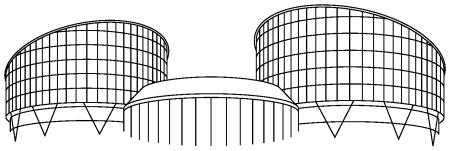

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF MERČEP v. CROATIA

(Application no. 12301/12)

JUDGMENT

STRASBOURG

26 April 2016

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 Merčep v. Croatia,

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

Işıl Karakaş, *President,*
Julia Laffranque,
Paul Lemmens,
Valeriu Griţco,
Ksenija Turković,
Stéphanie Mourou-Vikström,
Georges Ravarani, *judges,*

and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 15 March 2016,

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

PROCEDURE

1. The case originated in an application (no. 12301/12) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Mr Tomislav Merčep ("the applicant"), on 14 February 2012.

2. The applicant was represented by Mr M. Ujević, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant complained of a lack of relevant and sufficient reasons for his prolonged pre-trial detention, contrary to Article 5 § 3 of the Convention.

4. On 16 September 2013 the complaint was communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Zagreb.

A. Criminal proceedings against the applicant

6. On 10 December 2010 the Zagreb Police Department (*Policijska Uprava Zagrebačka*; hereinafter "the police") lodged a criminal complaint with the Zagreb County State Attorney's Office (*Županijsko državno odvjetništvo u Zagrebu*) against the applicant, alleging that in 1991, as commander of a police unit, he had committed war crimes against the civilian population. They relied on extensive material obtained in the course of a preliminary investigation. An investigating judge of the Zagreb County Court (*Županijski sud u Zagrebu*) was also informed of the case. The case immediately attracted wide media interest and coverage.

7. On the same day, based on the criminal complaint lodged by the police, the investigating judge questioned the applicant. The applicant contested the allegations of the police and decided not to give further evidence, stressing that he was suffering from health problems. He submitted extensive medical documentation showing that he had suffered a stroke in 2007.

8. Later on the same day, the Zagreb County State Attorney's Office requested the investigating judge to open an investigation in respect of the applicant on suspicion of war crimes against the civilian population, as alleged in the criminal complaint lodged by the police. It relied in particular on the material provided to the Croatian authorities by the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (hereinafter "the ICTY") concerning the crimes allegedly committed by a unit under the applicant's command.

9. Following the request of the Zagreb County State Attorney's Office, on 13 December 2010 the investigating judge questioned the applicant. The applicant decided to remain silent and refused to give any evidence.

10. On the same day the investigating judge opened an investigation in respect of the applicant on suspicion of war crimes against the civilian population. The investigating judge found, on the basis of the available material, that there was a reasonable suspicion that in the period between October and December 1991, in his capacity as commander of a police unit, the applicant had ordered arbitrary arrests, ill-treatment and the killing of a number of civilians, and that, by not taking the necessary measures to prevent and punish those responsible, he had consented to a number of other arbitrary arrests, the unlawful confiscation of property, ill-treatment and the killing of civilians by his subordinates.

11. During the investigation the investigating judge heard evidence from thirty-one witnesses and requested international legal assistance from the Serbian authorities in obtaining evidence from the witnesses. He also obtained a number of relevant reports on the DNA analyses of the victims' remains, as well as exhumation and autopsy reports, and various documents concerning the actions of the unit under the applicant's command.

12. On the basis of the evidence obtained during the investigation, on 9 June 2011 the Zagreb County State Attorney's Office indicted the applicant in the Zagreb County Court on charges of war crimes against the civilian population. The indictment listed twenty-two counts of arbitrary arrest, unlawful confiscation of property, ill-treatment and the killing of civilians. The relevant part of the indictment concerning the applicant's participation in those acts reads:

> "In the period between 8 October and mid-December 1991, in Zagreb and Pakračka Poljana, during an international armed conflict between the forces of the Republic of Croatia and the former [Yugoslav People's Army] and the paramilitary Serb forces, assisted by volunteer fighters from other parts of the former Yugoslavia, contrary to Articles 2, 3 § 1 (a) and (c), 13 and 32 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and Articles 4 §§ 4 and 2 (a), 51 §§ 2 and 6, 86 and 87 of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), as an official in the Ministry of the Interior of the Republic of Croatia and the commander of the reserve unit of the Ministry of the Interior stationed in Pakračka Poljana and partially in Zagreb, where it had its compound, and thereby authorised to command his subordinates and responsible for the application of rules of international humanitarian law concerning the protection of civilians, ordered the unlawful deprivation of liberty, torture and killing of certain civilians, and when he was not present in the field, although aware that his subordinates were acting unlawfully by arbitrarily depriving civilians of their liberty, robbing, ill-treatment, torture, causing physical harm and killing civilians, did not take the necessary measures to prevent or suppress such unlawful actions, thereby accepting that his subordinates continue with such acts and condoning their consequences ..."

13. On 28 June 2011 the applicant lodged an objection against the indictment, arguing that it was not supported by any relevant evidence.

14. On 12 September 2011 a three-judge panel of the Zagreb County Court dismissed the applicant's objection against the indictment as ill-founded on the grounds that there was sufficient evidence supporting the conclusion that there was a reasonable suspicion that he had committed the offences for which he had been charged.

15. On 4 October 2011 the Zagreb County Court commissioned an expert report concerning the possibility of the applicant following the trial.

16. In a report of 14 December 2011 a court expert found that with the appropriate accommodation arrangements and medical supervision, the applicant could follow the trial.

17. In the further course of the proceedings a number of hearings were held before the Zagreb County Court. A hearing held on 29 March 2012 was adjourned to 2 April 2012 due to deterioration in the applicant's health during the questioning of a witness. A hearing held on 15 June 2012 was also adjourned due to the applicant's state of health.

18. The criminal proceedings against the applicant are still pending.

B. Decisions on the applicant's detention

19. The applicant was arrested on 10 December 2010 in connection with the criminal complaint lodged against him by the police (see paragraph 6 above).

20. On the same day, having questioned the applicant (see paragraph 7 above), the investigating judge of the Zagreb County Court ordered his remand in custody for a further forty-eight hours on the grounds that he might try to influence the witnesses and on account of the gravity of the charges. The investigating judge noted in particular that some forty-three witnesses needed to be questioned and that the allegations of war crimes against the civilian population imputed to the applicant were of a particularly serious nature, involving killings and severe ill-treatment.

21. On the order of the investigating judge and because of the applicant's medical condition (see paragraph 7 above), he was placed in a prison hospital. Later during his confinement he was also treated in a special rehabilitation hospital in Krapinske Toplice.

22. On 12 December 2010 the investigating judge ordered that the applicant be remanded in custody for a further day.

23. On 13 December 2010 the investigating judge ordered the applicant's pre-trial detention for one month under Article 102 § 1 (2) and (4) of the Code of Criminal Procedure (risk of collusion and gravity of charges), reiterating his previous arguments.

24. The applicant appealed against the decision of the investigating judge before a three-judge panel of the Zagreb County Court, invoking his state of health and arguing that twenty years had passed since the alleged crimes had taken place.

25. On 17 December 2010 a three-judge panel of the Zagreb County Court dismissed the applicant's appeal as unfounded. The relevant part of the decision reads:

> "It is firstly to be noted that in connection with the offences imputed to the defendant, in particular concerning the acts of the reserve [police] forces under his command, the questioning of a number of victims and witnesses, who have the relevant knowledge about the events from the period at issue, has been requested. Irrespective of the time that has passed since the period at issue, the defendant, who has only recently been informed of the facts of the offences forming the charges against him, if at large is likely to try to contact the [following] witnesses ... [These witnesses] still feel distress and fear and [the defendant could], in order to minimise his criminal responsibility, directly or indirectly influence their statements and thereby hinder the proper course of the investigation. Therefore, in order to avert the collusion, the investigating judge properly ordered the defendant's pre-trial detention under Article 102 § 1 (2) of the Code of Criminal Procedure.
>
> Furthermore, in view of the manner in which the war crimes against the civilian population under Article 120 of the Criminal Code were allegedly committed by the defendant, and which are punishable by twenty years' imprisonment, the investigating judge correctly found that the circumstances of the offences were particularly grave,

warranting pre-trial detention under Article 102 § 1 (4) of the Code of Criminal Procedure. These particularly grave circumstances of the offences concern, in the view of this panel, the manner in which the civilians ... were unlawfully and arbitrarily deprived of their liberty, how their property was confiscated without any legal basis, how they were physically and mentally ill-treated (often by the use of electric shocks) and eventually killed; and the fact that some of these unlawful acts were committed on the basis of the defendant's orders, while the others he did not prevent although he was aware of them ..."

26. On 5 January 2011 the investigating judge extended the applicant's detention for a further two months under Article 102 § 1 (2) and (4) of the Code of Criminal Procedure (risk of collusion and gravity of charges). He found that some more witnesses needed to be questioned and reiterated his previous findings concerning the gravity of the charges against the applicant.

27. The applicant appealed against that decision and on 14 January 2011 a three-judge panel of the Zagreb County Court dismissed his appeal as ill-founded, reiterating its previous arguments.

28. The investigating judge extended the applicant's detention on 9 March 2011 for a further two months, relying on Article 102 § 1 (2) and (4) of the Code of Criminal Procedure (risk of collusion and gravity of charges). He found that eight witnesses still needed to be questioned and that the arguments concerning the gravity of the charges were still valid.

29. The applicant appealed against that decision, reiterating his previous arguments, and on 18 March 2011 a three-judge panel of the Zagreb County Court dismissed his appeal as ill-founded, relying on the same grounds as those in its previous decisions.

30. On 9 May 2011 the investigating judge extended the applicant's detention for a further month under Article 102 § 1 (2) and (4) of the Code of Criminal Procedure (risk of collusion and gravity of charges), reiterating his previous arguments concerning the gravity of the charges and finding that five more witnesses needed to be questioned.

31. The applicant appealed against that decision and on 27 May 2011 a three-judge panel of the Zagreb County Court dismissed his appeal as ill-founded, noting in particular that, in view of the gravity of the charges imputed to the applicant and given that he had been detained for some six months, there was still a predominant interest in keeping him in detention. It also considered that he should be remanded in custody until all the witnesses had been questioned.

32. Following the submission of the indictment against the applicant to the Zagreb County Court (see paragraph 12 above), on 10 June 2011 a three-judge panel of that court extended the applicant's detention pending trial under Article 102 § 1 (4) of the Code of Criminal Procedure (gravity of charges). The relevant part of the decision reads:

"When assessing whether further extension of the detention is needed under Article 102 § 1 (4) of the Code of Criminal Procedure, the panel looked into the facts

of the indictment and found that there was a reasonable suspicion that the accused Tomislav Merčep, in the period between 8 October 1991 and mid-December 1991, as an official and the commander of the reserve unit of the Ministry of the Interior of the Republic of Croatia, authorised to command his subordinates, ordered the unlawful deprivation of liberty, torture and killing of certain civilians. When he was not present in the field, although aware that his subordinates were acting unlawfully by arbitrarily depriving civilians of their liberty, robbing, ill-treatment, torture, causing physical harm and killing civilians, he did not take the necessary measures to prevent and suppress such unlawful actions, therefore accepting that his subordinates continue with such acts and condoning their consequences.

...

Furthermore, the perpetrators – members of the accused's unit – took money and valuables from their victims (cars, jewellery, household appliances etc.) and subsequently exposed them to brutal torture, such as electric shocks through an induction telephone, cutting open muscles and wiring open wounds, severe beatings, physical ill-treatment, degrading treatment and locking them in rooms without beds or toilets. In addition, the charges against the accused also concern an incident in which members of the unit under his command killed a twelve year-old girl A.Z. by firing six bullets into her head, together with her mother M., both of whom had been taken away after her father, M.Z., had been killed in their doorway in Z.

Consequently, and bearing in mind the extent of the unlawful actions which there is a reasonable suspicion that the accused committed and in particular the number of victims, which was, according to the facts of the indictment, more than twenty, all of them civilians, who were brutally tortured, robbed and killed or who have disappeared, the panel finds that the perpetrator acted with extreme cruelty, brutality, persistence and an extraordinary degree of criminal intent.

All of the above-mentioned circumstances, in the opinion of this panel, represent particularly grave circumstances that overcome the usually grave circumstances pertinent to such offences. Therefore, the detention is necessary under Article 102 § 1 (4) of the Code of Criminal Procedure ..."

33. The applicant appealed against that decision to the Supreme Court (*Vrhovni sud Republike Hrvatske*), challenging the necessity of his detention and alleging a number of substantive and procedural flaws.

34. On 6 July 2011 the Supreme Court dismissed the applicant's appeal, upholding the decision of the Zagreb County Court. The Supreme Court in particular noted:

"... the finding of the first-instance court that the grounds for further detention of the accused under Article 102 § 1 (4) of the Code of Criminal Procedure still exist is correct.

The indictment shows a relevant degree of reasonable suspicion that the accused committed the criminal offence under Article 120 § 1 of the Criminal Code, by which the general statutory condition under Article 102 § 1 of the Code of Criminal Procedure has been fulfilled.

...

According to the indictment ... the behaviour of the accused, in the view of this second-instance court, significantly surpasses the ordinary circumstances and consequences of such offences, and represents particularly grave circumstances of the

offence allegedly committed by the accused which warrant detention under Article 102 § 1(4) of the Code of Criminal Procedure.

In his appeal, the accused alleged that there had been a serious breach of criminal procedure, without specifying his argument. In this regard, the second-instance court was unable to find breaches that should have been examined *ex officio*.

The appeal argument of errors of facts is also unfounded, since the first-instance court fully determined the facts and gave detailed, valid and clear reasons for its findings, which this second-instance court fully accepts.

The accused also relied on the case-law of the Constitutional Court in its decision U-III-1683/2008 of 7 May 2008 and Article 5 § 1 [of the Convention], arguing that deprivation of liberty before a final judgment is a particularly sensitive issue, and that such detention should not turn into a prison sentence. Thus, [according to the accused] it can be ordered only when there is a high probability that guilt will be established and a sentence imposed, in cases where there is a reasonable suspicion that the accused has committed a criminal offence and only for the purposes of the proper conduct of the proceedings, conditions which had not been met in the case at issue.

Contrary to the appeal arguments, the extension of detention under Article 102 § 1 (4) of the Code of Criminal Procedure is not contrary to the Constitution or Article 5 of the European Convention on Human Rights. Detention under Article 102 § 1 (4) of the Code of Criminal Procedure has a preventive purpose, namely the deprivation of liberty of the perpetrators of such serious crimes that, if they would be at large, the reputation of the judiciary and the public's faith in it would be diminished; its purpose is not to avert the risk of the proceedings being hindered.

...

The poor state of health of the accused does not call into question the reasonableness of his detention, since adequate medical care, bearing in mind that he suffers from a chronic disease, can be offered to him in detention, that is to say in the prison hospital."

35. The applicant challenged the decision of the Supreme Court before the Constitutional Court (*Ustavni sud Republike Hrvatske*), arguing that the Supreme Court had failed to provide relevant and sufficient reasons for his prolonged pre-trial detention.

36. On 30 August 2011 the Constitutional Court dismissed the applicant's constitutional complaint as ill-founded, endorsing the decisions of the Zagreb County Court and the Supreme Court. The relevant part of the decision reads:

"In view of the competence of the Supreme Court as the highest court ensuring the coherent application of the law and the equality of everyone in its application (Article 116 § 1 of the Constitution), the likelihood of a prison sentence within the given term and the particularly grave circumstances of the offence, the Constitutional Court finds that the Supreme Court and the Zagreb County Court satisfied the relevant opinions and requirements when extending the pre-trial detention under Article 102 § 1 (4) of the Code of Criminal Procedure ..."

37. On 6 September 2011 a three-judge panel of the Zagreb County Court extended the applicant's detention under Article 102 § 1 (4) of the

Code of Criminal Procedure (gravity of charges), reiterating its previous arguments.

38. The applicant appealed against that decision to the Supreme Court and on 28 September 2011 the Supreme Court dismissed his appeal as ill-founded on the grounds that, in the particular circumstances of the case, his detention was still justified.

39. On 28 November 2011 a three-judge panel of the Zagreb County Court extended the applicant's detention under Article 102 § 1 (4) of the Code of Criminal Procedure (gravity of charges) on the grounds that the reasons warranting his detention still persisted.

40. The applicant appealed against that decision and on 14 December 2011 the Supreme Court dismissed his appeal as ill-founded, endorsing the reasoning of the Zagreb County Court.

41. The applicant's detention was further extended on 14 February 2012 by a decision of a three-judge panel of the Zagreb County Court, relying on Article 102 § 1 (4) of the Code of Criminal Procedure (gravity of charges) and reiterating its previous arguments.

42. The applicant challenged that decision before the Supreme Court and on 29 February 2012 the Supreme Court dismissed his appeal as ill-founded on the grounds that no doubts had been raised as to the findings of the Zagreb County Court.

43. The applicant then lodged a constitutional complaint before the Constitutional Court, arguing that his detention was no longer justified and proportionate.

44. On 18 April 2012 the Constitutional Court dismissed the applicant's constitutional complaint, endorsing the extension of his pre-trial detention. However, the Constitutional Court indicated that the lower courts were obliged to thoroughly assess all the relevant circumstances of the case, and in particular the applicant's state of health, when deciding whether his pre-trial detention should be extended.

45. On 27 April 2012 a three-judge panel of the Zagreb County Court extended the applicant's detention under Article 102 § 1 (4) of the Code of Criminal Procedure (gravity of charges), finding that the circumstances warranting his detention still persisted. With regard to the applicant's state of health, it indicated that so far, nothing suggested that he could not receive appropriate medical treatment in detention.

46. The applicant appealed to the Supreme Court alleging lack of appropriate reasoning in the decision of the Zagreb County Court to extend his pre-trial detention.

47. On 21 May 2012 the Supreme Court accepted the applicant's appeal and remitted the case to the Zagreb County Court on the grounds that it had not established all the relevant facts concerning the health care provided to the applicant in detention.

48. In compliance with the order of the Supreme Court, a three-judge panel of the Zagreb County Court re-examined the case. On 29 May 2012 it extended the applicant's detention under Article 102 § 1 (4) of the Code of Criminal Procedure (gravity of charges). With regard to the applicant's state of health, it noted that he was receiving appropriate medical treatment in detention.

49. The applicant challenged that decision before the Supreme Court. On 29 June 2012 the Supreme Court accepted his appeal and remitted the case for re-examination on the grounds that the decision of the Zagreb County Court lacked relevant reasoning.

50. On 5 July 2012 a three-judge panel of the Zagreb County Court revoked the decision on the applicant's detention and ordered his immediate release on the grounds that, although the circumstances of the case warranted his detention, the quality of the medical treatment which he was receiving in detention was not adequate. Since that could raise an issue under Article 3 of the Convention, the Zagreb County Court considered that he should be released pending trial. It stressed in particular:

> "Thus, in the concrete case priority should be given to the values protected by Article 3 of the European Convention on Human Rights because the public interest is reflected not only in the grounds for detention under Article 102 § 1 (4) of the Code of Criminal Procedure but also in the protection and application of the values provided for under the cited provision of the European Convention on Human Rights. In this respect, the time that has elapsed since according to the indictment the offence was committed should be noted, and in particular the period which the accused has spent in detention, as well as the likely duration of the criminal proceedings."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic law

1. Constitution

51. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010, 85/2010 and 5/2014) read as follows:

Article 22

> "Personal freedom and integrity are inviolable.
>
> No one shall be deprived of his liberty save in accordance with the law, and any deprivation of liberty must be examined by a court."

2. Criminal Code

52. The relevant provision of the Criminal Code (*Osnovni krivični zakon Republike Hrvatske*, Official Gazette nos. 53/1991, 39/1992, 91/1992 and 31/1993) provides:

War Crimes against the Civilian Population

Article 120

"(1) Whoever, in breach of the rules of international law during war, armed conflict or occupation, orders ... the killing, torture or inhuman treatment of civilians; ... the infliction of grave suffering on or injuries to the bodily integrity or health of civilians; ... measures of fear and terror against civilians or the taking of hostages, ... illegal arrests ... shall be sentenced to not less than five years' imprisonment or ... twenty years' imprisonment."

3. Code of Criminal Procedure

53. The Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002, 143/2002, 62/2003, 178/2004 and 115/2006) in its relevant part reads as follows:

General Provisions on Detention

Section 101

"(1) Detention may be imposed only if the same purpose cannot be achieved by another [preventive] measure.

(2) Detention shall be lifted and the detainee released as soon as the grounds for detention cease to exist.

(3) When deciding on detention, in particular its duration, a court shall take into consideration the proportionality between the seriousness of the offence, the sentence which ... may be expected to be imposed, and the need to order and determine the duration of detention.

(4) Judicial authorities conducting criminal proceedings shall proceed with particular urgency when the defendant is in detention, and shall review of their own motion whether the grounds and legal conditions for detention have ceased to exist, in which case detention shall immediately be lifted."

Grounds for Ordering Detention

Article 102

"(1) Where a reasonable suspicion exists that a person has committed an offence, that person may be placed in detention:

...

2. if there is a risk that he or she might destroy, hide, alter or forge evidence or traces relevant for the criminal proceedings or might suborn witnesses, or where there is a risk of collusion;

...

4. if the charges involved relate to murder, robbery, rape, terrorism, kidnapping, abuse of narcotic drugs, extortion or any other offence carrying a sentence of at least twelve years' imprisonment, when detention is justified by the *modus operandi* or other particularly grave circumstances of the offence;

..."

Appeal against a decision ordering, lifting or extending a custodial measure

Article 110

"(1) A defendant, defence counsel or the State Attorney may lodge an appeal against a decision ordering, extending or lifting a custodial measure, within two days thereof."

B. Relevant practice

54. In its decision no. U-III-3698/2003 of 28 September 2004, the Constitutional Court examined the conditions under which pre-trial detention could be ordered and extended under Article 102 § 1 (4) of the Code of Criminal Procedure (gravity of charges). The relevant part of the decision reads:

"Before every extension of pre-trial detention, [the competent court] must examine all the circumstances of the case so as to establish whether the grounds for detention still persist. The decision on detention must be reasoned and based on rational grounds justifying such a measure – with the aim of establishing that the detention is a necessary legal measure securing the presence of the defendant (the accused) during the proceedings or that it is necessary and justified because it is obvious in the circumstances that the protection of an important public interest is so relevant that it outweighs, irrespective of the presumption of innocence, the constitutional principle of freedom."

55. On 28 July 2010 the Constitutional Court, in case no. U-III-3804/2010, dismissed a constitutional complaint lodged by an appellant who had been detained pending trial under Article 102 § 1 (4) of the Code of Criminal Procedure (gravity of charges) on charges of war crimes against the civilian population. The relevant part of the decision reads:

"[T]he offence under Article 120 § 1 of the Criminal Code is one of the gravest criminal offences. In the circumstances of the present case, given the manner in which the offence was committed, the severity of the likely sentence and the particularly grave consequences of the crime, the proceedings would in principle be complex and lengthy. The Constitutional Court therefore finds that the impugned decision of the Supreme Court is in compliance [with the Constitution and the relevant law]."

56. In its decision no. Kž 174/11-4 of 8 April 2011, the Supreme Court explained the underlying purpose of pre-trial detention under Article 102 § 1 (4) of the Code of Criminal Procedure (gravity of charges) in the following manner:

"The purpose of pre-trial detention under Article 102 § 4 (2) of the Code of Criminal Procedure is not to prevent the defendant from hindering the proceedings, as is the case under Article 102 § 1 (1), (2) and (3) of the Code of Criminal Procedure. The distinct purpose of pre-trial detention under this provision is to prevent persons whose actions provoke particular moral condemnation from remaining at large, which could be condemned by the public. Thus it would diminish the reputation of the criminal justice system and the public's faith in it. ..."

C. Relevant domestic legal theory

57. In an article entitled "Duration of Detention in the Light of International Standards and Domestic Law and Practice" ("*Trajanje pritvora u svjetlu međunarodnih standarda te domaćeg prava i prakse"*) Dr Z. Đurđević and D. Tripalo explained that it was the settled practice of the domestic courts to order pre-trial detention under Article 102 § 1 (4) of the Code of Criminal Procedure (gravity of charges) only in the context of specific criminal offences which were of a particularly serious nature, in terms of the manner in which they had been perpetrated or their specific consequences. They also noted that, although it was not expressly stated in the relevant domestic law, a historical and comparative interpretation of the relevant provisions of the Code of Criminal Procedure led to the conclusion that the underlying reason for ordering pre-trial detention on the grounds of gravity of the charges was to protect public safety and legal order in cases of the most serious crimes; or, more precisely, to protect the public from great disturbance and to ensure public confidence in the functioning of the judiciary (Z. Đurđević and D. Tripalo, "Trajanje pritvora u svjetlu međunarodnih standarda te domaćeg prava i prakse", 13(2) *Hrvatski ljetopis za kazneno pravo i praksu* (2006), pp. 573-576).

III. RELEVANT INTERNATIONAL MATERIAL

A. Council of Europe

58. The relevant part of Committee of Ministers Recommendation Rec(2006)13 to member states of 27 September 2006 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse provides:

"**II. The use of remand in custody**

Justification

6. Remand in custody shall generally be available only in respect of persons suspected of committing offences that are imprisonable.

7. A person may only be remanded in custody where all of the following four conditions are satisfied:

a. there is reasonable suspicion that he or she committed an offence; and

b. there are substantial reasons for believing that, if released, he or she would either (i) abscond, or (ii) commit a serious offence, or (iii) interfere with the course of justice, or (iv) pose a serious threat to public order; and

c. there is no possibility of using alternative measures to address the concerns referred to in *b.*; and

d. this is a step taken as part of the criminal justice process.

8. [1] In order to establish whether the concerns referred to in Rule 7*b*. exist, or continue to do so, as well as whether they could be satisfactorily allayed through the use of alternative measures, objective criteria shall be applied by the judicial authorities responsible for determining whether suspected offenders shall be remanded in custody or, where this has already happened, whether such remand shall be extended.

[2] The burden of establishing that a substantial risk exists and that it cannot be allayed shall lie on the prosecution or investigating judge.

9. [1] The determination of any risk shall be based on the individual circumstances of the case, but particular consideration shall be given to:

a. the nature and seriousness of the alleged offence;

b. the penalty likely to be incurred in the event of conviction;

c. the age, health, character, antecedents and personal and social circumstances of the person concerned, and in particular his or her community ties; and

d. the conduct of the person concerned, especially how he or she has fulfilled any obligations that may have been imposed on him or her in the course of previous criminal proceedings."

B. Case-law of the international criminal tribunals

1. ICTY

59. In the Order denying a motion for provisional release, in the case of *The Prosecutor v. Tihomir Blaškić*, no. IT-95-14, on 20 December 1996 a Trial Chamber of the ICTY held as follows:

"**CONSIDERING** that both the letter of this text and the spirit of the Statute of the International Tribunal require that the legal principle is detention of the accused and that release is the exception; that, in fact, the gravity of the crimes being prosecuted by the International Tribunal leaves no place for another interpretation even if it is based on the general principles of law governing the applicable provisions in respect of national laws which in principle may not be transposed to international criminal law; ..."

60. In the case of *The Prosecutor v. Rahim Ademi*, no. IT-01-46-PT, the relevant part of the Trial Chamber's order on a motion for provisional release of 20 February 2002 reads:

"12. In addition to those that are still included, Rule 65(B) originally included a requirement that provisional release could be ordered by a Trial Chamber "only in exceptional circumstances." Under this rule it seemed that detention was considered to be the rule and not the exception. However, some decisions issued by Trial Chambers

concluded that the fact that the burden was on the accused and that he or she had to show that exceptional circumstances existed before release could be granted, was justified given the gravity of the crimes charged and the unique circumstances in which the Tribunal operated.

13. The requirement to show "exceptional circumstances" meant that in reality Trial Chambers granted provisional release in very rare cases. These were limited to those where for example, very precise and specific reasons presented themselves which leant strongly in favour of release. Thus, for example, Trial Chambers, before the amendment was adopted, accepted that a life-threatening illness or serious illness of the accused or immediate family members constituted exceptional circumstances justifying release, while illnesses of a less severe nature did not. As stated, the burden remained on an accused at all times to demonstrate to the satisfaction of the Trial Chamber that such circumstances existed. Should the Trial Chamber conclude that they did not, release would not be ordered.

14. After amendment of the rule, an accused no longer needed to demonstrate that such "exceptional circumstances" existed. Trial Chambers seem to have taken two approaches to the new provision. Most Trial Chambers have continued to find that the amendment did not change the other requirements in the Rule and that provisional release was not now the norm. They considered that the particular circumstances of each case should be assessed in light of Rule 65(B) as it now stood. The burden still remained on the accused to satisfy the Trial Chamber that the requirements of Rule 65(B) had been met. This was justified by some given the specific functioning of the Tribunal and absence of power to execute arrest warrants. The second approach seems to have been the following. It has been concluded that based on international human rights standards, "*de jure* pre-trial detention should be the exception and not the rule as regards prosecution before an international court." The Trial Chamber in question referred to the fact that, at the Tribunal, in view of its lack of enforcement powers, "pre-trial detention *de facto* seems to be...the rule." In addition, it stated that one must take account of the reference to serious crimes. Nevertheless, it found that, "any system of mandatory detention on remand is *per se* incompatible with Article 5(3) of the Convention (see *Ilijkov v. Bulgaria*, ECourtHR, Decision of 26 July 2001, para. 84). Considering this, the Trial Chamber must interpret Rule 65 with regard to the factual basis of the single case and with respect to the concrete situation of the individual human being and not *in abstracto*."

2. International Criminal Tribunal for Rwanda

61. In its decision on a defence motion for release in the case of *The Prosecutor v. Théoneste Bagosora et al.*, no. ICTR-98-41-T, on 12 July 2002 a Trial Chamber of the International Criminal Tribunal for Rwanda noted the following:

"27. The Chamber notes that in certain circumstances, six years of pre-trial detention may be a factor in the consideration of exceptional circumstances warranting the release of an accused. However, the length of current or potential future detention of the Accused cannot be considered material in these circumstances because it does not mitigate in any way that the Accused, who is charged with the grave offences coming under the subject matter jurisdiction of this Tribunal, which offences carry maximum term of imprisonment of his life, may be a flight risk or may pose a threat to witnesses or to the community if he were to be released. Detention under Rule 65 is intended to ensure the safety of the community and the integrity to the trial process. The Chamber observes that the Accused even while in custody found

the opportunity to intentionally absent himself from the trial proceedings of 2 April 2002."

3. International Criminal Court

62. The relevant part of the Decision of a Pre-Trial Chamber on the application for the interim release of Thomas Lubanga Dyilo of 18 October 2006, in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, no. ICC-01/04-01/06, reads:

"**CONSIDERING** that since pre-trial detention cannot be extended to an unreasonable degree; that reasonableness cannot be assessed *in abstracto* but depends on the particular features of each case; and that to assess the reasonableness of the detention, it is particularly important to assess the complexity of the case; ..."

THE LAW

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

63. The applicant complained about the length of his pre-trial detention and in particular that the reasons put forward by the national courts when extending his pre-trial detention in the period between 10 December 2010 and 5 July 2012 had not been relevant and sufficient. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

1. The parties' arguments

64. The Government submitted that the applicant did not have victim status, given that his pre-trial detention had not been excessive or unreasonable.

65. The applicant maintained that he had been a victim of a violation of the Convention on account of his unjustified pre-trial detention.

2. The Court's assessment

66. The Court reiterates, as regards the applicant's victim status, that under Article 34 of the Convention, "[it] may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto ..." (see, for example, *Burdov v. Russia (no. 2)*, no. 33509/04, § 54,

ECHR 2009). The word "victim", in the context of Article 34 of the Convention, denotes the person or persons directly or indirectly affected by the alleged violation (see, amongst many others, *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts)).

67. In the case at issue the applicant complained of a violation of Article 5 § 3 of the Convention in connection with his allegedly unjustified pre-trial detention in the period between 10 December 2010 and 5 July 2012 during criminal proceedings against him on charges of war crimes against the civilian population. The Government seem not to contest this but rather to disagree as to whether this amounted to a violation of the cited provision of the Convention.

68. Accordingly, as the Government's argument will be addressed further below in the Court's examination on the merits of the applicant's complaint, and in the absence of any relevant argument by the Government concerning the applicant's victim status under Article 34 of the Convention, the Court rejects the Government's objection.

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

B. Merits

1. The parties' arguments

(a) The applicant

70. The applicant contended that his pre-trial detention in the period between 10 December 2010 and 5 July 2012 had not been based on relevant and sufficient reasons as there was nothing in the domestic courts' decisions showing that his release from detention would run counter to an important public interest or that it would threaten public order. This was particularly true given his impaired state of health, which the domestic courts had not properly assessed or taken into account when ordering and extending his pre-trial detention. Moreover, in the applicant's view, there was never a reasonable suspicion that he had committed the offences at issue, and throughout the proceedings he had been exposed to a virulent media campaign.

71. With regard to the ground for ordering pre-trial detention under Article 102 § 1 (4) of the Code of Criminal Procedure (gravity of charges) the applicant pointed out that it essentially allowed the domestic courts to order and extend his detention merely on the basis of a reasonable suspicion that he had committed an offence, without ever examining all the relevant circumstances of the case and showing the existence of relevant and sufficient reasons justifying his prolonged detention. This was, in the

applicant's view, contrary to the requirements of Article 5 of the Convention.

(b) The Government

72. The Government argued that throughout the period of the applicant's detention there had been a reasonable suspicion that he had committed war crimes against the civilian population. In addition to the existence of a reasonable suspicion that he had committed the crimes at issue, during the investigation he had been detained on the grounds of a risk of collusion and the gravity of charges. Specifically, the domestic courts had examined all the relevant circumstances of the case and found that there was a risk that the applicant might suborn the witnesses who needed to be questioned during the investigation. Once the witnesses had been questioned, his detention was no longer extended on that ground.

73. The Government further pointed out that the applicant's detention pending trial had been extended on grounds of the gravity of the charges, which were commonly accepted as legitimate grounds for detention aimed at preventing any disturbance of public order. The Government compared the instant case to that of *Šuput v. Croatia* (no. 49905/07, 31 May 2011), in which the domestic courts had examined *in concreto* the relevant reasons warranting the applicant's pre-trial detention on those grounds. The interest of the public was evident from the wide media coverage of the applicant's case and thus the domestic courts had correctly established that his detention needed to be extended on the grounds of the particular gravity of the charges against him.

74. Lastly, the Government submitted that the domestic courts had displayed the requisite diligence in the conduct of the proceedings, including in the assessment of the applicant's state of health, and that, in view of the complexity of the case, the length of his pre-trial detention had not been excessive or disproportionate. That was also demonstrated by the fact that the domestic courts had released the applicant from detention as soon as it ceased to be reasonable to continue to remand him in custody.

2. The Court's assessment

(a) General principles

75. The Court reiterates that Article 5 of the Convention is in the first rank of the fundamental rights that protect the physical security of an individual, and that three strands in particular may be identified as running through the Court's case-law: the exhaustive nature of the exceptions, which must be interpreted strictly and which do not allow for the broad range of justifications under other provisions (Articles 8 to 11 of the Convention in particular); the repeated emphasis on the lawfulness of the detention, procedurally and substantively, requiring scrupulous adherence to the rule

of law; and the importance of the promptness or speediness of the requisite judicial controls under Article 5 §§ 3 and 4 (see, for instance, *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-X).

76. The Court has repeatedly held that the question whether a period of detention is reasonable, under the second limb of Article 5 § 3, cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case. Continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, 26 January 1993, Series A no. 254-A; *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI; and *Idalov v. Russia* [GC], no. 5826/03, § 139, 22 May 2012).

77. The presumption is in favour of release. The second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require him to be released provisionally once his continuing detention ceases to be reasonable (see *Vlasov v. Russia*, no. 78146/01, § 104, 12 June 2008, with further references).

78. It falls in the first place to the national judicial authorities to ensure that in a given case the pre-trial detention of an accused person does not exceed a reasonable time. To this end, they must examine all the evidence for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and the facts cited by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV).

79. The arguments for and against release must not be "general and abstract" (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX). Where the law provides for a presumption in respect of factors relevant to the grounds for continued detention, the existence of the specific facts outweighing the rule of respect for individual liberty must be convincingly demonstrated (see *Ilijkov v. Bulgaria*, no. 33977/96, § 84 *in fine*, 26 July 2001).

80. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where

such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see, amongst many others, *Idalov*, cited above, § 140; see also, *B. v. Austria*, 28 March 1990, § 42, Series A no. 175; *Toth v. Austria*, 12 December 1991, § 67, Series A no. 224; *Contrada v. Italy*, 24 August 1998, § 54, *Reports* 1998-V; *I.A. v. France*, 23 September 1998, § 102, *Reports* 1998-VII; and *Krikunov v. Russia*, no. 13991/05, § 36, 4 December 2014).

(b) Application of those principles to the present case

81. The Court notes that the applicant was arrested and detained on 10 December 2010 by a decision of the investigating judge (see paragraphs 19-20 above) and that he was released from detention on 5 July 2012 by a decision of a three-judge panel of the Zagreb County Court (see paragraph 50 above).

82. According to the Court's well-established case-law, in determining the length of detention under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day he is released (see, for example, *Fešar v. the Czech Republic*, no. 76576/01, § 44, 13 November 2008) or when the charge was determined, even if only by a court of first instance (see *Belevitskiy v. Russia*, no. 72967/01, § 99, 1 March 2007).

83. Accordingly, the total period of the applicant's detention to be taken into consideration amounts to one year, six months and twenty-five days.

(i) Grounds for detention

84. The Court observes that in the period between 10 December 2010 and 10 June 2011, during the investigation of the allegations that the applicant had committed war crimes against the civilian population, in addition to the existence of a reasonable suspicion that he had committed the crimes at issue, he was detained on grounds of risk of collusion by suborning witnesses and gravity of the charges (see paragraphs 19-31 above). On 10 June 2011, after he had been indicted in the Zagreb County Court on charges of war crimes against the civilian population, his detention was extended on the grounds of gravity of the charges, related to the public danger of the offences at issue and the necessity of securing public confidence in the judiciary. That was the basis for continuing to remand him in custody until his release on 5 July 2012 (see paragraphs 32-50 above).

85. The Court notes that the reasonable suspicion on which the domestic courts based their decisions followed from the extensive material provided by the police and the prosecuting authorities of the ICTY (see paragraphs 6, 8 and 10 above). In the further course of the investigation, additional voluminous evidence was obtained (see paragraph 11 above), and the existence of a reasonable suspicion that the applicant had committed the

crimes at issue was established by a three-judge panel of the Zagreb County Court when confirming the indictment against him (see paragraph 14 above).

86. In view of the findings of the domestic courts, which are based on reasonable and convincing grounds (see, by contrast, *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, § 97, 22 May 2014), the Court accepts that throughout the period of the applicant's detention a reasonable suspicion existed that he had committed the war crimes against the civilian population.

87. In these circumstances the Court will examine whether the other grounds given by the judicial authorities continued to justify the applicant's deprivation of liberty during the investigation and trial.

(α) Period between 10 December 2010 and 10 June 2011 (investigation)

88. The Court notes that in the six-month period between 10 December 2010 and 10 June 2011, during the investigation of the allegation that the applicant had committed war crimes against the civilian population, the national courts justified his detention on the grounds not only of the nature of the crimes allegedly committed, but also of the risk that, if at large, he might suborn witnesses who needed to be questioned during the investigation.

89. In this connection, the Court reiterates that detention on the grounds that pressure might be brought to bear on witnesses can be accepted at the initial stages of the proceedings (see *Jarzyński v. Poland*, no. 15479/02, § 43, 4 October 2005). In the long term, however, the requirements of the investigation do not suffice to justify the detention of a suspect, as in the normal course of events the risks alleged diminish over time as inquiries are completed, statements are taken and verifications are carried out (see *Clooth v. Belgium*, 12 December 1991, § 44, Series A no. 225). Moreover, the risk of the accused hindering the proper conduct of the proceedings cannot be relied upon *in abstracto*; it has to be supported by factual evidence (see *Becciev v. Moldova*, no. 9190/03, § 59, 4 October 2005).

90. In the present case, at the initial stages of the applicant's detention, the investigating judge, and a three-judge panel of the Zagreb County Court reviewing his decisions, noted the exact number and names of witnesses to be questioned during the investigation and the reasons for suggesting that there was a risk that the applicant might suborn them. In particular, they noted that there was a substantial risk that in order to minimise his criminal responsibility, the applicant might directly or indirectly contact and influence the witnesses and the victims, who still felt distress and fear following the serious crimes committed against them (see paragraphs 20 and 25 above; and compare, by contrast, *Mikalauskas v. Malta*, no. 4458/10, § 121, 23 July 2013).

91. However, as the investigation advanced and the witnesses were questioned, the investigating judge, relying on the risk of collusion, clearly stated the number of witnesses who still needed to be questioned (see paragraphs 26, 28 and 30 above), and after the completion of the investigation, the applicant's detention was no longer extended on that ground (see paragraph 32 above).

92. It follows that the applicant's detention during the investigation in the period in question was based on relevant and sufficient reasons.

(β) Period between 10 June 2011 and 5 July 2012 (trial)

93. The Court observes that in their decisions to extend the applicant's pre-trial detention from 10 June 2011 to 5 July 2012, the national courts – apart from the persisting reasonable suspicion that he had committed the war crimes against the civilian population – relied on the nature and gravity of the charges at issue related to the public danger and complexity of the crimes (see paragraphs 32-50 above).

94. In this connection the Court has repeatedly held that although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence (see, amongst many others, *Ilijkov*, cited above, § 81; *Khudoyorov v. Russia*, no. 6847/02, § 180, ECHR 2005‑X; *Belevitskiy*, cited above, § 101, 1 March 2007; *Getoš-Magdić v. Croatia*, no. 56305/08, § 85, 2 December 2010; and *Sigarev v. Russia*, no. 53812/10, § 53, 30 October 2014).

95. This is particularly true in instances in which detention is ordered or extended by relying on the gravity of the charges without providing any relevant explanation pertinent to the particular circumstances of a case (see, for instance, *Orban v. Croatia*, no. 56111/12, § 58, 19 December 2013). It also applies in cases where the characterisation in law of the facts, and thus the sentence faced by the accused, is determined by the prosecution without judicial review of whether the evidence obtained supports a reasonable suspicion that the accused has committed the alleged offence (see *Ilijkov*, cited above, § 81; *Veliyev v. Russia*, no. 24202/05, § 148, 24 June 2010; and by contrast, *J.M. v. Denmark*, no. 34421/09, § 62, 13 November 2012); likewise, where remand in custody is associated with a system of mandatory detention, which is *per se* incompatible with Article 5 § 3 of the Convention (see *Rokhlina v. Russia*, no. 54071/00, §§ 66-67, 7 April 2005), or where the gravity of the charges or the severity of the sentence are relied on as the decisive factor to justify unreasonably protracted periods of remand in custody (see, for example, *Jėčius v. Lithuania*, no. 34578/97, § 94, ECHR 2000-IX; and *Sutyagin v. Russia*, no. 30024/02, §§ 142-143, 3 May 2011).

96. However, in some instances concerning particularly serious crime, the nature and gravity of the charges against a defendant is a factor

weighing heavily against his or her release and in favour of remanding him or her in custody (see, for instance, *Van der Tang v. Spain*, 13 July 1995, §§ 61-63, Series A no. 321; *Dudek v. Poland*, no. 633/03, § 38, 4 May 2006; and *Kusyk v. Poland*, no. 7347/02, § 38, 24 October 2006). Indeed, regard to the gravity of the charges may lead to the conclusion that some other related legitimate grounds for detention exist, such as the protection of public order from disturbance (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; *I.A.*, cited above, § 104, *Reports of Judgments and Decisions* 1998-VII), or the public's sense of justice (see *J.M.*, cited above, § 62).

97. Accordingly, in the cases of *Getoš-Magdić* and *Šuput* (both cited above) concerning complaints about prolonged pre-trial detention in criminal proceedings on charges of war crimes against the civilian population, where the prolongation was based solely on the gravity of the charges, the Court attached a particular significance to the seriousness of the crime at issue and the nature and gravity of the charges against the applicants. It observed, in particular, that Article 102 § 1 (4) of the Code of Criminal Procedure did not provide for mandatory remand in custody and that the domestic courts had examined in detail the particular gravity of the specific circumstances of the case. Thus, given that the detention on the grounds of the gravity of charges had not lasted excessively long in the circumstances, and in view of the seriousness of the crime at issue and the nature and gravity of the charges against the applicants, the Court considered that the domestic authorities' reliance solely on the gravity of charges was a relevant ground for the applicants' detention (see *Getoš-Magdić*, cited above, §§ 80-91, and *Šuput*, cited above, §§ 101-10).

98. Against the above background, the present case is distinguishable from the Court's case-law in which it found that the domestic courts' reliance on the gravity of the charges or the severity of the sentence as the decisive factor to justify long periods of remand in custody had breached Article 5 § 3. This conclusion is based on the following reasons.

99. The Court firstly notes, as it observed in *Getoš-Magdić* and *Šuput*, that Article 102 § 1 (4) of the Code of Criminal Procedure, on which the domestic courts relied when extending the applicant's detention, provided for a possibility of detention where a reasonable suspicion existed that the defendant had committed a criminal offence carrying a sentence of at least twelve years' imprisonment and where detention was justified by the manner in which the crime had been committed or other particularly grave circumstances (see paragraph 53 above). That provision therefore did not provide for mandatory detention, nor was it applied to that effect in the applicant's case (compare *Getoš-Magdić*, cited above, §§ 82-84, and *Šuput*, cited above, §§ 103-05).

100. The applicant's detention was rather extended under Article 102 § 1 (4) of the Code of Criminal Procedure on the grounds that he was charged with a very serious crime, carrying the maximum sentence of twenty years'

imprisonment (see paragraph 52 above), and by the courts' reliance on the specific elements of the charges against him. In particular, the national courts repeatedly explained in detail the charges against the applicant. They cited considerations, such as the fact that the charges concerned his actions and omissions in his capacity as an official in the Ministry of the Interior and a commander of a reserve police unit. They also cited the fact that the unit under his command had allegedly taken money and valuables from their victims (cars, jewellery, household appliances), and had subsequently exposed them to torture, sometimes by subjecting them to electric shocks through an induction telephone, cutting open muscles and wiring open wounds, severe beatings, physical ill-treatment, degrading treatment and locking in rooms without beds or toilets. They had also allegedly carried out summary executions, including the killing of a twelve year-old girl and her family, as well as killings and ill-treatment of more than twenty other civilians (see paragraphs 25, 32 and 34 above).

101. It follows that the reasons relied upon by the national authorities cannot be said to have been stated *in abstracto*, nor can it be said that at any point they ordered or extended the applicant's detention on identical or stereotypical grounds, using some pre-existing template or formalistic and abstract language (compare *Getoš-Magdić*, cited above, § 86, and *Šuput*, cited above, § 107; and, by contrast, *Fırat v. Turkey*, no. 37291/04, § 24, 30 June 2009).

102. In this connection the Court also observes that, unlike some other legal systems where the sentence faced by the accused is determined by the prosecution without any judicial review (see, for example, *Artemov v. Russia*, no. 14945/03, § 77, 3 April 2014), in the Croatian legal system, although the public prosecution is responsible for drawing up the indictment, it is for the domestic courts to verify regularly during the pre-trial detention the existence of a reasonable suspicion that the offence at issue was committed. In so doing, they must review whether the particular charges against the accused are supported by the relevant evidence (see paragraphs 13-14 and 54-55 above; compare *J.M.*, cited above, § 62).

103. Furthermore, the Court notes that when reviewing the applicant's continued detention on the grounds of gravity of the charges, the Supreme Court stressed that, in view of the gravity of the specific charges against him, his remand in custody was necessary in order to preserve the public order, that is to say the reputation of the judiciary and the public's faith in it, which could be diminished if the alleged perpetrators of crimes such as war crimes against the civilian population were at large (see paragraphs 34 and 53 above; and compare *J.M.*, cited above, § 62; and, by contrast, *Orban*, cited above, § 61).

104. In this connection the Court notes that although the considerations such as the prevention of social disturbance and the protection of public order were not expressly stated in the relevant domestic law (see *Peša v.*

Croatia, no. 40523/08, § 103, 8 April 2010), they are generally seen as underlying reasons to consider ordering and extending pre-trial detention under Article 102 § 1 (4) of the Code of Criminal Procedure (see paragraphs 56 and 57 above). The prevention of a threat to public order is commonly seen as a legitimate ground for detention (see paragraph 58 above), and is as such accepted in the Court's case-law (see, for example, *Peša*, cited above, § 101, and *J.M.*, cited above, § 62, where the preservation of the public's sense of justice was in issue), and international criminal law practice (see, for instance, paragraph 61 above). Indeed, given the specific nature of the charges of war crimes against civilian population, this ground for detention appears particularly pertinent to the cases involving charges of such grave breaches of fundamental human rights, which in the general public commonly provoke particular moral condemnation (see paragraphs 56 and 97 above).

105. However, as the Court explained for the first time in the *Letellier* case (cited above), this ground can be regarded as relevant and sufficient only if it is based on facts capable of showing that the accused's release would actually prejudice public order. In addition, detention will continue to be legitimate only if public order remains threatened; its continuation cannot be used to anticipate a custodial sentence (see *Letellier*, cited above, § 51; *I.A.*, cited above, § 104; and *Kemmache v. France (no. 1 and no. 2)*, 27 November 1991, § 52, Series A no. 218).

106. In the present case, the conclusion of the Supreme Court as to the possibility that public order might be threatened was based on the findings of the Zagreb County Court concerning the specific facts pertinent to the concrete charges against the applicant, and in particular the effect on the victims and the particularly grave circumstances in which the alleged crimes had been committed (see paragraphs 32 and 34 above). These charges concerned in particular the arbitrary deprivation of liberty, the unlawful confiscation of property, severe acts of ill-treatment and summary executions of civilians, including children.

107. It is therefore reasonable to assume that there was a risk of social disturbance and prejudice to public order in the event that the alleged perpetrator of those crimes was released, which must have reasonably persisted during the period in which the applicant was detained pending trial (compare *Tomasi v. France*, 27 August 1992, § 91, Series A no. 241-A). This is all the more so given the undisputed wide public interest in and general relevance of the applicant's case (see paragraphs 6, 70 and 73 above), and the fact that the crimes at issue amounted to a negation of the very foundations of the Convention, which produce long-lasting effects (see the approach in *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, §§ 150-51, ECHR 2013; see further *Marguš v. Croatia* [GC], no. 4455/10, § 133, ECHR 2014 (extracts)).

108. Lastly, the Court acknowledges that the relevant issues pertaining to the duration of and grounds for the applicant's detention were also examined by the national courts. They reviewed the reasonableness of the applicant's continued detention also from the Convention perspective (see paragraph 34 above), and after his detention ceased to be reasonable in view of his state of health, the Zagreb County Court ordered his immediate release (see paragraph 50 above; and compare *Getoš-Magdić*, cited above, § 88). Thus, it put an end to the situation complained of by the applicant.

(ii) Conduct of the proceedings

109. It remains to be ascertained whether the national authorities displayed "special diligence" in the conduct of the proceedings.

110. In this regard, the Court observes that the criminal case at issue was very complex, requiring the collection and examination of voluminous documentation and physical evidence, as well as the need to seek expert advice on matters of DNA analyses and the questioning of a number of witnesses; some of which through the international legal assistance in criminal matters (see paragraph 11 above).

111. The Court also notes that the domestic authorities diligently conducted all the relevant procedural actions and that there is nothing before it which would allow it to criticise them for failing to observe "special diligence" in the handling of the applicant's case.

112. Against the above background, and in the particular circumstances of the present case, the Court finds that the applicant's pre-trial detention, throughout the period in which he was remanded in custody, was based on relevant and sufficient reasons, with due observance of the requirement of "special diligence" in the proceedings.

113. The Court therefore finds that there has been no violation of Article 5 § 3 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 26 April 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Işil Karakaş
Registrar	President