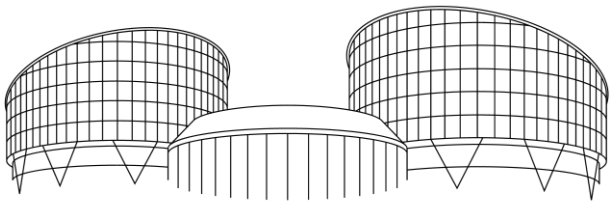

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF DERVISHI v. CROATIA

(Application no. 67341/10)

JUDGMENT

STRASBOURG

25 September 2012

FINAL

25/12/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Derrvishi v. Croatia,

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

Anatoly Kovler, *President,*
Nina Vajić,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 4 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 67341/10) 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 Januz Dervishi ("the applicant"), on 9 October 2010.

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

3. On 5 September 2011 the complaints concerning the alleged lack of reasoning and excessive length of the applicant's pre-trial detention were communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1966 and lives in Rijeka.

5. On 29 April 2008 the applicant was sentenced by a first-instance judgment of the Rijeka Municipal Court (*Općinski sud u Rijeci*) to one year and ten months' imprisonment on charges of extortion. He was not sent to serve the sentence.

6. It appears that another set of criminal proceedings was also pending against the applicant in the Rijeka Municipal Court on charges of making usurious contract and the obstruction of justice.

1 Criminal proceedings against the applicant

7. On 15 May 2008 an investigating judge of the Rijeka County Court (*Županijski sud u Rijeci*) opened an investigation in respect of the applicant in connection with a suspicion that in April 2000 he had organised the shipment of 6.1 kilograms of heroin from the Czech Republic to Italy and that during May and June 2002 he had organised the distribution of heroin in Croatia.

8. On 26 May 2008 the applicant lodged an appeal against the decision to open the investigation and on 30 May 2008 a three-judge panel of the Rijeka County Court dismissed the appeal as ill-founded.

9. The investigating judge heard evidence from witnesses L.I. and D.Z. on 10 and 24 June 2008.

10. On 24 June 2008 the applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) against the decision to open the investigation.

11. The investigating judge heard evidence from witness Ž.D. on 15 July 2008 and from the applicant on 18 July 2008. On 23 July 2008 the investigating judge heard V.X., another suspect in the same case.

12. On 23 July 2008 the investigation was extended to V.X.

13. On 25 September 2008 the Constitutional Court declared the applicant's constitutional complaint against the decision of 15 May 2008 opening the investigation inadmissible on the ground that it did not concern a final decision by which a criminal charge had been determined.

14. On 22 December 2008 witness K.Š. was heard by the Czech police and a written record of her oral statement was transmitted to the Rijeka County Court. On 9 March 2009 the investigating judge commissioned an expert report on the applicant's intercepted telephone conversations. The expert report was submitted to the court on 17 March 2009.

15. The Rijeka Division of the State Attorney's Office for the Suppression of Corruption and Organised Crime (*Državno odvjetništvo, Ured za suzbijanje korupcije i organiziranog kriminaliteta, Odsjek u Rijeci*; hereinafter the "Rijeka State Attorney's Office") indicted the applicant and V.X. in the Rijeka County Court on 2 April 2009, on charges of conspiracy to supply heroin from the Czech Republic to Italy in April 2000. On 15 April 2009 the applicant lodged an objection against the indictment arguing that it had numerous substantive and procedural flaws. The objection was dismissed on 20 May 2009 by a three-judge panel of the Rijeka County Court as ill-founded.

16. A hearing scheduled for 20 June 2009 was adjourned because the applicant's lawyer was unable to attend.

17. At a hearing on 23 September 2009 the applicant and witnesses Ž.D., D.Z. and L.I. gave oral evidence.

18. Another hearing was held on 24 September 2009 where the anonymous witness Ž. gave evidence. The parties made a proposal that all documents concerning the proceedings in Italy in respect of the same case be obtained by the court. The presiding judge accepted the request.

19. At a hearing on 29 October 2009 the parties made further proposals for evidence. The presiding judge ordered that two witnesses be heard.

20. At a hearing on 3 December 2009 witness E.M. gave evidence. Another hearing, scheduled for 26 January 2010, was adjourned because witness K.Š. did not appear.

21. At a hearing on 23 April 2010 witness K.Š. gave evidence via video link from Prague. The presiding judge established that the Italian authorities had submitted certain documents but not all, and requested them to also submit the audio recordings of the intercepted telephone conversations.

22. Hearings scheduled for 24 and 25 May 2010 were adjourned because the audio recordings had not been received from the Italian authorities.

23. At a hearing on 18 June 2010 the presiding judge established that the Italian authorities had not submitted the audio recordings and the hearing was adjourned. Another hearing scheduled for 6 July 2010 was adjourned for the same reason.

24. Hearings scheduled for 13, 14 and 15 September 2010 were adjourned because the audio recordings had not been received and because a member of the trial panel could not attend.

25. Hearings scheduled for 14 and 15 October 2010 were adjourned because the audio recordings had not been received.

26. On 18 November 2010 an official of the Ministry of Justice (*Ministarstvo Pravosuđa Republike Hrvatske*) informed the presiding judge that she had contacted the Italian authorities, who had informed her that some of the requested documents had been sent and that they were still searching for the audio-recordings.

27. A hearing scheduled for 22 November 2010 was adjourned because the presiding judge and another member of the panel had other obligations. Another hearing, scheduled for 23 November 2010, was also adjourned because a member of the trial panel could not attend owing to a death in her family.

28. At a hearing on 9 December 2010 the presiding judge established that the Italian authorities had not submitted the audio recordings and the hearing was adjourned.

29. On 1 March 2011 another hearing was held where the presiding judge again established that the Italian authorities had not submitted the audio recordings and the hearing was adjourned.

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

2. Decisions on the applicant's detention

31. The applicant was arrested on 14 May 2008 on suspicion of trafficking in heroin.

32. The investigating judge heard the applicant on 15 May 2008 and ordered his detention under Article 102 § 1(2) of the Code of Criminal Procedure (risk of tampering with evidence). The relevant part of the decision reads:

> " ... the investigating judge has to hear evidence from witnesses 'Ž.' and Ž.D. and seek information about the witnesses L.O. and K.S., called by the State Attorney, in order to hear them as witnesses. Therefore, it is obvious that there are circumstances indicating that, if released, the defendant might interfere with the conduct of the investigation by suborning the witnesses."

33. The Rijeka State Attorney's Office lodged an appeal on 16 May 2008, arguing that the applicant should also have been detained under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure (risk of reoffending and gravity of charges). The applicant also lodged an appeal, arguing that there was no evidence that he might suborn witnesses.

34. On 23 May 2008 a three-judge panel of the Rijeka County Court allowed the appeal by the State Attorney's Office, quashed the impugned decision on the ground that it was not sufficiently reasoned in terms of the detention not being ordered under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure (risk of reoffending and gravity of charges), and remitted the case to the investigating judge.

35. The investigating judge ordered the applicant's further detention on 26 May 2008, again under Article 102 § 1(2) of the Code of Criminal Procedure (risk of tampering with evidence), giving the same arguments as before. As to the matter of detention under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure (risk of reoffending and gravity of charges) the investigating judge noted:

> " ... the investigating judge considers that the evidence in the case file does not show that there are any circumstances justifying the fear that the defendant might reoffend. The fact that a criminal complaint was lodged by the [Primorsko-goranska Police Department] in respect of two other offences of drug abuse under Article 173 § 2 of the [Criminal Code] does not suggest any likelihood of reoffending at this stage of the investigation, especially as no investigation was opened in respect of those two offences.
>
> As to the proposal of pre-trial detention under Article 102 § 1(4), the investigating judge did not accept it because the material in the case file does not point to a particularly serious offence, especially as it was allegedly committed in April 2000 in the Czech Republic and in June 2002 ..."

36. The applicant lodged an appeal on 29 May 2008, which was dismissed by a three-judge panel of the Rijeka County Court on 30 May 2008. The court held that reasonable suspicion existed that the applicant had committed the offence and that the witnesses to be heard by the

investigating judge, namely Ž.D., L.O. and K.S., had knowledge related to the charge of supplying drugs that justified the fear that the applicant might suborn them if released.

37. The investigating judge further extended the applicant's detention on 13 June 2008, under Article 102 § 1(2) of the Code of Criminal Procedure (risk of tampering with evidence), stating that witnesses Ž.D., A.P., D.Z. and K.S. were yet to be heard.

38. The applicant lodged an appeal on 18 June 2008, where he argued, relying on the Court's case-law, that there was no indication whatsoever that he might influence the witnesses in question. The fact that the witnesses had yet to be heard could not suffice to conclude that there was a risk that he would try to influence them.

39. On 20 June 2008 a three-judge panel of the Rijeka County Court dismissed the applicant's appeal, finding that the information in the case file revealed that the applicant had had close contacts with witness Ž.D. which justified the fear that he might attempt to influence that witness.

40. The applicant lodged a constitutional complaint against that decision with the Constitutional Court on 24 June 2008, arguing, *inter alia*, that the fact that he was close to Ž.D. could not justify his detention, as there was no indication of his intention to suborn that witness.

41. The investigating judge extended the applicant's detention on 14 July 2008 under Article 102 § 1(2) of the Code of Criminal Procedure (risk of tampering with evidence), stating that witness Ž.D. had not yet given evidence and that a request for the investigation to be extended to cover another person and another sale of heroin had been lodged, all of which indicated a danger of "interference with further criminal proceedings by suborning witnesses and other participants".

42. The applicant lodged an appeal against that decision on 16 July 2008, arguing that the fact that a witness had to be heard was not a sufficient reason to keep him in detention.

43. A three-judge panel of the Rijeka County Court dismissed that appeal on 18 July 2008, stating that Ž.D., who had had close contacts with the applicant, had not yet been heard.

44. After the witness Ž.D. had been heard by the investigating judge on 22 July 2008, the applicant lodged a request for release, arguing that there was no longer any reason for his detention.

45. On 20 August 2008 the applicant lodged a constitutional complaint with the Constitutional Court against the decision of the three-judge panel of the Rijeka County Court of 18 July 2008, arguing that witness Ž.D. had been heard and that, therefore, the reason for which he had been detained had ceased to exist.

46. The investigating judge further extended the applicant's detention on 12 September 2008, under Article 102 §§ 1(3) and (4) of the Code of

Criminal Procedure (danger of reoffending and gravity of charges). The relevant parts of the decision read:

> "As to the extension of detention under Article 102 § 1(3) of the CCP, the facts from the case file show that the first defendant, Januz Dervishi, was sentenced by a first-instance judgment of the Rijeka Municipal Court, and that a further set of criminal proceedings is pending .... Therefore it is obvious that there are circumstances which suggest a risk of reoffending.
>
> The extension of detention under Article 102 § 1(4) of the CCP also appears necessary as the decisions adopted during the investigation show that the first defendant, Januz Dervishi, is charged with trafficking in high quantities of prohibited drugs on the territory of several European countries, which shows that the alleged offence is particularly serious."

47. On 18 September 2008 the applicant lodged an appeal against the above decision, arguing that while it was true that he had been convicted of extortion that judgment had not yet become final. In any case being detained for a long time in fact amounted to serving of the sentence. That conviction could in no way indicate that there was a danger of his reoffending. Such allegations were entirely unsupported by any relevant reasoning, in particular in view of the fact that he had never been prosecuted, let alone convicted, for a drug-related offence. Furthermore, the criminal charges held against the applicant in the proceedings at issue dated back to 1999 – a further indication that there was no danger of his reoffending.

48. The applicant also argued that the investigating judge had already refused to remand him in custody under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure at the beginning of the proceedings, in spite of the State Attorney's Office's request to do so.

49. As regards the gravity of the charges, the applicant argued that no particular reasoning had been put forward on that score.

50. A three-judge panel of the Rijeka County Court dismissed the appeal on 25 September 2008. In addition to the fact that the applicant had been previously finally convicted and also convicted at first instance of extortion, it noted that a further set of criminal proceedings against him was pending before the Rijeka Municipal Court on five different charges, which showed a tendency to break the law. Also, the charge of trafficking in a large amount of heroin was a particularly serious one.

51. On the same date the Constitutional Court declared the applicant's constitutional complaint of 24 June 2008 inadmissible on the ground that a fresh decision on the applicant's detention had been adopted in the meantime.

52. On 21 October 2008 the Constitutional Court declared the applicant's constitutional complaint of 20 August 2008 inadmissible, on the same ground.

53. On 13 November 2008 the investigating judge extended the applicant's detention under Article 102 §§ 1(3) and (4) of the Code of

Criminal Procedure, reiterating the arguments from his decision of 12 September 2008.

54. The investigating judge again extended the applicant's detention on 14 January 2009, under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure, reiterating the same arguments from his previous decisions.

55. The applicant lodged an appeal against the above decision on 19 January 2009, arguing that he had never been convicted of any drug-related offence and that the decision was not sufficiently reasoned.

56. On 22 January 2009 a three-judge panel of the Rijeka County Court dismissed the applicant's appeal, reiterating that he had been breaking the law for a long time, which suggested that there was a genuine risk that he would reoffend. It also held that trafficking in a large amount of heroin was a particularly serious charge and therefore justified his detention.

57. The investigating judge extended the applicant's detention on 13 March 2009, again under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure, reiterating the arguments from his previous decisions.

58. On 18 March 2009 the applicant lodged an appeal and on 20 March 2009 a three-judge panel of the Rijeka County Court dismissed the appeal, reiterating its previous arguments.

59. On 8 April 2009, after the applicant had been indicted in the Rijeka County Court, a three-judge panel of that court extended the applicant's detention, again under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure. The relevant part of the decision reads:

> "The first accused, Januz Dervishi, has already been convicted for making serious threats under Article 129 § 3 of [the Criminal Code] and there are two further sets of criminal proceedings pending against him. In one of them he was found guilty by a first-instance court of attempted extortion under Article 234 in conjunction with Article 33 of the CC, which suggests that he is not a law-abiding citizen. This, combined with the fact that he is unemployed and has no regular source of income, amounts to special circumstances under Article 102 § 1(3) of the CCP which justify the suspicion that he might reoffend...
>
> It is held against the above-mentioned accused that in April 2000, in Prague, in the Czech Republic, he organised the transport of 6.1 kilograms of heroin to Milan, Italy, in order to make a profit by selling the drugs. The quantity of the drug, which was to be distributed on the narcotics market, represented a grave danger, particularly for the younger population. Also, Januz Dervishi showed perseverance in organising the criminal activity, in that he engaged the second accused, V.X., to find a reliable courier to transport the drugs from the Czech Republic to Italy, and then, with help of three other unknown men, he hid the drugs in a car. This, together with the international aspect of the offence, adds up to circumstances which significantly differ from the usual manner in which the offence at issue is committed and renders the circumstances of the offence particularly serious, justifying the extension of the detention under Article 102 § 1(4) of the CCP. ..."

60. On 14 April 2009 the applicant lodged an appeal against the above decision with the Supreme Court (*Vrhovni sud Republike Hrvatske*). Concerning his previous conviction, he argued that he had been convicted of

threatening behaviour in 2006 in circumstances where the injured party had refused to repay a loan. Criminal proceedings on charges of fraud were pending against that person in connection with the same situation. The applicant's previous conviction thus had no relevance and no connection whatsoever with the charges against him in the proceedings in hand and could in no way indicate a risk of his reoffending.

61. As to the statement that he was unemployed, he argued that before he had been detained he had been employed, and that since he had been in detention for a longer period of time, he obviously could not be employed. However, he did have a source of income as his spouse and he owned property which was let.

62. The Supreme Court dismissed the applicant's appeal on 29 April 2009. It endorsed the reasoning of the Rijeka County Court and added that the applicant had been convicted of threatening behaviour and that two other sets of criminal proceedings, on charges of extortion, were pending against him.

63. On 5 June 2009 the applicant requested the Rijeka Municipal Court to be sent to serve his prison term on the basis of the first-instance judgment of that court of 29 April 2008 sentencing him to one year and ten months' imprisonment. On 10 June 2009 his request was accepted by the Rijeka Municipal Court but the applicant could not start serving his prison sentence as long as his pre-trial detention in the proceedings concerning the heroin trafficking charges continued.

64. A three-judge panel of the Rijeka County Court extended the applicant's detention on 29 June 2009, again under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure, reiterating its previous arguments.

65. The applicant lodged an appeal against that decision with the Supreme Court on 2 July 2009, reiterating his previous arguments.

66. His appeal was dismissed on 17 July 2009 by the Supreme Court, which endorsed the reasoning of the Rijeka County Court.

67. On 17 September 2009 a three-judge panel of the Rijeka County Court further extended the applicant's detention under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure, reiterating the same arguments as in its previous decisions.

68. On 21 September 2009 the applicant lodged an appeal with the Supreme Court and on 5 October 2009 the Supreme Court dismissed it as ill-founded.

69. At a hearing on 29 October 2009 the applicant's lawyers requested that the trial court terminate his detention so that he could start serving a prison sentence imposed on him in the criminal proceedings on charges of extortion. They explained that it would allow the applicant to work in prison and in any event he would be accommodated in better conditions. They also pointed out that documents had been requested from the Italian authorities which, based on their experience, would take a long time to obtain.

70. The request was denied by the trial court. As regards the danger of reoffending, it held that there was a reasonable suspicion that the applicant had purchased 6.1 kilograms of heroin with the intention of selling it on, and with that aim organised its transport from Prague to Milan. This conduct indicated a high degree of criminal resolve for monetary gain. Furthermore, he had been convicted of threat and extortion and another set of criminal proceedings was pending against him. He had no regular employment. All these circumstances showed a risk that, if released, he would reoffend.

71. As regards the gravity of the offence, the trial court held that the amount of heroin the applicant had purchased for further sale was such as to put at risk the health of a large number of people and that the criminal activity spanned several countries, which gave it an international dimension.

72. The trial court also indicated that the fact that the applicant had been convicted in another set of criminal proceedings and had requested to be sent to serve the sentence had no bearing on his detention in the current proceedings. In its decision the trial court noted:

> "Namely, under Article 355 paragraph 3 of the CCP, the first accused could have been sent to serve the prison sentence before the judgment became final only if he had been detained in connection with the proceedings in which he made the request. However, he lodged his request [with the Rijeka Municipal Court] on 5 June 2009, and the order was passed on 10 June 2009, and at that time the accused had not been detained in those proceedings because he had been detained in these proceedings since 14 May 2008."

73. On 4 December 2009 a three-judge panel of the Rijeka County Court extended the applicant's detention, under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure, reiterating the same arguments as in its previous decisions.

74. A three-judge panel of the Rijeka County Court again extended the applicant's detention on 10 February 2010, under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure.

75. The applicant lodged an appeal with the Supreme Court against the latter decision on 15 February 2010, but on 19 February 2010 the Supreme Court dismissed his appeal, endorsing the reasoning of the Rijeka County Court.

76. On 15 March 2010 the applicant lodged a constitutional complaint with the Constitutional Court, arguing, *inter alia*, that he had been indicted a year earlier and that the proceedings were not progressing at all, since the evidence thus far obtained did not support the charges against him, and that there was therefore no longer a reasonable suspicion that he had committed the criminal offence of trafficking in heroin. He also challenged the grounds for his detention, reiterating in substance his previous arguments.

77. The Constitutional Court dismissed the complaint on 1 April 2010, endorsing the reasoning of the lower courts.

78. On 19 April 2010 a three-judge panel of the Rijeka County Court extended the applicant's detention, again under Article 102 §§ 1(3) and (4) of the Code of criminal procedure, reiterating its previous arguments as to the risk of reoffending and the gravity of the charges.

79. At a hearing held on 23 April 2010 the applicant requested to be released, but the trial court dismissed his request.

80. At a hearing held on 18 June 2010 the applicant again requested to be released. His lawyer pointed out that the length of the applicant's detention contravened the right to a trial within a reasonable time and the principle of proportionality. He asked the trial court to replace the detention with any other preventive measure it deemed appropriate, such as regular reporting to the police, even every two hours if necessary.

81. On 29 June 2010 a three-judge panel of the Rijeka County Court refused the request for release and extended the applicant's detention under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure. It reiterated its previous arguments as to the grounds for the detention and pointed out that the principle of proportionality had not been infringed since the applicant was charged with a criminal offence punishable by long-term imprisonment and that he had been detained only for a little over two years.

82. A three-judge panel of the Rijeka County Court extended the applicant's detention on 6 September 2010, again under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure, reiterating its previous arguments. The applicant lodged an appeal, which the Supreme Court dismissed on 1 October 2010, endorsing the reasoning of the Rijeka County Court.

83. On 12 November 2010 the applicant lodged a constitutional complaint with the Constitutional Court. He argued, *inter alia*, that the investigation had lasted an unreasonably long time (almost one year) and that the case was not progressing at all. He pointed out that since he had been indicted, ten months earlier, only three witnesses had been heard and there were delays in obtaining evidence from the Czech Republic and Italy.

84. The Constitutional Court dismissed his complaint on 26 November 2010, endorsing the arguments of the lower courts.

85. At a hearing held on 9 December 2010 the applicant requested to be released. His lawyers pointed out that there had been significant delays in obtaining evidence from the Italian authorities. They argued that the last hearing had been held at the beginning of April 2010 and that since then nothing else had happened in the proceedings; in their view this, combined with the fact that the applicant had been detained for over two years and that he had a sick wife and a teenage child, required that he be released from detention pending the arrival of the evidence from Italy.

86. On the same day the Rijeka County Court ended the applicant's detention. The relevant part of the decision reads:

"... the accused has been detained since 14 May 2008, i.e. two years and almost seven months, while the maximum period of pre-trial detention is three years, with the possibility of extension by an additional six months since the detention during the investigation lasted more than six months.

Also, the accused was indicted on 2 April 2009 on charges that he had committed the offence in April 2000, i.e. ten and half years ago. Most of the witnesses were heard in September and December 2009 and then one additional witness from the Czech Republic was heard via video link on 23 April 2010. Furthermore, in order to obtain the relevant documents from Italy, particularly the audio recordings of intercepted telephone conversations, the last request was sent from this court through the Ministry of Justice on 5 May 2010, and an attempt was made to speed up the delivery of the documents through the liaison officer of the State Attorney's Office in EUROJUST but also through telephone conversations with the Ministry of Justice.

In this period no other evidence has been taken or examined in the trial and, up to the date of the last hearing on 9 December 2010, the documentation was never submitted to this court.

Therefore, having in mind the period of time which has lapsed since the alleged offence with which the first accused was charged was committed, the fact that he was never finally convicted for a crime related to drug abuse, the fact that the time he has spent in detention is approaching its maximum limit, but also the uncertainty as to how long it will take to obtain the relevant evidence, this court believes that the grounds for detention on which the accused has been detained are no longer significant enough to render the detention necessary. Also any further period of detention would amount to serving a sentence. ..."

87. The Rijeka State Attorney's Office lodged an appeal with the Supreme Court against that decision, arguing that the Rijeka County Court had misinterpreted the relevant facts.

88. On 22 December 2010 the Supreme Court revisited the Rijeka County Court's decision and extended the applicant's detention under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure, reiterating its previous arguments and concluding that the detention was still necessary. As to the principle of proportionality, it pointed out that the period of detention was not a crucial issue as the gravity of the offence and the sentence that the accused risked incurring were to be taken into account.

89. The applicant lodged another constitutional complaint with the Constitutional Court on 14 February 2011. He again pointed out the significant delays in the proceedings and, relying on the Court's case law, argued that there were no sufficient grounds justifying his pre-trial detention.

90. On 22 February 2011 the Constitutional Court dismissed his complaint, endorsing the arguments of the Supreme Court.

91. On 23 February 2011 the applicant's lawyer informed the Rijeka County Court, the Rijeka State Attorney's Office and the police that the applicant had left Croatia owing to a death in his family after he had been released from detention by the Rijeka County Court's decision of 9 December 2010. However, since the next hearing was scheduled for

1 March 2011 he would be returning to Croatia in time for the trial. His lawyer also informed the authorities of the exact date and place of his arrival in Croatia.

92. On 27 February 2011 the applicant returned to Croatia and he was again placed in detention.

93. At a hearing held on 1 March 2011 the applicant asked to be released. His lawyer pointed out the significant delays in obtaining the evidence from the Italian authorities and requested that the detention be replaced with some other measure, such as regular reporting to the police, noting that the applicant had voluntarily returned to detention after the order for his release was revoked by the Supreme Court.

94. That request was refused on 3 March 2011 by a three-judge panel of the Rijeka County Court.

95. On 29 April 2011 a three-judge panel of the Rijeka County Court extended the applicant's detention, again under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure, reiterating its previous arguments. On 5 May 2011 the applicant lodged an appeal with the Supreme Court against that decision.

96. On 18 May 2011 the Supreme Court dismissed the applicant's appeal, reiterating its previous arguments. As to the applicant's complaints about the violation of the principle of proportionality and the delays in the proceedings, that court noted:

> " ... the-first instance court correctly assessed that the importance of the grounds for detention under Article 102 paragraphs 1(3) and (4) of the CCP, on which the accused has been detained, still justify his detention. The fact that the accused has been detained for two years and almost ten months, not three years as he incorrectly suggests, does not violate the principle of proportionality. ... having in mind also the complexity of the case and the number of actions taken during the proceedings, it cannot be claimed that the authorities in the criminal proceedings have not demonstrated particular diligence. ..."

97. Against that decision the applicant lodged a constitutional complaint with the Constitutional Court. He argued, *inter alia*, that he had been detained for three years and that for one year and five months there had been no progress in the proceedings.

98. On 8 July 2011 the Constitutional Court dismissed the applicant's complaint as ill-founded. The relevant part of the decision reads:

> "[The applicant] argues that there was a violation of his constitutional right to be "promptly, according to law, brought before a court and within a period established by law acquitted or convicted" – Article 25 paragraph 2 of the Constitution; Article 5 paragraph 4 of the [Convention].
>
> However, the constitutional right concerned does not mean that every accused who is detained must be "promptly" brought to trial regardless of the circumstances of the concrete case. This constitutional provision means that the accused must be brought to trial within the time-limits established by law, in order to determine the charges against him. The detainee's right to be tried "promptly" cannot interfere with the

> rights and duties of the competent bodies in criminal proceedings to perform their duties with due care as to the success of their mission. [Therefore] the length of detention cannot be assessed without examination of all the circumstances of the concrete case, such as the course and progress of the criminal or judicial investigation (which in cases with an international element, such as this one, can vary significantly), the [applicant's] personal circumstances and his personality, his behaviour before and after the deprivation of liberty, and other specific facts which justify the fear that, if released, he might interfere with the process of the obtaining of evidence or continue engaging in criminal activities (judgment of the European Court of Human Rights in *Aleksandr Makarov v. Russia*, of 12 March 2009, § 130)."

The Constitutional Court also endorsed the reasoning of the Supreme Court that there was no indication that the authorities had failed to act with the necessary diligence.

99. The applicant's detention was again extended on 18 July 2011 by a three-judge panel of the Rijeka County Court under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure, reiterating its previous arguments. The applicant lodged an appeal with the Supreme Court and on 1 August 2011 the Supreme Court dismissed it as ill-founded.

100. The applicant lodged a constitutional complaint against that decision with the Constitutional Court and on 15 September 2011 the Constitutional Court dismissed it, reiterating its arguments from the decision of 8 July 2011.

101. On 10 August 2011, relying on Section 28 § 3 of the Office for the Suppression of Corruption and Organised Crime, a three-judge panel of the Rijeka County Court extended the applicant's detention for a further six months under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure, reiterating its previous arguments.

102. The applicant lodged an appeal with the Supreme Court and on 16 September 2011 the Supreme Court dismissed it as ill-founded.

103. On an unspecified date in 2011 the applicant lodged a constitutional complaint against the above decision, reiterating his previous arguments.

104. On 11 January 2012 the Constitutional Court dismissed the applicant's constitutional complaint as ill-founded.

105. The applicant remained in pre-trial detention until 1 February 2012, when the maximum period of the pre-trial detention expired.

II. RELEVANT DOMESTIC LAW

106. The relevant parts of the Criminal Code (*Kazneni zakon*, Official Gazette no. 110/1997, 27/1998) provide:

Deduction of Pre-Trial Detention and a Previously Served Sentence

Article 63

"(1) The period of pre-trial detention, as well as any other deprivation of liberty in connection with the criminal offence, shall be deducted from the sentence of imprisonment, long-term imprisonment, juvenile imprisonment or a fine.

..."

Abuse of Narcotic Drugs

Article 173

" ...

(2) Whoever, without authorisation, manufactures, processes, sells or offers for sale or buys for the purpose of reselling, keeps, distributes or brokers the sale and purchase of, or, in some other way and without authorisation, puts into circulation, substances or preparations which are by regulation proclaimed to be narcotic drugs shall be punished by imprisonment for one to ten years, or by long-term imprisonment.

(3) If the criminal offence referred to in paragraph 2 of this Article is committed while the perpetrator is part of a group or a criminal organisation, or has organised a network to sell drugs, he shall be punished by imprisonment for not less than three years or by long-term imprisonment."

107. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002, 143/2002 and 62/2003) provide as follows:

Preventive Measures

Article 90

"(1) Where the conditions for ordering detention under Article 102 of this Code have been fulfilled, and where the same purpose may be achieved by other preventive measures under this Article, the court shall order that one or more preventive measures are to be applied ...

(2) Preventive measures are:

1) prohibition on leaving one's place of residence;

2) prohibition on being in a certain place or area;

3) obligation on the defendant to report periodically to a certain person or a State body;

4) prohibition on access to a certain person or on establishing or maintaining contact with a certain person;

5) prohibition on undertaking a certain business activity;

6) temporary seizure of a passport or other document necessary for crossing the State border;

7) temporary seizure of a driving licence.

... "

8. 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 gravity 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 *ex officio* whether the grounds and legal conditions for detention have ceased to exist, in which case detention shall immediately be lifted."

9. Grounds for Ordering Detention

Section 102

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

1. where there are circumstances which show that there is a risk that [the defendant] will abscond [is in hiding or his or her identity cannot be established etc.);

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;

3. if special circumstances justify the suspicion that the person concerned might reoffend;

4. where the charges 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, or where detention is justified by the *modus operandi* or other especially grave circumstances of the offence."

Article 109

"(1) Until the adoption of a first-instance judgment, pre-trial detention may last for a maximum of:

1. six months for offences carrying a statutory maximum sentence of three years' imprisonment;

2. one year for offences carrying a statutory maximum sentence of five years' imprisonment;

3. eighteen months for offences carrying a statutory maximum sentence of eight years' imprisonment;

4. two years for offences carrying a sentence of more than eight years' imprisonment;

5. three years for offences carrying a sentence of long-term imprisonment.

...”

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...

... ”

14. Execution of Pre-Trial Detention and Treatment of Detainees

Article 111

“(1) Pre-trial Detention shall be executed in accordance with the provisions of this Code and other regulations based on it.

...”

Article 355

“ ...

(3) When the court imposes a punishment of imprisonment, the accused who is in detention may, by a decision of the president of the panel, be ordered to serve the sentence even before the judgment becomes final, if he so requests.”

108. The relevant provision of the Office for the Suppression of Corruption and Organised Crime Act (*Zakon o Uredu za suzbijanje korupcije i organiziranog kriminaliteta*, Official Gazette nos. 88/2001, 12/2002, 33/2005, 48/2005, 76/2007) provides as follows:

Section 28

“(1) Custody under Article 98 of the Code of Criminal Procedure shall be extended to 48 hours.

(2) The total duration of the pre-trial detention in the above proceedings, in the event of a prolonged investigation (Article 204, paragraph 1 of the Code of Criminal Procedure) may be twelve months.

(3) If the pre-trial detention during the investigation was extended under paragraph 2 above, the total duration of the pre-trial detention under Article 109 of the Code of Criminal Procedure shall be extended for six months.”

109. The relevant provisions of the Enforcement of Prison Sentences Act (*Zakon o izvršavanju kazne zatvora*, Official Gazette nos. 190/2003; 76/2007; 27/2008; 83/2009; 18/2011; 48/2011) read as follows:

Basic Provisions

Section 1

“(1) This Act regulates the execution of prison sentences.

..."

The Use of Terms

Section 8

"The terms used in this Act have the following meaning:

1. A detainee is any person held in detention pursuant to a pre-trial detention order.

...

3. An inmate is any person sentenced to a prison sentence for a criminal offence, serving the prison sentence in a prison or in a jail.

..."

Criteria for sending a convict to serve a prison sentence

Article 49

" ...

(4) If a convict's pre-trial detention has been ordered or extended in another set of criminal proceedings, the judge responsible for the execution of the prison sentence shall send him to serve the prison sentence which will start after the pre-trial detention has been lifted.

..."

THE LAW

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

110. The applicant complained that the reasons put forward by the national courts when extending his pre-trial detention were not relevant and sufficient to justify his continued detention and that the length of his pre-trial detention had been excessive. 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. Exhaustion of domestic remedies

(a) The parties' arguments

111. The Government submitted that the applicant had failed to lodge appeals against the decisions of 13 November 2008, 4 December 2009,

19 April 2010 and 29 June 2010 extending his detention, although he could have done so under the domestic law. In the Government's view he also failed to put forward the same arguments he was now raising before the Court in his appeals against the domestic courts' decisions extending his detention on 29 June 2009 and 17 September 2009. As to the other domestic court decisions extending his detention, the Government pointed out that the applicant had failed to address the issues raised before the Court in his constitutional complaints. Instead he had lodged his constitutional complaints as extraordinary remedies against the decisions of the Supreme Court, although the Constitutional Court made it clear in its case-law that it was not a court of "third instance".

112. The applicant argued that he had not lodged appeals against the decisions extending his detention on 4 December 2009, 19 April 2010 and 29 June 2010 because he had requested to be released at the hearings that followed those decisions, which essentially had the same effect. The applicant disagreed with the Government about the nature and substance of his constitutional complaints.

(b) The Court's assessment

113. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter after all domestic remedies have been exhausted. The purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-IV). The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances.

114. As to the alleged violations of Article 5 § 3 of the Convention, the Court has already held that if a person alleges a violation of this provision on account of the length of his detention in circumstances such as those in the present case, he complains of a continuing situation, which should be considered as a whole and not divided into separate periods (see *Popov and Vorobyev v. Russia*, no. 1606/02, § 71, 23 April 2009). In this regard the Court considers that if the applicant made the domestic courts sufficiently aware of his situation and gave them an opportunity to assess whether his detention was compatible with his Convention right to a trial within a reasonable time or release pending trial, it cannot be held that the applicant has failed to comply with his obligation to exhaust domestic remedies (see *Popov and Vorobyev*, cited above, § 71; and *Šuput v. Croatia*, no. 49905/07, § 86, 31 May 2011).

115. The Court notes that in the present case the applicant's detention during the investigation was ordered under Article 102 § 1(2) of the Code of Criminal Procedure (risk of tampering with evidence) and twice extended

on the same ground. His detention was then extended under Article 102 §§ 1(3) and (4) of the Code of Criminal Procedure (risk of reoffending and gravity of charges) four times during the investigation and twelve times during the trial before the Rijeka County Court.

116. The Court also notes that during the period of his pre-trial detention, the applicant lodged fourteen appeals before the domestic courts and in addition five requests to be released. He also lodged eight constitutional complaints arguing, *inter alia*, that there had been no relevant and sufficient grounds for his continued detention and that his pre-trial detention had been excessively long.

117. Against the above background, the Court considers that the applicant made the domestic authorities sufficiently aware of his situation and gave them an adequate opportunity to assess whether his detention was excessively lengthy. The Court, therefore, concludes that the applicant has complied with his obligation to exhaust domestic remedies and that the Government's objection must be rejected.

2. Conclusion

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

B. Merits

1. Period to be taken into consideration

119. The Court notes that there is no dispute between the parties that the period to be taken into consideration began on 14 May 2008, when the applicant was arrested. There is also no dispute that the applicant was released on 9 December 2010 and that he was again detained between 27 February 2011 and 1 February 2012, when the maximum period of his pre-trial detention under the relevant domestic law expired. The Government pointed out that the period between 9 December 2010 and 27 February 2011 should not be taken into consideration as the applicant had not been detained during that period.

120. In view of the fact that the applicant's pre-trial detention consisted of two separate periods, the Court firstly refers to its judgment in the *Idalov v. Russia* case, where it found, as regards the six-month rule, that an applicant is obliged to bring any complaint which he or she may have concerning pre-trial detention within six months of the date of the actual release. It follows that periods of pre-trial detention which end more than six months before an applicant lodges a complaint before the Court cannot be examined, having regard to the provisions of Article 35 § 1 of the

Convention (see *Idalov v. Russia* [GC], no. 5826/03, § 130, 22 May 2012). However, in the present case the applicant did comply with the six-month rule as he brought his first application before the Court on 9 October 2010 in respect of the first period of his detention and then he lodged further complaints on 6 September and 3 October 2011 as regards the second period of his pre-trial detention.

121. 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 was taken into custody and ends on the day when he was 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; and *Sizov v. Russia*, no. 33123/08, § 44, 15 March 2011). Furthermore, in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence", but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty "after conviction by a competent court" (see *Labita v. Italy* [GC], no. 26772/95, §§ 145-147, ECHR 2000-IV; and *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI).

122. Having in mind the above considerations, the Court must first address the possible effect of the applicant's conviction in another parallel set of criminal proceedings (see paragraphs 5 and 63) on the period to be taken into consideration in respect of his complaint under Article 5 § 3 of the Convention.

123. In this connection the Court firstly notes that throughout his detention the applicant was remanded in custody in criminal proceedings on charges of trafficking in heroin and on grounds specific to those charges and connected solely with those proceedings. Secondly, the Court also notes that in Croatia there exist two types of detention, differing in terms of premises and regime. The first type is pre-trial detention. Detainees are placed in detention centres rather than in ordinary prisons and are subject to a specific regime as regards the organisation of their time, the right to visits, the right to work in the prison, and so on. The second type is in ordinary prisons, where convicted prisoners are accommodated. Once sentenced to a prison term a convict is not transferred to a prison automatically, but only on the basis of a specific order, and on his or her admission to a prison an individual prison regime and programme is set up.

124. However, if pre-trial detention against the convicted person has been ordered or extended in another set of criminal proceedings, that person cannot start to serve his prison term while in pre-trial detention. The applicant in the present case asked the Rijeka Municipal Court on 5 June

2009 to start serving his prison sentence on the basis of the first-instance judgment of that court of 29 April 2008 concerning the conviction of extortion. That request was allowed on 10 June 2009. Nevertheless, he was not allowed to start serving his prison term as long as he was detained in connection with the criminal proceedings against him on charges of trafficking in heroin, which are the subject of the present application (see paragraph 72).

125. Against the above background, the Court considers that there was no causal connection between the applicant's conviction in another set of criminal proceedings and the deprivation of liberty at issue (see *M. v. Germany*, no. 19359/04, § 88, ECHR 2009) and that his pre-trial detention in the proceedings at issue never coincided with serving any prison sentence following his conviction in separate criminal proceedings (see, by contrast, *Piotr Baranowski v. Poland*, no. 39742/05, §§ 14, 45, 2 October 2007). Therefore, in these circumstances the Court considers that the applicant's conviction in another set of criminal proceedings has no influence on the overall period of his pre-trial detention which is to be examined in the present case.

126. As to the two periods of the applicant's pre-trial detention, namely between 14 May 2008 and 9 December 2010 and between 27 February 2011 and 1 February 2012, the Court considers that, according to its case-law, where such periods can be examined before the Court having regard to the provisions of Article 35 § 1 of the Convention, a global assessment of the aggregate period is required (see, for example, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 66, ECHR 2003-IX (extracts), and, *mutatis mutandis*, *Idalov*, cited above, § 130).

127. It follows that the period of the applicant's pre-trial detention to be taken into consideration began on 14 May 2008, the date of the arrest, and ended on 1 February 2012, when the maximum period of his pre-trial detention expired, less the period from 9 December 2010 to 27 February 2011, during which the applicant was released from detention, which in total amounts to three years and six months.

2. The parties' arguments

128. The applicant submitted that his detention had been ordered and extended without justified and sufficient legal and constitutional grounds and that his detention had been excessively lengthy, in violation of the principle of speediness in a case where the defendant had been deprived of his liberty. In his view the domestic authorities had failed to demonstrate special diligence during the criminal proceedings and the higher courts had also failed to address any of his complaints in that regard, interpreting the grounds for deprivation of liberty very broadly and generally.

129. The Government, reiterating the reasons put forward by the national courts, argued that the grounds for the applicant's detention had

been relevant and sufficient throughout his detention. In the Government's view there was a justified fear that he might suborn the witnesses and that he might reoffend. The Government also argued that the charges against the applicant represented particularly grave circumstances which had justified the applicant's detention throughout the proceedings. As to the length of the applicant's detention, the Government pointed out that the case had been very complex and that the domestic courts had displayed particular diligence in the course of the proceedings. Moreover, they had constantly weighed the proportionality of the detention against the public interests and the applicant's rights.

3. The Court's assessment

(a) General principles

130. The Court reiterates that the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its particular features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, 26 January 1993, § 30, Series A no. 254-A; and *Pantano v. Italy*, no. 60851/00, § 66, 6 November 2003).

131. 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 facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of presumption of innocence, a departure from the rule of respect for individual liberty, and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the matters referred to 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 *Kudła*, § 110; and *Labita*, § 152, cited above,).

132. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the validity of the continued detention, but, after a certain lapse of time, it no longer suffices: the Court must then establish whether the other grounds cited 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, *Toth v. Austria*, 12 December 1991, § 67, Series A no. 224; and *Bochev v. Bulgaria*, no. 73481/01, § 55, 13 November 2008).

(b) Application of these principles to the present case

133. The Court notes that in the present case the applicant was detained on three different grounds: (1) risk of tampering with evidence, (2) risk of reoffending and (3) gravity of charges. These grounds were not, however, taken cumulatively during the entire period of his pre-trial detention.

134. The Court notes that when the investigation was opened in respect of the applicant on charges of trafficking in heroin, the investigating judge ordered the applicant's detention on the ground of the risk of his tampering with evidence but did not order his detention on the ground of the risk of reoffending and the gravity of the charges. On the same ground (risk of tampering with evidence) the investigating judge extended the applicant's detention twice. However, when the evidence with which it was feared that the applicant might tamper had been obtained by the investigating judge, the applicant's detention was then extended on the grounds of the risk of reoffending and the gravity of the charges. This may in itself raise certain doubts as to the way the investigating judge acted, since he, in respect of the same grounds and having been aware of the same facts, acted differently when ordering the applicant's detention (see, *mutatis mutandis*, *Mooren v. Germany* [GC], no. 11364/03, § 78, 9 July 2009).

135. The Court further notes that the applicant's detention during the trial stage of the proceedings was extended twelve times on the grounds of (1) the risk of his reoffending and (2) the gravity of the charges.

136. As to the risk of reoffending, the domestic authorities relied on the fact that the applicant had been convicted of the crime of making serious threats and that two sets of criminal proceedings were pending against him which, in conjunction with the *modus operandi* of the offence at issue, led them to the conclusion that the applicant might reoffend. As to the gravity of the charges, the domestic authorities relied on the international aspect of the offence and the quantity of drugs involved.

137. In this respect the Court reiterates that the risk of reoffending, if convincingly established, may lead the judicial authorities to place and leave a suspect in detention in order to prevent any attempts to commit further offences. It is however necessary, among other conditions, that the danger be a plausible one and the measure appropriate, in the light of the circumstances of the case and in particular the past history and the personality of the person concerned (see *Clooth v. Belgium*, 12 December 1991, § 40, Series A no. 225; and *Paradysz v. France*, no. 17020/05, § 71, 29 October 2009). In addition, if the domestic authorities rely on the previous criminal prosecutions against the applicant, they must assess the relevant risk, including whether the previous facts and charges were comparable, either in nature or in the degree of seriousness, to the charges in the pending proceedings (see *Popkov v. Russia*, no. 32327/06, § 60, 15 May 2008; and *Shteyn (Stein) v. Russia*, no. 23691/06, § 115, 18 June 2009). The Court also reiterates, as regards the domestic courts' reliance on

the gravity of the charges, that it has repeatedly held that this reason cannot by itself serve to justify long periods of detention (see, among many other authorities, *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001; *Michta v. Poland*, no. 13425/02, § 49, 4 May 2006; and *Gultyayeva v. Russia*, no. 67413/01, § 186, 1 April 2010).

138. The Court considers, however, that it is not necessary to examine further to what extent these reasons were relevant or sufficient for the applicant's prolonged detention, since the case in any event reveals an infringement of his rights under Article 5 § 3 of the Convention for the following reasons.

139. The Court notes that the material submitted to it reveals that after the indictment was preferred on 2 April 2009, the trial court effectively held four hearings where it examined the following evidence; at a hearing on 23 September 2009 three witnesses were heard; one witness was heard at the hearing on 24 September 2009; one witness was heard at the hearing on 3 December 2009 and one witness was heard via video link from Prague at the hearing on 23 April 2010. In addition, at the hearing on 24 September 2009 the trial court ordered that certain evidence be requested from the Italian authorities.

140. The Court considerers at the outset that this one-year period in which only six witnesses were heard cannot be considered to satisfy the domestic authorities' obligation to conduct the proceedings with due diligence, particularly in such a case as this, where the applicant had already been detained for almost one year during the investigation (see *Malkov v. Estonia*, no. 31407/07, § 51, 4 February 2010).

141. Furthermore, the Court notes that after all the witnesses had given their evidence the trial court adjourned a total of eleven hearings because the Italian authorities had failed to submit the requested evidence and two hearings were adjourned on account of other professional and private obligations of the members of the trial panel. This amounted in total to one year and more than nine months during which the applicant was detained without any progress or development in the proceedings. Moreover, as regards the period after the applicant's maximum period of detention had expired on 1 February 2012, the Government have not shown that there has been any progress in the conduct of the proceedings. In these circumstances the Court sees no reason to examine the background of the possible reasons for these delays since, even taking into account the problems with obtaining evidence from the Italian authorities, the primary responsibility for delays rests ultimately with the State (see, *mutatis mutandis*, *Kulikowski v. Poland*, no. 18353/03, § 50, 19 May 2009).

142. In this respect the Court notes that at no stage of the proceedings was any consideration given to the possibility of imposing alternative, less severe preventive measures on the applicant, such as bail or police supervision, expressly foreseen by Croatian law to secure the proper

conduct of criminal proceedings (see *Drużkowski v. Poland*, no. 24676/07, § 36, 1 December 2009). In this connection, the Court would also reiterate that until his conviction, the accused must be presumed innocent, and the purpose of Article 5 § 3 of the Convention 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; and *Aleksandr Makarov v. Russia*, no. 15217/07, § 117, 12 March 2009).

143. The Court also notes that the applicant asked on several occasions for his detention to be replaced by any preventive measure considered appropriate by the domestic authorities and, although there were certain indications that the applicant would comply with them, as he had informed the authorities of his whereabouts in the period when he was released and had voluntarily returned to detention after his release was revoked, the domestic authorities never gave any consideration to those indications.

144. Against the above background, the Court considers that the period of delays in the examination of evidence in the course of the trial, which could possibly be tolerated if seen as isolated, accumulated with a very long period of one year and more than nine months without any progress or new development in the proceedings, and the fact that the domestic authorities never gave any consideration to replacing the applicant's detention with other preventive measures, could not been seen as other than irreconcilable with the requisite of "special diligence" in such cases (see *Toth*, §§ 77 and 78 and *Malkov*, § 51, cited above).

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

146. The applicant complained under Article 6 §§ 1 and 2 of the Convention about the length of the criminal proceedings against him and that the wording of the national courts when extending his detention following his indictment amounted to prejudging his guilt. He also complained under Article 13 of the Convention that he had no effective remedy in respect of his Convention complaints. Finally he complained under Article 14 of the Convention and Article 1 of Protocol No. 12 that he was discriminated against.

147. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

148. 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

149. The applicant claimed 100,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

150. The Government considered the applicant's claim excessive, unfounded and unsubstantiated because there was no causal link between the violations complained of and the applicant's financial expectations.

151. Having regard to all the circumstances of the present case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,600 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

B. Costs and expenses

152. The applicant also claimed EUR 2,000 for the costs and expenses incurred in the proceedings before the Court.

153. The Government considered that the applicant had failed to substantiate his claim for costs and expenses in any respect.

154. 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 have been actually and necessarily incurred and are reasonable as to quantum. Making its assessment on an equitable basis and in the light of its practice in comparable cases, the Court considers it reasonable to award the applicant, who was legally represented, the sum of EUR 2,000, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

155. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 5 § 3 of the Convention concerning the length of and reasons for the applicant's pre-trial detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 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, which are to be converted into Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 25 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Anatoly Kovler
Registrar	President