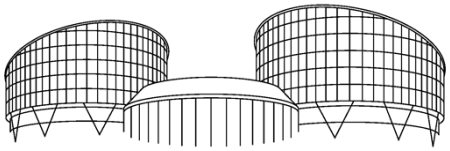

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF BIGOVIĆ v. MONTENEGRO

(Application no. 48343/16)

JUDGMENT

STRASBOURG

19 March 2019

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 Bigović v. Montenegro,

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

Robert Spano, *President,*
Işıl Karakaş,
Valeriu Griţco,
Stéphanie Mourou-Vikström,
Ivana Jelić,
Arnfinn Bårdsen,
Darian Pavli, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 26 February 2019,

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

PROCEDURE

1. The case originated in an application (no. 48343/16) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Montenegrin national, Mr Ljubo Bigović ("the applicant"), on 3 August 2016.

2. The applicant was represented by Ms B. Franović, a lawyer practising in Podgorica. The Montenegrin Government ("the Government") were represented by their Agent, Ms V. Pavličić.

3. The applicant complained about the conditions of his detention, in particular of the lack of medical care, the unlawfulness of his detention in view of the irregular reviews as to whether his further detention was justified, insufficient reasoning in the decisions extending his detention, the length thereof and the lack of a speedy decision on his release.

4. On 25 January 2018 notice of those complaints was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976. He is currently serving a prison sentence in the Institution for the Execution of Criminal Sanctions (*Zavod za izvršenje krivičnih sankcija*; hereinafter "the IECS") in Spuž.

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

A. Background information

7. On several occasions in July and August 2005 explosives were used on the construction site of a hotel on the Montenegrin coast, apparently with the aim of forcing the investors to buy the adjacent plot of land. A high-ranking police officer, S.Š., was in charge of the police investigation.

8. Shortly after midnight on 30 August 2005, S.Š. was ambushed in front of his house and killed by nineteen shots from an automatic gun.

9. On 16 February 2006 the applicant was arrested on suspicion of criminal enterprise (*zločinačko udruživanje*), attempted extortion (*iznuda u pokušaju*) and aiding and abetting aggravated murder (*teško ubistvo putem pomaganja*). The case was entrusted to the Special Prosecutor for Organised Crime.

B. The applicant's detention

10. On 19 February 2006 the investigating judge of the High Court (*Viši sud*) in Podgorica issued a detention order against the applicant and several other persons for fear that they might abscond, taking into account the gravity of the offences and the severity of the prison sentence prescribed. The decision specified that detention would last for a month starting as of 16 February 2006. It relied on Article 148 § 1(1) of the Code of Criminal Procedure ("the CCP") in force at the time (see paragraph 94 below).

11. The detention of the applicant and one other person was extended on 16 March, 15 April, 16 May, 15 June and 12 July 2006, each time for another month, in substance for fear that they might abscond and taking into account the gravity of the criminal offences of which they were suspected. Relying on Article 148 § 1(1) of the CCP, the court specified, *inter alia*, that there was an ongoing investigation against them and that a number of witnesses remained to be interviewed. Those decisions specified that as well as criminal enterprise and attempted extortion, the applicant was also suspected of aiding and abetting aggravated murder.

12. On 14 August 2006 the Supreme State Prosecutor (Special Prosecutor) filed an indictment against the applicant and several other persons. The applicant was indicted for criminal enterprise, attempted extortion, aiding and abetting aggravated murder, helping a perpetrator after the commission of a criminal offence, incitement to forge an official document (*isprava*), and incitement to endanger the public (*izazivanje opšte opasnosti*).

13. The defendants' detention, including the applicant's, was further extended by the High Court on 15 August 2006, 21 October 2008 and

11 March 2009, in substance for fear that they might abscond taking into account the gravity and number of criminal offences that they had been accused of and the sentences prescribed for them. The latter two decisions also took into account that the defendants were relatively young, that three of them were unemployed, two were single, and one was a foreign citizen. All three decisions relied on Article 148 §1(1) and none of them specified for how long the detention was extended.

14. In addition, on 23 May 2007, during the main hearing (*glavni pretres*), the applicant requested that his detention be lifted, submitting that he had nowhere to abscond to and that he would duly appear before the court (*uredno odazvati na pozive suda*). The court dismissed the request the same day, considering that "the grounds for [the applicant's] detention still persisted".

15. On 7 August 2009 the High Court found the applicant guilty of several criminal offences and sentenced him to thirty years in prison.

16. On 17 February 2010 the Court of Appeal (*Apelacioni sud*) in Podgorica quashed the High Court judgment. The same day it extended the detention of four defendants, including the applicant, without specifying for how long, considering that "the reasons for detention still persisted". The court relied on Article 148 § 1(1) and (4) of the CCP in force at the time (see paragraph 94 below).

17. On 4 March 2011 four defendants, including the applicant, applied for release (*predlog za ukidanje pritvora*). On 10 March 2011 the High Court dismissed their application, considering that "the circumstances on the basis of which [their] detention had been extended still persisted". It relied on Article 148 §1 (1) and (4).

18. On 9 May 2011 the High Court again found the applicant guilty of several criminal offences and sentenced him to thirty years in prison. The same day the court extended the detention of four defendants, including the applicant, for fear that they might abscond in view of the sanction imposed, and that their release could seriously jeopardise public order and peace. The court relied on Article 175 § 1(1) and (4) of the 2009 CCP (see paragraphs 100-101 below).

19. On 30 December 2011 the Court of Appeal quashed the High Court's judgment. The same day the court extended the detention of five defendants, including the applicant, without specifying for how long, considering that "the reasons for detention still persisted". It relied on Article 175 § 1(1) and (4) of the 2009 CCP.

20. On 1 February 2012, relying on Articles 5 and 6 of the Convention, five defendants, including the applicant, applied for release, maintaining that the reasons for their detention no longer persisted. On 8 February 2012 the High Court dismissed their application, considering that "the circumstances had not changed since the previous decision" and that "the

reasons for their detention persisted". It relied on Article 175 § 1(1) and (4) of the 2009 CCP.

21. On 11 April, 13 June and 10 August 2012 the High Court, acting pursuant to Article 179 § 2 of the 2009 CCP (see paragraphs 96 and 100 below), further extended the detention of five defendants, including the applicant, "until further notice" (*ima trajati do dalje odluke suda*), for fear that they might abscond and that their release would seriously breach public order and peace. In doing so the court relied on Article 175 § 1(1) and (4) of the CCP. The court took into account the gravity and the number of offences at issue, the sentence provided for the offences, the circumstances in which they had been committed, as well as the fact that the defendants were relatively young and that one of the accused had absconded.

22. On 18 April 2012, during the main hearing, five defendants, including the applicant, applied to the court to lift their detention. The court dismissed their application the same day, considering that "the reasons for extending their detention persisted".

23. On 9 October 2012 the High Court, *inter alia*, found the applicant guilty of attempted extortion, public endangerment and aggravated murder, all through incitement (*sve putem podstrekavanja*), and sentenced him to thirty years in prison. The same day the court extended the detention of four defendants, including the applicant. It considered that the risk of their absconding persisted, and that there were particular circumstances indicating that releasing them would seriously breach public order and peace. The court relied on Article 175 § 1(1) and (4) of the 2009 CCP.

24. On 2 April 2013 the Court of Appeal upheld the first-instance judgment.

25. On 2 April 2014 the Supreme Court quashed the Court of Appeal's judgment. The same day the Supreme Court extended the detention of four defendants, including the applicant, considering that the reasons for detention persisted. Notably, the defendants at issue had been found guilty of aggravated murder by the first-instance judgment, which had not been quashed. The offence contained two qualifying circumstances: (a) the victim was a police officer, and (b) he had been murdered for profit (*koristoljublje*). Referring to Article 175 § 1(4), the court considered that releasing the defendants could seriously breach public order and peace.

26. On 1 August 2014 the applicant applied for release to the High Court. Relying on Article 5 of the Convention and the relevant case-law, he complained, *inter alia*, about the length of his detention, alleging insufficient reasoning of the relevant decisions, the lack of regular review of his detention pursuant to Article 179 § 2 of the CCP, a lack of medical care and poor conditions in detention. He also submitted that in October 2013 he had been diagnosed with ulcerative colitis (an inflammatory bowel disease that causes long-lasting inflammation and ulcers in the digestive tract; it affects the innermost lining of the large intestine (colon) and the rectum)

and enclosed the relevant medical reports. On 3 September 2014 the applicant urged the High Court to rule on his application.

27. On 4 September 2014 the applicant applied to the Court of Appeal. On 12 September 2014, during the main hearing before the Court of Appeal, the applicant applied for release, primarily for health-related reasons. He submitted additional medical reports. Between 5 November 2014 and 16 January 2015 he urged the Court of Appeal on six occasions to rule thereon.

28. On 23 January 2015 the Court of Appeal heard a medical expert witness and obtained information from the IECS in this regard. The expert medical witness submitted that the applicant's illness (ulcerative colitis) was serious, requiring a special diet and specific medical treatment, the absence of which, or even small deviations, could make it worse. He also explained that the illness caused a lot of psychological changes. The IECS submitted that it provided both medical care, including in public health institutions where needed, and various diets. In particular, the applicant had been taken to various hospitals and specialists, and was allowed to provide for his own food. On 13 February 2015 the court dismissed his application.

29. On 20 February 2015 the Court of Appeal upheld the High Court's judgment on the merits of 9 October 2012. The same day, relying on Article 175 § 4 of the CCP, the court extended the four defendants' detention, including the applicant's, finding that the reasons for it persisted.

30. On 12 March 2015 the Supreme Court, acting upon an appeal lodged by the applicant, quashed the order of 20 February 2015 extending the applicant's detention, finding that Article 175 § 4 of the CCP, on which the Court of Appeal had relied, did not exist, as the relevant provision contained only two paragraphs. The court also acknowledged that there was no reasoning as to whether the applicant's health affected his further detention.

31. On 16 March 2015 the Court of Appeal extended four defendants' detention, including the applicant's, relying on Article 175 § 1(4). It found the applicant's health of no relevance to his further detention, given that it transpired from the IECS's submission that the applicant had been provided with adequate medical care and nutrition.

32. On 20 March 2015 the applicant appealed, relying on Articles 5 and 6 of the Convention. He submitted that the order to extend the detention had been issued for all defendants together, and that the court had failed to provide specific reasons for extending his detention. He also complained about the conditions in detention and of a lack of adequate medical care there, including a lack of the medically prescribed diet (see paragraph 45 below).

33. On 27 March 2015 the Supreme Court dismissed the appeal. While acknowledging that the relevant judgment was not yet final, the court took into account that the defendants had been found guilty of aiding and abetting aggravated murder, for which a prison sentence of ten years or

more was prescribed. It also held that the Court of Appeal had sufficiently examined the applicant's health and its relevance to detention.

34. On 7 May 2015, invoking Articles 3, 5 and 6 of the Convention, the applicant lodged a constitutional appeal. He complained, in particular, that (a) the conditions of detention in prison, in particular the medical care, were inadequate; (b) his detention was unlawful given that it was not regularly reviewed; (c) his detention was lengthy and the relevant decisions had been insufficiently reasoned; and (d) his application for release submitted on 1 August 2014 had not been ruled upon.

35. On 16 June 2015 the applicant again applied for release. He invoked the principle of proportionality and submitted that whenever possible the courts were obliged to order a less severe measure instead of detention. He referred to his state of health and relied on *Bulatović v. Montenegro*, no. 67320/10, 22 July 2014. He attached a medical report of 10 June 2015 (see paragraph 77 below).

36. On 9 July 2015 the High Court dismissed his application, relying on Article 175 § 1(4) of the CCP. It considered that the applicant had been found guilty of aggravated murder by a judgment which was not yet final, and that the criminal offence at issue was particularly grave owing both to the manner in which it had been committed, and to its consequences – the death of a high-ranking police officer, who had been murdered for profit. The court considered that the applicant's health was of no consequence as he was being, and had to be, provided with an adequate diet and medical care in the IECS. Even if this had not been the case, it would not affect the existence of a reason for detention, but could only indicate that he should be detained in more adequate conditions, such as in the Clinical Centre of Montenegro.

37. On 20 October 2015 the Supreme Court, in substance, upheld the judgment of the Court of Appeal of 20 February 2015 and the applicant's sentence of thirty years in prison.

38. On 28 December 2015 the Constitutional Court dismissed the applicant's constitutional appeal. The court found, in particular, that the impugned decisions had been rendered by competent courts, in a procedure prescribed by law, on the basis of the CCP, and that the reasons contained therein were not arbitrary. As regards the length of detention, the court held that Article 5 distinguished between detention before and after conviction. It held that the lawfulness of detention could be assessed only until the first-instance judgment, which did not have to be final. Given that the first-instance judgment had been issued on 7 August 2009, the applicant's constitutional appeal in that regard was belated. As regards medical care, the court considered that the applicant's health had been continuously monitored by a number of specialists in various institutions, and that he had been provided in a timely manner with reasonable available medical care (*pravovremeno su pružili razumnu dostupnu medicinsku njegu*). The

decision did not address the conditions of detention, whether the applicant's detention had been regularly reviewed or the alleged failure to rule on his application for release. That decision was served on the applicant on 25 March 2016.

C. The conditions of detention

39. The parties' submissions in this regard differed.

40. The applicant maintained that the cell in which he had been detained had been overcrowded, the number of inmates varying, and that he had lacked water and daily exercise. The cell had contained a sanitary facility and a dining table. Due to a frequent lack of water, the applicant had had to collect it in a container (*u buretu*). Also, the daily walks had lasted for one hour – except for Thursdays and Fridays, when they had lasted for half an hour – and had been cancelled altogether on rainy days.

41. The Government, for their part, submitted that there were no records for the period prior to 5 August 2009. Between 5 August 2009 and 26 March 2010 the applicant had been held in room D4, measuring 30 sq. m, which, at times, he had shared with five other persons at most. Between 27 March 2010 and 8 February 2016 he had been in room L9, measuring 20 sq. m, which he had shared with three other persons at most, and during some periods he had been there alone. Both D4 and L9 had their own toilets, separated from the rest of the room, which the inmates were in charge of cleaning.

42. In the remand section of the prison the applicant had had at his disposal four outdoor walking areas, measuring in the range of 506 sq. m to 900 sq. m. He had also been allowed out of his room during family visits (thirty minutes per week) and during the visits of his representatives, which were not time-limited.

43. On 8 February 2016 the applicant had been transferred to the post-conviction section of the prison, where he had been placed in a single room on the ground floor in newly-built pavilion F. The room measured 15.09 sq. m, of which the main area measured 5.7 sq. m, the dining area 7.84 sq. m, and the toilet with wash basin 1.55 sq. m, separated from the rest of the room by a dividing wall. In the room there was a bed, a table and a chair, a wardrobe, a television set and receiver, a DVD player, a refrigerator, air-conditioning, a hot plate and an oven. In the immediate vicinity of the room there was a common bathroom with several showers. There were several outdoor yards at his disposal: one of concrete measuring 289 sq. m, and two grass ones measuring 210 sq. m and 2,393 sq. m respectively. There was also a covered gym (*natkrivena teretana*) of a metal construction.

44. The Government also submitted that the conditions in the prison, for both remand prisoners and convicted prisoners, had been significantly

improved after a visit of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment ("the CPT") in 2013 (see paragraph 139 below).

D. The applicant's health

1. Ulcerative colitis

45. In September 2013 the applicant was diagnosed with ulcerative colitis and was prescribed a special diet (*crijevna dijeta*) by a specialist in the Clinical Centre of Montenegro (a State-run hospital). The relevant medical report did not contain any details as regards the exact content of the diet. With the consent of the High Court judge of 9 December 2013, special food products were provided by the applicant's family, at first once a day and then once a week.

46. It transpires from medical reports issued in June, July and November 2014 that the treatment the applicant was receiving for ulcerative colitis was not effective. In 2014 he was, *inter alia*, admitted twice to the Clinical Centre as his condition had worsened. As he did not wish to undergo surgery, he was prescribed medication called Vedolizumab ("VDZ") instead. It is unclear from the case file when exactly VDZ was prescribed, but it would appear that it was between September and November 2014. The reports of November 2014 also noted that the applicant did not wish to be hospitalised either. As VDZ was not available in Montenegro, the applicant had four doses bought for him in Germany, the cost of which was 17,222.40 euros (EUR). Those doses were administered in December 2014, January, February and March 2015. After the dose in March 2015 the doctors noted "evident improvement" and considered it of utmost importance that the applicant be given the next dose, as "every delay thereof increased the risk of the illness worsening". The next dose was planned for May 2015.

47. Twice in May 2015 the IECS informed the Court of Appeal and the Supreme Court of its attempts to provide VDZ for the applicant. Given that it was not registered in Montenegro, it could be obtained only with the exceptional approval of a request made by a company licensed to distribute medication. The IECS had asked that such a request be made by a pharmaceutical company.

48. On 20 May 2015 the main distributor of VDZ informed the pharmaceutical company that VDZ was under special monitoring (*pod posebnim praćenjem*). Every administration of it had to be authorised by its medical sector, and each and every individual case examined separately.

49. On 22 July 2015 the applicant had two more doses bought for him in Germany, the cost of which was EUR 5,975.94. They were administered in August and September 2015.

50. On 2 September 2015 the IECS provided for two doses of VDZ, the cost of which was covered by the High Court (one being EUR 4,457.85). They were administered in November 2015 and January 2016.

51. In the course of 2015 the applicant was hospitalised once because his ulcerative colitis had worsened.

52. In 2016 the applicant received five doses of VDZ in total (the one in January 2016 mentioned in paragraph 50 above, and in February, October, November and December 2016). The dose planned for March 2016 was not administered until October 2016.

53. In 2017 the applicant received nine doses of VDZ (January, February, March, April, May, June, July and two in September). There is no information in the case file as to who covered the costs of the doses as of February 2016 onwards.

54. In at least nine medical reports in 2017 the doctor in charge noted that the treatment with VDZ had been prescribed because the applicant had kept refusing surgery. He considered, however, that in spite of the VDZ treatment, the applicant's health was not satisfactory and that even though he kept refusing to undergo an operation, there was no other option, and the applicant was advised to consider it again. The doctor also considered that it was practically impossible for the applicant to recover (*ostvari remisiju*), given that the conditions in which he was detained increased the risk of complications and could be life-threatening.

55. Between 15 November and 4 December 2017 the applicant was hospitalised again because his ulcerative colitis had worsened. As he had been recommended surgery, further VDZ treatment was discontinued.

56. On 13 June 2018 the doctor from the Clinical Centre noted that the applicant was feeling well. On 23 July 2018 the applicant underwent an endoscopic examination in the Clinical Centre, in which it was found that the ulcerative colitis was in remission. On 25 July 2018 the prison doctor noted that the applicant was feeling well, that he was in a state of remission and that his ulcerative colitis was in a "tranquil" phase. Between 3 August and 20 December 2018 the applicant had three more specialists' examinations indicating an inflammatory pseudopolyp and that the ulcerative colitis had reactivated after six months of remission.

2. Eye surgery

57. On 17 October 2013 a discharge note from the hospital stated that the applicant had been, *inter alia*, recommended an ophthalmological examination in order to determine his dioptres. A discharge note of 25 December 2013 stated that the applicant had diminished vision (*oslabljen vid*).

58. On 13 January 2014 (during an endoscopic examination at the Clinical Centre), the applicant was told he must undergo an

ophthalmological examination on account of his sudden eyesight problems (*zbog naglo nastalih smetnji s vidom*).

59. On 4 February 2014, with the High Court's consent of 30 January and 4 February 2014, the applicant was examined by an ophthalmologist in Meljine hospital as well as in a privately-run ophthalmology clinic in Podgorica. The report of the ophthalmologist in Meljine is partly illegible. It transpires from the legible part that the applicant was diagnosed with complicated cataracts (*cataracta complicate*) in his left eye. The next check-up was recommended in three to four months.

60. On an unspecified date, apparently in March 2014, the applicant was diagnosed with proliferative retinopathy (*Retinopathia proliferativa alia*), myopia (*OD Myopia*), and optic atrophy (*OS Atrophia n. optici*). A panel of ophthalmologists (*konzilijum oftalmologa*) recommended eye surgery in a privately-run clinic, which would include a cataract operation.

61. On 26 March 2014 the applicant was examined in a privately-run ophthalmological clinic. He underwent surgery on 27 March 2014, for which he paid EUR 2,600.

3. Knee-related treatment

62. It transpires from the case file that the applicant had been suffering pain in the knee, spine and feet since 2000. He had undergone surgery to his left leg in 2001, had broken a thighbone in 2003, and both legs were "extremely deformed" (*izrazito deformisana*) owing to shotgun injuries (*prostrelne rane*) and a car accident, which would appear to have taken place in 2005. After gangrene had appeared, the applicant had undergone surgery to his right leg and skin grafts.

63. In the course of 2015 the applicant was examined by a number of specialists from the Clinical Centre and the Special Hospital for Orthopaedics, Neurosurgery and Neurology in Risan ("the Risan hospital"), and received various medication.

64. In particular, during his hospitalisation between 28 March and 3 April 2015 (for ulcerative colitis) the applicant was also examined by an orthopaedist who recommended surgery. He had another check-up on 22 April 2015.

65. On 24 April 2015 the applicant was hospitalised again because his surgery wounds were oozing (*secernacije*) under the left knee and he required further surgery. On 30 April 2015, on his discharge from hospital, he was recommended rehabilitation treatment in the Rehabilitation Institute in Igalo (*Institut za fizikalnu medicinu, rehabilitaciju i reumatologiju* – "the Igalo Institute") and, if the results were not satisfactory, an endoprosthesis.

66. On 27 July 2015 the applicant requested that he be allowed the said rehabilitation treatment. The High Court approved the request on 30 July 2015, noting that the exact dates of the treatment would be agreed directly between the IECS and the applicant.

67. On 21 August 2015 the applicant asked the prison authorities to provide him with transportation to the Igalo Institute the first week of September. He submitted that the costs of his treatment and stay there would be entirely covered by his family. On 2 September 2015 he informed the IECS that his treatment was scheduled to begin on 7 September 2015. He repeated that the costs of it would be covered by him. On 7 September 2015 the applicant was taken to Igalo.

68. Following the recommendation of doctors in Risan hospital, the applicant's request to that effect and the High Court's consent, his treatment in the Igalo Institute was extended twice. In one of those requests the applicant submitted that the costs thereof would be covered by him. He stayed there between 7 September and 7 December 2015, for which he paid EUR 10,673.60. The discharge note from the Igalo Institute stated that he had received treatment for strengthening his muscles with the aim of preparing him for a possible endoprosthesis.

69. Between 4 September 2015 and 9 February 2016 the High Court informed the IECS on several occasions that the costs of the applicant's medical treatment, including for VDZ, and the costs of security guards at the Igalo Institute, would be covered by the High Court upon presentation of the relevant reimbursement requests (*po podnošenju zahtjeva za naknadu troškova*), pursuant to Article 226 §§ 2(5) and 4 of the CCP. Between 14 October 2015 and 12 February 2016 the Judicial Council paid EUR 15,748.80 to the Igalo Institute for the accommodation of the IECS security guards who had accompanied the applicant during his treatment there.

70. On 3 December 2015 a specialist in Risan hospital noted that the applicant was still suffering strong pain in his left knee and that the treatment in the Igalo Institute had not improved it. The specialist recommended inter-ligament corrective osteotomy with external fixing (*interligamentarna korektivna osteotomija uz spoljašnju fiksaciju*). He diagnosed the applicant with advanced knee arthrosis.

71. Between 2 June 2016 and March 2017 the applicant's left knee was further examined by a number of specialists: once by an orthopaedist, a vascular surgeon and a neurologist, and three times by a neuro-surgeon. He also had an X-ray of the knee and an MRI scan of the lumbar spine. He was diagnosed with serious osteoarthritis of the left knee (*gonarthrosis lateralis sinistri gradus gravis*), atherosclerosis, lumbalgia (*lumboischialgia*), and peroneal nerve dysfunction (*leasio nervi peronaei*), and further treatment in the Igalo Institute was recommended.

4. Psychiatrist

72. During his hospitalisation between 28 March and 3 April 2015 (for ulcerative colitis) the applicant had also been examined by a psychiatrist

and prescribed treatment. The report did not specify which treatment, but stated that the next check-up should take place "if needed" (*po potrebi*).

73. On 25 March 2016 the applicant was examined by the prison doctor, who recommended an examination by a psychiatrist in the specialist hospital in Kotor. On 29 March 2016 the applicant was examined in Kotor, where he submitted that in the previous two months he had felt fear for his physical health and certain aspects of everyday functioning. The doctor prescribed treatment. The next appointment scheduled for 19 April 2016 took place on 18 April 2016. The doctor found that he was suffering from "prominent anxious-depressive psychopathology with vegetative expression" (*prominentna anksiozno-depresivna psihopatologija, sa vegetativnom ekspresijom*) and prescribed treatment. The next check-up recommended for 4 May 2016 took place on 8 July 2016. The applicant submitted that he had stopped taking the medication "due to changes in the work of the health service" (*zbog izmijenjenih okolnosti rada zdravstvene službe*). The doctor found that he was suffering from depression, a high level of anxiety and severe somatic symptom disorder. He prescribed treatment and recommended another check-up in a month. The next check-up took place on 23 August 2016, when severe anxiety was noted. It was recommended that the next check-up be done by telephone in two weeks, and a further one in Kotor hospital in one to two months. It would appear from the case file that there have been no further check-ups.

5. Other health-related facts

74. Between March 2013 and 4 December 2017 the applicant was hospitalised eight times (for 128 days in total) and had in addition twenty-two outpatient hospital treatments. Between September 2013 and January 2018 he was examined outside the IECS 151 times.

75. Between 17 September 2013 and 18 August 2015 the IECS informed the High Court on several occasions that following the referral (*uput*) of the prison doctor, the applicant had been taken to various medical institutions outside the IECS.

76. Medical examinations had been conducted in the presence of prison guards, including a colonoscopy and psychiatric examinations. The colonoscopy had been performed without anaesthesia.

77. On 10 June 2015 three medical experts (one in forensic medicine, one in internal medicine – a gastroentero-hepatologist and a psychiatrist) issued an opinion on the applicant's health, after having examined him and his medical file. They stated that ulcerative colitis was incurable and that apart from genetic factors, it was generated by stressful circumstances. They recommended that the applicant be treated in the least stressful environment possible, that is that he be "isolated from the IECS". They observed that his health had constantly deteriorated until he had started treatment with VDZ, and that "even though the medication was not registered in Montenegro, it

was absolutely medically indicated and necessary to try to administer it, as the only other alterative was surgical removal of the colon, which needed to be avoided as long as there was any other option".

78. The doctors further observed that the applicant suffered from myopia, that he could not see in the left eye and he had an artificial lens implanted in the right eye, that he had a dislocation of the fourth and fifth lumbar vertebrae and ossification of the lumbar part of his spine, ossification of his left knee, an injury to a nerve in his left calf, he walked with crutches, and had two skin infections following the administration of injections as a result of the lack of disinfectant alcohol in the prison. The prison doctor later confirmed that there had indeed been no such disinfectant in the IECS for a considerable time and that it could not provide for the applicant's special diet, which was why his family was allowed to bring him food.

79. The doctors described the applicant's cell as a "classic prison cell", where only the applicant was held at the time, although he sometimes had a cell-mate. There was a toilet, apparently not separated from the rest of the room, and a separate tank of water. The doctors considered that the lack of running water and absence of a shower in the room could additionally cause a deterioration of the applicant's health because of an increased risk of infection.

80. On 3 July 2015 the IECS informed the High Court, the Court of Appeal, the Supreme Court and the applicant that three types of medication (not VDZ), also unavailable in Montenegro, had been provided for the applicant.

81. On 18 September 2017 a medical expert submitted an expert opinion at the request of the applicant's representatives. He maintained that there was a threat of malign alteration, which would inevitably result in the applicant's death, and that it was absolutely necessary to find a solution allowing for adequate nutrition, the permanent administration of complex treatment, moderate daily physical exercise and the elimination of stressful situations. The conditions in which the applicant was detained were described as unfavourable for recuperation.

82. It would appear that on 26 September 2017 the applicant applied for an extraordinary reduction of his sentence for health-related reasons. The court requested an expert opinion in this regard, which was produced in October 2017. The expert submitted that stressful conditions in the IECS and the limited possibility of an adequate diet were such that the applicant would never achieve remission as long as he was in the IECS. Such course of illness was harmful and threatened to cause serious complications, some of which could undoubtedly be life-threatening.

83. On 18 January 2018 the applicant was diagnosed with bronchial asthma and prescribed treatment.

E. Other relevant information

84. On five occasions between 1996 and 2010 the applicant was found guilty of various criminal offences. He received penalties ranging from a six-month suspended sentence to three years of imprisonment.

85. Before the first first-instance judgment was rendered, sixty hearings had taken place (twenty-one in 2007, twenty-two in 2008 and seventeen in 2009), during which more than seventy witnesses and ten expert witnesses had been heard, tens of expert witnesses' opinions read out, and more than 100 pieces of material evidence examined. In the same period nine hearings were adjourned because of the absence of or various requests by the applicant and/or other defendants and/or their representatives.

86. Between 14 September 2010 and 9 May 2011 eighteen hearings were held. Between 5 April and 9 October 2012 eleven hearings were held.

87. Between 27 June 2014 and 20 February 2015 the Court of Appeal held ten hearings.

88. The ombudsman's report of December 2017 indicates that half of all prisoners have some sort of mental illness or disorder and that the prison health service is not operating at full capacity. There is a waiting list for psychiatric evaluation and examination. Recommendations were made to the Ministry of Justice and the IECS to urgently consider the need to establish a prison psychiatric unit and to undertake steps to help patients suffering from depression, as well as to ensure that that kind of examination was conducted without the presence of prison guards (unless the psychiatrist explicitly requested their presence).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Montenegro 2007 (*Ustav Crne Gore*; published in the Official Gazette of Montenegro - OGM - nos. 01/07 and 038/13)

89. Article 28 guarantees to every individual, *inter alia*, the inviolability of his or her physical and psychological integrity, and prohibits torture and inhuman and degrading treatment.

90. Article 30 contains details as regards detention. Paragraph 1 thereof provides that a person in respect of whom there is a reasonable suspicion that he or she has committed a criminal offence may be detained only on the basis of a competent court's decision and if it is necessary for the conduct of criminal proceedings. Paragraph 4 provides that the duration of detention must be as short as possible (*mora biti svedeno na najkraće moguće vrijeme*).

B. Code of Criminal Procedure 2003 (*Zakonik o krivičnom postupku*; published in the Official Gazette of the Republic of Montenegro - OG RM - nos. 71⁄03, 07⁄04 and 47⁄06)

91. Article 16 provided, *inter alia*, that the courts must conduct proceedings without delays and limit the duration of detention to the shortest time needed.

92. Article 136 provided that a defendant's participation in criminal proceedings could be secured by means of summonses, taking the person to court by force, surveillance measures, as well as the imposition of bail and detention. The competent court would ensure that a more severe measure was not applied if a less severe measure could achieve the same purpose. The measures would cease automatically when the reasons for their application ceased to exist, or would be replaced with other less severe measures once the conditions had been met. Articles 137 to 153 set out details as to each of those measures.

93. Article 147 § 2, in particular, provided for a duty on the part of all bodies involved in criminal proceedings to act with particular urgency if the accused was in detention.

94. Article 148 § 1(1) provided that detention could be ordered if there were circumstances indicating that the accused might abscond. Paragraph 1(4) provided that detention could be ordered if there was a reasonable suspicion that an individual had committed a crime for which he or she could be sentenced to ten years' imprisonment or more, if the crime in question had been committed in especially aggravating circumstances.

95. Article 149 § 2 provided that a detention order must specify, *inter alia*, a period of detention.

96. Article 152 set out details as regards the length of detention after an indictment had been issued. In particular, Article 152 § 2 provided that before the indictment entered into force, a panel of judges, at the request of the parties or of its own motion, "had a duty" (*je dužno*) to examine every thirty days whether the reasons for detention persisted and, if so, to issue a decision extending the detention or, if not, to lift it. The same procedure had to be followed every two months (*svaka dva mjeseca*) after the indictment had entered into force. Article 152 § 3 provided that detention could last three years at most after an indictment had been issued. If the defendant was not served with a first-instance decision within that time frame, the detention would be lifted and the defendant released. Article 152 § 4 provided that after the delivery of the first-instance decision, the detention could last for another year at most. If no second-instance judgment overturning or upholding the first-instance judgment was delivered within that year, the detention would be lifted and the accused released. If the second-instance court quashed the first-instance judgment, the detention

could last for at most another year after the delivery of the second-instance judgment.

97. Article 155 § 2 provided that every detainee would be able to have an outdoor walk (*obezbjedi[će] se kretanje*) for at least two hours every day.

98. Article 397 provided, *inter alia*, that a second-instance court could quash a first-instance judgment and order a retrial. If the accused was in detention, the second-instance court would examine whether the reasons for detention still persisted and issue a decision either extending or terminating the detention. No appeal was allowed against that decision.

C. Code of Criminal Procedure 2009 (*Zakonik o krivičnom postupku*; published in OGM nos. 057/09, 049/10, 047/14, 002/15, 035/15, 058/15, and 028/18)

99. On 27 September 2010 the Supreme Court issued a ruling (*zauzeo načelni pravni stav*) (Su.VI br 81/10) that proceedings in respect of organised crime, corruption, terrorism and war crimes would be conducted pursuant to this Code as of 26 August 2010. As regards other criminal proceedings, the Code entered into force on 1 September 2011.

100. Articles 15, 163, 174 § 2, 175 § 1(1), 176 § 5, 179, and 182 § 2 of the Code correspond in essence to Articles 16, 136, 147 § 2, 148 § 1(1), 149 § 2, 152, and 155 § 2 respectively of the previous Code.

101. Article 175 § 1(4) initially provided that detention could be ordered if there was a reasonable suspicion that an individual had committed a crime for which he or she could be sentenced to ten years' imprisonment or more, and which was particularly grave due to the manner in which it had been committed or its consequences, and if there were special circumstances indicating that the release of that person would seriously breach public order and peace. As of 16 January 2015 part of Article 175 § 1(4) ceased to be in force, notably the words "and if there were special circumstances indicating that the release of that person would seriously breach public order and peace".

102. Article 226 defines types of costs of criminal proceedings. In particular, paragraphs 2(5) and 4 provide, *inter alia*, that the costs of proceedings include the costs of medical care of an accused (*troškove liječenja okrivljenog*) while he or she is in detention, except for expenses which are covered by the Health Insurance Fund. These costs are paid from the funds of the court conducting the criminal proceedings at issue upon a reimbursement request (*po podnošenju zahtjeva za naknadu troškova*).

103. Article 376 regulates detention after a conviction (*nakon izricanja presude*). Paragraph 6, in particular, provides that when detention is ordered or extended after an individual has been convicted, it can last until the judgment becomes final or until the sentence imposed by the first-instance judgment expires.

104. Articles 381 to 413 regulate the procedure to be followed if an appeal is lodged against the first-instance judgment. Article 397, in particular, provides, in substance, that the provisions relating to the main hearing before the first-instance court shall accordingly apply to the hearing before the second-instance court.

D. Execution of Sentences Act (*Zakon o izvršenju kazni zatvora, novčane kazne i mjera bezbjednosti*; published in OGM no. 036/15)

105. This Act entered into force on 18 July 2015. Section 12 thereof provides that a prisoner has the right to lodge a complaint with the prison director for protection of his or her rights and interests while serving a prison sentence. The prison director has a duty to examine the complaint and issue a decision within fifteen days. The prisoner can appeal against that decision within eight days to the Ministry of Justice. The Ministry must rule thereon within fifteen days. The prisoner can initiate administrative proceedings against the Ministry's decision.

E. Obligations Act (*Zakon o obligacionim odnosima*; published in OGM nos. 047/08, 004/11, and 022/17)

106. Sections 148 and 149 set out the different grounds for claiming compensation for both pecuniary and non-pecuniary damage, including for a violation of personal rights (*povreda prava ličnosti*).

107. Section 166(1) provides that a legal entity is liable for any damage caused by one of its bodies when exercising its functions or related thereto.

108. Section 207 provides that personal rights (*prava ličnosti*) include the right to physical and psychological integrity, and the right to dignity (*pravo na dostojanstvo*).

F. Health Insurance Act (*Zakon o zdravstvenom osiguranju*; published in OG RM, nos. 039/04, 023/05, and 029/05, and OGM nos. 012/07, 013/07, 073/10, 039/11, 040/11, 014/12, and 036/13)

109. Section 3 provides that the Health Insurance Fund ensures the rights stemming from the payment of compulsory health insurance contributions. Section 18a provides that compulsory health insurance does not cover medication which is not on the basic or additional list of medication; nor does it cover a person accompanying a patient who is hospitalised or is undergoing medical rehabilitation.

G. Decision on the list of medication covered by the Health Insurance Fund (*Odluka o utvrđivanju liste lijekova koji se propisuju i izdaju na teret sredstava Fonda za zdravstveno osiguranje*; published in the OGM no. 004/12)

110. The Decision listed all the medication covered by the Health Insurance Fund. Vedolizumab was not on the list. Article 3 of the Decision provided that in exceptional cases, the Medication Commission, at the request of a panel of relevant specialists (*konzilijum*), could authorise the provision of medication which was not on the list and which had been indicated for rare illnesses and for a small number of patients. This Decision entered into force on 25 January 2012.

H. Decision on the Medication List (*Odluka o utvrđivanju osnovne liste ljekova*; published in OGM no. 003/15)

111. This Decision entered into force on 29 January 2015 and was in force until 18 January 2018, when a new Decision was adopted. It provided a list of medication covered by the State. Vedolizumab was not on the list. Article 3 thereof in substance corresponded to Article 3 of the previous Decision.

I. Rules on Medical Rehabilitation in Specialised Institutions (*Pravilnik of indikacijama i načinu korišćenja medicinske rehabilitacije u zdravstvenim ustanovama koje obavljaju specijalizovanu rehabilitaciju*; published in OG RM no. 074/06, and in OGM nos. 030/10 and 031/10)

112. These Rules were in force between 12 December 2006 and 5 January 2017, when new Rules entered into force. They specified in which cases medical rehabilitation could be provided at the expense of the State, its length and the procedure to be followed. In particular, the Health Fund's Medical Board would issue an opinion on the need for the rehabilitation, on the basis of the patient's medical documentation and specialists' (*konzilijum*) recommendation. On the basis of that opinion the Fund issues a referral (*uput*) on a prescribed form, which the patient needs to submit to the medical institution where the rehabilitation should take place. The rehabilitation could last twenty-one days, except in cases of brain, spine or spinal-cord tumour, after a cerebrovascular accident, after brain injury (contusion or bleeding), injury of the spinal cord, and after cerebral artery bypass surgery, when it could last twenty-eight days (section 14).

J. Other relevant provisions

113. Sections 26 and 27 of the Detention Rules 1987 (*Pravilnik o kućnom redu za izdržavanje pritvora*, published in the Official Gazette of the Socialist Republic of Montenegro no. 010/87) and section 31 of the Detention Rules 2012 (*Pravilnik o bližem načinu izvršavanja pritvora*, published in OGM no. 42/2012) set out details as regards the daily walks of detainees. In particular, detainees are entitled to a two-hour walk every day.

114. Section 56 of the Prison Rules (*Pravilnik o kućnom redu u Zavodu za izvršenje krivičnih sankcija*, published in OGM no. 032/16) provides that prisoners are entitled to at least two hours of sports and recreational activities at sports fields and on prison premises reserved for that purpose.

115. Section 20 of the IECS Security Officers Service and Firearms Rules (*Pravilnik o načinu vršenja službe obezbjeđenja, naoružanju i opremi službenika obezbjeđenja u Zavodu za izvršenje krivičnih sankcija*, published in OGM no. 068/06) prohibits a security guard, while performing his or her tasks, to leave the person deprived of liberty he or she is guarding without the approval of his or her immediate superior.

K. Constitutional Court's case-law

116. On 20 June 2011 the Constitutional Court accepted a constitutional appeal submitted by R.K. and D.M. (Už-III br. 348/11). It found, *inter alia*, that the High Court had not extended their detention within the statutory time-limit and that the Court of Appeal had not ruled within the statutory time-limit on their appeal against the decision extending their detention. It concluded that non-compliance with the national legislation had led to a violation of Article 5 of the Convention. In so doing, the court relied on *Van der Leer v. the Netherlands* (21 February 1990, § 22, Series A no. 170-A). This decision was published in OGM no. 30/11 on 22 June 2011.

117. On 20 April 2012 the Constitutional Court dismissed a constitutional appeal lodged by N.M. (Už-III br. 152/12). It considered that the courts had a duty to examine every two months whether reasons for detention persisted and, depending on the circumstances, extend it or lift it. There was no obligation on the courts to specify how long the detention would last, given their obligation to re-examine the duration of the detention every two months. Those statutory time-limits, however, were not mandatory and the fact that the decision had been issued after two months and four days could not therefore be decisive for concluding that the applicant's right to liberty had been violated.

L. The relevant Supreme Court rulings

118. On 17 January 2017 the Supreme Court issued a ruling that the national courts must consistently comply with the time-limits (*da se dosljedno pridržava rokova*) for reviewing detention provided for in Article 179 § 2 of the CCP and that failing to do so violated the right to liberty and security.

III. RELEVANT INTERNATIONAL DOCUMENTS

A. CPT report on standards of healthcare services in prisons (document no. CPT/Inf/E (2002) 1- Rev. 2006)

119. Paragraph 38 states that a prison healthcare service should be able to provide, *inter alia*, appropriate diets. Paragraph 51 states that all medical examinations of prisoners should be conducted out of the hearing and – unless the doctor concerned requests otherwise – out of the sight of prison officers.

B. CPT reports in respect of Montenegro

1. Report of the CPT visit of 2008

120. Between 15 and 22 September 2008 the CPT visited Montenegro.

121. During its visit the CPT noted, *inter alia*, "the alarming level of overcrowding" in the remand prison in Podgorica. In particular, a cell measuring 28 sq. m with fifteen sleeping places (provided on five three-tier beds) was holding twenty-one male prisoners. In many cells prisoners had to sleep on mattresses or just folded blankets placed directly on the floor. The majority of the cells were stuffy and humid, despite the presence of large windows and air conditioners. Remand prisoners remained for twenty-three hours or more a day inside their cells, in some cases for several years. The only out-of-cell activity available to them was outdoor exercise taken in two thirty-minute periods, which was apparently not available on Fridays (see paragraphs 55 and 57 of the CPT report).

122. The CPT recommended that the Montenegrin authorities take a number of steps with regard to the above issue, one of them being a significant reduction of the occupancy level in the cells at the remand prison in Podgorica. The objective was to comply with the standard of 4 sq. m of living space per prisoner (see paragraph 58 of the CPT report).

2. Report of the CPT visit of 2013

123. Between 13 and 20 February 2013 the CPT visited Montenegro again.

124. The CPT noted that the remand prison accommodated 295 remand prisoners at the time of the visit for an overall capacity of 350. While overcrowding was observed in parts of both the prison and the remand prison, in the latter it was mainly due to the ongoing refurbishment works, due to which several cells were not in use (see paragraphs 36 and 38 of the CPT report).

125. It was considered that the material conditions at the remand prison had improved since the CPT's visit in 2008. While the renovated cells offered on the whole adequate conditions, the larger unrenovated ones were still affected by overcrowding, all cells being equipped with, *inter alia*, a semi-partitioned sanitary area including a toilet and a washbasin. The noted shortcomings were exacerbated by the fact that inmates on remand were spending systematically twenty-three hours each day locked in their cells, the only regular out-of-cell activity on offer being outdoor exercise for one hour per day. Two exercise bikes in two small single readapted cells could be used for one hour a week by inmates in need of physical rehabilitation. For the rest of the time, prisoners remained in a state of inactivity in their cells. Their only form of distraction was playing board games, reading newspapers and watching television (see paragraphs 50 and 51 of the CPT report).

126. As regards the prison, with the exception of pavilion A, the material conditions of detention could be considered as satisfactory in terms of the state of repair, hygiene, ventilation and heating in the cells, with adequate access to natural light. Inmates were generally accommodated in cells containing four or six beds (measuring respectively 16 sq. m and 25 sq. m) equipped with a fully partitioned sanitary annex (including a toilet and a washbasin). Prisoners could access shower rooms on each floor twice a week, and had access throughout the day to a community room (generally measuring around 50 sq. m) equipped with wooden benches, a television, a fridge and a cooker. In sum, the material conditions in pavilions B, C, D and F were on the whole of a good standard (see paragraph 44 of the CPT report).

127. As regards activities, inmates confirmed to the CPT delegation that they continued to benefit from an open-door regime during the day, with cell doors remaining open until 7 p.m. (9 p.m. during summertime). Furthermore, all prisoners were offered outdoor exercise of two hours per day in various yards in the grounds of the prison. There was also a basketball court and an open-air gym with some weightlifting machines to which inmates had access once a week (see paragraph 48 of the CPT report).

128. The CPT further noted, as regards confidentiality of medical consultations, that, according to the internal house rules, custodial staff should only be present during such consultations if this was assessed as necessary by the healthcare personnel. However, the CPT delegation found

that a prison officer was systematically present in the course of medical examinations of inmates. The CPT reiterated its recommendation that all medical examinations of prisoners be conducted out of the hearing and – unless the healthcare staff member concerned requested otherwise in a particular case – out of the sight of prison officers (see paragraph 62 of the CPT report).

C. European Commission reports

129. The issue of prison conditions was also raised in the context of the process of Montenegro's accession to the European Union. In particular, in its Progress Reports of 2011 and 2012, the European Commission stated that although the prison conditions were improving, they were still not in line with international standards, overcrowding remaining a concern.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

130. Under Article 3 of the Convention the applicant complained of poor conditions in detention and a lack of medical care.

131. The Government contested that argument.

132. The relevant Article of the Convention reads as follows:

Article 3

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

A. Admissibility

133. In a document of 10 September 2018 containing their additional observations and submissions on just satisfaction, the Government raised for the first time an objection that domestic remedies had not been exhausted. Notably, they submitted that the applicant had failed to lodge a complaint to the prison director pursuant to section 12 of the Execution of Sentences Act and/or to lodge a compensation claim pursuant to sections 149 and 207 of the Obligations Act (see paragraphs 106 and 108 above).

134. The Court reiterates that under Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party, in so far as the nature of the objection and the circumstances so allowed, in its written or oral observations on the admissibility of the application (see

N.C. v. Italy [GC], no. 24952/94, § 44, ECHR 2002-X). In the present case, the Government had not clearly raised an objection as to the non-exhaustion of domestic remedies in their observations of 11 May 2018 on the admissibility and merits, and the question of a failure by the applicant to lodge a complaint with the prison director or a compensation claim was raised only in their additional observations and submissions on just satisfaction. The Government have not provided any explanation for that delay and there are no exceptional circumstances capable of exempting them from their obligation to raise an objection as to admissibility in a timely manner.

135. In view of the above, the Court considers that the Government are estopped from relying on a failure to exhaust domestic remedies (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 51-54, 15 December 2016).

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

B. Merits

1. Conditions of detention

(a) Parties' submissions

(i) The applicant

137. The applicant complained about the conditions of his detention. He maintained, in particular, that the cell in which he had been detained had been overcrowded, with a toilet only partially partitioned, contrary to the CPT's recommendations. All the improvements noted by the Government had taken place after the CPT's visit in 2013, whereas he had been in the remand prison as of 2006. The doctors had also confirmed in 2015 that the conditions in which he had been held had been inadequate and insufficiently hygienic, and had recommended that he be placed in a room with a shower, which was still not the case. The use of a shower twice a week, due to the nature of his illness, the fact that he was in charge of cleaning the cell, coupled with the occasional lack of running water, all contributed to the degrading treatment to which he was subjected.

138. He also submitted that he had lacked daily exercise, and that the relevant Rules relating to that had not been complied with in his case. Notably, he had spent one hour a day at most outdoors, and on rainy days he had not had any kind of outdoor activity.

(ii) The Government

139. The Government contested the applicant's complaint. They submitted that there were no records for the period prior to 5 August 2009, but that after 5 August 2009 the applicant had been held in conditions that were in compliance with Article 3. In particular, after the CPT's visit in 2013 the remand prison had been entirely renovated, with adequate access to daylight. The CPT also held that the standards in pavilions B, C, D and F were good overall, in particular pavilion F, which was considered satisfactory as regards hygiene, ventilation and heating in the rooms.

140. In the remand prison the applicant had been allowed at least two hours of sports and recreational activities every day in one of the outdoor walking areas, and following a doctor's recommendation an additional hour's walk. When in prison the applicant was entitled to sports and recreational activities on a daily basis, both at sports fields as well as indoors. In pavilion F he had several walking areas and a gym at his disposal. Some of the exercise equipment had been in a cell where he had been held (L9). He also worked in the library, in accordance with his personal and health capacities. In addition, he could stay in common premises, where there was also a small kitchen with the necessary equipment (kitchen sink, dishes for baking and frying, and so on).

141. As regards the showers, the Government submitted that there were no rooms with their own showers in the IECS.

(b) The Court's assessment

(i) Relevant principles

142. The Court reiterates that Article 3 requires the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Melnītis v. Latvia*, no. 30779/05, § 69, 28 February 2012).

143. The Court has already held that severe overcrowding raises in itself an issue under Article 3 of the Convention (see *Kadiķis v. Latvia (no. 2)*, no. 62393/00, § 52, 4 May 2006 and *Muršić v. Croatia* [GC], no. 7334/13, §§ 136-141, 20 October 2016). In particular, Article 3 was breached in a case where an applicant had been detained for almost nine months in extremely overcrowded conditions (10 sq. m for four inmates) with little access to daylight, limited availability of running water, especially during the night, strong smells from the toilet, and with insufficient and poor

quality food and inadequate bed linen (see *Modarca v. Moldova*, no. 14437/05, §§ 60-69, 10 May 2007).

(ii) The Court's assessment

144. Turning to the present case, the Court observes that between 5 August 2009 and 8 February 2016 the applicant had at least 5 sq. m at his disposal (see paragraph 41 above), whereas as of 8 February 2016 onwards he was alone in a cell measuring more than 15 sq. m in a newly-built pavilion F (see paragraph 43 above). The Government submitted that sanitary facilities were partitioned from the rest of the room, and that the applicant had sufficient daily exercise, both indoors and outdoors. The Court notes that the Government's submissions in respect of the prison conditions are supported by the relevant CPT report of 2013. Notably, the report noted that the conditions in the prison were on the whole of a good standard (see paragraph 126 above), and that the inmates had confirmed that they were offered two hours' outdoor exercise per day in various yards.

145. The Court also notes, however, that the applicant was transferred to prison in February 2016, having been in a remand prison for ten years, that is between February 2006 and February 2016. The Government provided no evidence contradicting the applicant's submission in respect of his detention between 16 February 2006 and 5 August 2009, for which apparently there are no records. On the other hand, the applicant's submissions are supported by the CPT, which observed in its 2008 report "the alarming level of overcrowding" in the remand prison at the relevant time, the cells being stuffy and humid. The CPT also noted that the remand prisoners had been allowed two thirty-minute walks per day, which was below the statutory minimum of two hours, and that they remained inside their cells for twenty-three hours or more a day, in some cases for several years (see paragraph 121 above).

146. Although the conditions in the remand prison improved after the CPT's visit in 2008, the cells still contained a semi-partitioned sanitary facility, whereas the CPT recommended that it be fully partitioned. In addition, inmates were systematically spending twenty-three hours each day locked in their cells. The only regular out-of-cell activity was outdoor exercise for one hour per day, and there were two exercise bikes in two small readapted cells, which could be used for one hour a week by inmates in need of physical rehabilitation. For the rest of the time, prisoners remained in a state of inactivity in their cells (see paragraph 125 above).

147. While the improvements made to the remand prison are certainly praiseworthy in the light of the CPT's observations as regards the remand prison in 2008 and 2013, especially as regards the overcrowding, semi-partitioned sanitary areas and the inmates being locked in their cells for twenty-three hours a day, the Court cannot but conclude that the conditions in which the applicant was held in the period between February

2006 and August 2009 in the remand prison were in violation of Article 3 of the Convention (see, *mutatis mutandis*, *Bulatović*, cited above, §§ 122-27).

2. Medical care

(a) The parties' submissions

(i) The applicant

148. The applicant submitted that he had been diagnosed with a number of illnesses he had not suffered from prior to his detention and that the medical care he had received had been inadequate.

149. In particular, he had had to pay for VDZ himself. Even though it was not on the list of medication covered by the State, it was not a treatment of his choice but had been prescribed as the only solution. Surgery would mean complete removal of his colon and its replacement by an intestinal bag outside of his body, which would need to be changed every other day. It would require a high-level of hygiene, and given that most of the time there was no disinfectant in the IECS, there was a high risk of infection and sepsis, which would further compromise his health and could be life-threatening. It had also been the doctors' suggestion to avoid surgery for as long as possible. Lastly, he had never been provided with an appropriate diet by the State, so his family had had to do this.

150. The eye surgery the applicant had undertaken was also belated, as it had taken four months to take him for an eye examination and a further six months for the surgery, by which time the sight in his left eye could no longer be restored.

151. The applicant had never had an endoprosthesis in his leg, even though it had been indicated in April 2015. He had never sought reimbursement of the expenses for the treatment in the Igalo Institute, as the State had allowed it on the condition that he cover all the costs himself. His lawyers had been advised on what to write in their requests in order for the treatment to be allowed at all. He had also feared that if he had sought reimbursement, he would not be allowed any more medical treatment. He had also paid for the prison guards' stay there. In this respect the applicant submitted several invoices issued by the Igalo Institute, all bearing his name as the beneficiary of rendered services.

152. Article 226 § 2(5) of CCP provided that the costs of medical care were covered by the body conducting the criminal proceedings, except for the costs which were paid by the Health Insurance Fund. All of those costs were supposed to be covered by the Health Insurance Fund and the applicant had therefore not been obliged to submit them to the High Court.

153. The applicant had had few psychiatric examinations, the last one having taken place on 23 August 2016, even though he was on a specific anti-depressant treatment which could cause addiction. As his illness was

primarily psychosomatic, treatment by a psychiatrist was as important as treatment by a gastroenterologist. The applicant also referred to the Ombudsman's report of 2017 (see paragraph 88 above).

154. Furthermore, all of the medical examinations, including the colonoscopy and psychiatric examinations, had been conducted in the presence of prison guards. As such, they had lacked confidentiality and amounted to inhuman and degrading treatment.

155. Finally, the applicant submitted that he had been diagnosed with tuberculosis and asthma in the past two years, which proved that he had not been treated properly and in a timely manner. He had therefore suffered considerable pain over a prolonged period of time, which went beyond the threshold of Article 3.

(ii) The Government

156. The Government contested the applicant's complaint. They submitted that he had been under constant medical supervision, both in the IECS and outside it, and that the medical care that he had received had been available, quick, accurate, regular and systematic, including a thorough treatment strategy. Between September 2013 and January 2018 the applicant had been examined and treated outside the IECS more than 150 times throughout Montenegro, including in the Clinical Centre in Podgorica, the biggest hospital in the country. He had spent in total 255 days in hospitals, nearly half of which had related to his gastro-enterological problems.

157. The Government submitted that VDZ was not on the list of medication covered by the State, and as such it was to be paid for by patients. Even though they had no obligation to do so, the domestic bodies had provided VDZ for the applicant on two occasions, and paid a total of EUR 9,539.80 for it. The applicant himself had been rather negligent as he kept refusing recommended surgery. He was also allowed to receive food parcels from his family once a week.

158. The Government further maintained that the surgery to the applicant's left eye could not have been performed in the Clinical Centre due to a lack of necessary equipment. However, the applicant had not sought reimbursement of the surgery costs, either from the High Court or from the IECS. In any event, he could make use of a civil claim if he believed that the State should bear the costs.

159. The Government submitted that the applicant had failed to comply with the necessary procedure set out in the Rules on Medical Rehabilitation in Specialised Institutions, in order for his rehabilitation in the Igalo Institute to be covered by the State. He had never addressed the Health Fund in order to seek prior approval for his rehabilitation at the expense of the State, but had, on the contrary, explicitly insisted that all the costs would be entirely covered by him. The relevant invoices, which had been submitted to the Court, had never been submitted to the High Court for reimbursement.

The invoices that had been submitted to the High Court had been duly reimbursed – they amounted to EUR 15,748.80. The Government submitted several invoices issued by the Igalo Institute to the High Court bearing various names as beneficiaries of the rendered services and specifying that they were the prison guards accompanying the applicant. In any event, the State could cover twenty-eight days of rehabilitation at most, whereas the applicant had stayed for three months.

160. As regards the second operation, on the applicant's knee, he had failed to approach the IECS or the health service in order to get a referral (*uput*) for it and had thus himself contributed to the incomplete treatment in this respect.

161. The Government further submitted that inmates who were prescribed psychiatric treatment were continuously supervised by a specialist psychiatrist in the IECS, as well as by the rest of the medical staff.

162. The Government also maintained that by accompanying the applicant during the medical examinations, the prison guards had acted in compliance with the relevant legislation, notably section 20 of the IECS Security Officers Service and Firearms Rules (see paragraph 115 above). This was also necessary bearing in mind that the relevant medical institutions did not have a sufficient degree of security measures in place, and the applicant was being tried for organised crime.

163. In sum, the applicant's illness was under constant monitoring, and his state of health had improved, as confirmed by the doctors.

(b) The relevant principles

164. The relevant principles in this regard are set out for example in *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV; *Kudła,* cited above, §§ 92-94; and *Blokhin v. Russia* [GC], no. 47152/06, §§ 135-140, 23 March 2016. In particular, Article 3 of the Convention imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). There may be no derogation from this obligation.

165. The Court accepts that the medical assistance available in prison hospitals may not always be at the same level as that offered by the best medical institutions for the general public. Nevertheless, the State must ensure that the health and well-being of detainees are adequately secured (see *Kudła*, cited above, § 94, and *Kalashnikov v. Russia*, no. 47095/99, §§ 95 and 100, ECHR 2002-VI).

166. In order to establish whether the applicant received the requisite medical assistance while in detention, it is crucial to determine whether the State authorities provided him with sufficient medical supervision for a timely diagnosis and treatment of his illnesses (see *Popov v. Russia*,

no. 26853/04, § 211, 13 July 2006, and *Mechenkov v. Russia*, no. 35421/05, § 102, 7 February 2008).

(c) The Court's assessment

167. Turning to the present case, the Court firstly notes the following positive points.

(a) Apart from obtaining medical care in prison, the applicant was also examined and treated on numerous occasions in various medical facilities throughout Montenegro, which included several admissions to hospital (see paragraphs 46, 59, 61, 63, 66, 68, 71-74 above).

(b) Even though they were not statutorily obliged to, the State authorities did provide for some of the VDZ doses. As it was not among the medication covered by the Health Fund, its cost was to be covered by patients, inmates being no exception. Although the applicant submitted that it had not been a treatment of his choice, it transpires from the enclosed medical reports that VDZ was prescribed because he had refused to undergo surgery, and that subsequently he had not wanted to be hospitalised either (see paragraph 46 above). The doctors recommended avoiding surgery only after he had started the VDZ treatment (see paragraph 77 above). It is also clear from the case file that in spite of certain oscillations, this aspect of the applicant's state of health improved (see paragraph 56 above).

(c) The first time an obligatory eye-examination was indicated was on 13 January 2014. The applicant was then examined on 4 February 2014, in two ophthalmology clinics, and underwent surgery on 27 March 2014. While it is noted that the applicant paid for that operation, it is also noted that he did not contest the Government's submission that he had never sought reimbursement of those costs at domestic level.

(d) While indeed the applicant has not yet obtained the endoprosthesis, the respondent State took a number of other measures aimed at remedying his knee-related problem. Notably, the applicant was recommended knee surgery at the earliest on 28 March 2015 and an operation took place on 24 April 2015, that is within less than a month. The recommended rehabilitation treatment in the Igalo Institute had been duly authorised by the High Court, for three months in total, the State having covered the costs of the guards accompanying the applicant, as it clearly transpires from the invoices submitted to the Court (see paragraphs 69 above *in fine*, 151 and 159). It is further noted in this regard that the applicant did not apply to the Health Insurance Fund for prior approval of such treatment, which was the standard procedure when rehabilitation was to be covered by the State. On the contrary, he explicitly submitted on more than one occasion that he or his family would cover those costs. Lastly, he has not sought reimbursement thereof at domestic level. It is also noted that the applicant had had problems with his legs long before he was arrested and detained (see paragraph 62 above).

168. In the Court's further examination of the applicant's complaint based on the lack of adequate medical care, the Court places emphasis on the need to refrain from examining individual aspects alone and in isolation from the entire medical assistance provided to the applicant regularly and over the years. In other words, the Court will adopt an overall assessment in its examination of whether the minimum level of severity has been attained within the meaning of Article 3 of the Convention.

169. As regards the applicant´s diet for ulcerative colitis the Court notes that he was prescribed a special diet in the treatment of the condition. While there are no details in the case file as to what that particular diet consisted of, or the food served in the remand prison, it is clear from the case file that the remand prison could not provide for it, as confirmed by the prison doctor in June 2015 (see paragraph 78 *in fine* above). The Court reiterates that the obligation of the national authorities to ensure the health and general well-being of inmates includes, *inter alia*, the obligation to properly feed prisoners (see, *mutatis mutandis*, *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 451, ECHR 2004-VII, and *Moisejevs v. Latvia*, no. 64846/01, § 78, 15 June 2006). The Court observes in this regard that the High Court judge authorised as early as on 9 December 2013 that the applicant be provided with adequate food by his family once a week (see paragraph 45 above). This was accepted by the IECS (see paragraph 28 above), and confirmed by the Government (see paragraph 157 above). While it would have been preferable if the prescribed diet could have been provided by the IECS itself, an element which might, viewed alone, be of concern, the Court notes however that the applicant was not left altogether without the adequate food, but that the respondent State took measures in order to overcome the encountered situation, albeit with the assistance of the applicant's family.

170. It is further noted that the applicant has not had a psychiatric examination since 23 August 2016, even though he was advised to have the next one in "one or two months". The Court observes, however, that there is no indication in the case file that the recommended examination was considered urgent or necessary to treat a severe or life-threatening mental disorder. Nor is there any evidence to suggest that the lack of prompt treatment subjected the applicant to further suffering (see, *mutatis mutandis*, *Wenerski v. Poland*, no. 44369/02, § 64, 20 January 2009, and *Bulatović*, cited above, § 134).

171. Finally, the Court observes that prison officers attended the applicant's medical examinations, including psychiatric examinations and a colonoscopy. The Government maintained that this was in accordance with the law.

172. The Court notes at the outset that it is mindful of the importance of medical confidentiality, which should not be encroached upon, unless it is strictly necessary in the specific circumstances of a case, as distress may

certainly be caused by the presence of prison officers during hospital visits. However, the Court acknowledges that there might be situations where a prisoner has to be taken to a medical facility outside prison to receive treatment which the prison itself does not or cannot provide. Such situations may inevitably entail a risk of prisoners absconding or posing a danger either to themselves or to someone else (for example, medical personnel or other patients). The Court is also mindful of the fact that medical staff in ordinary public hospitals cannot be expected to have the same level of preparedness and training as prison officers to deal with possible risks posed by prisoners' unpredictable or violent behaviour. The State authorities must be particularly vigilant when they have sufficient prior knowledge about the possible danger the prisoner might pose, in particular those, like the applicant, who have been convicted of the most serious types of offences, like aggravated murder (for example, previous attempts to escape or violent behaviour) (see *A.T. v. Estonia*, no. 23183/15, § 59, 13 November 2018).

173. The Court therefore recognises the security risk presented by the fact that by the relevant time, a heavy sentence had been imposed on the applicant for a number of criminal offences, including aggravated murder, as previously mentioned. It also notes, on the other hand, that when authorising the applicant's hospital admissions, the prison authorities did not provide a thorough risk profile, by analysing for example whether he complied with the prison regime, if he was impulsive, manipulative, violent, aggressive or capable of attacking others or of self-harm (see, *a contrario*, *A.T.*, cited above, §§ 62-63). However, the Court again reiterates that it does not consider, in the particular circumstances of the present case, that it is justified in viewing this aspect in isolation from the entire medical assistance that was indeed provided to the applicant for a considerable period of time. In these circumstances, on the basis of the evidence before it and assessing the relevant facts as a whole, the Court therefore concludes that the presence of prison guards during the medical examinations did not, alone, attain a sufficient level of severity to entail a violation of Article 3 of the Convention (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, § 99, ECHR 2000-XI; *Matencio v. France*, no. 58749/00, § 89, 15 January 2004; and *Bulatović*, cited above, § 135).

174. In the light of the foregoing, the Court concludes that there has been no violation of Article 3 of the Convention in this regard.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

175. Under Article 5 of the Convention the applicant complained of: (a) the unlawfulness of his detention in view of the lack of regular examination of whether his detention was still justified; (b) the insufficient reasoning of the decisions extending his detention and the length thereof;

and (c) the lack of speed in deciding on his application for release submitted on 1 August 2014 (see paragraph 26 above).

176. The Government contested the applicant's claims.

177. The relevant Article of the Convention reads as follows:

Article 5

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

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

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

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

..."

A. Article 5 § 1 (c) of the Convention

1. Admissibility

178. The Court notes that this 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

(a) The parties' submissions

179. The applicant reaffirmed his complaint. In particular, he submitted that his detention should have been reviewed every two months. That time-scale had been mandatory, but had not been complied with.

180. The Government submitted that the applicant's detention had been lawful at all times. They maintained that the only limitation of detention provided for by the legislation was that of three years as of the time when the indictment was issued until the first-instance judgment was rendered. The courts did not have to specify how long the detention would last, given

their obligation to review it every two months. The Government admitted that the applicant's detention had not been reviewed every two months, but submitted that, in any event, the first-instance judgment had been issued within three years.

(b) The Court's assessment

(i) The relevant principles

181. The relevant principles in this regard are set out in *Mooren v. Germany* [GC], no. 11364/03, § 72, 9 July 2009. In particular, the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. It is thus in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see, among other authorities, *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports of Judgments and Decisions* 1996-III; *Douiyeb v. the Netherlands* [GC], no. 31464/96, §§ 44-45, 4 August 1999; and *Mooren*, cited above, § 73).

182. However, the "lawfulness" of detention under domestic law is the primary but not always a decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1, which is to prevent persons from being deprived of their liberty in an arbitrary fashion. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein (see, for example, *X v. Finland*, no. 34806/04, § 148, ECHR 2012 (extracts); *Bik v. Russia*, no. 26321/03, § 30, 22 April 2010; and *Winterwerp v. the Netherlands*, 24 October 1979, § 45, Series A no. 33).

(ii) The Court's assessment

183. Turning to the present case, the Court notes that the applicant's detention was ordered by the investigating judge on 19 February 2006, and subsequently extended on 16 March, 15 April, 16 May, 15 June and 12 July 2006, each time for a month. After the indictment had been issued on 14 August 2006, his detention was further extended on 15 August 2006, 21 October 2008 and 11 March 2009. It was also re-examined on 23 May 2007 at the applicant's request.

184. In the period between 17 February 2010, when the first judgment was quashed, and 9 May 2011, when he was found guilty by the High Court for the second time, his detention was extended once, on 17 February 2010. It was re-examined at his request on 10 March 2011.

185. In the period between 30 December 2011, when the second judgment against the applicant was quashed, and 9 October 2012, when he was found guilty by the High Court for the third time, his detention was extended on 30 December 2011, and 11 April, 13 June and 10 August 2012. His detention was also re-examined on 8 February and 18 April 2012 at his request.

186. While the first detention order must specify the length of detention (see paragraph 95 above), any subsequent ones, extending detention, apparently do not have to make such a specification, as explained by the Constitutional Court (see paragraph 117 above; see also *Mugoša v. Montenegro*, no. 76522/12, § 52, 21 June 2016). Indeed, the decisions extending the applicant's detention after the indictment had been issued on 14 August 2006 either did not make such a specification or stated that the applicant's detention would last until the court made a further decision (see paragraphs 13, 16, 19 and 21 above).

187. It is further noted that the legislation, for its part, explicitly provides that the courts must examine whether the reasons for detention persist or not every thirty days before the indictment enters into force, and every two months after it has entered into force. Depending on whether the reasons for detention persist or not, the courts must extend it or lift it. It is clear from the case file that this time-limit was exceeded on several occasions in the applicant's case, which is also admitted by the Government (see paragraph 180 *in fine*, and 183 to 184 above).

188. While it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see *Benham*, cited above, § 41) the Court observes that the Constitutional Court, when ruling on the applicant's constitutional appeal, did not address his submission that a review of his detention had not been undertaken regularly. It is also observed that in 2011 the same Constitutional Court, in a similar situation, had found that non-compliance with the national legislation and the time-limits contained therein led to a violation of Article 5 of the Convention (see paragraph 116 above). Lastly, in its general ruling, issued in January 2017, the Supreme Court held that national courts must consistently comply with the time-limits for reviewing detention provided for in Article 179 § 2 and that failing to do so was in breach of the right to liberty and security (see paragraph 118 above).

189. The Court considers that compliance with the statutory time-limits provided for the re-examination of the grounds for detention is of utmost importance, particularly given that the domestic courts were not obliged to specify the exact duration of the detention.

190. The Court reiterates that where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be

foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention. That standard requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Steel and Others v. the United Kingdom*, 23 September 1998, § 54, *Reports* 1998-VII).

191. The Court considers that, in the present case, the relevant legislation itself seems to be sufficiently clearly formulated. However, the lack of precision in detention orders in respect of the duration of extensions and the lack of consistency at the time, before the Supreme Court had issued its ruling in 2017, as to whether the statutory time-limits for re-examination of the grounds for detention were mandatory or not made it unforeseeable in its application (see *Mugoša*, cited above, § 56). The Court therefore considers that there has been a violation of Article 5 § 1 of the Convention (ibid., § 57) with regard to periods where more than two months passed after the indictment was issued without new orders extending the applicant's detention.

B. Article 5 § 3 of the Convention

1. Admissibility

192. The Court notes that this 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

(a) The parties' submissions

(i) The applicant

193. The applicant reaffirmed his complaint. He submitted that the entire period of his deprivation of liberty, including the period after the first-instance judgments had been issued, fell under the scope of Article 5 § 3.

194. He maintained that the decisions on his detention had relied on the same provision and had been insufficiently reasoned. The reasoning had remained the same for ten years and had been summarised in one sentence for all of the defendants. Even assuming that he had wished to abscond, the courts had nevertheless had a duty to examine the grounds for his detention and to provide reasons for those decisions. Furthermore, the length of his detention had never been taken into account by the authorities.

195. The applicant also maintained that the courts had failed to act with special diligence. The proceedings had lasted for ten years before the final

judgment. Although the Government had submitted that a number of hearings had been adjourned due to the absence of defence lawyers and other defendants, that did not justify the length of his detention.

(ii) The Government

196. The Government contested the applicant's complaint. They submitted that the periods between the first-instance judgments and the judgments quashing them should not be taken into account in the context of Article 5 § 3. The relevant detention thus consisted of three stages, and lasted a total of five years and five months.

197. The Government maintained that the reasons for extending the applicant's detention had been relevant and sufficient, and that the fear that he might abscond had persisted throughout the proceedings. In particular, the reasonable suspicion that he had committed the criminal offences of which he had been accused, as well as the fear that he might abscond due to the severity of the penalty he had been facing, had not been substantially brought into question (*dovedeni u pitanje*). Also the fact that S.Š. had been brutally murdered in his official capacity, for profit, on his doorstep clearly indicated that the applicant's detention was justified within the meaning of Article 175 § 1(4) of the CCP.

198. The Government averred that the length of each single phase of relevant detention was not contrary to Article 5 § 3 and that the national courts had acted with particular diligence. They referred to the number of hearings held and the evidence examined (see paragraphs 85-87 above). The proceedings prior to 7 August 2009 had lasted a little longer, but that was because a number of hearings had been adjourned because of the absence of or various requests by the applicant, other defendants or their representatives (see paragraph 85 *in fine* above). The fact that the proceedings had lasted for ten years was because this case had been one of the most complex in Montenegrin judicial history, both legally and factually. A number of witnesses and experts had had to be heard, and numerous pieces of evidence examined. While the activities of the defendants and their representatives did not justify the applicant's detention, they did justify the overall length of the criminal proceedings.

(b) The Court's assessment

(i) Period to be taken into consideration

199. The Court reiterates that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see *Panchenko v. Russia*, no. 45100/98, § 91, 8 February

2005; *Labita,* cited above, §§ 145 and 147; *Solmaz v. Turkey*, no. 27561/02, §§ 23-24, 16 January 2007; and *Kalashnikov*, cited above, § 110).

200. In view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence", as specified in the latter provision, but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty "after conviction by a competent court" (see *Panchenko*, cited above, § 93, and *Kudła*, cited above, § 104). However, when assessing the reasonableness of the length of the applicant's pre-trial detention, the Court should make a global evaluation of the accumulated periods of detention under Article 5 § 3 of the Convention (see *Solmaz*, cited above, §§ 36-37).

201. Accordingly, in the present case the period to be taken into consideration consisted of three separate terms: (1) from 16 February 2006, when the applicant's detention started, until his conviction on 7 August 2009; (2) from 17 February 2010, when the applicant's conviction was quashed on appeal, until his subsequent conviction on 9 May 2011; and (3) from 30 December 2011, when the second conviction was quashed on appeal, until his third and last conviction on 9 October 2012.

202. Making an overall assessment of the accumulated periods under Article 5 § 3 of the Convention, the Court concludes that the period to be taken into consideration in the instant case amounts to five years, five months, and twenty-four days.

(ii) The relevant principles

203. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *McKay v. the United Kingdom* [GC], no. 543/03, § 42, ECHR 2006-X, and *Kudła*, cited above, § 110).

204. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable length of time (see, among many other authorities, *Vrenčev v. Serbia*, no. 2361/05, § 73, 23 September 2008). To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in

these decisions and of the uncontested facts mentioned by applicants in their appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Labita*, cited above, § 152).

205. The arguments for and against release must not be "general and abstract" (see *Boicenco v. Moldova*, no. 41088/05, § 142, 11 July 2006, and *Khudoyorov v. Russia*, no. 6847/02, § 173, ECHR 2005-X (extracts)), but must contain references to the specific facts and the applicant's personal circumstances justifying his detention (see *Aleksanyan v. Russia*, no. 46468/06, § 179, 22 December 2008, and *Rubtsov and Balayan v. Russia*, nos. 33707/14 and 3762/15, §§ 30-32, 10 April 2018). Quasi-automatic prolongation of detention contravenes the guarantees set forth in Article 5 § 3 (see *Tase v. Romania*, no. 29761/02, § 40, 10 June 2008).

206. The persistence of reasonable suspicion is a condition *sine qua non* for the validity of the continued detention, but does not suffice to justify the prolongation of the detention after a certain lapse of time (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 87 and 92, 5 July 2016). The Court has clarified that the requirement on the judicial officer to give relevant and sufficient reasons for the detention – in addition to the persistence of reasonable suspicion – applies already at the time of the first decision ordering detention on remand, that is to say "promptly" after the arrest (see *Buzadji*, cited above, § 102). In such cases the Court must establish whether the other grounds given by the judicial authorities continue to justify the deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita*, cited above, § 153). The complexity and special characteristics of the investigation are factors to be considered in this respect (see *Scott v. Spain*, 18 December 1996, § 74, *Reports* 1996-VI). The burden of proof in these matters should not be reversed by making it incumbent on the detained person to demonstrate the existence of reasons warranting release (see *Ilijkov v. Bulgaria*, no. 33977/96, § 85, 26 July 2001).

207. It is accepted that, by reason of their particular gravity and public reaction to them, certain offences may give rise to social disturbance capable of justifying pre-trial detention, at least for a time. However, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the accused's release would actually breach public order. In addition, detention will continue to be legitimate only if public order remains actually threatened; its continuation cannot be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207, and *Tiron*, cited above, §§ 41-42).

208. The right of an accused in detention to have his case examined with particular expedition must not unduly hinder the efforts of the judicial authorities to carry out their tasks with proper care (see *Shabani v. Switzerland*, no. 29044/06, § 65, 5 November 2009).

(iii) Application of the above principles to the present case

209. The Court notes that the applicant was held in pre-trial detention for more than five years and five months (see paragraph 202 above). It is further noted that each periodic decision extending detention referred not only to the applicant but to at least one other defendant, and invoked the same reason – the risk of absconding, owing to the gravity and number of criminal offences the defendants were accused of and the sentences prescribed for those offences. While the severity of the sentence faced is a relevant element in the assessment of the risk that an accused might abscond, the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Idalov v. Russia* [GC], no. 5826/03, § 145, 22 May 2012; *Garycki v. Poland*, no. 14348/02, § 47, 6 February 2007; *Chraidi v. Germany*, no. 65655/01, § 40, ECHR 2006-XII; and *Ilijkov*, cited above, §§ 80-81), nor can the danger of absconding be gauged solely on the basis of the severity of the sentence risked. With the passage of time the authorities must examine this issue with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see, among other authorities, *Letellier*, cited above, § 43, and *Panchenko*, cited above, § 106).

210. In the applicant's case, the risk of absconding was the only reason for his continued detention until 30 December 2011, that is for four years and seven months of his pre-trial detention. It was only then that the courts, in addition, considered that the release of the defendants, including the applicant, would breach public order and peace. Even then, however, the authorities used standardised formulae, and on several occasions merely specified that "the reasons for detention still persisted", without going into any detail whatsoever (see paragraphs 14, 16-17 and 19 above).

211. The Court further observes that, apart from the fact that the applicant was a relatively young person (see paragraph 13 above), the courts, when extending his detention, failed to consider his personal circumstances, such as his character and morals, home, occupation, assets, family ties and various links to the country in which he was being prosecuted. Those are all factors in the light of which the risk of absconding has to be assessed (see *Becciev v. Moldova*, no. 9190/03, § 58, 4 October 2005). Moreover, the Court observes that the domestic courts did not make any express assessments as to the proportionality of the applicant's continued detention, in particular in the light of his state of health and the lapse of time.

212. Finally, when deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures of ensuring his appearance at trial (see *Idalov*, cited above, § 140), which in the present case they failed to do.

213. For the foregoing reasons, the Court considers that the authorities extended the applicant's detention on grounds which cannot be regarded as "sufficient", thereby failing to justify his continued deprivation of liberty for a period of over five years. It is therefore not necessary to examine whether the proceedings against him were conducted with due diligence.

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

C. Article 5 § 4

215. The Government contested the applicant's complaint. Firstly, when the applicant had first applied for release, on 1 August 2014, the case had been pending before the Court of Appeal and he had lodged his application with the High Court. Secondly, Article 179 § 2, on which he had relied, referred only to the proceedings before the first-instance court, and not to those before the Court of Appeal. Thirdly, the application had been forwarded by the High Court to the Court of Appeal on 4 September 2014, and on 13 February 2015 the Court of Appeal, at one of its hearings, had dismissed it. Therefore, it had ruled speedily on his application, especially given that the applicant had invoked his state of health and the conditions of his detention, and that the court had had to examine all the relevant documentation and hear a medical expert witness. It had been a procedural decision, issued not as a separate document, but as an integral part of the minutes during the main hearing at which the applicant's representatives had been present. The Government urged the Court to find the applicant's complaint manifestly ill-founded or, alternatively, that there had been no violation.

216. The applicant reaffirmed his complaint. In particular, he argued that the Court of Appeal had taken six months to rule on his application and that the relevant decision had never been delivered to him. He also submitted that Article 397 of the CCP provided that all the provisions relating to the first-instance trial would be applicable at the second-instance level too, including Article 179 § 2.

217. The relevant principles in this regard are set out, for example, in *De Wilde, Ooms and Versyp v. Belgium* (18 June 1971, § 76, Series A no. 12). In particular, where a decision depriving a person of his liberty was taken by an administrative body, Article 5 § 4 obliges the Contracting States to make available to the detained person a right of recourse to a court. There is nothing, however, to indicate that the same applies when the decision is made by a court at the close of judicial proceedings. In the latter case the

supervision required by Article 5 § 4 is incorporated in the decision (see *Engel and Others v. the Netherlands*, 8 June 1976, § 77, Series A no. 22); this is so, for example, where a sentence of imprisonment is pronounced after "conviction by a competent court".

218. Turning to the present case, the Court notes that on 9 October 2012 the High Court found the applicant guilty and sentenced him to thirty years in prison. That judgment was upheld by the Court of Appeal on 2 April 2013. While the Supreme Court, on 2 April 2014, quashed the judgment of the Court of Appeal, it did not quash the judgment of the High Court convicting the applicant (see paragraph 25 above). Therefore, his detention at the relevant time ensued from his "conviction by a competent court", notably the High Court on 9 October 2012. Accordingly, this complaint is manifestly ill-founded and is rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

219. 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

220. The applicant claimed 38,646.94 euros (EUR) in respect of pecuniary damage (EUR 17,222.40 and EUR 5,975.94 for VDZ; EUR 2,600 for the eye surgery; and the remainder for the treatment in the Igalo Institute). He also claimed EUR 100,000 in respect of non-pecuniary damage.

221. The Government contested the applicant's claim in respect of pecuniary damage as unfounded, and in respect of non-pecuniary damage as unrealistic.

222. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 7,500 in respect of non-pecuniary damage.

B. Costs and expenses

223. The applicant made no claim in this regard.

224. The Court therefore makes no award under this head.

C. Default interest

225. 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. *Declares* the complaint concerning an alleged lack of speed in deciding on the applicant's request for release under Article 5 § 4 inadmissible, and the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the conditions in detention;

3. *Holds* that there has been no violation of Article 3 of the Convention in respect of medical care in detention;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

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

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 19 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President