessing whether a domestic remedy was effective or not was the date when the application was lodged. As the Court had already found in *Koprivica v. Montenegro* (no. 41158/09, 22 November 2011) that all constitutional appeals before July 2010 had been systematically rejected or dismissed, and since they had lodged their application in January 2010, they did not have to avail themselves of this remedy.

b. The relevant principles

114. The Court points out that the purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Convention institutions. Consequently, States are exempted from answering for their acts before an international body until they have had an opportunity to put matters right through their own legal system and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among many authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV; and *Vučković and Others v. Serbia* (preliminary objection) [GC], no. 17153/11 and 29 other cases, § 70, 25 March 2014). The rule of exhaustion of domestic remedies referred to in Article 35 of the Convention requires that normal recourse should be had by an applicant only to remedies that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others*, cited above, § 66; *Sejdovic v. Italy* [GC], no. 56581/00, § 45, ECHR 2006-II); it falls to the respondent State to establish that these various conditions are satisfied (see *Selmouni v. France* [GC], no. 25803/94, §§ 74-75, ECHR 1999-V).

115. To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004; and *Sejdovic v. Italy* [GC], cited above, § 46). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Akdivar and Others*, cited above, § 71; and *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009).

116. Lastly, the Court recalls that, apart from an award of compensation or, at least, the possibility of seeking and obtaining compensation for the damage the applicant sustained as a result of the ill-treatment, the State authorities must have, in addition, conducted a thorough and effective investigation capable of leading to the identification and punishment of those responsible as a result of the ill-treatment (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010, with further references; see also *Sapožkovs v. Latvia*, no. 8550/03, § 54, 11 February 2014; *Razzakov v. Russia*, no. 57519/09, § 50, 5 February 2015, and *Cestaro v. Italy*, no. 6884/11, §§ 230-232, 7 April 2015).

c. The Court's conclusion

i. Exhaustion of domestic remedies

(α) Compensation claim

117. The Court notes that the relevant domestic legislation clearly permits anybody who – in violation of their personal rights – has suffered fear, physical pain or mental anguish to sue legal entities, including the State, for damages in the civil courts (see paragraphs 89-93 above). It is noted in this regard that the applicants did not lodge such a compensation claim with respect to the alleged ill-treatment.

118. It is further observed that the Government have submitted only one domestic judgment in support of their proposal. The Court, however, has already found that even in that case the domestic courts neither acknowledged the breach as clearly as would have been necessary in cases of that type nor afforded the applicants appropriate redress (see *Milić and Nikezić v. Montenegro*, cited above, §§ 75-76).

119. In any event, the Court has already held that, in the area of unlawful use of force by State agents – and not mere fault, omission or negligence – civil or administrative proceedings aimed solely at awarding damages, rather than ensuring the identification and punishment of those responsible, are not adequate and effective remedies capable of providing redress for complaints based on the substantive aspect of Articles 2 and 3 of the Convention (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 227, ECHR 2014 (extracts)). The applicants therefore were not obliged to make use of that remedy and the Government's objection in this regard must be dismissed.

(β) Constitutional appeal

120. The Court notes that the relevant provisions of the Constitutional Court Act in force at the time provided that a constitutional appeal could be lodged only against an individual decision. The Court accordingly found that where there was no relevant domestic decision against which a constitutional appeal could be lodged, a constitutional appeal could not be considered an available remedy (see *Mijušković v. Montenegro*, no. 49337/07, §§ 73-74, 21 September 2010; *Bulatović v. Montenegro*, no. 67320/10, § 109, 22 July 2014). The Government did not object to such a conclusion at the time.

121. The Government averred for the first time in the present case that the constitutional appeal was an available and effective domestic remedy even in cases where there was no domestic decision. In support of such a claim, they submitted the decision of the Constitutional Court rendered on 20 September 2012 in which the Constitutional Court examined on the

merits a complaint about an alleged failure of the domestic courts to serve a Supreme Court decision (see paragraphs 97 and 110 above).

122. The Court notes in this regard that all constitutional appeals were submitted against various decisions, except for two, and these two were examined on the merits by the Constitutional Court, one in September 2012 and the other in July 2014 (see paragraph 97 above). In neither of these two decisions, however, did the Constitutional Court explain its departure from its previous case-law (see paragraph 98 above) and the reasons therefore. This, together with an explicit statutory provision, allowing for constitutional appeals only against individual decisions, did not make it sufficiently clear for claimants that the Constitutional Court would deal on merits with constitutional appeals against anything else except individual decisions. In addition, the legislation in force at the time provided for no time-limits for processing of constitutional appeals or for a possibility of the Constitutional Court to award any compensation in cases where it finds a violation.

123. The new legislation, however, explicitly provides for a possibility of lodging a constitutional appeal in respect of not only a decision but also an action or an omission. In addition, it further provides, *inter alia*, for a possibility of awarding just satisfaction and limits processing of all the cases pending before the Constitutional Court, including upon constitutional appeals, to 18 months at most (see paragraphs 65-67 above). In view of this the Court is of the opinion that a constitutional appeal in Montenegro can in principle be considered an effective domestic remedy as of 20 March 2015, this being the date when the new legislation entered into force.

124. Turning to the present case, the Court notes that, contrary to the Government's objection, the third and fourth applicants made use of a constitutional appeal and in doing so complained also about the alleged ill-treatment. It is further observed that the other applicants either did not raise this issue before the Constitutional Court or did not make use of this remedy at all. The Court reiterates in this regard that, while it can be subject to exceptions which might be justified by the specific circumstances of each case, the issue of whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)). Given that the applicants lodged their applications in December 2009 and January 2010, that is long before the constitutional appeal became an effective domestic remedy in the respondent State, the Court considers that they were not required to avail themselves of this particular remedy.

125. In view of the above, the Court considers that the Government's objection of non-exhaustion must be dismissed.

ii. Six months

126. The Government made no comment as to whether the applicants' complaints were submitted within the six month time-limit even though they were invited specifically to do so.

127. The first, second, third, fourth and fifth applicants made no comment in this regard either. The sixth and seventh applicants submitted that the complaints had been lodged in proper time.

128. The Court recalls that the purpose of the six-month rule is to promote security of the law, ensure that cases raising issues under the Convention are examined within a reasonable time, and protect the authorities and other persons concerned from being in a situation of uncertainty for a long period of time (see *P.M. v. the United Kingdom* (dec.), no. 6638/03, 24 August 2004). This rule also provides the prospective applicant with sufficient time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (see *O'Loughlin and Others v. the United Kingdom* (dec.), no. 23274/04, 25 August 2005).

129. If no remedies are available or if they are judged to be ineffective, the six-month time-limit contained in Article 35 § 1 of the Convention in principle runs from the date of the act complained of. However, special considerations could apply in exceptional cases where an applicant avails himself of or relies on an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it is appropriate to take as the start of the six month period the date when he first became aware or ought to have become aware of those circumstances (see *Bayram and Yildirim v. Turkey* (dec.), no. 38587/97, 29 January 2002, and *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002).

130. Turning to the present case, the Court has already noted that, even though they were not required to do so at the relevant time, the third and fourth applicants made use of a constitutional appeal with regard to this complaint, which was furthermore examined on the merits. As the relevant decision was issued by the Constitutional Court on 23 July 2014, the Court considers that the third and fourth applicants' complaint in respect of the alleged ill-treatment was submitted within the six-month period.

131. As regards the other applicants the Court observes that they lodged their criminal complaints between 14 September and 28 October 2006 (see paragraphs 12 and 14-15 above). It is further noted that on 30 October 2007, 14 January and 16 June 2008 the first and/or second applicants urged the State Prosecutor to deal with their criminal complaints and submitted some additional information. The fifth, sixth and seventh applicants made no such attempts nor have they provided any additional information after having submitted their criminal complaints in 2006. On 14 May 2008 the State Prosecutor indicted five police officers for ill-treating the first and second applicants' father on the occasion of their arrest (see paragraph 54 above).

132. The Court is of the opinion that, with the passage of time and in the absence of any action taken by the State Prosecutor, the first, second, fifth, sixth and seventh applicants' hope that the relevant authorities might act upon their criminal complaints must have ended at certain point thereafter, but in any case no later than 14 May 2008, which is when the State Prosecutor lodged an indictment in respect of the maltreatment of the first and second applicants' father and nobody else. Therefore the Court considers that the six-month period started running as of that date at the latest. As the first, second, fifth, sixth and seventh applicants lodged their complaints on 29 December 2009, 31 January 2010 and 26 January 2010 respectively, it follows that their complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

iii. The fourth applicant

133. The Court has held that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Vladimir Romanov v. Russia*, no. 41461/02, § 58, 24 July 2008).

134. Turning to the present case, it is observed that the fourth applicant submitted to the Court a medical report issued by a private hospital in 2010, which stated that he had "an old" fracture of the rib and of the right clavicle, without specifying when approximately these two fractures could have been sustained. There is nothing in the case file indicating that the fourth applicant submitted this medical report to any domestic authority. On the contrary, at the time when he was brought before the investigating judge he stated himself that he had no injuries, and the investigating judge did not observe any injuries with regard to him, unlike in respect of some other applicants (see paragraph 10 above).

135. In the absence of any other evidence which would indicate at least approximately when the above injuries could have been sustained, and given that the applicant did not seek any medical assistance at the relevant time, that he admitted himself that he had had no injuries and that the investigating judge did not notice any injuries, the Court cannot speculate about the origin of these fractures, which were noted only in 2010.

136. In view of the above, and given that an effective official investigation is required only where an individual makes a credible assertion that he has suffered treatment contrary to Article 3 (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV), the Court considers that the fourth applicant's complaint, under both the substantive and procedural limbs of

Article 3 of the Convention, is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

iv. The third applicant

137. The Court notes that the third applicant's complaint 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.

2. Merits (the third applicant)

138. The third applicant reaffirmed his complaint.

139. The Government contested it. They submitted, in particular, that the Internal Police Control in a timely manner had identified all the police officers involved in the action and found that there had been no unlawfulness in their actions. The relevant report in this regard was submitted to the State Prosecutor, together with the relevant documentation.

140. They further maintained that Article 3 did not apply in the present case as the injuries which the applicant had suffered during the apprehension had been light and did not reach the necessary threshold to be considered torture or inhuman or degrading treatment.

141. In any event, the procedural aspect of Article 3 did not guarantee that the criminal proceedings would end in conviction. They averred in this regard that the State Prosecutor had indicted five persons in May 2008 for the criminal offence of torture and abuse. On 21 October 2010, after a remittal, the defendants were acquitted, which judgment was upheld by the High Court on 18 May 2011 (see paragraph 54 above).

142. The Court recalls, as noted above, that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see the authorities cited in paragraph 133 above).

143. According to the Court's established case-law, when an individual makes a credible assertion that he has suffered treatment at the hands of the police or other similar agents of the State that violates Article 3, it is the duty of the national authorities to carry out an effective official investigation (see *Labita v. Italy* [GC], cited above, § 131).

144. The Court observes in this connection that the lack of conclusions arising from any given investigation does not, by itself, mean that it was ineffective: an obligation to investigate "is not an obligation of results, but of means". Not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of

the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Mikheyev v. Russia*, no. 77617/01, § 107, 26 January 2006). Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Labita* [GC], cited above, § 131).

145. The investigation must be thorough, prompt and independent (see *Mikheyev*, cited above, §§ 108-110, and *Jasar v. the former Yugoslav Republic of Macedonia*, no. 69908/01, §§ 56-57, 15 February 2007).

146. Turning to the present case, the Court notes that after the third applicant had been arrested both the investigating judge and the prison doctor noted injuries on him. The investigating judge noted that he had a bandage on his head under which there was a visible cut, as well as haematoma in the upper part of his left cheekbone. The same injuries were observed by the prison doctor, who described the injuries in more detail: there was a 5 cm long scratch on top of his head, and a dark blue haematoma on the left cheekbone measuring 4x0.3 cm. In addition, the prison doctor noted a dark blue haematoma stretching from his left nipple to his armpit 25x3cm and a large haematoma above the left elbow (see paragraphs 10-11 above).

147. It is further observed that the third applicant filed a criminal complaint in this regard already in October 2006. The only action undertaken thereafter would appear to be an investigation by the Internal Police Control, which resulted in a report and apparently in the identification of the police officers involved. The Report specified that the investigating judge had noted the allegations of ill-treatment, and referred in that regard to prison medical reports in respect of the first, second, fifth, sixth and seventh applicants. It contained no reference whatsoever to the third applicant or the injuries observed on him by both the investigating judge and the prison doctor. The Report was transmitted to the State Prosecutor, who, for his part, pursued only the complaint on ill-treatment submitted by the first and second applicants' father.

148. The Court notes that the Government neither contested the existence of the injuries on the third applicant nor provided an explanation as to the origin thereof, but merely stated that they did not reach the necessary threshold to be considered torture or inhuman or degrading treatment. The only action undertaken thereupon was apparently the investigation of the Internal Police Control, which can be neither considered independent, given that it was done by the police themselves, nor thorough given that the third applicant, his complaints and the injuries observed in respect of him were completely ignored. There is nothing in the case file that would indicate that any other action was undertaken to clarify the origin

of the third applicant's injuries and identify the person responsible, let alone to prosecute him/her.

149. In view of the above, the Court finds that the threshold of Article 3 was reached and considers that there has been a violation of both the substantive and procedural limb of Article 3 of the Convention in respect of the third applicant.

B. Alleged lack of adequate medical care in detention

150. This complaint was submitted by the sixth applicant only.

1. Exhaustion of domestic remedies

151. The Government submitted that the applicant had not complained to the president of the competent court, who was in charge of supervising the execution of detention (see paragraph 77 above) and who reported in that regard to the Supreme Court and the Ministry of Justice.

152. The sixth applicant submitted that there was no effective remedy in this regard and relied on *Đermanović v. Serbia* (no. 48497/06, 23 February 2010).

153. The Court has already held that the supervision of detention by the president of the competent court cannot be considered an effective domestic remedy (see *Bulatović v. Montenegro*, no. 67320/10, § 107-108, 22 July 2014). It sees no reason to depart from its finding in the present case. The Government's objection in this regard must therefore be dismissed.

2. Conclusion

154. The Government maintained that the sixth applicant had had appropriate medical care at all times and submitted his entire medical file.

155. The applicant reaffirmed his complaint.

156. The Court recalls that the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure of deprivation of liberty do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI; and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006). In most cases concerning the detention of persons who were ill, the Court has examined whether or not the applicant received adequate medical assistance in prison. The Court reiterates in this regard that even though Article 3 does not entitle a detainee to be released "on compassionate grounds", it has always interpreted the requirement to secure the health and

well-being of detainees, among other things, as an obligation on the State to provide detainees with the requisite medical assistance (see *Kudła*, cited above, § 94; *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI; and *Khudobin v. Russia*, no. 59696/00, § 96, ECHR 2006-XII (extracts)).

157. The "adequacy" of medical assistance remains the most difficult element to determine. The Court insists that, in particular, authorities must ensure that diagnosis and care are prompt and accurate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 115, 29 November 2007), and that, where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation (see *Amirov v. Russia*, no. 51857/13, § 85, 27 November 2014).

158. It is also recalled that the mere fact that an applicant's state of health deteriorated in prison cannot by itself suffice for the finding of a violation of the State's positive obligations under Article 3 of the Convention. What needs to be established is whether the relevant domestic authorities have in a timely fashion provided all reasonably available medical care in a conscientious effort to hinder development of the disease in question (see, among many others, *Jashi v. Georgia*, no. 10799/06, § 61, 8 January 2013, and *Fedosejevs v. Latvia* (dec.), no. 37546/06, § 47, 19 November 2013).

159. On the whole, the Court reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Amirov*, cited above, § 86).

160. Turning to the present case, the Court notes that at the time when he was arrested the sixth applicant had high cholesterol, for which he was already being treated. This treatment continued to be regularly controlled throughout the entire period of his detention through various laboratory analyses and the corresponding treatment (see paragraphs 48 and 50-52 above).

161. It further transpires from his medical file that between 12 September 2006 and 24 December 2008 the sixth applicant was examined 36 times in total by various specialists and duly received the necessary treatment (see paragraphs 48-49). This included a number of laboratory tests, ultra-sounds and X-rays, and regular controls of his blood pressure. It is also clear that the mole about which the sixth applicant complained was regularly checked as well. While the removal thereof was said to be the only effective treatment it was clearly indicated that it was not urgent (see paragraphs 50-52 above).

162. There is no evidence in the case file that on any occasion the applicant was denied any – let alone necessary and urgent – medical

assistance and was in consequence caused suffering or considerable pain, or any pain for that matter (see, *mutatis mutandis*, *Wenerski v. Poland*, no. 44369/02, § 64, 20 January 2009). The sixth applicant, for his part, failed to explain why he considered that the medical treatment he had received was inadequate or in any other way in breach of the guarantees provided for in Article 3 of the Convention.

163. In these circumstances, on the basis of the evidence before it and assessing the relevant facts as a whole, the Court finds that the sixth applicant's complaint in this regard is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

164. The sixth and seventh applicants complained under Articles 6 and 14 of the Convention about having been convicted on the basis of evidence obtained in contravention of Article 3, notably on the basis of a statement extorted by torture from the first applicant, his diary obtained pursuant to an unlawful search and the diary's subsequent inadequate translation. These two applicants also complained about having been convicted at first instance by a bench composed of three judges instead of five. The Court, being the "master of the characterisation" to be given in law to the facts of any case before it (see *Akdeniz v. Turkey*, no. 25165/94, § 88, 31 May 2005), considers that these complaints fall to be examined under Article 6 of the Convention, which Article, in so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. The parties' submissions

165. The Government submitted that the sixth and seventh applicants failed to lodge an appeal on points of law with the Supreme Court and a constitutional appeal.

166. They further maintained that the search could be conducted without witnesses if it was not possible to ensure their immediate presence and if there was a danger in delaying the action, which conditions were met in the present case. While, admittedly, this was not stated in the minutes, that was only because the minutes were drafted on the spot. In any event, Article 79 § 5 of the Criminal Procedure Code 2003 provided that the search could be conducted without witnesses when implementing the order of apprehension or arrest of a person, if there was a suspicion that he or she possessed weapons, and the evidence collected thereby could be used in the criminal proceedings.

167. They also submitted that Article 510 of the Criminal Procedure Code provided for a three-judge panel in the proceedings for the criminal offences of organised crime. As the trial against the applicants had been initiated upon an indictment by the Supreme State Prosecutor – Division for Combating Organised Crime, the panel of the court composed of three judges was in accordance with the law.

168. The sixth and seventh applicants maintained that the Supreme Court had dismissed the other applicants' appeal on points of law and would have likewise dismissed their appeal on points of law, had they lodged one. They also submitted that a constitutional appeal was not an effective remedy and reaffirmed their complaint. In particular, the search of the first applicant's flat and other premises had been conducted in the absence of two witnesses and was therefore not in accordance with the law, which rendered the proceedings as a whole "unfair".

B. The Court's conclusion

1. Exhaustion of domestic remedies

a. Appeal on points of law in criminal proceedings

169. The Court recalls that the obligation under Article 35 § 1 requires only that an applicant should have normal recourse to the remedies likely to be effective, adequate and accessible (see *Sofri and Others v. Italy* (dec.), no. 37235/97, ECHR 2003-VIII). The Court also considers that an appeal on points of law in criminal proceedings (*zahtjev za ispitivanje zakonitosti pravosnažne presude*) is, in principle, an effective domestic remedy within the meaning of Article 35 § 1 of the Convention (see *Mamudovski v. the former Yugoslav Republic of Macedonia* (dec.), no. 49619/06, 10 March 2009).

170. Turning to the present case, the Court notes that the sixth and seventh applicants indeed failed to lodge an appeal on points of law with the Supreme Court. It is observed, however, that the Supreme Court was given an opportunity to rule in respect of the first, second, third and fourth applicants' appeals on points of law, which were identical to the sixth and seventh applicants' complaints raised herewith, and ruled against them (see paragraph 42 above). As there is nothing in the case file to suggest that the Supreme Court would have ruled any differently in respect of the sixth and seventh applicants, the Court considers that requiring them to use this remedy in such circumstances, would amount to excessive formalism and that therefore they did not have to exhaust this particular avenue of redress (see, *mutatis mutandis*, *Lakićević and Others v. Montenegro and Serbia*, nos. 27458/06, 37205/06, 37207/06 and 33604/07, § 51, 13 December 2011). The Government's objection in this regard must therefore be dismissed.

b. Constitutional appeal

171. As noted above the issue of whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France*, cited above, § 47). As the complaints examined herewith were lodged in January 2010 and a constitutional appeal can in principle be considered an effective domestic remedy as of 20 March 2015 (see paragraphs 1 and 123 above) the Court considers that the sixth and seventh applicants were not required to make use of this remedy at the time. The Governments' objection in that regard must therefore be dismissed.

2. *Conclusion*

a. Alleged extortion of the first applicant's statement

172. The Court recalls that the admission of statements obtained as a result of torture or other ill-treatment as evidence to establish the relevant facts in criminal proceedings renders the proceedings as a whole unfair. This finding applies irrespective of the probative value of the statements and irrespective of whether their use has been decisive in securing a conviction (see *Gäfgen v. Germany* [GC], cited above, § 166).

173. Turning to the present case, the Court notes that neither the sixth and seventh applicants, nor the first applicant for that matter, submitted any evidence in support of their allegation that the first applicant had been tortured or ill-treated. In addition, the investigating judge did not observe any injuries with regard to the first applicant, unlike in respect of some other applicants (see paragraph 10 above), nor have they submitted any medical report in that regard or any other evidence whatsoever in support of that allegation (see, *a contrario*, *Örs and Others v. Turkey* (dec.), no. 46213/99, §§ 57-61, ECHR 2003-XI (extracts), where there were medical reports supporting the ill-treatment claims and a "strong presumption" that ill-treatment had taken place). In the absence of any evidence of the ill-treatment, the first applicant did not have an arguable claim in this regard. Moreover, the Court notes that the statements were not the only evidence against the sixth and seventh applicants and that their conviction was based on all the available evidence following the proceedings which, taken as a whole, may be regarded as fair.

174. In view of the above the Court considers that the sixth and seventh applicants' complaint about having been convicted on the basis of a statement extorted from the first applicant is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

b. Evidence obtained pursuant to an allegedly unlawful search

175. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law. It is, therefore, not the role of the Court to determine, as a matter of principle, whether particular types of evidence - for example, evidence obtained unlawfully in terms of domestic law - may be admissible. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the unlawfulness in question and, where the violation of another Convention right is concerned, the nature of the violation found (see *Stanimirović v. Serbia*, no. 26088/06, § 50, 18 October 2011, and other authorities cited therein).

176. The sixth and seventh applicants complain that the search of the first applicant's flat was unlawful in view of the absence of two witnesses during the search. Therefore, the evidence obtained thereby, including the first applicant's diary, had been unlawfully obtained and thus could not be used in the subsequent criminal proceedings.

177. The Court notes that the sixth and seventh applicants do not claim that, in the absence of witnesses, the diary was planted or tampered with by the police, as, presumably, the purpose of having witnesses during a search is to prevent possible tampering with evidence. They rather complain about the mere absence of witnesses. It is observed in this regard that the domestic courts considered this issue and held that the search was lawful under the domestic law (see paragraphs 31, 38 and 42 above). Notably, pursuant to Article 79 of the Criminal Procedure Code, even though exceptionally, a search without two witnesses was allowed if it was impossible to secure the attendance of witnesses at the relevant time, and if there was a danger that the search would have to be postponed, which was the case in this particular search (see paragraph 75 above). In view of the early hour when the search was conducted the domestic courts accepted that it was impossible to find two witnesses and that the search was thus lawful.

178. In addition, the said diary was not the only evidence on the basis of which the sixth and seventh applicants were found guilty (see paragraph 33 above). Apart from the diary they were also convicted on the basis of the statement made by the first applicant, which was further supported by a report on their crossing of borders, as well as an official police report, which confirmed the existence of all the objects and places described in the diary (see paragraph 33 above).

179. In view of the above and in view of the Court's case-law that the admissibility of evidence is primarily a matter for regulation under national law, as noted above, the Court considers that the sixth and seventh applicants' complaint in this regard is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

c. The translation of the diary

180. It is clear from the case file that the first applicant, who himself wrote the diary, is also a school teacher of the Serbian language (see paragraph 53 above) and therefore could legitimately translate the contents of his own diary. In view of this, the Court considers that the sixth and seventh applicants' complaint in this regard is likewise manifestly ill-founded and must be therefore rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

d. Conviction by a three-judge bench

181. The Court recalls that, under Article 6 § 1 of the Convention, a tribunal must always be "established by law", which phrase covers not only the legal basis for the very existence of a "tribunal" but also, *inter alia*, the composition of the bench in each case. In principle, a violation by a tribunal of domestic legal provisions relating to the establishment and competence of judicial organs gives rise to a violation of Article 6 § 1. It must, therefore, be examined whether the domestic law has been complied with in this respect. However, having regard to the general principle that it is, in the first place, for the national courts themselves to interpret the provisions of domestic law, the Court may not question their interpretation unless there has been a flagrant violation of domestic law (see, *mutatis mutandis*, *DMD GROUP, a.s. v. Slovakia*, no. 19334/03, §§ 58-61, 5 October 2010; and the authorities cited therein).

182. Turning to the present case, the Court notes that the sixth and seventh applicants were tried in a single set of proceedings with the other accused, including those charged with the offences for which the sanction could be up to fifteen years of imprisonment (see paragraphs 69-71 and 73 above) and for the trial of which the domestic legislation provides for a five-judge bench.

183. The Court, however, also observes that the sixth and seventh applicants themselves were accused of criminal offences for which the relevant legislation provided for imprisonment of less than fifteen years and, hence, a three-judge bench for the trial (see paragraphs 70-71 and 73 above). In addition, the Supreme Court itself ruled that, pursuant to Article 510 of the Criminal Procedure Code, a three-judge bench was in charge of trial given that the sixth and seventh applicants were indicted upon the indictment by the special prosecutor in charge of organised crime (see paragraphs 42 and 81 above).

184. In view of the above and having regard to the general principle that it is, in the first place, for the national courts themselves to interpret the provisions of domestic law, the Court considers that the three-judge bench which tried the sixth and seventh applicants was composed in accordance with the law. Their complaint in this regard is therefore manifestly ill-

founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

185. Lastly, the sixth and seventh applicants also complained about having been detained without a criminal charge from 9 September to 7 December 2006, about not having been able to examine the first applicant at any stage of the proceedings and about judge R.I.'s previous involvement in the proceedings. As neither of these issues has been raised before the domestic courts it follows that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

186. 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

187. The third applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

188. The Government contested this claim.

189. The Court accepts that the third applicant has suffered non-pecuniary damage resulting from a violation of Article 3 which cannot be sufficiently compensated by the finding of a violation alone. Making its assessment on an equitable basis the Court awards the third applicant the entire amount claimed.

B. Costs and expenses

190. The third applicant also claimed EUR 11,000 for costs and expenses incurred in the domestic proceedings. He submitted the receipts from his two legal representatives confirming that they had charged this amount in total.

191. The Government contested this claim.

192. 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 (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no.

31107/96, § 54, ECHR 2000-XI). Regard being had to all the information in its possession and the above criteria, the Court considers it reasonable to award the third applicant EUR 3,500 for the costs and expenses incurred in the domestic proceedings.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the third applicant's complaint concerning ill-treatment admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of both the substantive and procedural aspect of Article 3 of the Convention in respect of the third applicant;

4. *Holds*
   (a) that the respondent State is to pay the third applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the third applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 24 November 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Işıl Karakaş
Registrar	President