La CEDU sul rispetto della vita privata e sul divieto di tortura
(CEDU, sez. III, sent. 2 giugno 2020, ric. n. 15122/17)

La CEDU si pronuncia sul caso del Sig. Pranjić condotto con forza a sottoporsi ad esami psichiatrici e psicologici. Il ricorrente ritiene che sia stato leso il suo diritto al rispetto della vita privata sancito dall'art. 8 Conv.

Il concetto di vita privata include sia l'integrità fisica che psicologica di una persona. La Corte ritiene che obbligare una persona a sottoporsi ad un esame psichiatrico contro la propria volontà, leda il diritto al rispetto della sua vita privata.

Nel caso in esame l'interferenza con il diritto del richiedente al rispetto della sua vita privata non è risultato essere "conforme alla legge" così come richiesto dal co. 2 dell'art. 8 Conv ,e per questo motivo la Corte ne ha dichiarato la violazione.

Il richiedente ha inoltre sostenuto che il trattamento cui è stato sottoposto nel momento dell'ammanettamento da parte della polizia era contrario all'art. 3 Conv. che afferma: "Nessuno può essere sottoposto a tortura o a trattamenti o punizioni disumane o degradanti".

La Corte ricorda che laddove un individuo sia privato della propria libertà o, più in generale, si trovi di fronte a forze dell'ordine, qualsiasi ricorso di queste alla forza fisica che non sia necessario, riduce la dignità umana ed è in linea di principio una violazione dell'art. 3 Conv.

Nel caso di specie, tenuto conto della salute mentale del richiedente, l'uso delle manette non era necessario perché non vi erano motivi seri per temerne la fuga, pertanto, l'ammanettamento del richiedente ha diminuito la sua dignità umana e per questo motivo la Corte ha sostenuto anche la violazione dell'art. 3 Conv.

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

THIRD SECTION

CASE OF VLADIMIR USHAKOV v. RUSSIA

(Application no. 15122/17)

JUDGMENT
STRASBOURG
18 June 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 Vladimir Ushakov v. Russia,

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

Vincent A. De Gaetano, *President*,
Georgios A. Serghides,
Paulo Pinto de Albuquerque,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Alena Poláčková, *judges*,
and Stephen Phillips, *Section Registrar*,
Having deliberated in private on 28 May 2019,
Delivers the following judgment, which was adopted on that date:
(palatino linotype, 11, intestazione comprensiva dei nomi del collegio centrata e il resto della sentenza giustificato, interlinea dell'intero file multipla – 1,15, rientri e spaziature "0")

FOURTH SECTION

CASE OF PRANJIĆ-M-LUKIĆ v. BOSNIA AND HERZEGOVINA
(Application no. 4938/16)

JUDGMENT

Art 8 § 1 • Respect for private life • Applicant repeatedly and forcibly taken for involuntary psychiatric and psychological examinations during criminal proceedings • Court orders not in accordance with the law, given unlawfulness of the continuation of criminal proceedings Art 3 (substantive) • Degrading treatment • Applicant handcuffed in front of his family and forcibly escorted by police to an involuntary psychiatric examination • Handcuffing not imposed in connection with lawful arrest or detention • No serious cause to fear that applicant might abscond or resort to violence • Applicant outnumbered by four police officers, able to address any resistance by other means • Applicant's vulnerability as a mentally-ill person not taken into consideration • No waiver of the right not to be subjected to such treatment can be accepted • Handcuffing not made strictly necessary by applicant's conduct • Handcuffing diminished applicant's human dignity and was in itself degrading

STRASBOURG
2 June 2020

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 Pranjić-M-Lukić v. Bosnia and Herzegovina,
The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:
Jon Fridrik Kjølbro, *President*,
Faris Vehabović,
Iulia Antoanella Motoc,

Carlo Ranzoni,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Péter Paczolay, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application against Bosnia and Herzegovina lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a national of Bosnia and Herzegovina, Mr Goran Pranjić-M-Lukić ("the applicant"), on 29 December 2015;

the decision to give notice to the Government of Bosnia and Herzegovina ("the Government") of the complaints concerning Article 3 and Article 8 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 12 May 2020,

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

INTRODUCTION

The application concerns the applicant's alleged subjection to treatment contrary to Articles 3 and 8 of the Convention owing to his repeated forcible escort, under unlawful court orders (including handcuffing on one occasion), to involuntary psychiatric and psychological examinations conducted during the course of criminal proceedings against him.

THE FACTS

1. The applicant was born in 1962 and lives in Karlsruhe. He was granted leave to represent himself.

2. The Government were initially represented by their Deputy Agent, Ms. S. Malešić, and then by their Acting Agent, Ms V. Bjelica-Prutina.

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

THE CRIMINAL PROCEEDINGS

4. On 5 April 2004 the applicant allegedly damaged the façade of his neighbour's house. After the police were summoned, the applicant allegedly spat on and assaulted one police officer and verbally abused another, and was then arrested. He was released on 6 April 2004, after he was questioned by a prosecutor from the Mostar Cantonal Prosecutor's Office ("the Prosecutor").

5. On 4 May 2004 the Prosecutor issued an order by which the applicant was to present himself to a psychiatrist so that he could be examined. It appears that the applicant did not comply with that order and that the examination was not conducted.

6. On 16 July 2004 the Prosecutor indicted the applicant for the criminal offence of damaging property belonging to another person and for the criminal offence of assaulting an official person in the performance of his or her security duties (*napad na službenu osobu u vršenju poslova sigurnosti*).

7. On 9 March 2006 the applicant was granted free legal assistance in the form of a court-appointed lawyer. The applicant immediately objected to the appointment of that lawyer and requested the appointment of N.D.; N.D. was appointed on 15 February 2010.

8. On 22 February 2007 the applicant failed to appear at his trial, justifying his absence by citing a need to attend a mental health centre in Mostar (the Mental Health Centre) owing to the mental illness from which he suffered; the Prosecutor then proposed that the applicant be examined by a psychiatrist, observing that the applicant's health problems had also been noted during the investigation. On the same day the Mostar Municipal Court ("the Municipal Court") issued an order that the applicant undergo a psychiatric examination. It appears that no such examination was conducted.

9. On 21 October 2008 the Municipal Court issued a fresh order that the applicant undergo a psychiatric examination, after the perusal of another criminal file relating to the applicant had indicated that he suffered from mental illness.

10. On 3 November 2010 a psychiatric examination was carried out. The applicant was taken to the psychiatrist by force (*prinudno dovođenje*), as he had failed to appear voluntarily.

11. On 31 December 2010 the psychiatrist issued her expert opinion. She concluded that the applicant was an asocial person who, because of chronic psychological distress, had developed an increasingly wide-ranging and intense series of symptoms, which were developing towards a psychotic state. That caused the applicant to perceive situations that were very tense and containing potential for conflict as threatening to his own survival and well-being – all of which could lead to excessive and impulsive reactions. Therefore, the expert concluded, the applicant was unable to participate in criminal proceedings and proposed to the Municipal Court, as a security measure, the "compulsory psychiatric treatment of the accused" in a psychiatric institution.

12. On 4 March 2011 the Municipal Court terminated the proceedings against the applicant in so far as they concerned the criminal offence of damaging property belonging to another person (see paragraph 6 above) because that offence had become statute-barred.

13. On 8 April 2011 the Municipal Court issued a decision (i) accepting the findings of the expert (see paragraph 11 above) and (ii) adjourning (*prekida*) the criminal proceedings against the applicant in respect of the criminal offence of assaulting an official person in the performance of his or her security duties (see paragraph 6 above), until such time as his health improved to the extent that he was capable of standing trial. The Court referred the applicant to the Mostar Social Work Centre ("the Social Work Centre") for further proceedings. The applicant appealed against that decision.

14. On 21 June 2011 the Mostar Cantonal Court ("the Cantonal Court") dismissed the applicant's appeal.

THE NON-CONTENTIOUS PROCEEDINGS

15. On 25 October 2011 the Social Work Centre lodged an application, in non-contentious proceedings, with the Municipal Court, seeking, as a security measure, that the applicant be obliged to undergo mandatory psychiatric treatment in a health institution (see paragraph 11 above).

16. On 18 April 2012 the Municipal Court asked the Social Work Centre to indicate whether it continued to seek the measure that it had sought initially, or if it now recommended that the applicant be (within the meaning of sections 45 to 59 of the Non-contentious Proceedings Act – see paragraphs 49 below) detained (*zadržan*) in a health institution. The Social Work Centre replied that it maintained its initial application.

17. On 6 November 2012 the Municipal Court dismissed the application lodged by the Social Work Centre (see paragraph 15 above) and terminated the proceedings (*obustavlja se*). It held that it did not have the authority to order the measure sought, given that, pursuant to section 43 of the Mental Health Act 2001 (see paragraph 48 below), the only body with authority to order such a measure was a criminal court within the course of criminal proceedings. It reasoned, on the basis of the evidence presented, that the offence in question had not been committed while the applicant had been in a state of insanity, and that the applicant was not a "person with a mental disorder" within the meaning of section 45 of the Non-contentious Proceedings Act and section 22 of the Mental Health Act 2001 (see paragraphs 48 and 49 below). It held that upon that decision becoming final the procedure would be continued under the rules of criminal proceedings, and that the applicant had the right to appeal against its decision within fifteen days of being served with it.

18. On 6 February 2013 the applicant was served with that decision, and he appealed against it on 21 February 2013 (that is to say within the statutory fifteen-day deadline – see paragraph 49 below), citing Articles 3 and 6 of the Convention.

19. On 22 December 2015 the Cantonal Court rejected the applicant's appeal as inadmissible. It held that (i) the applicant had no legal interest in appealing against the decision delivered during the non-contentious proceedings, as those proceedings had been terminated, and (ii) in accordance with the rules of criminal proceedings, the proceedings regarding the imposition of a security measure requiring that the applicant undergo psychiatric treatment in a health institution were to be continued, once the decision delivered during the non-contentious proceedings had become final.

THE CONTINUATION OF CRIMINAL PROCEEDINGS

20. On 21 December 2012 the Municipal Court issued a new order for the applicant to undergo an expert examination by a psychiatrist. It instructed the psychiatrist to examine the case file, as well as the medical documentation held by the Mental Health Centre in Južni Logor Hospital in Mostar

("Mostar Hospital"), where – according to the information that it had – the applicant was being treated. The applicant's examination was to be conducted with special emphasis on determining (i) whether he was capable of following the proceedings and (ii) the extent of his sanity at the time of his committing the offence.

21. On 27 December 2012 the applicant lodged a submission with the Municipal Court in which he noted that (i) the criminal proceedings against him had been adjourned on 8 April 2011 (see paragraph 13 above) and (ii) the non-contentious proceedings had still not been concluded, as his appeal remained pending (see paragraph 18 above); accordingly, he argued, the court's order that he undergo a psychiatric examination was "pointless".

22. On 17 January 2013 the Municipal Court summoned the applicant for a psychiatric examination at Mostar Hospital scheduled for 23 January 2013, pursuant to Article 124 of the Code of Criminal Procedure (see paragraph 47 below). It also stated that if the applicant did not comply with the order, or if the order could not be served, he would be transported by the judicial police to the examination, in accordance with Article 139 of the Code of Criminal Procedure.

23. On 21 January 2013 the applicant lodged a submission with the Municipal Court in which he repeated his previous arguments (see paragraph 21 above) and added that the Municipal Court was acting in a manner that was contrary to the Code of Criminal Procedure in so far as it had not delivered a fresh decision on the continuation of the adjourned proceedings. Given all the circumstances, he refused to attend the scheduled examination.

24. On 30 January 2013 the Municipal Court issued an order (*dovedbeni nalog*), in accordance with Article 139 (see paragraph 47 below), to the judicial police to take the applicant to Mostar Hospital by force (*prinudnim putem*) for psychiatric and psychological examination. It also ordered the judicial police to be present at the applicant's examination.

25. On 5 February 2013 the applicant was taken by the judicial police for examination; however, no examination was actually conducted, since the applicant lodged a request that he not be examined by those particular experts. That request was refused by the Municipal Court on 13 March 2013.

26. On 29 March 2013 the Municipal Court again summoned the applicant to Mostar Hospital for a psychiatric examination aimed at determining whether he was capable of following the criminal proceedings against him (see paragraph 20 above).

27. On 12 April 2013 the applicant lodged a submission with the Municipal Court in which he stated that his being ordered to attend the examination had exposed him to various "methods of torture", which had affected his mental integrity, and that he would not comply with the order. He again referred to the decision delivered during the non-contentious proceedings (see paragraph 17 above).

28. On 7 May 2013 the Municipal Court issued another order, in accordance with Article 139 (see paragraph 47 below), to the judicial police to take the applicant by force to Mostar Hospital and to be present at his psychiatric and psychological examination.

29. On 8 May 2013 the applicant was taken by force for examination by the judicial police. The applicant again lodged a request that he not be examined by the above-mentioned experts. It appears that the Municipal Court did not decide on the exemption request; in any event, no examination took place.

30. On 24 May 2013 the Municipal Court summoned the applicant to attend the court hearing scheduled for 7 June 2013. The applicant was also advised that he could engage a defence lawyer.

31. On 3 June 2013 the applicant lodged a submission with the Municipal Court in which he stated that he was not capable of participating in the criminal proceedings, referring to the expert opinion dated 31 December 2010 (see paragraph 11 above). The applicant added that the decision delivered during the non-contentious proceedings (see paragraph 17 above) was still not final.

32. On 5 June 2013 the Municipal Court issued another order, in accordance with Article 139 (see paragraph 47 below), to the judicial police to take the applicant by force to Mostar Hospital, and to be present at his psychiatric examination, scheduled to be held on 6 June 2013.

33. On 6 June 2013 the applicant was taken by force by four judicial police officers to the neurology department of Mostar Hospital for a psychiatric examination, which was held on that day. On the same day, the judicial police also issued a "Confirmation regarding the entering and examination of [the applicant's] flat and other spaces" (*Potvrda o ulasku i pregledu stana i drugih prostorija* – "the Confirmation"), which indicated that three police officers had entered the applicant's home while enforcing the court order for his psychiatric examination. It furthermore stated that the applicant's father, who was the owner of the flat, had refused to sign the Confirmation, so it had been left with him in the living room. The report on the officers' visit to the applicant's home, dated the same day and signed by the four police officers, reads in the relevant part as follows:

"... Upon arriving at the residence indicated in the order, the [Court Police] found the accused, Goran Pranjić-M-Lukić, at home at 14:30.

The Court Police informed the accused, Goran Pranjić-M-Lukić, of the reasons for their arrival [and] gave him a copy of the cited order by the Mostar Municipal Court, after which he was asked to accompany the [judicial police officers], which he refused to do, saying "that he had been examined, and that he would not come with us". The leader of the [judicial police officers] several times repeated to the accused that he had to come, which he energetically refused to do and turned towards the staircase leading to the other floor of the house.

Since the judicial police officers were situated close to the [accused] judicial police officer M.A. stood at the door leading to the other floor, thus stopping the [accused] from [carrying out] his intention, while judicial police officer L.A. ordered the accused to put his hands behind his back, which he did, and then he applied the binding measures [*sredstvo za vezivanje*] (handcuffs), without using other means of coercion, after which [the accused] was placed in the official vehicle and taken to the Mostar Centre.

...

The judicial police ensured the security of the examination, which lasted from 16:00 until 17:30, during which there were no problems [*nije bilo negativnosti*].

...

During the execution of the cited [court] order the powers exercised were provided for by the Judicial Police Act and the Rules on the Judicial Police, and there were no problems [*nije bilo negativnosti*"] – nor were any types of coercive measure [employed]."

34. According to the medical evidence submitted by the applicant – namely the injury report (*prijava o povredi*) dated 10 June 2013 issued by the emergency department of the Mostar Health Centre – the applicant was handcuffed during his forcible escort to the psychiatric examination. The doctor established that the applicant had sustained three to four hematomas on his right upper arm, each measuring 1 cm by 1 cm. The doctor also noted the applicant's statement that his forcible handcuffing by the judicial police had caused him mental injuries (*psihičke povrede*) and anxiety.

35. On 18 June 2013 the Municipal Court issued another order, in accordance with Article 139 (see paragraph 47 below), to the judicial police to transport the applicant by force to Mostar Hospital, and to be present at his psychological examination. The examination was held on 19 June 2013.

36. On 8 July 2013 the Municipal Court decided to adjourn the criminal proceedings against the applicant and referred him to the Social Work Centre for further non-contentious proceedings. In its reasoning the Municipal Court, fully accepting the expert reports, established that the applicant suffered from "permanent (chronic) psychological illness, currently at the progression phase". At the time of the examination the applicant had been mentally incapacitated (*neuračunljiv*), whereas at the time of the commission of the alleged offence his sanity had been significantly reduced. It concluded that the applicant was not capable of participating or following the criminal proceedings against him. On the same day the Municipal Court appointed the applicant a defence lawyer, owing to his mental state, in the interests of justice.

37. On 12 July 2013 the applicant appealed against that decision, citing Article 3 of the Convention. He repeated that the non-contentious proceedings were still pending. Furthermore, he contended that the court orders and examinations undertaken had been unlawful, and he challenged the method and purpose of the expert examinations (the criminal offence had allegedly been committed in 2004, but he had only been examined in 2013). Lastly, the applicant submitted that the court orders that he be forcibly examined, and the examinations themselves, had subjected him to "mental anguish" that had reached the minimum threshold of severity, within the meaning of Article 3. The applicant's court-appointed lawyer also lodged an appeal against the above-mentioned decision (see paragraph 36 above).

38. On 30 April 2014 the Cantonal Court found that the appeal lodged by the applicant's court-appointed lawyer was incoherent and declined to examine it. At the same time it upheld the applicant's appeal and quashed the decision of 8 July 2013 (see paragraph 36 above). It noted that the impugned criminal proceedings had finally been adjourned on 21 June 2011 (see paragraph 14 above), and that under the accusatory principle they could only be continued

lawfully upon a prosecutor's request (and not at the court's own motion), pursuant to Article 17 and 409 § 2 of the Code of Criminal Procedure (see paragraph 47 below), and that the prosecutor had to supplement such a request with appropriate evidence indicating that the underlying reasons for the adjournment of the proceedings had ceased to exist. Since the prosecutor had never lodged a request for the continuation of the criminal proceedings, the conditions for the continuation had not been fulfilled. Thus it was meaningless (*bespredmetno*) to send the applicant once again for an expert examination and to issue another decision on the adjournment of the proceedings on the basis of such an expert examination, given that a final decision on this matter had already been delivered. The Cantonal Court did not examine the Article 3 complaint.

THE TERMINATION OF CRIMINAL PROCEEDINGS

39. On 22 April 2016 the Prosecutor issued orders for expert examinations of the applicant to be undertaken, respectively, by a psychiatrist and a psychologist. The experts, who based their opinions on the applicant's medical documentation, concluded that the applicant's mental health could not have improved since 2013, when an examination had concluded that he suffered from a "permanent (chronic) psychological illness" and was mentally incapacitated at the time of that examination (see paragraph 36 above).

40. On 12 October 2016 the Prosecutor lodged a request with the preliminary hearing judge for leave to withdraw the indictment; the preliminary hearing judge gave his consent on 14 October 2016. On 18 October 2016 the Municipal Court terminated the criminal proceedings against the applicant.

APPLICANT'S WRITTEN OBJECTION TO THE JUDICIAL POLICE DEPARTMENT

41. On 10 June 2013 the applicant lodged a written objection with the judicial police department of the Herzegovina Neretva Canton ("the Judicial Police Department"), alleging that his rights under Article 3 of the Convention had been violated by the manner in which he had been treated by the judicial police on 6 June 2013 (see paragraphs 33 and 34 above). He alleged that he had been handcuffed in his home (in front of his ailing parents, who had experienced stress and had started to cry) – even though that had been unnecessary as it had been "impossible for him to abscond" and his "conduct [had been] unimpeachable".

42. On the same day the head of the Judicial Police Department, with two other senior officers, held a conversation with the applicant about his objection, after which the applicant gave the statement that is noted in the record of that conversation, the relevant parts of which read as follows:

"'On 6 June 2013, at around 3 p.m., judicial police officers unknown to me came to my home with a court order to take me to [Mostar Hospital's] neurology clinic for examination. A conversation ensued between me and one of the unknown police officers, [but] I do not remember what he asked me, or what I answered. At that moment he only handed to me the order for my forcible escort (*dovedbeni nalog*). While we were talking I think he misunderstood me, upon which I was handcuffed, even though I was not offering any resistance. After that I was taken from my house and smoothly [*lijepo*] taken to the car. After I asked commander D. if he knew whether [my case-

file] contained the confirmation on the entering and examination of [the applicant's] flat and other spaces, which [my] father (as the owner) had refused to sign, he replied that he had not seen it, although he had insisted that it be drafted (which was not done).'

After the commander and the deputy recommended that the objection be resolved by means of a non-formal settlement (*neformalnim razrješenjem*), Goran Pranjić-M-Lukić stated that he agreed with that recommendation, on condition that the commander reprimand [the accused] and inform his superiors (*Uprava*) about the whole situation. Goran Pranjić-M-Lukić declines to make any further objection, since he is content with the explanation of the commander relating to the regularity of the conduct of the police officers in this case."

43. On 10 June 2013 the head of the Judicial Police Department submitted information regarding the applicant's objection to the Chief Commander of the judicial police. It comprised (i) information regarding the judicial police's entry into the applicant's home for the purpose of his forcible escort to the psychiatric examination, and (ii) information to the effect that his handcuffing had been performed in accordance with section 17 of the Rules on the Use of Means of Coercion (see paragraph 51 below). It also stated, *inter alia*:

"After the conversation with the complainant it is obvious that he submitted his objection in ignorance of the ... laws pursuant to which the judicial police act and the objection concerns a person that was several times transported for psychiatric examination.

The complainant accepted the explanation regarding the conduct of the officers of the judicial police and the objection was resolved by non-formal means."

THE PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

44. In the meantime, on 22 November 2010 the applicant complained to the Constitutional Court of the length of the criminal proceedings concerning him. On 28 February 2013 the Constitutional Court established that the length of the criminal proceedings had been excessive and ordered the Municipal Court to finish the proceedings urgently. In particular, the court found it unacceptable that it had taken the Municipal Court more than three years to conduct a psychiatric examination of the applicant after it had become aware that he suffered from "psychological problems" (see paragraphs 8 and 10 above), and that it had taken more than four years for it to appoint him a legal representative of his own choosing (see paragraph 7 above).

45. On 14 June 2013 the applicant lodged another constitutional appeal with the Constitutional Court, complaining under Article 3 of the Convention of his ill-treatment in the continued criminal proceedings (see paragraphs 20-38 above). The applicant argued that the Municipal Court's repeated orders for the judicial police to transport him by force to involuntary expert examinations – in particular the one on 6 June 2013 (see paragraphs 33 and 34 above) – had violated his rights under Article 3 of the Convention.

46. On 21 July 2015 the Constitutional Court rejected the applicant's constitutional appeal as manifestly ill-founded. It concluded that the applicant had failed to prove that he had been

exposed to treatment that had reached the minimum level of severity necessary to fall within the scope of Article 3.

RELEVANT LEGAL FRAMEWORK

RELEVANT DOMESTIC LAW

47. The relevant provisions of the 2003 Criminal Procedure Code (*Zakon o krivičnom postupku*), published in the Official Gazette of the Federation of Bosnia and Herzegovina, nos. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10, 8/13 and 59/14, read as follows:

Article 17
Accusatory Principle

"Criminal proceedings may only be initiated and conducted upon the request of the prosecutor."

Article 124
Psychiatric Expert Evaluation

"(1) If a suspicion arises that the accountability of the suspect or the accused has been diminished, or that the suspect or the accused has committed a criminal offense due to the drug or alcohol addiction, or that he is not capable of participating in the proceedings due to a mental disturbance, expert evaluations consisting of examination of the suspect or the accused by a psychiatrist shall be ordered.

..."

Article 139
Arrest Warrant

"(1) The court may order [the issuance of] an arrest warrant [*naredba da se optuženi dovede*] if a decision on detention has been issued or if the accused, having been duly summoned, has failed to appear without justification, or if the [relevant] summons could not be properly served and the circumstances obviously indicate that the accused is evading the service of a summons.

...

(3) The arrest warrant shall be executed by the judicial police.

...

(5) The person authorised to execute the arrest warrant shall hand the arrest warrant to the accused and instruct the accused to follow him. If the accused refuses, he shall be apprehended by force."

Article 221
Mental Disorder Suffered by the Suspect or Accused in the Course of the Proceedings

"If in the course of criminal proceedings it is ascertained that since the criminal offence [in question] was committed the accused has become mentally ill, a decision shall be delivered ... adjourning [those] criminal proceedings. (Article 409)."

Article 409
Adjournment of Proceedings in the Event of a Mental Illness

"1. If the accused becomes so affected by a mental illness after the commission of a criminal offence that he or she is unable to take part in the proceedings, the Court shall, after a psychiatric forensic evaluation [is carried out], adjourn the procedure and send the accused [for treatment] to the body responsible for issues regarding social care.

2. When the health condition of the accused has improved to the extent to which he or she is capable of taking part in the procedure, the proceedings shall resume.

..."

Article 410
Procedure in the Event of Mental Incompetence

"1. If a suspect has committed a criminal offence while in a state of mental incapacity, and if legally prescribed conditions for ordering the mandatory placement in a health institution of seriously mentally incapacitated persons exist, the Prosecutor shall propose in the indictment that the Court establish whether the suspect has committed an unlawful act while in a state of mental incompetence and that he be subject to a temporary order on mandatory placement in a health institution, with the health institution in question being informed about [that order].

2. Upon a reasoned proposal by a prosecutor, the detention of the suspect or accused under paragraph 1 above may be ordered for reasons [listed] under Article 146 of this Law [listing the general grounds for custody]. When the detention of a suspect is ordered or extended, he shall be confined in a health institution for a period that may last as long as [provided] under Article 146 exist, but no longer than the [relevant period of] time [specified] under paragraphs 2 and 3 of Articles 149 and 151 [respectively], of this Code, or until the temporary order on mandatory placement in a health institution has become final and binding.

... "

48. The relevant provisions of the Mental Health Act 2001 (*Zakon o zaštiti osoba s duševnim smetnjama*), published in the Official Gazette of the Federation of Bosnia and Herzegovina, nos. 37/01, 40/02, 52/11, 14/13, and 20/13, as in force at the relevant time, read as follows:

Section 22

"1. A person with severe mental disorders who seriously and directly threatens his/her own life or health or safety, or the life or health or safety of others, may be placed in a health institution without his or her consent, under the procedure for forced detention and forced accommodation prescribed by this Law.

... "

Section 43

"Against a perpetrator who committed a criminal offence while in a state of insanity or significantly reduced sanity a court in the course of criminal proceedings shall order as a security measure [his] compulsory psychiatric treatment and custody in a health institution, or ... compulsory psychiatric treatment while still at liberty, in accordance with the provisions of Articles 63 and 64 of the Criminal Code of the Federation of Bosnia and Herzegovina and Articles 475-480 of the Criminal Procedure Code (*Official Gazette of FBIH*, no. 43/98)."

49. The relevant provisions of the Non-contentious Proceedings Act (*Zakon o vanparničnom postupku*), published in the Official Gazette of the Federation of Bosnia and Herzegovina, nos. 2/98, 39/04, 73/05 and 80/14, read as follows:

Section 18

"An appeal may be lodged against a decision rendered in first-instance proceedings within fifteen days of its delivery, if the law does not provide otherwise."

Section 19

"An appeal suspends the execution of the decision, if the law does not provide otherwise.

The court may, on the basis of important reasons, decide that the appeal does not suspend the execution of the decision.

... "

Section 45

"1. ... A court [may] decide to retain [that is to say hold – *zadržati*] a mentally ill person in a health institution when, owing to the nature of a disease, it is necessary for that person to be restricted in his freedom of movement or contact with the outside world, as well as to release such a person when the reasons for detention cease to exist.

2. The procedure referred to in paragraph 1 of this Article must be completed as soon as possible – at the latest within seven days."

Section 58

"An appeal may be lodged [by the retained person] against a decision on retain him in or release him from the health institution by: ... within eight days of the delivery of that decision.

The appeal does not suspend the execution, unless the court decides otherwise for justified reasons ..."

50. The relevant provisions of the 1996 Judicial Police Act of the Federation of Bosnia and Herzegovina (*Zakon o sudskoj policiji Federacije Bosne i Hercegovine*), published in the Official Gazette of the Federation of Bosnia and Herzegovina, nos. 19/96 and 37/04, read as follows:

Section 7

"The judicial police shall assist the Constitutional Court of the Federation of Bosnia and Herzegovina, the Supreme Court of the Federation of Bosnia and Herzegovina, and courts in cantons in securing information, the execution of court orders for the forcible escort of witnesses [and] the execution of court orders for the bringing in of accused persons [*dovođenje optuženih osoba*]..."

Section 20

"The judicial police, in undertaking their tasks, may use means of coercion – namely: physical force, a rubber baton, and other means of coercion – only when that is necessary to prevent a physical attack on judges and other employees of the court, [or] the ombudsman and other persons that they protect, [to prevent] a witness or the accused and convicts from absconding, or [to prevent] the causing of material damage to the court. Physical force may be used in particular when it is necessary to prevent a person resisting those to whom the order of the court is entrusted."

51. The relevant provisions of the Rules on the Use of Means of Coercion (*Pravilnik o upotrebi sredstava prinude*, no. Su-Sp-55/11), adopted on 2 March 2011 by the President of the Supreme Court of the Federation of Bosnia and Herzegovina, read as follows:

Section 2

"The judicial police officers of the Federation of Bosnia and Herzegovina use means of coercion for the purpose of attaining lawful goals, proportional to the level of resistance of the individual [in question].

The judicial police officers shall, in [well-defined] circumstances, only use means of coercion that guarantee the successful implementation of official orders with the least severe consequences for the individual against whom they are used."

Section 3

" ...

During the use of means of coercion, judicial police officers shall take account of the life, health and human dignity and of the property of physical and legal persons."

Section 17

"judicial police officers use means of binding (*sredstva za vezivanje*) for the purpose of limiting the bodily movements of the individual – particularly his hands and legs.

The following are understood as means of binding: handcuffs for hands, handcuffs for hands with a belt, cuffs for legs, cuffs for hands and legs, plastic binders and straps.

The judicial police officers are obliged to apply binding measures during the conduct of operations to bring in (*radnje dovođenja ili sprovođenja*) temporarily retained, detained or convicted persons."

INTERNATIONAL TEXTS, INSTRUMENTS AND DOCUMENTS

52. In its Recommendation Rec(2001)10 on the European Code of Police Ethics adopted on 19 September 2001, the Committee of Ministers of the Council of Europe stated its conviction that

"... public confidence in the police is closely related to their attitude and behaviour towards the public, in particular their respect for the human dignity and fundamental rights and freedoms of the individual as enshrined, in particular, in the European Convention on Human Rights."

It recommended that the governments of member States be guided in their internal legislation, practice and codes of conduct in respect of the police by the principles set out in the European Code of Police Ethics appended to the Recommendation, with a view to their progressive implementation and the widest possible circulation of the text setting them out.

53. The Code states in particular that one of the main purposes of the police is to protect and respect the individual's fundamental rights and freedoms, as enshrined, in particular, in the Convention (paragraph 1). In the section on "Guidelines for police action/intervention" it stipulates that "[t]he police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances" (paragraph 36) and that they "may use force only when strictly necessary and only to the extent required to obtain a legitimate objective" (paragraph 37). Furthermore, "in carrying out their activities, [they] shall always bear in mind everyone's fundamental rights" (paragraph 43) and "police personnel shall act with integrity and respect towards the public and with particular consideration for the situation of individuals belonging to especially vulnerable groups" (paragraph 44).

54. On 22 September 2004 the Committee of Ministers adopted Recommendation Rec(2004)10 concerning the protection of the human rights and dignity of persons with a mental disorder. In the relevant part the Recommendation provides:

Article 32
Involvement of the police

"1. In the fulfilment of their legal duties, the police should coordinate their interventions with those of medical and social services –if possible, with the consent of the person concerned, if the behaviour of that person is strongly suggestive of mental disorder and represents a significant risk of harm to him or herself or to others.

2. Where other appropriate possibilities are not available, the police may be required, in carrying out their duties, to assist in conveying or returning persons subject to involuntary placement to the relevant facility.

3. Members of the police should respect the dignity and human rights of persons with a mental disorder. The importance of this duty should be emphasised during training."

THE LAW

SCOPE OF THE CASE

55. In response to observations submitted by the Government, the applicant reiterated his complaints under Articles 5 and 6 of the Convention, which he had raised in his application form.

56. The Court notes that these complaints have already been declared inadmissible, and thus fall outside of the scope of this case.

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

57. The applicant complained, under Article 3 of the Convention, of his repeated forcible escort to involuntary psychiatric and psychological examinations during the criminal proceedings against him in 2013, which had caused him mental suffering.

58. Being the master of the characterisation to be given in law to the facts of the case (see *Bouyid v. Belgium* [GC], no. 23380/09, § 55, ECHR 2015), the Court finds it appropriate to examine the applicants' allegations under Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Admissibility

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

Merits

The parties' arguments

60. The applicant complained under Article 8 that the court orders for his involuntary psychiatric and psychological examinations, and his forcible escort by the judicial police on the basis of such orders and subjection to those examinations, had been unlawful and had exposed him to "mental suffering". The orders had been unlawful, given the fact that the decision terminating the non-contentious proceedings had not become final at the time of the issuance of those orders (see paragraphs 17-19 above); moreover, the criminal proceedings against him had been "pointless", as they had ultimately been adjourned.

61. The Government limited its reply to this complaint, referring only the incident of 6 June 2013 (see paragraph 33 above). They argued that force had had to be used in transporting the applicant to the psychiatric examination because the applicant had failed to comply with a duly served court order that had been issued in the course of the relevant criminal proceedings, and that given the circumstances there had been no interference with his rights under Article 8. They furthermore contended that even if there had been any interference, it had had its basis in national law, thus

complying with the required quality of domestic law, and moreover that it had not violated his rights under Article 8, as the interference had been aimed at determining whether it was justified to conduct court proceedings against the applicant.

The Court's assessment

62. The Court notes that the applicant was taken by force to involuntary psychiatric and psychological examinations on 5 February, 8 May, 6 June and 19 June 2013 (see paragraphs 25, 29, 33 and 35 above) on the basis of court orders issued on 30 January, 7 May, 5 June and 18 June 2013, respectively (see paragraphs 24, 28, 32 and 35 above).

63. The Court has previously held, in various contexts, that the concept of private life includes a person's physical and psychological integrity (see, for example, *A. v. Croatia*, no. 55164/08, § 60, 14 October 2010) and that mental health is a crucial part of private life (see, for example, *Bensaid v. the United Kingdom*, no. 44599/98, § 47, ECHR 2001-I, and *Dolenec v. Croatia*, no. 25282/06, § 165, 26 November 2009). Furthermore, it has held that the involuntary examination of a person by a psychiatrist from a State-run clinic or a hospital amounted to an interference with his right to respect for his private life (see *Matter v. Slovakia*, no. 31534/96, § 64, 5 July 1999, and *Fyodorov and Fyodorova v. Ukraine*, no. 39229/03, § 82, 7 July 2011). In line with those principles, it finds that the applicant's forcible escort and subjection to involuntary examination by a psychiatrist and a psychologist from a State-run institution – on four occasions (see paragraph 62 above) – constituted an interference with his private life.

64. The Court furthermore reiterates that an interference will contravene Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2, and is furthermore "necessary in a democratic society" in order to achieve the aim in question.

65. The Court notes that there is a dispute between the parties as to whether the interference with the applicant's Article 8 rights was "in accordance with the law". The Court reiterates that the expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the Convention not only require that the impugned measure should have a legal basis in domestic law, but also refer to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 108, ECHR 2015, and the cases cited therein). In that respect, the Court notes that on 6 November 2012 the Municipal Court terminated the non-contentious proceedings, holding that upon that decision becoming final the procedure would be continued under the rules of criminal proceedings. The applicant appealed against that decision on 21 February 2013 (that is to say within the statutory deadline). It furthermore notes that, under section 19 of the 1998 Non-contentious Proceedings Act, an appeal has suspensive effect (see paragraph 49 above). Nevertheless, the criminal proceedings were continued on 21 December 2012 (that is to say while the non-contentious proceedings were still ongoing) and the Municipal Court repeatedly ordered the applicant's psychiatric and psychological examinations and his forceful escort to those examinations, in accordance with Articles 124 and 139 of the Code of Criminal Procedure. The orders therefore had a basis in domestic law. However, in the particular circumstances of the present case, it cannot be said that the domestic authorities have complied with the law as the

continuation of the criminal proceedings was unlawful. The Court notes that the Cantonal Court had ruled that the Municipal Court could not have lawfully continued the adjourned criminal proceedings of its own motion, and by extension could not have lawfully issued any orders for the applicant's forcible examination within the context of those continued proceedings, as that would have run contrary to the applicable rules on criminal procedure (see paragraph 38 above). The interference with the applicant's right to respect for his private life was therefore not "in accordance with the law", within the meaning of Article 8 § 2 of the Convention.

66. That being the case, the Court is not required to determine whether the interference pursued a legitimate aim and, if so, whether it was proportionate to the aim pursued (see *Mockutė v. Lithuania*, no. 66490/09, § 105, 27 February 2018).

67. There has therefore been a violation of Article 8 of the Convention.

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

68. The applicant complained, under Article 3 of the Convention, about the treatment that he had been subjected to on 6 June 2013, when he had been handcuffed by the judicial police during his forcible escort to an involuntary psychiatric examination. The provision at issue reads as follows:

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

Admissibility

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

Merits

The parties' arguments

70. The applicant reiterated his complaints. He submitted that, without warning, one of the above-mentioned judicial police officers had twisted his right arm in order to handcuff him, as attested by the injury report (see paragraph 34 above). He rejected any contention that he had offered resistance or had attempted to abscond, as that would only have further disturbed his sick parents. He furthermore argued that his withdrawal of his objection in respect of the impugned incident had been conditional upon the judicial police officers involved in the incident being reprimanded and their superiors being informed thereof (see paragraph 42 above), which was not done. Finally, citing the case of *Shchiborshch and Kuzmina v. Russia* (no. 5269/08, 16 January 2014), the applicant indicated that the actions of the police officers had not reached the required level of care expected of them when dealing with individuals suffering from mental illness, and he expressed his belief that they had not undergone any training in that respect.

71. The Government argued that the applicant's handcuffing had been necessary because he had refused to comply with the lawful court order that had been duly handed to him prior to its enforcement. Moreover, they argued that no physical force had been used against the applicant and that he had consequently not suffered any physical injuries during his forcible escort to the psychiatric examination. They also considered that the applicant's injury report to have been

submitted belatedly, so there was no conclusive evidence that the impugned injuries had been inflicted by the judicial police officers. Lastly, they argued that the applicant had effectively withdrawn his objection in respect of the impugned incident, and that the judicial police officers' superiors had been informed of the incident (see paragraph 43 above).

The Court's assessment

(a) General principles

72. The Court has stated on previous occasions that measures of restraint such as handcuffing do not normally give rise to an issue under Article 3 of the Convention where they have been imposed in connection with lawful arrest or detention and do not entail the use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances. In this regard, it is of importance, for instance, whether there is reason to believe that the person concerned would resist arrest or try to abscond or cause injury or damage or suppress evidence (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 117, ECHR 2014 (extracts), and the cases cited therein). In any case, the Court attaches particular importance to the circumstances of each case and examines whether the use of restraints was necessary (see *Gorodnichev v. Russia*, no. 52058/99, § 102, 24 May 2007, and *Stoleriu v. Romania*, no. 5002/05, § 74, 16 July 2013).

73. Moreover, as the Court has pointed out previously, where an individual is deprived of his or her liberty or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (*Bouyid v. Belgium* ([GC], no. 23380/09, §100, ECHR 2015). The Court has emphasised that the words "in principle" cannot be taken to mean that there might be situations in which such a finding of a violation is not called for because the severity threshold has not been attained. Any interference with human dignity strikes at the very essence of the Convention. For that reason any conduct by law-enforcement officers vis-à-vis an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question (ibid., § 101).

74. Lastly, the Court has recognised the special vulnerability of mentally ill persons in its case-law (see *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 113, 31 January 2019) and has held that the assessment of whether the treatment or punishment concerned is incompatible with the standards of Article 3 must, in particular, take into consideration this vulnerability (see *Bureš v. the Czech Republic*, no. 37679/08, § 85, 18 October 2012, and the cases cited therein).

(b) Assessment in the present case

75. Turning to the circumstances of the case before it, the Court notes that there is no dispute between the parties as to whether the applicant was handcuffed in his home when he was forcibly escorted, by the judicial police, to his involuntary psychiatric examination on 6 June 2013. The Government made no comment regarding the applicant's allegations that he had been handcuffed

in front of his parents. Nevertheless, from the Confirmation it appears that at least the applicant's father was present during the incident (see paragraph 33 above).

76. The Court will examine whether the applicant's handcuffing falls within the scope of Article 3 of the Convention. The Government justified the handcuffing of the applicant by arguing that it had been necessary because he had refused to comply with the lawful court order that had been duly handed to him prior to its enforcement. In the Court's view, for the reasons indicated above, it cannot be said that the applicant's handcuffing was "imposed in connection with lawful arrest or detention" (see paragraph 65 above).

77. In respect of the Government's argument that the applicant's injury report was belated, the Court notes that in the past it has accepted a certain delay in seeking medical help (see *Balogh v. Hungary*, no. 47940/99, § 49, 20 July 2004), but that the above-mentioned four-day delay is excessive and undermines the applicant's claim as to any injuries that he may have sustained during his handcuffing. Nevertheless, the Court reiterates that within the context of handcuffing, the relative brevity of the treatment – as well as the absence of any damage to the applicant's health and the lack of any particular severity – is not decisive (see, *mutatis mutandis*, *Radkov and Sabev v. Bulgaria*, nos. 18938/07 and 36069/09, § 32, 27 May 2014). Rather, the Court must also examine whether the measure complained of could reasonably be considered necessary, given the circumstances of the case (see paragraph 73 above).

78. The Government based their conclusions on the report filed by the four police officers that had enforced the order of the Municipal Court for the applicant's forcible escort to the above-mentioned involuntary psychiatric examination (see paragraph 35 above). The Court notes that that version of events was contradicted by the applicant, who stated that he had offered no resistance (see paragraphs 41-42 above). As to the applicant's demeanour during the incident, the Court furthermore remarks that even the impugned report twice stated that there had been no problems (*nije bilo negativnosti*) during the applicant's forcible escort to the examination, and that the applicant had immediately complied with the order to put his hands behind his back so that he could be handcuffed (see paragraph 35 above).

79. The Court observes, as regards the alleged necessity of his handcuffing, that even though the applicant repeatedly refused to undergo psychiatric and psychological examinations it was still possible to forcibly take him to those examinations on three occasions – including the one that took place after the incident in question – without the use of handcuffs. Moreover, the Court cannot overlook the fact that on the occasion of his being handcuffed the applicant was clearly outnumbered by the four police officers, who were placed in a considerably superior position in terms of controlling the situation (see, *mutatis mutandis*, *Fyodorov and Fyodorova*, cited above, § 65, 7 July 2011); in any case, such a situation was of course not new to the police and they should have been able to foresee that they might be faced with some resistance from him and should have prepared accordingly (see, *mutatis mutandis*, *Shchiborshch and Kuzmina*, cited above, § 239).

80. Lastly, the Court notes that there is no indication in the file that the applicant's special vulnerability as a mentally ill person was taken into account when the decision was taken to handcuff him (see paragraph 74 above). As the Court has previously pointed out, the police,

specifically, must "not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances" (European Code of Police Ethics, § 36; see paragraphs 52-53 above). Furthermore, Article 3 of the Convention establishes a positive obligation on the State to train its law-enforcement officials in such a manner as to ensure a high level of competence in their professional conduct so that no one is subjected to torture or treatment that runs counter to that provision (see *Bouyid*, cited above, § 108).

81. As to the Government's argument that the applicant withdrew his objection in respect of this complaint on 10 June 2013 (see paragraphs 42 and 71 above), the Court notes that the Government has not offered evidence that the officers involved in the incident were reprimanded in any way, as requested by the applicant in his statement. More importantly, the Court considers that, in view of the fundamental importance of the prohibition of torture and inhuman or degrading treatment or punishment, no waiver of the right not to be subjected to such treatment can be accepted, as it would be contrary to an important matter of public interest (see, *mutatis mutandis*, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 150, ECHR 2012 (extracts)).

82. In the instant case, having regard to the applicant's mental health, the fact that the handcuffing was not imposed in connection with lawful arrest or detention, and the absence of any previous conduct giving serious cause to fear that he might abscond or resort to violence, the Court considers that the use of handcuffs was not made strictly necessary by the applicant's conduct. The applicant's handcuffing thus diminished his human dignity and was in itself degrading (see, *mutatis mutandis, Radkov and Sabev*, cited above, § 34, and *Ilievska v. the former Yugoslav Republic of Macedonia*, no. 20136/11, § 63, 7 May 2015). The Court notes that the fact that the applicant was handcuffed in front of his parent, which may well have caused him to feel humiliated in his own eyes, would only be a further aggravating factor in this regard.

83. There has accordingly been a violation of Article 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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."

Damage

85. The applicant claimed 220,310.03 euros (EUR) in respect of non-pecuniary damage.

86. The Government contested the applicant's claim as unsubstantiated and excessive.

87. The Court is of the view that the applicant must have sustained non-pecuniary damage as a result of the breaches of his rights under Articles 3 and 8 of the Convention. As to quantum, judging on an equitable basis, it awards him EUR 3,900.

Costs and expenses

88. The applicant also claimed EUR 17,213.13 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

89. The Government considered that the claim was unsubstantiated and excessive. In particular, they submitted that most of the costs and expenses had not actually been incurred, because the amounts claimed had not been paid by the applicant, who had been self-represented in domestic proceedings and before the Court. Moreover, his costs and expenses did not exclusively concern the proceedings before the Court

90. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the fact that the applicant was self-represented, and to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 70 covering costs and expenses under all heads, plus any tax that may be chargeable to the applicant.

Default interest

91. 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,

Declares the application admissible;

Holds that there has been a violation of Article 8 of the Convention;

Holds that there has been a violation of Article 3 of the Convention;

Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 3,900 (three thousand and nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 70 (seventy euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 2 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse FreiwirthJon Fridrik Kjølbro
Deputy RegistrarPresident