

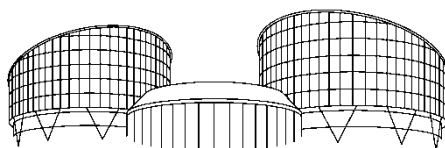
La Corte Edu sulla carenza dei requisiti di legittimità delle misure privative della libertà personale

(CEDU, sez. III, sent. 26 agosto 2025, ric. n. 38336/21)

Nella decisione qui annotata, la Corte di Strasburgo si è pronunciata in merito al ricorso presentato da un cittadino serbo il quale lamentava di essere stato sottoposto a un trattamento medico contro la sua volontà e di essere stato trattenuto in un ospedale in assenza di qualsiasi autorizzazione. In particolare, fra gli altri motivi di doglianza, il ricorrente lamentava che la sua detenzione in ospedale per novanta ore fosse stata illegittima e arbitraria, in violazione dell'articolo 5 della Convenzione.

Nel merito, la Corte ha ribadito il principio di diritto secondo il quale qualsiasi privazione della libertà deve essere legittima e priva di elementi di arbitrarietà; nel caso di specie, ove è stata riscontrata la mancanza di un verbale redatto dalla polizia circa l'arresto del ricorrente e la sua successiva detenzione, la Corte osserva come tale lacuna sia incompatibile con il principio di legalità, in evidente contrasto con l'art. 5 della Convenzione. A ciò si aggiunga che il ricorrente non era stato neppure tempestivamente e adeguatamente informato dei motivi per cui era stato privato della libertà, così impedendogli sia di adire un tribunale per contestare la legittimità della sua detenzione sia di chiedere una revisione giudiziaria della misura limitativa della sua libertà.

Alla luce di quanto osservato, la Corte ha dunque accertato la violazione del parametro convenzionale evocato.



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

THIRD SECTION

CASE OF XXX v. SERBIA

(Application no. 38336/21)

JUDGMENT
STRASBOURG
26 August 2025

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 XXX v. Serbia,

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

Ioannis Ktistakis, *President*,

Lətif Hüseyinov,

Darian Pavli,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva,

Úna Ní Raifeartaigh,

Mateja Đurović, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 38336/21) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Serbian national, Mr XXX (“the applicant”), on 30 June 2021;

the decision to give notice of the application to the Serbian Government (“the Government”);

the parties’ observations;

Having deliberated in private on 27 May and 1 July 2025,

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

INTRODUCTION

1. Relying on Articles 3 and 5 of the Convention, the applicant complained that he had been subjected to a medical intervention against his will and that he had been detained in a hospital in the absence of any authorisation.

THE FACTS

2. The applicant was born in “omissis” and lives in “omissis”. The applicant was represented by Ms S. Radivojević, a lawyer practising in Belgrade.

3. The Government were represented by their Agent, Ms Z. Jadrijević Mladar.

4. The facts of the case may be summarised as follows.

I. The applicant’s arrest and ensuing events

5. On 19 November 2016 at around 10 p.m. two police officers approached three young men, including the applicant, in the street. After the police officers identified themselves, the applicant took a plastic bag out of his pocket, put it into his mouth and started to run, trying to escape and uttering profanities. He hit a dead end, where the police officers caught up with him. According to the police report, the applicant refused to surrender and resisted arrest. The officers had to use force to subdue him. When patrol officers arrived, the applicant gave in and was taken to the police station.

6. At the police station, police officers questioned the applicant. No document authorising his arrest was produced. He was not allowed to contact a lawyer or his family. The applicant admitted that he had swallowed a plastic bag containing drugs.

7. On 20 November 2016 at 12.50 a.m. the applicant was taken to the Clinic for Emergency and Clinical Toxicology associated with the Military Medical Academy in Belgrade, where he was placed under twenty-four-hour police surveillance. According to the medical report prepared by the hospital administration, the applicant did not show any signs or symptoms of substance intoxication on arrival. His vital signs remained normal. A urine test confirmed the presence of cocaine. No amphetamine was detected in the applicant's urine.

8. According to the applicant, during his stay at the hospital, he was constantly shackled with hand- and ankle-cuffs to the bed. He was only allowed to use the bathroom in the presence of police officers.

9. On 22 November 2016 the applicant underwent an X-ray examination. It did not show any presence of free gas or fluid in the abdomen (signs of perforation). On the same day, the applicant was given a laxative. The medical report did not mention the reason for prescribing the laxative, nor did it specify its type or name. The applicant denied that he had been informed that the liquid he had been made to ingest was a laxative or that he had given consent to taking it. At around 3.10 p.m., in the presence of a police officer, the applicant had a bowel movement and excreted a plastic bag containing seven smaller plastic bags with white powder in each of them. Subsequently, it was established that the powder contained amphetamine and caffeine (the total weight was 4.77 grams). The police seized the powder, admitting it into evidence in a criminal case against the applicant on multiple charges, including possession of illegal drugs (see paragraphs 11-12 below). On the same day, at around 4 p.m., the applicant was allowed to contact his lawyer and family. Two of his friends visited him in hospital.

10. On 23 November 2016 at 1 p.m. the police transferred the applicant from the hospital to the police station. At 3.20 p.m. he was released.

II. Criminal proceedings against the applicant

11. On 30 November 2016 the prosecutor instituted criminal proceedings against the applicant on multiple charges, including possession of illegal drugs.

12. On 13 June 2018 the applicant entered into a plea agreement with the prosecutor's office and on 22 June 2018 the Belgrade First Basic Court accepted that agreement, found the applicant guilty as charged and gave him a suspended sentence of two years' imprisonment.

III. Complaint to the Constitutional Court

13. On 23 December 2016 the applicant lodged a complaint with the Constitutional Court of Serbia, alleging, *inter alia*, that he had been unlawfully deprived of his liberty between 19 and 23 November 2016 and that he had been subjected to inhuman and degrading treatment during his confinement at the hospital. In particular, he asserted, without referring to any evidence, that he had been arbitrarily detained at the hospital by the police in the absence of any court order authorising his arrest or detention, that he had remained shackled to the bed for over ninety hours and that a laxative had been administered against his will and then his bowel movements had been monitored.

14. The Constitutional Court found that the actions by the police had been justified by the risk to the applicant's life resulting from his having swallowed amphetamine in the amount possibly exceeding a lethal dose of 200 mg. The medical practitioners had reacted appropriately to the situation and had provided the necessary medical treatment to eliminate the danger. Once the applicant's life had been out of danger, he had been released from hospital. The Constitutional Court relied on the police report describing the events of 19 November 2016, medical documentation prepared by the Clinic where the applicant had been hospitalised and the case file in the criminal proceedings against the applicant.

15. The Constitutional Court conceded that the applicant's stay in hospital had amounted to deprivation of liberty. It further acknowledged that there had been no order authorising the applicant's detention, nor had the applicant been informed of his rights when taken into custody. In the Constitutional Court's view, those omissions had been justified by the urgency of the situation. Priority had been given to saving the applicant's life. The actions of the authorities, albeit not fully compliant with the applicable rules, had been legitimate and constitutionally acceptable. No ruling was made as regards the applicant's allegations that he had remained shackled to the hospital bed for over ninety hours.

16. On 28 December 2020 the Constitutional Court rejected the applicant's complaint as unsubstantiated. On 30 December 2020 the applicant received a copy of the relevant decision.

THE LAW

I. PRELIMINARY REMARKS

17. The Government submitted that the applicant had failed to use effective domestic remedies before applying to the Constitutional Court. In their view, the applicant could have submitted a complaint to the Ministry of the Interior to challenge the lawfulness of the police officers' conduct during his arrest and detention in hospital. Alternatively, he could have brought his grievances to the attention of the Ombudsman, whose office dealt expressly with complaints under Articles 3 and 5 of the Convention. Furthermore, the applicant could have lodged a criminal complaint against the police officers, which would have prompted a criminal investigation into their conduct. Lastly, it had been open to the applicant to lodge a civil claim for damages against the Ministry of Justice.

18. Referring to the above, the Government submitted that the application should be dismissed by the Court owing to the applicant's failure to exhaust effective domestic remedies.

19. The applicant pointed out that his complaints had been examined on the merits by the Constitutional Court, which was the highest and last-instance court for the protection of human rights in Serbia. That court's decision had been final in respect of his complaints and he had not been required to make use of any other avenue for the exhaustion of domestic remedies.

20. The Court observes that, in a number of previous cases against Serbia, it has examined the issues similar to the objection raised in the present case by the Government. It has consistently ruled in that regard that where the Constitutional Court had examined the merits of the applicant's complaints without dismissing them on account of the applicant's failure to exhaust the remedies referred to by the Government, the applicant was clearly not required to pursue yet another avenue of potential redress, civil or otherwise, after that (see, among other authorities, *Jevtović v. Serbia*, no. 29896/14,

§§ 66-70, 3 December 2019, and *Negovanović and Others v. Serbia*, nos. 29907/16 and 3 others, §§ 58-68, 25 January 2022). Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to conclude otherwise in the present case. It considers that, having made use of the constitutional appeal procedure, whereby violations could be found and compensation awarded by the Constitutional Court, the applicant was clearly not required to make use of any other remedies referred to by the Government. Their objection that the applicant had failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

21. The applicant complained that the treatment he had been subjected to while in custody in hospital had been inhuman and degrading. He relied on Article 3 of the Convention, which reads as follows:

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

Admissibility

1. *The parties' submissions*

22. The Government submitted that the police officers' decision to take the applicant to hospital and subject him to medical procedures had been justified. Having swallowed amphetamine, the applicant had put himself in a life-threatening situation. The police had had to take measures to protect his life and limb. The officers' response to the situation had been compatible with the Convention requirements. The Government denied that the applicant had been shackled to the hospital bed for three days. They argued that the applicant had failed to provide any evidence to support his allegations. It was highly unlikely, according to them, that such severe measures of restraint would have left no marks on his arms or legs. Moreover, it had been open to the applicant to ask the authorities to question medical personnel at the hospital to confirm his allegations. However, he had failed to do so.

23. The applicant argued that the treatment he had been subjected to by the police officers while in the hospital had caused him suffering reaching the level of severity falling under Article 3 of the Convention. For the period of more than three days that he had spent in hospital, he had been unable to move freely, as he had been shackled to his hospital bed. A doctor had made him take an unknown substance, without informing him of its nature or the reasons for its administration. The use of a laxative had not been legally or medically justified. The medical examination and associated tests had not shown that there had been any risk to his life. The only purpose of the medical intervention had been to extract evidence from his body in order to open a criminal case against him. In such circumstances, it would have been possible for the police officers to give preference to natural bowel movements rather than subject him to the highly intrusive procedure of administering a laxative. He had had to defecate in the presence of a police officer, which had been particularly humiliating. The police had failed to obtain any authorisation from a court or prosecutor for their actions, nor had they informed any competent authorities thereof.

2. *The Court's assessment*

(a) Alleged use of restraints

24. As to the applicant's complaint that he had been shackled to the hospital bed for three days, the Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To

assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

25. The Court notes that the applicant was released on 23 November 2016 and lodged his complaint with the Constitutional Court on 23 December 2016. During that period, he was not in a situation that could have reasonably prevented him from obtaining a medical report to substantiate his allegations about the use of restraints. Furthermore, the applicant did not file a criminal complaint in this respect or a civil claim for damages. Nor did he provide any explanation as to why he chose not to proceed so.

26. The Court also notes that the Constitutional Court did not make a ruling as regards the well-foundedness of the applicant’s allegations (see paragraph 15 above). In such circumstances, it cannot be said that the applicant raised an arguable claim. The Court cannot therefore conclude that the authorities were under an obligation to carry out an official investigation into the matter (see *Bouyid v. Belgium* [GC], no. 23380/09, § 116, ECHR 2015; *Yağci and Özcan v. Turkey* (dec.), no. 83646/17, §§ 20-26, 16 October 2018; and *Bazjaks v. Latvia*, no. 71572/01, § 79, 19 October 2010).

27. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(b) Medical intervention

28. As to the medical intervention the applicant was subjected to, the Court reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other numerous authorities, *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI). It further reiterates that Article 3 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). As a general rule, a measure which is a therapeutic necessity cannot be regarded as inhuman or degrading. The Court must nevertheless satisfy itself that the medical necessity has been convincingly shown to exist and that procedural guarantees for the decision, for example to force-feed, exist and are complied with (see, *Bogumil v. Portugal*, no. 35228/03, § 69, 7 October 2008, and, *mutatis mutandis*, *Herczegfalvy v. Austria*, 24 September 1992, § 82, Series A no. 244). Moreover, account has to be taken of whether the person concerned experienced serious physical pain or suffering as a result of the forcible medical intervention, whether the forcible medical procedure was ordered and administered by medical doctors and whether the person concerned was placed under constant medical supervision and, lastly, whether the forcible medical intervention resulted in any aggravation of his or her state of health or had lasting consequences for his or her health (see *Jalloh v. Germany* [GC], no. 54810/00, §§ 72-74, ECHR 2006-IX, with further references, and *Bogumil*, cited above, § 70).

29. Having examined the relevant facts, the Court considers that once the applicant had admitted to having swallowed amphetamine, the police officers were under an obligation to take measures to prevent any risk to his health resulting from his actions. The Court accepts that the police officers’

decision to take the applicant to a hospital, where, as indicated in the medical report, he was examined and subjected to a medical intervention, was compatible with the requirements set out in Article 3 of the Convention. The Court takes into account the fact that the impugned measure was administered by medical practitioners – and not the police – in a specialised institution, after a comprehensive medical examination and a two days' wait for the drugs to pass through the applicant's body naturally. The Court also refers to the findings of the Constitutional Court (see paragraph 14 above) that the amount of the drugs swallowed voluntarily by the applicant might have exceeded a lethal dose posing a serious risk to his health. Furthermore, the intervention was of a short duration and did not cause any bodily injury or deterioration of the applicant's state of health. Nor does the Court discern any evidence that the treatment caused intense physical or mental suffering. No force was used to make the applicant ingest the medication. After the intervention, the applicant remained in medical care for another day. He was released from the hospital and transferred to a police station once there was no longer a risk to his health. Lastly, the Court does not lose sight that the amphetamines were later admitted as evidence in the criminal case against the applicant.

30. Taking the above considerations into account, the Court cannot but find that the measures applied in this case do not reach the threshold of inhuman or degrading treatment within the meaning of Article 3 of the Convention.

31. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

32. The applicant complained that his detention in hospital for ninety hours had been unlawful and arbitrary, in contravention of Article 5 of the Convention. He also referred to Article 13 of the Convention.

33. The Court, being master of characterisation to be given in law to the facts of the case, will consider these complaints under Article 5 of the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). Article 5 of the Convention reads, in so far as relevant, as follows:

"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;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

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. Admissibility

34. 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.

B. Merits

1. *The parties' submissions*

35. The applicant submitted that, following his arrest on 19 November 2016, he had been detained by the police until 23 November 2016 in the absence of any court order. As a result, he had been unable to obtain a review of the lawfulness of his detention. He also denied having been informed of the reasons for his arrest or his rights as a detainee. Nor had he been brought before a judge. He had been denied contact with his lawyer and family members until the police officers had been able to obtain the evidence in the criminal case against him.

36. The Government acknowledged, similarly to the Constitutional Court, that at no time had a court order authorising the applicant's detention been issued. They further reiterated the Constitutional Court's reasoning that the police officers had had to do everything possible to save the applicant's life, which had been in danger after he had swallowed a plastic bag containing amphetamine. The urgency of the situation had obliged the police to prioritise saving the applicant's life. Even though their actions had not strictly followed the letter of the law, they had been legitimate and constitutionally acceptable. Lastly, the Government pointed out that the medical practitioners at the hospital had notified the applicant's family of his situation. The Government discerned no violation of the applicant's rights set out in Article 5 of the Convention.

2. *The Court's assessment*

37. The Court reiterates that any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1, be “lawful”. Where the “lawfulness” of detention is in issue, including the question whether “a procedure prescribed by law” has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of that law (see *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, § 125, 1 June 2021).

38. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among many other authorities, *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33; *Witold Litwa v. Poland*, no. 26629/95, §§ 72-73, ECHR 2000-III; and *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 74, 22 October 2018). Detention will be “arbitrary” where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see, for example, *Bozano v. France*, 18 December 1986, § 59, Series A no. 111, and *Mooren v. Germany* [GC], no. 11364/03, §§ 77-79, 9 July 2009) or where the domestic authorities neglected to attempt to apply the relevant legislation correctly (see *Benham v. the United Kingdom*, 10 June 1996, § 47, *Reports of Judgments and Decisions* 1996-II; *Liu v. Russia*, no. 42086/05, § 82, 6 December 2007; and *Marturana v. Italy*, no. 63154/00, § 80, 4 March 2008).

39. Turning to the circumstances of the present case, the Court observes, and the Government did not argue otherwise, that no record was drawn up of the applicant's arrest and ensuing detention from 19 to 23 November 2016.

40. In this connection, the Court observes that the absence of an arrest record must in itself be considered a most serious failing, as it has been the Court's consistent view that the unacknowledged detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 § 1 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 § 1 of the Convention (see *Menesheva v. Russia*, no. 59261/00, §§ 87 and 89, ECHR 2006-III; *Fedotov v. Russia*, no. 5140/02, §§ 78 and 79, 25 October 2005; and *Kurt v. Turkey*, 25 May 1998, § 125, *Reports* 1998-III). The Court cannot subscribe to the Government's argument that the urgency of the situation prevented the police from properly recording the applicant's arrest and detention and concludes that his deprivation of liberty did not comply with the guarantees of Article 5 § 1 of the Convention.

41. In terms of Article 5 § 2 of the Convention, the Court reiterates that this provision contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty and is an integral part of the scheme of protection afforded by Article 5 (see, for example, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 115, 15 December 2016). Where a person has been informed of the reasons for his arrest or detention, he may, if he sees fit, apply to a court to challenge the lawfulness of his detention (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 40, Series A no. 182, and *Čonka v. Belgium*, no. 51564/99, § 50, ECHR 2002-I). Any person who is entitled to take proceedings to have the lawfulness of his detention decided speedily cannot make effective use of that right unless he is promptly and adequately informed of the reasons why he has been deprived of his liberty (see *Van der Leer v. the Netherlands*, 21 February 1990, § 28, Series A no. 170-A; *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 413, ECHR 2005-III; and *Grubnyk v. Ukraine*, no. 58444/15, §§ 97 and 99, 17 September 2020). Turning to the present case, the Court notes that the applicant was indeed not informed of the reasons for his arrest in disregard of the requirements of Article 5 § 2 of the Convention.

42. Article 5 § 3 of the Convention furthermore provides persons arrested or detained on suspicion of having committed a criminal offence with a guarantee against any arbitrary or unjustified deprivation of liberty (see *Aquilina v. Malta* [GC], no. 25642/94, § 47, ECHR 1999-III, and *Stephens v. Malta* (no. 2), no. 33740/06, § 52, 21 April 2009). Judicial control of interferences by the executive with the individual's right to liberty is an essential feature of the guarantee embodied in Article 5 § 3 (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 58, Series A no. 145-B; *Pantea v. Romania*, no. 33343/96, § 236, ECHR 2003-VI (extracts); and *Assenov and Others v. Bulgaria*, 28 October 1998, § 146, *Reports of Judgments and Decisions* 1998-VIII). As regards the present case, the applicant was clearly deprived of the possibility of being brought before a court of law to test the lawfulness of his detention.

43. Lastly, the Court recalls that Article 5 § 4 of the Convention provides that arrested or detained persons are entitled to a review by a court of law bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in the sense of the Convention, of their

deprivation of liberty (see, for example, *Oravec v. Croatia*, no. 51249/11, § 64, 11 July 2017, with further references). Where there is no judicial remedy at all available to individuals to challenge the lawfulness of their detention, examination of a complaint under Article 5 § 4 has been considered warranted, regardless of the length of the detention in question (see, for example and *mutatis mutandis*, *Moustahi v. France*, no. 9347/14, §§ 103 and 104, 25 June 2020). With this in mind and in the context of the present case, where the applicant was given no opportunity to seek judicial review of his detention, the Court is of the opinion that Article 5 § 4 of the Convention is not only applicable but also that its requirements have not been respected (*ibid.*).

44. In view of the foregoing, the Court concludes that there has been a violation of the applicant's rights secured under Article 5 §§ 1, 2, 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage.

47. The Government submitted that no award should be made to the applicant, discerning no violation of his rights under the Convention.

48. The Court observes that it has found serious violations of the Convention in the present case and awards the applicant the amount claimed in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

49. The applicant also claimed EUR 2,480 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. In particular, he sought the reimbursement of postal expenses in the amount of EUR 200. He also claimed the reimbursement of the legal costs and expenses incurred in the proceedings before the Constitutional Court of Serbia in the amount of EUR 760 and in the proceedings before the Court in the amount of EUR 1,520.

50. The Government suggested that the claim be dismissed.

51. 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 were also reasonable as to their quantum. That is, the applicant must have paid them or be bound to pay them pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress (see, among other authorities, *Đurić v. Serbia*, no. 24989/17, § 95, 6 February 2024, with further references). In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the applicant's claim in respect of the postal costs and expenses claimed and considers it reasonable to award to the applicant EUR 1,726 for the proceedings before the Constitutional Court and the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 §§ 1, 2, 3 and 4 of the Convention;
3. *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 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage,

(ii) EUR 1,726 (one thousand seven hundred and twenty-six 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 26 August 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar

Ioannis Ktistakis President