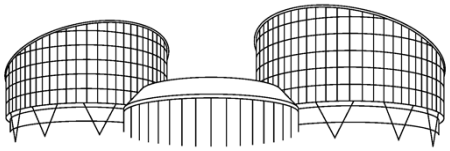

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF HYSA v. ALBANIA

(Application no. 52048/16)

JUDGMENT

Art 5 § 3 • Reasonableness of pre-trial detention • Domestic courts' failure to give relevant and sufficient reasons justifying applicant's pre-trial detention • Shortcomings in reasoning not rectified by way of cassation or constitutional review due to Constitutional Court's refusal to review detention

STRASBOURG

21 February 2023

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

In the case of Hysa v. Albania,

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

Pere Pastor Vilanova*, President*,
Georgios A. Serghides,
Yonko Grozev,
Jolien Schukking,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 52048/16) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Albanian national, Ms Afërdita Hysa ("the applicant"), on 22 August 2016;

the decision to give notice to the Albanian Government ("the Government") of the complaints under Article 5 §§ 3 and 4 of the Convention concerning the alleged lack of relevant and sufficient reasons justifying the applicant's pre-trial detention, and the domestic court's alleged ineffective examination of her appeals in that connection; and

the decision to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 13 December 2022 and 31 January 2023,

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

INTRODUCTION

1. The case concerns the alleged lack of relevant and sufficient reasons justifying the applicant's pre-trial detention.

THE FACTS

2. The applicant was born in 1968 and lives in Tirana. She was initially represented by P. Thaçi and subsequently by Mr F. Caka, a lawyer practising in Tirana.

3. The Albanian Government ("the Government") were initially represented by their former Agent Ms B. Lilo and, subsequently, by Mr O. Moçka, General State Advocate.

I. THE APPLICANT'S DEPRIVATION OF LIBERTY

4. At the relevant time, the applicant was employed in the Regional Tax Directorate of Tirana and held the position of director of the Inspection Department (*Drejtoreshë e Drejtorisë së Kontrollit*).

A. First detention period

1. Decision of the District Court of Tirana

5. Upon a request lodged by the Tirana Prosecutor's Office and following a hearing held in the absence of the applicant, on 5 November 2013 the District Court of Tirana ordered the applicant's pre-trial detention on suspicion that she had committed the offence of abuse of office, contrary to Article 248 of the Criminal Code.

6. The court concluded that the conditions for the imposition of a detention measure provided for by Articles 228 and 229 of the Code of Criminal Procedure (see paragraphs 29-30 below) had been fulfilled. It found that the applicant was suspected of having approved (when acting in her official capacity) a rebate to a number of companies amounting to 515,455,275 Albanian leks (ALL – approximately 3.7 million euros (EUR) at the time in question) in respect of value added tax, in violation of the applicable tax legislation.

7. In addition to describing in detail the suspected violation of the relevant tax rules, the court referred to "the circumstances of the commission of the offence and the flight risk of the suspect."

8. Furthermore, the court noted that:

> "In ordering the security measure of 'detention', the [c]ourt takes into account in particular the compatibility of this security measure with the requirements of the case at hand. This security measure is considered by the [c]ourt to be proportional to the gravity of the facts and the sentence carried by this criminal offence. The offence of 'abuse of office', of which Afërdita Hysa is suspected, has had serious consequences for the State finances in the amount of 515,455,275 [Albanian] leks, [and] is assessed by the [c]ourt in the light of the risk that it constitutes to society, its aim, the consequences to which it gave rise, the form [that it took], the type and length of sentence that is provided [in respect of it] by law, and the aggravating and mitigating circumstances that exist at this stage of the investigation.
>
> Given these conditions, the [c]ourt decides to order the detention of the suspect Afërdita Hysa, having deemed any other security measure to be inappropriate."

9. On 6 November 2013 the applicant surrendered herself to the authorities, and on 9 November 2013, following another hearing at which she was present, the District Court of Tirana confirmed that the conditions for the applicant's pre-trial detention were met. The case file does not contain a record of this hearing.

10. In addition to the applicant, a number of individuals acting in a private capacity – as well as four additional officers from the Regional Tax

Directorate of Tirana, acting in their official capacity – were suspected of being involved in the events described above.

2. Decision of the Tirana Court of Appeal

11. On 15 November 2013 the applicant lodged an appeal with the Tirana Court of Appeal against the above-mentioned decision. She stated that her detention was not justified and argued that the fact that she had voluntarily surrendered herself to the police indicated that the risk that she would flee was non-existent ; moreover, she had worked for the past fifteen years for the tax authorities, she was married to a police officer and was the mother of two young children.

12. She added that she was not in a position to be able to tamper with the evidence as she had been suspended from office and, in any event, the relevant files of the tax authorities had been already seized by the Tirana Prosecutor's Office.

13. Lastly, she argued that her detention was not proportionate to the charges that she was facing and that her poor state of health indicated that a less severe security measure would be more appropriate.

14. On 27 November 2013 the Tirana Court of Appeal upheld the lower court's decision. The court relied in essence on the same reasoning set forth by the District Court of Tirana in respect of the suspicion that the applicant had committed a criminal offence; however, it did not refer to the applicant presenting a flight risk. Instead, it noted as follows:

> "In the case at hand, the Court of Appeal ..., for the purpose of choosing an appropriate security measure that would guarantee ... security in respect of the risk that the suspect might commit the same criminal offence or another more serious offence, takes into account the following:
>
> - the acts attributed to the suspect are considered to be serious, given the sentence provided for by Article 248 of the Criminal Code,
>
> - the criminal offence in question represents a particular danger to society,
>
> - the suspect represents a danger to society, having regard to the circumstances of the commission of the offence that she is suspected [of committing], [and] the fact that the actions were carried out in the name of an institution in charge of [tax] inspections and have caused significant economic harm to the interests of the State ...
>
> Given these circumstances, contrary to what is alleged in the appeal of the person under investigation, the security needs in respect of the case at hand may be guaranteed only through the security measure of 'detention', and any other measure has been rightly deemed to be inappropriate."

3. Supreme Court

15. On 3 December 2013 the applicant lodged a cassation appeal relying in essence on her previous arguments (see paragraphs 11-13 above).

16. On 19 December 2013 the Supreme Court dismissed the applicant's cassation appeal by four votes to one by way of a *de plano* decision which stated that the applicant's claims did not fall within the Supreme Court's jurisdiction.

4. Constitutional Court

17. On 14 September 2015, the applicant lodged a constitutional complaint with the Constitutional Court whereby, in so far as relevant, she relied directly on Article 5 of the Convention and reiterated her previous arguments (see paragraphs 11-13 above).

18. On 24 February 2016, the Constitutional Court, by five votes to three, dismissed as inadmissible the applicant's complaint on the grounds that she lacked standing before the court, given that her detention in prison had meanwhile been replaced by house arrest on 19 June 2014 (see paragraph 22 below). The court noted that the applicant had no interest in challenging a security measure that had been replaced with a different measure.

19. One judge appended a dissenting opinion, stating, among other arguments, that individuals should be allowed to challenge the constitutionality of their deprivation of liberty even if, at the time when the challenge was reviewed, the detention measure against them had been replaced by a more lenient measure. He argued that an individual who was detained in potential violation of the Constitution would suffer considerable prejudice that would not be reduced or remedied by the subsequent revocation of that detention measure. Lastly, citing various precedents (see paragraphs 39-41 below), the dissenting judge added that in dismissing the complaint the Constitutional Court had departed without good reason from the well-established case-law of that court. For those reasons he concluded that the court should have reviewed the compatibility with the Constitution of the applicant's deprivation of liberty, the more so because of the prima facie issues that the case disclosed.

B. Subsequent periods

20. In the meantime, on 6 February 2014 the applicant lodged a habeas corpus application seeking that the District Court of Tirana replace her detention in prison with a more lenient security measure. On 11 April 2014 the District Court of Tirana dismissed the application.

21. On 24 April 2014 the applicant lodged another habeas corpus application. On 13 May 2014 a bench of the District Court of Tirana found that the investigation phase of the proceedings had come to an end on 8 May 2014, when the prosecutor had committed the applicant for trial. The court concluded that the applicant's habeas corpus application should therefore be examined by the bench of the District Court before which the

examination of the criminal case on the merits was pending; it then forwarded the application accordingly.

22. On 19 June 2014 the District Court of Tirana allowed the application and ordered that the applicant be placed under house arrest with electronic surveillance.

II. JUDGMENTS ON THE MERITS OF THE CRIMINAL CHARGE

23. On 8 October 2014 the District Court of Tirana found the applicant guilty of theft by abuse of office committed in collusion with others, contrary to Articles 25 and 135 of the Criminal Code. It sentenced her to five years' imprisonment.

24. On 8 April 2015 the Tirana Court of Appeal upheld the lower court's judgment; however, it ordered that the execution of the sentence be suspended on condition that the applicant did not commit another offence for five years. The applicant was accordingly released.

25. Following a decision of the Supreme Court to lift the applicant's suspension of the sentence and a subsequent decision by the Constitutional Court remitting the case for rehearing, on 19 February 2018 the Supreme Court upheld the Tirana Court of Appeal judgment of 8 April 2015.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. Constitution

26. The relevant parts of Articles 27 and 28 of the Constitution read:

"**Article 27**

1. No one may be deprived of their liberty, except in cases and in accordance with the procedures provided by law.

2. The freedom of a person may not be limited, except in the following cases:

...

c) when there is reasonable doubt that they have committed a criminal offence or to prevent them from committing a criminal offence or ... escaping following its commission;

...

Article 28

1. Everyone who has been deprived of liberty has the right to be notified immediately, in a language that they understand, of the reasons for that measure, as well as of the charge brought against them. A person who has been deprived of liberty shall be informed that they have no obligation to make any declaration and have the right to communicate immediately with a lawyer and to be given the opportunity to avail themselves of their rights.

2. A person who has been deprived of [his or her] liberty under Article 27 § 2 (c) shall be brought within forty-eight hours before a judge, who shall decide upon their pre-trial detention or release not later than forty-eight hours from the moment of receiving the documents for review.

3. A person in pre-trial detention has the right to appeal against the decision of the judge. They have the right to be tried within a reasonable period of time or to be released on bail, under the law.

4. In all other cases, a person who has extrajudicially been deprived of liberty may address at any time a judge, who shall decide within forty-eight hours on the lawfulness of the [deprivation] measure."

27. The relevant part of Article 134 § 2 of the Constitution provides that individuals may lodge a complaint with the Constitutional Court only in respect of matters that relate to their interests.

B. The Constitutional Court Act (Law no. 8577 dated 10 February 2000 on the organisation and functioning of the Constitutional Court of the Republic of Albania)

28. Section 30 of the Constitutional Court Act, as in force at the relevant time, provided that the deadline for the lodging of individual complaints with the Constitutional Court was two years.

C. Code of Criminal Procedure ("the CCP")

29. Under Article 228 § 1 of the CCP, as in force at the relevant time, a security measure (*masë sigurimi personal*) could be imposed if, on the basis of evidence, there was a reasonable suspicion that an accused had committed a crime. Under Article 228 § 2, no security measures may be imposed when there are grounds under which the individual may not be sentenced or when the offence becomes non-prosecutable. Under Article 228 § 3, security measures are imposed when: (a) there are important reasons that would endanger the collection or authenticity of evidence; (b) the accused has absconded or there is a risk of flight; (c) there is a danger that the accused, owing to the circumstances at hand or his personality, might commit serious crimes or other offences similar to the one with which he or she has been charged.

30. Under Article 229 § 1 of the CCP, in ordering a security measure, a court considers its appropriateness and the degree of security necessary, given the case in question. Under Article 229 § 2 of the CCP, the court should also consider the gravity of the acts attributed to the suspect, the penalty envisaged, any tendency on the part of the suspect to reoffend (if he or she has been convicted of previous crimes), and any mitigating and aggravating circumstances.

31. Article 230 § 1 of the CCP states that placement in a detention facility may be ordered if no other security measure is appropriate owing to the

particular danger posed by the offence in question and the accused. Article 230 § 2 provides that detention may not be ordered in respect of a pregnant or breastfeeding woman, an individual suffering from a particularly severe health condition, and a number of other cases.

32. Under Article 232 of the CCP, a court may order the following restraining security measures: a travel ban; the obligation to report to the judicial police; arrest and detention in a particular place; bail; house arrest; detention in prison; and temporary detention in a psychiatric hospital.

33. Under Article 240 of the CCP, a court may order the following preventive security measures: suspension from exercising a public duty or providing a public service; and a temporary ban on engaging in certain professional or commercial activities.

34. Article 268 § 2 of the CCP provides that individuals who have been detained pending trial by way of a decision that is later found to contravene Articles 228 and 229 of the CCP have the right to be awarded compensation for their pre-trial detention.

D. Criminal Code

35. Article 135 of the Criminal Code provides the offence of "theft by way of abuse of office".

36. Article 248 of the Criminal Code provides the offence of "abuse of office".

E. Compensation for Unlawful Detention Act (Law no. 9381 of 28 April 2005)

37. Sections 2 and 3(ç) of the Act provide an individual's right to compensation for unlawful pre-trial detention in the same terms as those set out by Article 268 § 2 of the CCP (see paragraph 34 above). Under section 8(3) of the Act, a claim for compensation must be lodged with the relevant court of first instance.

II. DOMESTIC CASE-LAW

A. Supreme Court's case-law related to detention measures

38. In a decision no. 7 of 14 October 2011, the Supreme Court, sitting in a plenary formation (*Kolegjet e Bashkuara*), stated, in so far as relevant, that:

> "9. ... the existence of a reasonable suspicion based on evidence against the defendant (*fumus delicti*) is only the initial condition, [or] precondition, for the application of a security measure. This condition [the existence of a reasonable suspicion] does not exclude – on the contrary, it implies – that in addition to [that suspicion], it is necessary to prove at least one of the other legal conditions and criteria that speak to the need for a security measure and to the suitability of the actual security measure [to be imposed

in order to] restrict the freedom of the defendant (*periculum libertatis*). The judicial process imposing, or reviewing the necessity of, a security measure, in accordance with the conditions and criteria provided by law, is based on and aims to achieve the necessary balance between, on the one hand, respect for (and the safeguarding of) public order and ... the administration of justice, and, on the other hand, the legal rights and interests of the individual subject to the proceedings – both of which are provided by the Constitution.

...

Following on from the correct interpretation of the meaning that should be given to the term "risk" under Article 228 [of the CCP] as a whole – including paragraph (a) of that Article – the [court] reaches the unifying conclusion that at every stage of the proceedings, a request lodged by the prosecutor's office and the court decision imposing the security measure must be [properly] reasoned, ..., and [must] state (concretely) the need for a security measure and [detail] the important reasons relating to the "risk" [in question] – i.e. the probability [or] the real possibility that (*id quod plerumque accidit*) the judicial process will be put at risk by the defendant."

B. Constitutional Court's case-law on pre-trial detention

39. In decision no. 28 dated 23 June 2011, the Constitutional Court examined a set of complaints against a court decision ordering the detention of the complainant. The Constitutional Court noted that the imposition of a security measure directly concerned the fundamental human rights and freedoms of the person affected – that is to say the personal freedom of an individual. Furthermore, the court cited the case-law of the European Court of Human Rights under Article 5 of the Convention. After applying the applicable principles to the case in question the Constitutional Court dismissed the complaints.

40. In decision no. 40 dated 18 July 2012, the Constitutional Court examined a complaint that the Tirana Court of Appeal had erred in the calculation of the deadline to appeal against a decision of the first-instance court that had ordered the complainant's detention. The Constitutional Court found that the complaint was admissible, despite the fact that (i) in a subsequent set of proceedings, the regular courts had replaced the applicant's pre-trial detention with house arrest and (ii) he had later been detained on the strength of a judgment imposing a prison sentence.

41. As to the merits of the case before it, the court examined the question of whether the proceedings leading to the applicant's pre-trial detention had complied with the "fair hearing" requirements under the Constitution. Following that examination, the court upheld the complaint, ruling that the applicant's right of access to the court of appeal in order to challenge the pre-trial detention ordered by the first-instance court had been violated as result of the Tirana Court of Appeal's misapplication of the relevant law. However, in view of the fact that the pre-trial detention proceedings had become moot, the Constitutional Court did not order a rehearing before the ordinary courts.

THE LAW

42. The applicant complained under Article 5 § 1 (c) of the Convention that the domestic decisions ordering her detention had not contained relevant and sufficient reasoning or referred to her personal circumstances. Under Article 5 § 4 of the Convention she also complained that her appeals in connection to her detention had not been properly examined. The Court, being the master of the characterisation to be given in law to the facts of the case, considers that these complaints fall to be examined under Article 5 § 3 of the Convention, which reads as follows:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

I. APPLICATION OF ARTICLE 37 § 1 (b) OF THE CONVENTION

43. The Government submitted that on 19 June 2014 the domestic courts had replaced the applicant's pre-trial detention with house arrest (see paragraph 22 above) and that on 8 April 2015 she had been released (see paragraph 24 above). Accordingly, in the Government's view the case had been resolved and should be struck out of the Court's list of cases under Article 37 § 1 (b) of the Convention.

44. The applicant maintained her complaints, without addressing this matter.

45. The Court notes that the part of the applicant's complaints that are now before it concern her first period of detention, which lasted five months and five days. That period started on 6 November 2013, when she was detained on the strength of the decision of the District Court of Tirana of 5 November 2013 (see paragraph 9 above). It ended on 11 April 2014, when the domestic courts dismissed her habeas corpus application (see paragraph 20 above), thereby prompting the applicant's second period of detention, in respect of which her complaints have already been declared inadmissible.

46. The Court further notes that neither the domestic decision of 19 June 2014 placing the applicant under house arrest (see paragraph 22 above) nor the decision of 8 April 2015 suspending her prison sentence (see paragraph 24 above) involved any determination of the compatibility of the applicant's initial pre-trial detention with Article 5 § 3 of the Convention – a question that lies at the heart of her case before the Court. On the contrary, all the domestic appeals in respect of the applicant's first period of detention were dismissed by the domestic courts.

47. The subsequent discontinuation of the applicant's pre-trial detention did not change the fact that she had been nevertheless detained for five months and five days. She is, therefore, entitled to complain to the Court that

her detention was contrary to Article 5 § 3 of the Convention. It follows that, contrary to the Government's submission, the matter has not been resolved and the conditions provided by Article 37 § 1 (b) of the Convention have not been met.

48. Accordingly, the Court dismisses the Government's request for the application to be struck out of its list of cases.

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

A. Admissibility

1. The parties' submissions

49. The Government referred to Article 34 of the Convention in contending that on the date when the application had been lodged the applicant had not been deprived of her liberty; therefore, she had not had victim status, and had therefore no right to lodge a complaint with the Court.

50. They also considered that the complaints were manifestly ill-founded.

51. The applicant reiterated her complaints, without responding to the above-noted arguments.

2. The Court's assessment

52. The Court reiterates that the word "victim", within the context of Article 34 of the Convention, denotes the person directly affected by the act or omission in issue. Consequently, a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention in question (see, among other authorities, *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 67, 2 November 2010). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude the examination of an application (see *Arat v. Turkey*, no. 10309/03, § 46, 10 November 2009). The alleged loss of the applicant's victim status involves an examination of the nature of the right in issue, the reasons advanced by the national authorities in their decision and the persistence of adverse consequences for the applicant after the decision (see *Freimanis and Līdums v. Latvia*, nos. 73443/01 and 74860/01, § 68, 9 February 2006).

53. Turning to the present case, the Court notes that the Government's objection relies, in essence, on the same grounds as their request under Article 37 § 1 (b) of the Convention that the case be struck out of the Court's list of cases (see paragraph 43 above). Accordingly, for the same reasons as those set out in paragraphs 45-47 above, the Court dismisses the Government's objection regarding the applicant's victim status under Article 34 of the

Convention (see, *mutatis mutandis*, *Nada v. Switzerland* [GC], no. 10593/08, § 129, ECHR 2012).

54. Lastly, in *Delijorgji v. Albania* (no. 6858/11, § 59, 28 April 2015) the Court found that the Government had not cited any decision to support their assertion that the Constitutional Court offered an effective remedy in respect of the individual's right to liberty, as guaranteed under Article 5 of the Convention. However, in the present case the Constitutional Court did not find any issue *ratione materiae* with the complaint regarding the right to liberty, which was invoked by the applicant before that court. On the contrary, it carried out a preliminary examination and noted that the applicant's pre-trial detention in prison had come to an end (see paragraph 18 above). Furthermore, it can be seen from the case-law of the Constitutional Court (see paragraph 39-41 above) that that court has admitted and ruled in the past on complaints alleging unlawful deprivation of liberty. Moreover, the Government did not submit that the applicant's constitutional complaint should not be considered to constitute an effective remedy for the purposes of the six-month time limit. In view of the foregoing, the Court considers that the application was lodged within the six-month time-limit.

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

B. Merits

1. The parties' submissions

56. The applicant submitted that the domestic decisions of 5 November 2013 and 27 November 2013 had neither cited relevant and sufficient reasons nor referred to her personal circumstances when ordering her detention. She added that her appeals against her detention had not been examined thoroughly.

57. The Government rejected those arguments. They submitted that each of the domestic decisions had given a detailed account as to why the applicant had been suspected of the offence that she had been charged with.

58. The Government further submitted that domestic courts had made a comprehensive evaluation of the factors relevant to the level of risk of the applicant absconding and reoffending. At the same time, the Government stated that as the applicant had surrendered herself to the authorities, domestic courts had not relied on the applicant's flight risk to order her detention.

59. In the Government's view, the domestic courts had taken into consideration the fact that the applicant was suspected of abusing her powers and her influence over other public officers. Therefore, according to the Government, there had been sufficient elements pointing to a danger that the applicant, unless detained in prison, would influence the witnesses or her co-suspects.

60. In connection to the Constitutional Court's decision, the Government submitted that in view of the specific characteristics of that court, it was normal that the admissibility conditions in respect of complaints before it were more stringent and included a requirement that the applicant justify that she had a legal interest in bringing a complaint (see paragraph 27 above). In the Government's view the Constitutional Court had assessed this requirement in the same way that the European Court of Human Rights assessed whether an applicant had "victim status" under Article 34 of the Convention. In the case at hand, pursuant to the Government, the applicant had not satisfied that condition, as at the time when her constitutional complaint had been examined she had been placed under house arrest; therefore, the Constitutional Court had acted correctly in rejecting her complaint.

2. The Court's assessment

(a) General principles

61. The applicable general principles concerning the justification and the length of pre-trial detention are set out in *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 87-91, 5 July 2016.

62. The Court reiterates in particular that, while paragraph 1 (c) of Article 5 sets out the grounds on which pre-trial detention may be permissible in the first place (see *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, § 44, Series A no. 77), paragraph 3, which forms a whole with the former provision, lays down certain procedural guarantees, including the rule that detention pending trial must not exceed a reasonable time, thus regulating its length (see *Buzadji*, cited above, § 86).

63. According to the Court's established case-law under Article 5 § 3, the persistence of a reasonable suspicion is a condition *sine qua non* for the validity of the pre-trial detention but after a certain lapse of time – that is to say as from the first judicial decision ordering detention on remand (see *Buzadji*, cited above, § 102) – it no longer suffices. The Court must then establish (1) whether other grounds cited by the judicial authorities continue to justify the deprivation of liberty, and (2) where such grounds were "relevant" and "sufficient", whether the national authorities displayed "special diligence" in the conduct of the proceedings. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see, among many other authorities, *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012; and *Buzadji*, cited above, § 87).

64. Justifications that have been deemed "relevant" and "sufficient" reasons – in addition to the existence of reasonable suspicion – in the Court's case-law have included such grounds as the danger of absconding, the risk of pressure being brought to bear on witnesses or of evidence being tampered with, the risk of collusion, the risk of reoffending, the risk of causing public

disorder and the need to protect the detainee (ibid., § 88, with further references).

65. Until conviction, an accused must be presumed innocent and the purpose of the provision under consideration is essentially to require his or her provisional release once his or her continuing detention ceases to be reasonable (see *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X, and *Buzadji*, cited above, § 89).

66. The question of whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, for instance, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV, and *Kudła v. Poland* [GC], no. 30210/96, §§ 110 *et seq*., ECHR 2000 XI; see also *Buzadji*, cited above, § 90).

67. It primarily falls to the national judicial authorities to ensure that, in any given case, the pre-trial detention of an accused person does not exceed a reasonable time. Accordingly, they must, with respect for the principle of the presumption of innocence, examine all the facts militating for or against the existence of the above mentioned requirement of public interest or justifying a departure from the rule in Article 5, and must set them out in their decisions on applications for release (see *Buzadji*, cited above, § 91). With particular regard to the risk that the suspect, if released, would reoffend, consideration must be given to, *inter alia*, the nature and seriousness of the charges against a defendant, his or her criminal record, and his or her character or behaviour that would indicate that he or she presented such a risk (see, for instance, *Merčep v. Croatia*, no. 12301/12, § 96, 26 April 2016; *Šoš v. Croatia*, no. 26211/13, § 95, 1 December 2015; and *Magnitskiy and Others v. Russia*, nos. 32631/09 and 53799/12, § 221, 27 August 2019).

68. In exercising its function on this point, the Court has to ensure that the domestic courts' arguments for and against release must not be "general and abstract" (see, for example, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX (extracts)), but contain references to specific facts and the personal circumstances justifying an applicant's pre-trial detention (see, *mutatis mutandis*, *Panchenko v. Russia*, no. 45100/98, § 107, 8 February 2005).

69. Where circumstances that could have warranted a person's detention may have existed but were not mentioned in the domestic decisions it is not the Court's task to establish them and take the place of the national authorities that ruled on the applicant's pre-trial detention (see *Bykov v. Russia* [GC],

no. 4378/02, § 66, 10 March 2009, and *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, § 77, 13 January 2009).

(b) Application of those principles

(i) Proceedings before the district and appellate courts

70. The applicant did not contest the assertion that at the time in question there had been a reasonable suspicion that she had committed a criminal offence. The Court has no reason to hold otherwise. Accordingly, the disputed issue is whether, besides pointing to a reasonable suspicion, the domestic courts appended relevant and sufficient reasons to support their decisions to detain the applicant (see paragraph 63 above).

71. In this connection, the decision of 5 November 2013 of the District Court of Tirana referred to the risk that the applicant would abscond (see paragraph 7 above), which is one of the permissible grounds for ordering detention. However, as conceded by the Government, the District Court of Tirana did not provide any reason as to why it considered that the applicant presented a flight risk. Neither did it point out, in line with the Court's case-law requirements (see paragraph 68 above), to any personal circumstances of the applicant that led the court to the conclusion that she was a flight risk (ibid.).

72. The subsequent decision of the Tirana Court of Appeal of 27 November 2013 did not contain any reference to the fact that the applicant allegedly presented a flight risk. Be that as it may, the Tirana Court of Appeal held that there was a risk that the applicant, if released, would reoffend. The risk of reoffending also constitutes grounds for continued detention (see paragraph 64 above). However, the appellate court, too, confined itself to stating that a risk existed, without explaining what elements had led to it reaching that conclusion (see paragraph 14 above). In particular, besides the reference to the gravity of the charges, the court did not explain what weight it attached, for example, to the applicant's prior criminal record, if any, and her character or behaviour (see paragraph 67 above).

73. In this connection, the applicant submitted that there had been no risk that she would reoffend as she had been in the meantime suspended from her official position (see paragraph 12 above). The Court considers that this submission warranted an answer. In particular, it is unclear why the Tirana Court of Appeal considered that the applicant still presented a risk of reoffending, notwithstanding that she had been suspended of the office in the exercise of which she was accused of having committed the offence in issue.

74. The Court notes that the domestic decisions of 5 and 27 November 2013 were based to a large extent on the grave financial consequences of the offence in question and the fact that the applicant was suspected of committing it by means of abusing her public office (see paragraphs 5-14 above). However, the gravity of the offence or the consequences thereof do

not constitute standalone grounds justifying detention and may not, by themselves, justify depriving a suspect of his or her liberty unless they are considered in the course of assessing the existence of permissible grounds under which detention may be ordered, pursuant to the Court's case-law (see paragraph 64 above).

75. The Government submitted that the applicant's pre-trial detention had been justified by the risk that she would put pressure on witnesses or collude with the co-accused. However, the Court notes that the domestic courts did not refer to such a risk in their decisions of 5 and 27 November 2013 (see paragraphs 5-14 above). That being so, it is not for the Court to take the place of the domestic authorities and establish retroactively such new grounds for detention (see paragraph 69 above).

76. Lastly, the Court notes that the domestic decisions of 5 and 27 November 2013 stated that alternative measures to the applicant's detention in prison were considered to be inadequate (see paragraphs 8 and 14 above). However, other than a formal statement that other measures were taken into consideration, the domestic decisions did not refer in substance to the extent of the consideration that the courts had given to any alternative measures of ensuring the applicant's appearance at trial (see *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000).

(ii) Proceedings before the superior courts

77. Although many of the above-noted requirements concerning the imposition of a detention measure had already been recognised by the Supreme Court's case-law (see paragraph 38 above), the Court notes that the applicant's cassation appeal relying on the said requirements was rejected by the Supreme Court by way of a *de plano* inadmissibility decision.

78. Nor were her arguments examined on the merits by the Constitutional Court which rejected her complaint on the sole grounds that she was not detained in prison any longer. In this connection, in a number of cases relating to comparable circumstances the Court has found a violation of Article 5 § 4 of the Convention, on account of the Croatian Constitutional Court's practice of declaring constitutional complaints inadmissible where a fresh decision concerning the complainant's detention had been adopted before that court had given its own decision (see *Bernobić v. Croatia*, no. 57180/09, § 93, 21 June 2011; *Krnjak v. Croatia*, no. 11228/10, § 54, 28 June 2011; *Šebalj v. Croatia*, no. 4429/09, § 223, 28 June 2011; and *Margaretić v. Croatia*, no. 16115/13, § 119-121, 5 June 2014).

79. In the present case, the Court notes that the restriction of the applicant's right to a constitutional review of her first period of detention on account of lack of a legitimate interest, and thus of standing, was not provided specifically by domestic law. Such a restriction was identified by the Constitutional Court in its interpretation of Article 134 § 2 of the Constitution, which provides that individuals complaining before the

Constitutional Court must justify a personal interest in the proceedings (see paragraph 27 above).

80. As pointed out by the Government, the Court's power to review compliance with domestic law is limited, as it is primarily for the national authorities (notably the courts) to interpret and apply domestic law (see, among other authorities, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 110, ECHR 2015, and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 144, 27 June 2017). Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018, and *Centre for Democracy and the Rule of Law v. Ukraine*, no. 10090/16, § 108, 26 March 2020, with further references).

81. Returning to the circumstances at hand, the Court is not persuaded that the Constitutional Court's decision of 24 February 2016 or the Government's observations before the Court set out convincingly the reasons for the conclusion that the applicant had no personal interest in challenging the lawfulness of her first period of detention.

82. In reaching its decision, the Constitutional Court relied exclusively on the fact that the applicant's pre-trial detention had been discontinued. However, as already noted in paragraphs 46-47 above, the decision of 19 June 2014 placing the applicant under house arrest did not involve any determination of the lawfulness of her first period of pre-trial detention.

83. As pointed out by the Constitutional Court's dissenting judge, by the date on which the Constitutional Court adopted its decision the applicant had already endured a deprivation of her liberty; accordingly, she could legitimately benefit from a *post facto* constitutional review of her first period of detention (see paragraphs 19 and 45 above). A full review by the Constitutional Court could have led to a finding that the applicant had been detained in violation of her right to liberty. In addition to the moral interest in obtaining that result, such declaratory relief could have also opened the way for a compensation claim on the grounds of unlawful detention under Article 5 § 5 of the Convention (see *S.T.S. v. the Netherlands*, no. 277/05, § 61, ECHR 2011), a right that is also recognised by domestic law (see paragraphs 34-37 above).

84. In any event, the Constitutional Court's refusal to examine the merits of the applicant's complaint meant that the shortcomings in the reasoning of the first instance and appeal judgments were not rectified, and the infringement of the applicant's right to liberty was not remedied, by way of either cassation or constitutional review at domestic level.

(iii) Conclusion

85. The foregoing considerations are sufficient to enable the Court to conclude that the domestic courts failed to provide relevant and sufficient reasons in support of their decisions regarding the applicant's first period of detention.

86. There has accordingly been a violation of Article 5 § 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. 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

88. The applicant claimed 13,626,777.7 ALL (116,658.49 euros (EUR)) in respect of pecuniary and non-pecuniary damage. She submitted a number of statements regarding the expenses incurred by her family in connection with her detention and an expert report quantifying her moral and psychological damage.

89. The Government submitted that the claim was unsubstantiated and excessive.

90. The Court does not discern any causal link between the violation found and the claim for pecuniary damage. Having regard to the nature of the violation found, the Court, ruling on an equitable basis, awards EUR 4,500 to the applicant in respect of non-pecuniary damage.

B. Costs and expenses

91. The applicant also claimed EUR 5,500 for the costs and expenses incurred before the domestic courts and the Court. She submitted two invoices of EUR 2,500 and EUR 3,500 in support of her claim.

92. The Government submitted that the amounts claimed were excessive and that the invoices provided were not submitted on the officially approved invoice forms.

93. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the applicant pursued proceedings before four levels of domestic courts prior to lodging her application with the Court. The Court has already rejected in the past the

Government's argument that claims for costs and expenses must be supported by officially approved invoices (see *Sharxhi and Others v. Albania*, no. 10613/16, § 209, 11 January 2018; *Delijorgji*, cited above, § 100; and *Luli and Others v. Albania*, nos. 64480/09 and 5 others, § 129, 1 April 2014). It finds no reason to reach a different conclusion in this case.

94. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,500 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Dismisses* the Government's request to strike the application out of its list of cases;

2. *Declares* the complaint under Article 5 § 3 of the Convention admissible;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the domestic courts' failure to provide relevant and sufficient reasons for the applicant's first period of detention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,500 (four thousand five hundred 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 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President