



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

THIRD SECTION

CASE OF O.H. AND OTHERS v. SERBIA

(Application no. 57185/17)

JUDGMENT

Art 4 P4 • Prohibition of collective expulsion of aliens • Arbitrary removal by police of irregular migrants from Serbia to Bulgarian side of the border despite domestic court's acknowledgment of their asylum claims, ordering the issuance of temporary residence permits and the facilitation of their accommodation • Removal unrelated to initial unauthorised entry into Serbian territory • Expulsion without a prior examination of removal on an individual basis

Art 3 (substantive) • Degrading treatment • Duration and impact of the applicants' exposure to inadequate conditions at the border police station for ten hours did not reach the severity threshold

Art 3 (substantive) • Removal of the applicants from Serbia during the night in freezing temperatures amounted to inhuman treatment

Art 3 (procedural) • Expulsion • Respondent State's failure to examine whether the applicants would have access to an adequate asylum procedure in Bulgaria

Art 5 § 1 • Unlawful and arbitrary detention from the discontinuation of the misdemeanour proceedings against the applicants until their expulsion from Serbia • Detention without a basis in domestic law • Applicants deprived of their liberty in a deceptive way

Art 5 § 2 • Information in language understood • Authorities engaged the services of an interpreter at the police station following the applicants' arrest

Art 5 § 4 • Police's failure to provide applicants with legal assistance deprived them of the possibility of challenging the lawfulness of their detention

Prepared by the Registry. Does not bind the Court.

STRASBOURG

3 February 2026

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 O.H. and Others v. Serbia,

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

Ioannis Ktistakis, *President*,

Peeter Roosma,

Lətif Hüseynov,

Darian Pavli,

Mateja Đurović,

Canòlic Mingorance Cairat,

Vasilka Sancin, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 57185/17) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by 17 Afghan nationals on 1 August 2017 (“the applicants” – see appended list);

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

the decision not to have the applicants’ names disclosed;

the parties’ observations;

Having deliberated in private on 16 December 2025,

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

INTRODUCTION

1. The case concerns the removal of migrants from Afghanistan to the Republic of Bulgaria after they had expressed their intention to seek asylum in Serbia, and a lack of effective domestic remedies against their removal. It also concerns the lawfulness and conditions of their detention prior to their removal.

THE FACTS

2. A list of the applicants, together with their personal details, is set out in the appended table. The President granted leave to Mr N. Kovačević to represent the applicants before the Court (Rule 36 §§ 2 and 4 (a)) of the Rules of Court).

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

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

I. EVENTS OF 3 AND 4 FEBRUARY 2017

5. In the early hours of 3 February 2017, at approximately 12.15 a.m., Serbian authorities arrested the applicants near Dimitrovgrad train station in Serbia. The applicants had been part of a larger group of 25 migrants detected by a border police unit monitoring the border with Bulgaria. They were arrested on suspicion of committing a misdemeanour of illegal border crossing (see paragraph 49 below).

6. Following their arrest, the police contacted police officers in Bulgaria with a view to returning the group pursuant to the Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation (see paragraph 58 below). However, as evident from the facts presented below, the applicants were not returned pursuant to this Agreement.

7. According to police reports, the crime scene investigation unit arrived at the place of arrest at 1.45 a.m. At 2.15 a.m. the applicants and other members of the group were brought to the premises of Gradina Border Police Station (*Stanica granične policije Gradina* – hereinafter “Gradina Police Station”), which shared its offices with the Regional Border Police Centre for the Republic of Bulgaria (*Regionalni centar granične policije prema Republici Bugarskoj* – hereinafter “the Regional Border Police Centre”) by members of the border police, the army and the Gendarmerie police unit (see paragraphs 51 below).

8. The police issued detention orders against the first, second, third, seventh, eighth, ninth, tenth, eleventh, fourteenth and fifteenth applicants. The detention orders, signed by those applicants, indicate that they were served at 2.15 a.m. The applicants were detained pursuant to Article 190 of the Misdemeanours Act and Article 86 of the Police Act (see paragraphs 46 and 48 below) because they had been caught illegally crossing the border and the authorities had reasonable grounds to believe they might flee or continue committing offences, and because they could not be immediately brought before a court. The applicants were held in Gradina Police Station, with the start of detention recorded as 12.15 a.m. on 3 February 2017.

9. Along with the detention orders, the above-mentioned 10 applicants were provided with forms outlining their rights as detainees, which they also signed. Both the orders and the forms were in the Serbian Cyrillic alphabet. Both documents indicated that an employee of the Danish Refugee Council translated the contents into English, thereby informing the applicants of their substance. The detention orders further stated that the applicants had declined to notify anyone of their detention and had chosen not to retain legal counsel. Additionally, the orders informed the applicants of their right to appeal with a time-limit of four hours for submitting the appeal and that the judge would be required to decide on the appeal within a four-hour period.

10. According to the information provided by the applicants, the police asked a Farsi interpreter from the Belgrade Centre for Human Rights (*Beogradski centar za ljudska prava* – hereinafter “the BCHR”) to go to Gradina Police Station to facilitate communication with them, but he was initially unavailable. However, he did arrive later. The Government stated that a Farsi interpreter from the BCHR had been present at Gradina Police Station in the early hours of 3 February 2017. In a report of 6 February 2017 prepared by the BCHR concerning the events of the present case, it is stated that the police asked Mr P.J., a Farsi interpreter working with the BCHR, to go to Gradina Police Station at 2.00 a.m. on 3 February 2017.

11. The police searched the applicants and their belongings between 2.15 a.m. and 4.30 a.m. Later, between 9 a.m. and 12.30 p.m., the applicants were fingerprinted and photographed under Article 77 of the Police Act to establish their identities, as none of them possessed identity documents (see paragraph 47 below).

12. The applicants were held in a basement room at Gradina Police Station. The conditions of those premises are described in paragraphs 51, 55 and 91 below. According to data provided by the applicants from the AccuWeather website, accessed on 22 July 2017, the outside temperature in Dimitrovgrad during their detention ranged from -2 °C to 6 °C. The applicants were given food provided by the Dimitrovgrad Reception Centre (*Prihvatni centar u Dimitrovgradu*), in cooperation with the Danish Refugee Council and the BCHR, and clothing and shoes were provided by the United Nations High Commissioner for Refugees.

13. Subsequently, according to the applicants, they were transported in a single van to the Pirot Misdemeanour Court (*Prekršajni sud u Pirotu*) (hereinafter “the Misdemeanour Court”) and brought before the misdemeanour judge at around 2 p.m. Gradina Police Station and the Misdemeanour Court are situated approximately 25 km apart. The detention orders stated that the police detention ended at 2.30 p.m. The border police lodged requests to open misdemeanour proceedings against the above-mentioned 10 applicants on suspicion of illegally crossing the border. Identical requests were also filed against eight other individuals who had been apprehended at the same time as the applicants. No proceedings were sought against the remaining seven applicants, who the police had identified as minors. During the proceedings, the Misdemeanour Court expressed doubts as to the actual ages of the first, second and tenth applicants and treated them as minors during the proceedings.

14. Based on the photographs submitted by the applicants, it appears that they were held in the courthouse hallway during the misdemeanour proceedings. The images show the applicants sitting and lying on the floor, although some unoccupied benches are also visible. The applicants were kept under the continuous supervision of armed border police officers.

15. At 10.30 p.m. the Misdemeanour Court discontinued the proceedings because the applicants had expressed their intention to seek asylum in Serbia. It held that the continuation of the proceedings would run contrary to the principle of non-punishment for illegal entry of asylum-seekers provided by Article 8 of the Asylum Act (see paragraph 50 below). The Misdemeanour Court further noted that the applicants were refugees from a country affected by war and that there were indications they might have been the victims of human trafficking, which, in the court's view, exempted them from liability for the illegal border crossing. The court also took into account the age of the minor applicants as a mitigating factor.

16. During the proceedings the applicants stated that they feared returning to Afghanistan because of the ongoing war and threat of terrorism. They also submitted that they did not consider Bulgaria a safe country, alleging that they had been subjected to extortion by the police there. The applicants admitted to having been smuggled across the border and declared their intention to apply for asylum in Serbia.

17. In the operative part of the decisions to discontinue the proceedings, the court ordered the police officers from Gradina Police Station to do the following:

“... allow the authorised representative of the competent Commissariat for Refugees [and Migration] of the Republic of Serbia to take over the proceedings concerning the individuals who have expressed the intention to seek asylum in Serbia, as these people are refugees from a war zone in Afghanistan and to ensure, through the Commissariat for Refugees [and Migration] in Dimitrovgrad, that the migrants are accommodated. The procedure must comply with the provisions of the Asylum Act, which prohibits the expulsion or return of a person against their will if they have expressed the intention to seek asylum as a refugee from a war zone. There is also a suspicion that these people are victims of human trafficking, which is why they cannot be prosecuted.”

18. The proceedings were conducted with the help of two interpreters. Firstly, the applicants' statements were translated from Pashto or Farsi into English, and then from English into Serbian.

19. After the conclusion of the misdemeanour proceedings, the applicants were once again handed over to the police who issued certificates to each of them, indicating their intention to seek asylum in the Republic of Serbia (*potvrde o izraženoj nameri da traže azil u Republici Srbiji*) (hereinafter “the asylum-intention certificates”). According to the applicants, those certificates were served around 1.00 a.m. on 4 February, while a police report states the time of service was between 12.30 and 12.45 a.m. on the same date. The certificates instructed the applicants to report to the Divljana Reception Centre and they served as temporary permits to stay in Serbia. They also noted that the minor applicants were accompanied.

20. Instead of following the decision of the Misdemeanour Court (see paragraph 17 above), the police transported the applicants in a single van to the Bulgarian border. The police confiscated all the documents previously issued to the applicants in Serbia and then forced them to cross into Bulgaria.

The incident occurred during the night, in freezing conditions with temperatures dropping to -2°C. The applicants further alleged that some of them had been kicked by police officers after voicing complaints about their treatment.

21. The exact time of the applicants' expulsion is unclear. The applicants contended that it had happened between 2.30 and 3 a.m. on 4 February 2017. A report by the BCHR stated that the van transporting the applicants had left for the border at 1.30 a.m. (as witnessed by an interpreter working for the BCHR who had spoken to the applicants before they were taken to the border). The applicants stated that the journey from the Misdemeanour Court had lasted 1 hour and 30 minutes. The Constitutional Court did not determine the exact time of the removal (see paragraphs 27-29 below). As for the police reports, they stated that the police officers had not exercised any police powers against the applicants after they had been served with the asylum-intention certificates, essentially denying that they had removed the applicants from Serbian territory.

22. According to the applicants, they spent the night in the forest. The following morning, at 8.25 a.m., they were arrested by the Bulgarian police in the village of Kalotina, near the Serbian border. The authorities then directed them to either the Voenna Rampa Reception Centre or the Harmanli Reception Centre. The seventh applicant, however, was transferred to the Bosmanci Detention Centre. On that occasion, the Bulgarian police produced a report which stated that all the applicants, except the seventh applicant, had previously been registered in the national system for the identification of individuals based on fingerprints and palm prints.

II. LATER DEVELOPMENTS

23. Following their arrest by the Bulgarian authorities (see paragraph 22 above) the third, fourth, fifth, sixth, twelfth, thirteenth, fourteenth, fifteenth, sixteenth and seventeenth applicants were placed in the Voenna Rampa Reception Centre. On 30 July 2017, the twelfth to seventeenth applicants re-entered Serbia, where they were re-registered as asylum-seekers and, at the time of their application to the Court, were residing in the Krnjača Asylum Centre in Belgrade. The third to sixth applicants remained in the Voenna Rampa Reception Centre in Bulgaria.

24. The first, second, eighth, ninth, tenth and eleventh applicants stayed in Sofia, living either on the streets or in hotels paid for by third parties. On 11 February 2017 they re-entered Serbia. After a further attempt to remove them to Bulgaria, they succeeded in re-registering as asylum-seekers and remained in Serbia. The second applicant currently resides in Germany and, according to his legal representative, benefits from refugee protection.

25. The seventh applicant was held in Bosmanci Detention Centre. She re-entered Serbia on 28 July 2017 and was re-registered as an asylum-seeker.

She now resides in France. Her representative stated that she had been resettled in France from Serbia by the UNHCR office.

III. CONSTITUTIONAL COURT PROCEEDINGS

26. The applicants, represented by lawyers working for the BCHR, lodged a constitutional appeal on 3 March 2017 and contended that several of their rights guaranteed by the Serbian Constitution (hereinafter “the Constitution”) and the Convention had been violated. On 29 December 2020 the Constitutional Court partially upheld their constitutional appeal and ruled as follows.

A. Findings of violations

1. Complaint concerning the removal of the applicants from Serbian territory in the early hours of 4 February 2017

27. The applicants complained that the conduct of the police officers following the discontinuation of misdemeanour proceedings against them had amounted to a collective expulsion in violation of Article 4 of Protocol No. 4 to the Convention and Article 39 § 3 of the Constitution.

28. The Constitutional Court held that following the discontinuation of the misdemeanour proceedings, the police officers had transported the applicants in a van to the Bulgarian border, contrary to the decisions of the Misdemeanour Court (see paragraph 17 above). There, they had taken all the documents previously issued to the applicants (including the asylum-intention certificates) and forced them to return to Bulgaria during a very cold night, with temperatures of -2°C.

29. In the Constitutional Court’s view, that conduct had amounted to a violation of Article 39 § 3, in conjunction with Article 25 of the Constitution. The relevant parts of the decision read as follows:

“... in all cases of removal of an asylum-seeker from a Contracting State to a third intermediary country without examination of the asylum requests on the merits, regardless of whether the receiving third country is an EU Member State or not or whether it is a State Party to the [European Convention on Human Rights] or not, it is the duty of the removing State to examine thoroughly the question whether or not there is a real risk of the asylum-seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting him or her against *refoulement*. If it is established that the existing guarantees in this regard are insufficient, Article 3 implies a duty that the asylum-seeker should not be removed to the third country concerned.

...

... the Constitutional Court observes that, despite the fact that the applicants were legally characterised as refugees from a war zone, were subjected to the legal procedure applicable to refugees, thereby receiving the protection of the Serbian legal order, and had expressed their intention to seek asylum, they were in fact expelled by the actions of police officers. Such conduct contains elements of inhuman treatment. These

elements are further reinforced by the fact that the applicants were expelled to the territory of the Republic of Bulgaria, into a forest, at night, in temperatures of -2°C, particularly bearing in mind that the group included eight minors, four of whom were under the age of five and three others under the age of seven, and that this was accompanied by the confiscation of documents previously issued to them (asylum-intention certificates). By acting in this manner, State agents breached the guarantee of the principle of *non-refoulement*, coupled with elements of inhuman treatment, which requires that any removal of migrants be carried out in accordance with the law, and that foreigners may only be expelled on the basis of a decision of the competent authority adopted and enforced through the procedure prescribed by law. In the present case, the violation of the principle of *non-refoulement*, with elements of inhuman treatment, lies not only in the absence of an individualised act by which the competent authority ordered a specific person to leave the territory of Serbia, but also in the fact that the expulsion was carried out despite the decision of the Misdemeanour Court and after the asylum procedure had been initiated by the submission of a formal expression-of-intent form, at a time when that procedure had not yet been concluded.

The Constitutional Court further notes that an examination of the second aspect of the principle of *non-refoulement* – namely, whether the individuals concerned are being returned to a safe third country – does not arise in the present case, as such an assessment is relevant only where a formal expulsion decision has been adopted. In this case, the focus lies on the actions of the police, which were contrary to a judicial decision and effectively deprived the applicants of any possibility of participating in the full procedure for determining their asylum status.”

2. *Complaints concerning safeguards against arbitrary detention*

30. The applicants complained that they had not been able to appoint a lawyer in order to challenge their detention, the charges against them and the conditions of detention. Furthermore, they complained that they had not had an opportunity, with the help of an expert on immigration and human rights’ law, to present their claims of fear of ill-treatment in Afghanistan and Bulgaria. Lastly, they complained that they had not been informed, in a language they understood, of their rights during arrest and detention. The applicants argued that Mr P.J., a Farsi interpreter, had been at Gradina Police Station but for the purpose of assisting the police officers in establishing the applicants’ identities and not to interpret for the applicants the reasons for their detention.

31. The Constitutional Court analysed those complaints from the standpoint of guarantees provided in Article 27 § 3 and Article 29 § 1 of the Constitution. It found that contrary to Article 29 § 1, the police had not appointed a lawyer for the applicants, even though they had been detained without a court order. The Constitutional Court further held that it had been reasonable to assume that the applicants, owing to their circumstances, had been in need of a lawyer in order to effectively understand their rights and the proceedings against them. As the police had failed to give them a legal-aid lawyer, the Constitutional Court concluded that the applicants had been deprived of their right to challenge the lawfulness of their police-ordered detention.

3. *Redress awarded*

32. In addition to asking for compensation in respect of non-pecuniary damage that they had suffered, the applicants asked the Constitutional Court to order the Serbian Government, the Ministry of Internal Affairs and the Ministry of Defence to ensure no further violations of human rights of migrants and asylum-seekers and to make sure, in particular, that the principles of *non-refoulement* and the prohibition of collective expulsion were respected. The Constitutional Court awarded 1,000 euros (EUR) to each of the applicants in respect of non-pecuniary damage suffered owing to all the violations found and ruled that it had no jurisdiction to order measures such as the ones the applicants had requested.

33. The respondent State paid the above-mentioned compensation to the second and seventh applicants. The remaining applicants did not submit banking information needed to make the payments.

B. No violations found by the Constitutional Court

1. *Complaints concerning the alleged unlawfulness and arbitrariness of the applicants' detention*

34. The applicants complained that the deprivation of liberty between their arrest and the discontinuation of the misdemeanour proceedings against them had been arbitrary because they had ultimately been recognised as asylum-seekers and the misdemeanour proceedings against them had been discontinued. As for the deprivation of liberty following the discontinuation of those proceedings until their removal from Serbian territory, the applicants argued that it had had no basis in domestic law.

35. The Constitutional Court found no violation of Article 27 § 1 of the Constitution and ruled that the deprivation of the applicants' liberty, which had lasted from their arrest (see paragraph 5 above) until the misdemeanour proceedings against them had been discontinued (see paragraph 15 above), had had basis in domestic law (detention of individuals caught in the act of committing a misdemeanour because their identity cannot be established, pursuant to Article 190 §§ 1 (a) and 3 of the Misdemeanours Act – see paragraph 46 below). The Constitutional Court further held that the applicants had been detained in accordance with the procedure prescribed by law because the authorities had served them with detention orders pursuant to the Misdemeanours Act. The Constitutional Court added that the decision of the Misdemeanour Court to discontinue the proceedings against the applicants because they had expressed their intention to seek asylum in Serbia could not bring into question the initial lawfulness of detention.

2. *Complaints concerning the alleged ill-treatment of the applicants*

36. The applicants complained that the conditions of detention in Gradina Police Station and in the building of the Misdemeanour Court had amounted to inhuman and degrading treatment.

37. As for their detention in Gradina Police Station, the Constitutional Court accepted that the applicants had been held in overcrowded conditions. The Constitutional Court, in establishing the relevant facts, referred to the findings of the Serbian Ombudsperson (see paragraph 54 below). The Constitutional Court ultimately concluded that that period of the applicants' detention had not amounted to any form of ill-treatment prohibited by Article 25 of the Constitution. That conclusion was reached in the light of several mitigating circumstances, namely the fact that the applicants had been provided with food and clothing during their short period of detention, and that they had been detained during a migrant crisis, during which an unexpectedly high number of foreigners had entered Serbian territory. The Constitutional Court relied on this Court's case-law in *Muršić v. Croatia* ([GC], no. 7334/13, 20 October 2016). As for the conditions of the applicants' stay in the courthouse in Pirot, the Constitutional Court dismissed that part of the constitutional appeal as manifestly ill-founded.

C. Other complaints

38. The Constitutional Court did not address the applicants' complaints that they had not had access to an effective legal remedy with suspensive effect to challenge their removal from Serbian territory and that they had been transported in overcrowded conditions from the Misdemeanour Court to the border. The Constitutional Court also did not address the applicants' complaint regarding the unlawfulness of their detention following the discontinuation of the misdemeanour proceedings (see paragraphs 34 and 35 above). Notwithstanding its finding that the applicants had needed a lawyer to effectively understand their rights and the proceedings against them, the Constitutional Court did not explicitly rule on the applicants' complaint that they had not been informed, in a language they understood, of their rights during arrest and detention (see paragraphs 30 and 31 above).

IV. THE SECOND APPLICANT'S AGE

39. The second applicant, like all the other applicants, had no identification documents from his country of origin – Afghanistan. In his application, he stated that he had been born on 13 March 2000, which would have made him 16 years old at the time of his arrest and expulsion. However, official documents provide conflicting information: the detention order and the police identification report by the Serbian police list his date of birth as 1 January 1998 (see paragraphs 8 and 11 above), and the same date appears

in the request to initiate misdemeanour proceedings (see paragraph 13 above). During those proceedings, the Misdemeanour Court recorded his date of birth as February 2000, indicating a suspicion that he might be a minor (ibid.). In the Bulgarian police report, it was stated that the second applicant had been born on 10 March 1996 (see paragraph 22 above).

40. In a submission dated 9 June 2025, the applicants' representative provided the Court with the second applicant's residence permit in Germany, which indicates that he was born on 24 January 1992. The respondent Government did not make any comments in that regard.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGAL FRAMEWORK AND PRACTICE

A. The Constitution of the Republic of Serbia (*Ustav Republike Srbije*, published in the Official Gazette of the Republic of Serbia – OG RS – no. 98/06)

41. Article 25 provides that physical and psychological integrity are inviolable and that no one will be subjected to torture, inhuman or degrading treatment or punishment, nor to medical or scientific experimentation without their freely given consent.

42. Article 27 §§ 1-3 reads as follows:

“Everyone has the right to personal liberty and security. Deprivation of liberty is permitted only for reasons and through procedures prescribed by law.

A person deprived of liberty by a State authority must be immediately informed, in a language he or she understands, of the reasons for the deprivation, the charges against him or her and his or her rights. That person also has the right to promptly notify a person of his or her choice of his or her detention.

Anyone deprived of liberty has the right to appeal to a court, which is obliged to promptly decide on the lawfulness of the detention and order release if the deprivation of liberty was unlawful.”

43. Article 28 §§ 1 and 2 provides that a person deprived of liberty must be treated humanely and with respect for the dignity of his or her personality and prohibits all forms of violence against a person deprived of liberty.

44. Article 29 § 1 provides that a person deprived of liberty without a court decision must be immediately informed that he or she has the right to remain silent and the right not to be questioned without the presence of a defence lawyer of his or her own choosing, or a lawyer who will provide free legal assistance if he or she is unable to pay for it.

45. Article 39 § 3 reads as follows:

“The entry and stay of foreigners in the Republic of Serbia is regulated by law. A foreigner may be expelled only on the basis of a decision by the competent authority, in a procedure prescribed by law, and only if he or she is guaranteed the right to appeal.

Expulsion is permitted only where the individual does not face persecution because of their race, gender, religion, nationality, citizenship, membership in a particular social group or political opinion, or where he or she does not face a serious violation of the rights guaranteed by this Constitution.”

B. The Misdemeanours Act (*Zakon o prekršajima*, published in OG RS nos. 65/13 and 13/16)

46. Article 190 § 1 provides that authorised police officers may bring to court a person found committing a misdemeanour without a court order if: (a) the identity of the person cannot be determined or if identity verification is required; (b) the person does not have a permanent or temporary residence permit; (c) there is a risk that the person may leave the country to avoid liability for the misdemeanour, and the offence is such that a misdemeanour warrant cannot be issued; or (d) it is necessary to prevent the continuation of the offence, or if there is an imminent risk that the person will repeat the offence or evade misdemeanour proceedings. Article 190 § 3 provides that, in cases referred to in paragraph 1 of this Article, and if immediate transfer to the court is not possible, the police may detain the suspect for up to 24 hours if there are grounds to suspect that the person may flee or continue committing the offences. In the situation referred to in paragraph 3 of this Article, the competent police officer must, without delay, inform a person chosen by the detained individual of his or her detention, as well as the diplomatic or consular representative of the State of which the detainee is a national, or, where the detainee is a refugee or stateless person, the representative of the appropriate international organisation (Article 190 § 4). Paragraphs 5 and 6 of the same Article provide that a detention order is to be issued in respect of the arrested suspect and that the accused and his or her defence counsel have the right to lodge an appeal against the detention order within four hours of its service.

C. The Police Act (*Zakon o policiji*, published in OG RS no. 6/16)

47. Article 77 provides, *inter alia*, that identity verification is carried out when a person does not possess the required identification document or when there is doubt about the authenticity of such a document, and the identity cannot be verified by other means, or upon a specific request from a competent authority. It further provides that identity is established using data from forensic records, through the application of criminalistics and forensic tools, or by means of medical or other appropriate expert examinations.

48. Article 86 § 1 provides that a police officer is to detain a person where such detention is prescribed by another law.

D. The Protection of the State Border Act (*Zakon o zaštiti državne granice*, published in OG RS no. 97/08)

49. Article 65 § 1 provides, *inter alia*, that a natural person will be punished for a misdemeanour with a fine ranging from 5,000 to 50,000 Serbian dinars or with imprisonment of up to 30 days if he or she crosses or attempts to cross the State border outside a designated border crossing point.

E. The Asylum Act (*Zakon o azilu*, published in OG RS no. 109/07)

50. Article 8 provides that an individual who seeks asylum will not be punished for illegal entry into or stay within the territory of the Republic of Serbia, provided that he or she submits an application for asylum without delay and presents a valid justification for his or her unlawful entry or presence.

F. The Serbian Ombudsperson – the National Mechanism for the Prevention of Torture (NPM) – Reports on the visits to the Regional Border Police Centre for Bulgaria

51. The Regional Border Police Centre and Gradina Police Station are two distinct organisational units within the Serbian Police. However, they share some of the infrastructure, which is the case for the room in which the applicants were held on 3 February 2017 (see paragraph 12 above).

1. Visit on 27 July 2016

52. The visit was announced. In the relevant parts the report reads as follows:

“In the period from 1 January to 1 July 2016, a total of 2,673 individuals were registered as having been discovered while illegally crossing the State border. Of that number, the majority were citizens of Afghanistan ... According to official reports, migrants most often cross the border on foot or are smuggled in vehicles.

... According to official reports, the registration procedure at the Regional Border Police Centre premises lasts no longer than six hours.”

53. It states that in the same period the Regional Border Police Centre issued 3,296 asylum-intention certificates, following which it directed the asylum-seekers towards an asylum centre with available accommodation.

2. Visit on 9 February 2017

54. This visit was unannounced. In the relevant parts, the report reads as follows:

“According to the records of the Regional Border Police Centre, in January 2017 303 individuals were found who were attempting to enter or who had illegally entered the Republic of Serbia.

...

Asylum-intention certificates are issued by border police stations, which receive information from the duty centre of the Border Police Directorate about available places in migrant reception centres. Regional Border Police Centre officers do not escort these individuals to the centres; instead, transportation is organised by the International Organization for Migration (IOM), in coordination with the Commissariat for Refugees and Migration.

...

According to Regional Border Police Centre officers, communication with encountered foreigners is still conducted orally, in English, with someone from the group who speaks the language. Occasionally, they use interpreter services provided by the Belgrade Centre for Human Rights and the IOM. The recommendation of the NPM to provide a rights information form translated into Arabic, Farsi, Urdu and Pashto – which police officers could hand out to migrants/asylum-seekers to inform them of their legal situation and rights – has not been implemented.”

55. In a part concerning the detention of migrants, the report reads as follows:

“[The Regional Border Police Officers stated that they do] not have detention facilities and do not hold migrants in detention. In cases where misdemeanour or other proceedings are initiated during the night, migrants reportedly stay in the dining area for several hours until they are brought before a misdemeanour judge or until identity verification and other procedures are completed. In the courtyard, there is a ‘container’ intended for accommodating vulnerable groups of migrants (women and children), but it is not yet in use.

However, during the inspection of the building, the NPM team found a separate room where migrants are placed. On the floor of the room, there were spread-out, dirty blankets that appeared to have been used, as well as remnants of food, Bulgarian currency and forgotten personal belongings. Based on those findings, the NPM team concluded that migrants do spend time in that room, even though it lacks a toilet access to drinking water and adequate heating. [Photos of the room are attached to the report.]”

G. Reports by the Belgrade Centre for Human Rights

56. The BCHR, a Belgrade-based NGO that provided assistance to asylum-seekers in Serbia, published annual reports entitled “Right to asylum in the Republic of Serbia” for the years 2015, 2016 and 2017, published in 2016, 2017 and 2018, respectively. Those reports indicate that 577,995 individuals were registered as asylum-seekers in 2015. That number dropped sharply to 12,821 in 2016, and the downward trend continued in 2017 with 6,199 registrations. The number of newly registered asylum-seekers in 2017 remained consistent throughout the year.

II. INTERNATIONAL LEGAL FRAMEWORK AND PRACTICE

A. Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 May to 5 June 2015, 24 June 2016, CPT/Inf (2016) 21

57. The CPT visited several police establishments where persons are deprived of liberty (Gradina Police Station was not among them) and found deficiencies in the conditions of detention similar to those documented by the NPM during its visit to Gradina Police Station (see paragraph 55 above). Most pertinently, it found that cells remained unsuitable for detention beyond a few hours, with poor lighting, inadequate ventilation and no mattresses, forcing detainees to sleep on hard “platforms”. Blankets were rarely cleaned, and sanitary facilities were generally in poor condition (see paragraph 32 of that report). The CPT recommended that Serbia improve material conditions in police cells (see paragraph 36 of that report).

B. Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation of 19 December 2007, OJ L 334, pp. 46-64

58. This agreement, approved by Council Decision 2007/819/EC of 8 November 2007, provides, in so far as relevant, as follows:

Article 5

“1. A Member State [any Member State of the European Union, with the exception of the Kingdom of Denmark] shall readmit, upon application by Serbia and without further formalities other than those provided for in this Agreement, all third-country nationals or stateless persons who do not, or who no longer, fulfil the legal conditions in force for entry to, presence in, or residence on, the territory of Serbia provided that it is proved, or may be validly assumed on the basis of *prima facie* evidence furnished, that such persons:

...

(b) illegally and directly entered the territory of Serbia after having stayed on, or transited through, the territory of the Requested Member State.

2. The readmission obligation in paragraph 1 shall not apply if:

...

(b) Serbia has issued to the third country national or stateless person a visa or residence permit before or after entering its territory unless:

— that person is in possession of a visa or residence permit, issued by the Requested Member State, which expires later, or

— the visas or residence permit issued by Serbia has been obtained by using forged or falsified documents, or by making false statement, and the person concerned has stayed on, or transited through, the territory of the Requested Member State, or

— that person fails to observe any condition attached to the visa and the person concerned has stayed on, or transited through, the territory of the Requested Member State.

...

4. After the Member State has given a positive reply to the readmission application, Serbia issues the person whose readmission has been accepted the travel document required for his or her return.

...”

Article 17

“1. This agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Serbia arising from International Law and, in particular, from:

...

— the European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms,

...”

THE LAW

I. LOSS OF INTEREST IN THE PROCEEDINGS OF FIFTEEN APPLICANTS

59. The Court observes that Article 37 § 1 of the Convention, in its relevant parts, provides as follows:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; ...

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

60. In a letter of 21 September 2021, the applicants’ representative informed the Court that he was in regular contact with the second (Mr H.A.) and seventh (Ms Z.F.) applicants. As for the other applicants, he informed the Court that they either did not wish to continue with the proceedings before the Court or that he had lost contact with them. On 14 July 2022 and 9 June 2025 the applicants’ representative confirmed that he was in contact with the second and seventh applicants, and their willingness to pursue the proceedings before the Court.

61. In their observations, the Government argued that the available information clearly shows that, with the exception of the second and seventh

applicants, the remaining applicants have no intention of continuing the proceedings before the Court.

62. The Court considers that, in the above circumstances, the applicants, except for the second and seventh applicants, may be regarded as no longer wishing to pursue their application, within the meaning of Article 37 § 1 (a) of the Convention (see *V.M. and Others v. Belgium* (striking out) [GC], no. 60125/11, §§ 35-36, 17 November 2016, and the authorities cited therein).

63. Before striking out a case, the Court must however consider whether there are any circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case (Article 37 § 1 *in fine*).

64. The Court observes that all the applicants were subjected to the same treatment and raised identical complaints. While noting that some of the applicants who lost interest in the proceedings were minors, the Court considers that the issues raised by the present application can be adequately addressed through the examination of the complaints brought by the second and seventh applicants, who still wish to pursue the proceedings (hereinafter “the applicants”). In these circumstances, there is no need to continue the examination of the complaints of the remaining fifteen applicants pursuant to Article 37 § 1 of the Convention *in fine*.

65. In view of the above considerations, the Court finds it appropriate to strike the application in respect of the first, third, fourth, fifth, sixth, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth and seventeenth applicants out of the list of cases pursuant to Article 37 § 1 (a) of the Convention.

II. VICTIM STATUS OF THE SECOND AND SEVENTH APPLICANTS

66. In its decision of 29 December 2020 the Constitutional Court found that several of the applicants’ rights guaranteed by the Constitution had been breached by the Serbian authorities on 3 and 4 February 2017 (see paragraphs 27-31 above). The Constitutional Court awarded each applicant EUR 1,000 in respect of non-pecuniary damage resulting from all the violations found. Those sums were subsequently paid (see paragraphs 32 and 33 above).

67. In their observations, the Government submitted that the Constitutional Court had addressed all the violations of the applicants’ rights and had awarded them just satisfaction.

68. Although not expressly raised, the Court understands the Government’s submissions as an objection that the applicants can no longer claim to be “victims” as regards the complaints in respect of which the Constitutional Court found a violation. In any event, this is a matter which goes to the Court’s jurisdiction, which it may examine of its own motion (see

Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland [GC], no. 931/13, § 93, 27 June 2017).

69. The applicants accepted that the Constitutional Court found that several of their rights guaranteed by the Constitution and the Convention had been violated. However, they argued that the amount awarded to them in respect of non-pecuniary damage that they had suffered had not been appropriate and sufficient.

70. According to the Court's case-law, a decision or measure favourable to the applicants is not, in principle, sufficient to deprive them of their "victim" status for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention. Only where both these conditions have been satisfied does the subsidiary nature of the protective mechanism of the Convention preclude the examination of the application (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 218, 22 December 2020). As to the redress which is appropriate and sufficient in order to remedy a breach of a Convention right at national level, the Court has generally considered this to be dependent on all the circumstances of the case, having regard, in particular, to the nature of the Convention violation at stake. In cases of wilful ill-treatment by State agents in breach of Article 3, the State authorities must have conducted an effective investigation capable of leading to the identification and, if appropriate, punishment of those responsible (see *Tsaava and Others v. Georgia* [GC], nos. 13186/20 and 4 others, § 251, 11 December 2025). An award of compensation to the applicant is required where appropriate, or, at least, the possibility of seeking and obtaining compensation for the damage which the applicant sustained as a result of the ill-treatment. The victim status of an applicant may depend on the level of compensation awarded at domestic level, having regard to the facts about which he or she complains before the Court (see *Gäffen v. Germany* [GC], no. 22978/05, §§ 116 and 118, ECHR 2010).

71. Turning to the present case, the Court observes that the Serbian authorities acknowledged, at least in substance, several violations of the applicants' rights under the Convention. In particular, the Constitutional Court found a breach of Article 39 § 3 of the Constitution, which provides procedural safeguards in respect of the expulsion of foreigners (see paragraph 45 above). It held that this provision had been breached because the applicants were expelled without a prior examination of their removal on an individual basis and contrary to the instructions issued by the Misdemeanour Court (see paragraphs 27-29 above and compare with the applicants' complaints in paragraph 79 below). It further found a violation of Article 25 of the Constitution in relation to the applicants' allegation that they had been expelled from Serbia during the night in freezing conditions, corresponding to a violation of Article 3 of the Convention (see paragraph 29 above). Lastly, the Constitutional Court found a violation of Article 27 § 3

and Article 29 § 1 of the Constitution in connection with the applicants' complaint that they had not been provided with legal assistance following their arrest and had been unable to challenge the lawfulness of their detention (see paragraphs 30 and 31 above). This corresponds to a violation of Article 5 § 4 of the Convention. Accordingly, the first condition is satisfied in respect of certain aspects of the applicants' complaints under Articles 3 and 5 of the Convention (for the full scope of the applicants' complaints under Article 3 see paragraphs 90, 91, 113, 120, 128, and 135 below, and under Article 5 see paragraphs 150 and 161-163 below).

72. As to the redress afforded to the applicants, the Court notes that the Constitutional Court awarded each of them EUR 1,000 in respect of non-pecuniary damage resulting from all the violations it had found, and that those sums were duly paid. The Court observes, however, the particularly serious nature of those violations, which included a breach of the prohibition of ill-treatment. Furthermore, the amount awarded was significantly lower than the sums granted by the Court in comparable cases (see, for example, *mutatis mutandis*, *J.A. and Others v. Italy*, no. 21329/18, §§ 67, 99, 116, and 122, 30 March 2023; and *H.Q. and Others v. Hungary*, nos. 46084/21 and 2 others, §§ 125, 142 and 168, 24 June 2025). The Court therefore considers that the second condition required to deprive the applicants of their victim status is not satisfied.

73. Under these circumstances, and in the context of the applicants' victim status, it is not necessary to address the question whether the authorities complied with their obligation to conduct an effective investigation capable of leading to the identification and, if appropriate, punishment of those responsible, in respect of the conduct of the police officers which the Constitutional Court found to be in breach of Article 25 of the Constitution (see paragraphs 29 and 71 above).

74. In the light of the above, the Court finds that the decision of the Constitutional Court of 29 December 2020 did not deprive the applicants of their victim status in respect of their complaints before the Court.

III. PRELIMINARY ISSUE – THE SECOND APPLICANT'S AGE

75. In the light of the conflicting information concerning the second applicant's age (see paragraphs 39 and 40 above), the Court considers it necessary to determine whether he was a minor at the time of the events that form the subject matter of this application, as it affects the scope and content of the respondent State's obligations under the Convention.

76. The Court notes that official documents from Serbia and Bulgaria place the second applicant's date of birth on various dates between March 1996 and February 2000 (see paragraph 39 above). In this context, the Court observes that the applicant spent approximately 24 hours in Serbia. This brief period did not allow the Serbian authorities sufficient time to conduct a

thorough age assessment. Regarding the age assessment carried out in Bulgaria, the Court has no information about any specific steps taken by the Bulgarian authorities in order to determine the second applicant's age.

77. The Court therefore gives greater weight to the second applicant's most recent submission regarding his age as determined by German authorities (see paragraph 40 above). In particular, it notes that the second applicant has not disputed that date while this information does not strengthen his case in view of the assessment of complaints made by unaccompanied minors in similar cases.

78. Accordingly, the Court finds it established that the second applicant was born on 24 January 1992 and was not a minor at the time of the events that form the subject matter of this application.

IV. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL No. 4 TO THE CONVENTION

79. The applicants alleged that they had been subjected to a collective expulsion. They contended that the Serbian authorities had compelled them to leave the country without conducting an individual assessment of their personal circumstances, in violation of Article 4 of Protocol No. 4 to the Convention, which reads as follows:

“Collective expulsion of aliens is prohibited.”

80. The Government argued that the Constitutional Court had found, in its decision of 29 December 2020, that the applicants had been subjected to an expulsion in violation of Article 39 § 3 of the Constitution, which corresponds to Article 4 of Protocol No. 4 to the Convention, and had offered the applicants appropriate redress.

81. The applicants maintained that the amount awarded to them in respect of non-pecuniary damage that they had suffered was not appropriate and sufficient.

82. The Court has already decided that the applicants can still claim to be “victims” in respect of this complaint (see paragraphs 66-74 above).

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

84. The Court refers to the principles concerning the “collective” nature of an expulsion summarised in *N.D. and N.T. v. Spain* ([GC], nos. 8675/15 and 8697/15, §§ 193-201, 13 February 2020). It reiterates that the decisive criterion in order for an expulsion to be characterised as “collective” is the absence of “a reasonable and objective examination of the particular case of each individual alien of the group” (*ibid.*, § 195).

85. Exceptions to the above rule have been found in cases where the lack of an individual expulsion decision could be attributed to the applicant's

own conduct (see *Berisha and Haljiti v. the former Yugoslav Republic of Macedonia* (dec.), no. 18670/03, 16 June 2005, and *Dritsas v. Italy* (dec.), no. 2344/02, 1 February 2011).

86. In *N.D. and N.T. v. Spain* (cited above, §§ 201 and 209-11), the Court set out a two-tier test to determine compliance with Article 4 of Protocol No. 4 in cases where individuals cross a land border in an unauthorised manner and are expelled summarily. Firstly, it has to be taken into account whether the State provided genuine and effective access to means of legal entry, in particular border procedures to allow all persons who face persecution to submit an application for protection, based in particular on Article 3, under conditions which ensure that the application is processed in a manner consistent with international norms including the Convention. Secondly, where the State provided such access, but an applicant did not make use of it, it has to be considered whether there were cogent reasons not to do so which were based on objective facts for which the State was responsible. The absence of such cogent reasons preventing the use of these procedures could lead to this being regarded as the consequence of the applicants' own conduct, justifying the lack of individual identification.

87. The Court observes that the applicants entered Serbia in an unauthorised manner. However, unlike in *N.D. and N.T. v. Spain* (cited above, §§ 24 and 25) and other cases in which the Court applied this test (see *Shahzad v. Hungary*, no. 12625/17, §§ 8, 9, and 47, 8 July 2021; *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, §§ 7, 8 and 278, 18 November 2021; and *A.A. and Others v. North Macedonia*, nos. 55798/16 and 4 others, §§ 8 and 9, 5 April 2022), the applicants in the present case were not expelled summarily – either immediately or within hours after an unauthorised entry or attempted entry. Instead, they were brought before a court which acknowledged their asylum claims, ordered the authorities to facilitate the applicants' accommodation and instructed the issuance of asylum-intention certificates serving as temporary residence permits (see paragraph 19 above). The applicants' subsequent arbitrary removal by the police was entirely unrelated to their initial unauthorised entry into Serbian territory. The Government have not argued that the applicants had been expelled on that basis.

88. Lastly, the Court observes that the Constitutional Court already found that the domestic authorities had expelled the applicants without a prior examination of their removal on an individual basis, which had violated the prohibition of collective expulsion in respect of the applicants (see paragraphs 27-29 above). The Court has no reason to disagree with that assessment.

89. The Court therefore concludes that there has been a violation of Article 4 of Protocol No. 4 to the Convention.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

90. The applicants claimed that they had been subjected to inhuman and degrading treatment owing to the conditions of their detention at both Gradina Police Station and the Misdemeanour Court. They also complained that they had been transported from the police station to the court in Pirot, and subsequently to the Bulgarian border, in one van in overcrowded conditions. Additionally, they raised concerns about the circumstances surrounding their expulsion. Furthermore, the applicants argued that the Serbian authorities had failed to assess the risks of ill-treatment in the event of their expulsion to Bulgaria. They relied on Article 3 of the Convention, which reads as follows:

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

A. Alleged violation of the substantive limb of Article 3 of the Convention

1. Detention at Gradina Police Station

91. The applicants complained that their detention at Gradina Police Station amounted to treatment in violation of Article 3 of the Convention. They alleged that they had been held for ten hours in overcrowded and unsanitary conditions. They stated that they had been detained in a dilapidated basement room measuring 25 sq. m. shared with 23 other individuals, including the other applicants who later withdrew their complaints (see paragraphs 59-65 above) and other individuals who had been arrested at the same time (see paragraph 5 above). The applicants stated that the room had been cold, damp and poorly ventilated, with only one small window. Temperatures had ranged from -2°C to a maximum of 6°C that day. The applicants also complained about the lack of hygiene, inadequate lighting and the fact that men, women and children had been detained together. They added that no beds or chairs had been provided, forcing them to sit on a floor soiled with urine and faeces, using dirty blankets. Additionally, they were allegedly denied access to a toilet. They relied on the NPM report of 9 February 2017 (see paragraph 55 above).

(a) Admissibility

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

(b) Merits

(i) The parties' submissions

93. The applicants maintained their complaints as detailed above.

94. The Government mainly replied by referring to the Constitutional Court's reasoning (see paragraph 37 above). They acknowledged that the applicants had been held in overcrowded and generally poor conditions. However, they argued that those circumstances did not amount to a violation of Article 3 of the Convention. They cited several mitigating factors: the significant influx of irregular migrants; the respondent State's limited financial resources which prevented the renovation of the detention facilities; the brief duration of the applicants' detention – limited to the time necessary for their identification; and the provision of basic assistance such as food and clothing.

(ii) *The Court's assessment*

(α) Relevant principles

95. The general principles applicable to the treatment of people held in immigration detention were set out in *Khlaifia and Others v. Italy* ([GC], no. 16483/12, §§ 158-69, 15 December 2016). When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant. In particular, the length of the period during which the applicant was detained in the impugned conditions will be a major factor (*ibid.*, § 163, and the authorities cited therein).

96. As regards the assessment of overcrowding in prisons, the Court clarified the principles and standards in *Muršić v. Croatia* ([GC], no. 7334/13, §§ 136-41, 20 October 2016). Should the personal space available to a detainee fall below 3 sq. m. of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. The presumption can be rebutted in particular by demonstrating that the cumulative effects of the other aspects of the conditions of detention compensated for the scarce allocation of personal space. In that connection the Court takes into account such factors as the length and extent of the restriction, the degree of freedom of movement and the adequacy of out-of-cell activities, as well as whether or not the conditions of detention in the particular facility are generally decent (*ibid.*, §§ 122-38).

97. In the context of short immigration detention, the Court has applied the test of cumulative effects of conditions of detention (see *Georgia v. Russia (I)* [GC], no. 13255/07, §§ 192-205, ECHR 2014 (extracts) in the context of detention in police stations and detention centres for foreigners; and *Khlaifia and Others*, cited above, §§ 158-69 and 187-201 in the context of detention in migrant reception centres).

98. Regarding the standard of proof in conditions-of-detention cases, the Court refers to its well-established case-law on that matter (see *Muršić*, cited above, §§ 127-28). Once a credible and reasonably detailed description of the

allegedly degrading conditions of detention, constituting a *prima facie* case of ill-treatment, has been made, the burden of proof is shifted to the respondent Government who alone have access to information capable of corroborating or refuting these allegations. They are required, in particular, to collect and produce relevant documents and provide a detailed account of an applicant's conditions of detention. Relevant information from other international bodies, such as the CPT, on the conditions of detention, as well as the competent national authorities and institutions, should also inform the Court's decision on the matter.

(β) Application of those principles to the present case

99. The Court notes that the Government did not dispute the applicants' allegations about the conditions of their detention at the Gradina Border Police Station, nor did they challenge the findings of the Ombudsperson of 9 February 2017 (see paragraph 55 above).

100. On the basis of the foregoing, the Court finds that the applicants, together with twenty-three other individuals, were detained in a basement room measuring 25 sq. m. Accordingly, each person had approximately 1 sq. m of personal space. That personal space did not meet the minimum standard as laid down in the Court's case-law (see, *mutatis mutandis*, *Muršić*, cited above, § 124). Thus, the question is whether the cumulative effects of other aspects of the applicants' conditions of detention compensated for this issue.

101. The Court finds that the applicants were detained in inadequate conditions. The room in which they were held was dirty. Moreover, it lacked a toilet, access to drinking water and adequate heating, with outside temperatures in that part of Serbia on 3 February 2017 ranging from -2 °C to 6 °C (see paragraphs 12 and 55 above). There were no beds or chairs. However, the Court cannot accept the applicants' allegation that there was no access to fresh air, as the Ombudsperson established that the room had a window. The Court also notes that the Ombudsperson's report did not mention any problems concerning source of light in the room. The Court notes that the applicants were provided food and clothing during their detention (see paragraph 12 above).

102. The Government argued that Serbia was faced with a large influx of irregular migrants which made it challenging for the authorities to maintain appropriate conditions during police detention. It further referred to financial constraints that had prevented the renovation of detention facilities.

103. In that respect the Court reiterates that, having regard to the absolute character of Article 3, an increasing influx of migrants cannot absolve a State of its obligations under that provision, which requires that persons deprived of their liberty must be guaranteed conditions that are compatible with respect for their human dignity. However, a situation of extreme difficulty confronting the authorities is one of the factors in the assessment of whether

or not there has been a breach of that Article in relation to the conditions in which such people are kept in custody, as it would be artificial to examine the facts of the case without considering the general context in which those facts arose (see *Khlaifia and Others*, cited above, §§ 184-85).

104. Nevertheless, the Court cannot accept the Government's argument that the Serbian authorities were facing a situation of extreme difficulty in providing appropriate police detention facilities for irregular migrants at the beginning of 2017. The Government did not provide any evidence to show that the authorities – particularly in Dimitrovgrad – had been faced with a sudden increase in the number of irregular migrants at that time. Available statistical data confirm a sharp decline in the number of newly registered asylum-seekers in 2016 compared to 2015, with the downward trend continuing into 2017 (see paragraph 56 above). While the overall number of irregular migrants entering Serbia was certainly higher, the data indicate that the peak of migrant arrivals occurred in 2015. These figures are supported by statistics provided by the Regional Border Police Centre to the National Preventive Mechanism teams (see paragraphs 52, 53, and 54 above; also compare with *S.F. and Others v. Bulgaria*, no. 8138/16, §§ 91-92, 7 December 2017, and contrast with *Khlaifia and Others*, cited above, §§ 179-80).

105. Insofar as the Government argued that its limited financial resources prevented the renovation of the room in which the applicants had been detained, the Court reiterates that it is incumbent on the Government to organise its law-enforcement system in such a way that it ensures respect for the dignity of detainees, regardless of any financial difficulties (see, *mutatis mutandis*, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 229, 10 January 2012, and the authorities cited therein).

106. The Court notes that the applicants were held in the above-described conditions for a short period, namely ten hours. In view of that short duration, the Court considers that it is of no particular relevance to examine whether the applicants enjoyed sufficient freedom of movement outside the room in which they were held and whether they had access to adequate activities outside that room (see *Muršić*, cited above, §§ 132-33).

107. The applicants were irregular migrants who had crossed the border unofficially and were without identity documents. In that context, the police decided to detain them, together with twenty-three other individuals, for the purpose of establishing their identity and bringing them before the Misdemeanour Court. Having regard to the Contracting States' right to control the entry, residence and removal of aliens (see *N.D. and N.T. v. Spain*, cited above, § 167, and the authorities cited therein), the Court considers that detention during ten hours cannot be regarded as unreasonably long for the performance of those tasks.

108. At the same time, while the length of a detention period may be a relevant factor in assessing the gravity of suffering or humiliation caused to

a detainee by the inadequate conditions of his or her detention, the relative brevity of such a period alone will not automatically remove the treatment complained of from the scope of Article 3 of the Convention if other elements are sufficient to bring it within the scope of that provision (see *Muršić*, cited above, § 131, and the authorities cited therein).

109. In that connection, the Court has previously found violations of Article 3 of the Convention on account of the conditions in which applicants were held, notwithstanding the relatively short duration of their detention. In *Brega v. Moldova* (no. 52100/08, §§ 39-43, 20 April 2010), the applicant was held for 48 hours in a cold room without bedding. After he suffered a non-lethal, but painful medical condition, he was not provided with timely medical assistance. In *Rahimi v. Greece* (no. 8687/08, §§ 63-86, 5 April 2011), the applicant, an unaccompanied minor who at the time was fifteen years old, was held for two days in conditions that were so severe that they undermined the very essence of human dignity. In *Fakailo (Safoka) and Others v. France* (no. 2871/11, §§ 39-45, 2 October 2014), the applicants were held for two days in overcrowded conditions (two of them had just over 2 sq. m of personal space, while three other applicants had less than 1 sq. m). Furthermore, the rooms were not adequately lit and the ventilation had been virtually non-existent. In *T. and A. v. Turkey* (no. 47146/11, §§ 91-99, 21 October 2014), the personal space available to the first applicant for the three days of her detention had been limited (between 2.3 and 1.23 sq. m) and there had been only one sofa-bed on which the inmates took turns to sleep.

110. Finally, the Court will address the question of access to toilet during the applicants' detention. The Court has previously examined, under Article 3 of the Convention, complaints concerning applicants who were obliged to relieve themselves in the cells where they were detained without a toilet (see *Danilczuk v. Cyprus*, no. 21318/12, § 59, 3 April 2018), or who were unable to use the toilet in private (see *Longin v. Croatia*, no. 49268/10, § 60, 6 November 2012), and found that such circumstances, taken together with other factors, amounted to degrading treatment. However, in the present case, the Ombudsperson's report on the room in which the applicants were detained does not indicate that there were traces of urine or faeces, nor was it indicated that the persons held there complained of being denied access to toilet (see paragraph 55 above). While aware that the visit took place shortly after the applicants' detention, the Court observes that other alleged deficiencies complained of by the applicants, such as issues of fresh air and light which could not have been remedied in the meantime, proved unfounded (see paragraph 101 above). Furthermore, the applicants did not complain that they were obliged to relieve themselves in front of other detainees. In light of the above, the Court concludes that these allegations have not been substantiated.

111. Therefore, the present case, differs from the factual background of the above-mentioned judgments primarily because the applicants were exposed to inadequate conditions of detention for a significantly shorter

period (and from the *Rahimi* judgment also because the applicants were not minors). Taking into account all the circumstances of the present case (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV), the Court finds that the duration and impact of the applicants' exposure to those conditions were not such as to reach the threshold of severity required to engage Article 3 of the Convention.

112. It follows that there has been no violation of Article 3 of the Convention in that respect.

2. *Detention at the Misdemeanour Court in Pirot*

113. The applicants complained that they had had to sit and sleep on the floor during their detention at the Misdemeanour Court and provided photographs to that effect (see paragraph 14 above).

114. The Government argued that "one cannot absolutely speak of conditions that are contrary to Article 3 of the Convention" at the Misdemeanour Court.

115. It is not disputed by the parties that during the misdemeanour proceedings the applicants were held under the circumstances outlined in paragraph 14 above. It is further undisputed that they remained at or in front of the courthouse following the conclusion of those proceedings until they were put in a van with a view to their expulsion from Serbia. However, the Court observes that the precise conditions of their detention during the period following the discontinuation of the misdemeanour proceedings and prior to their placement in the van remain unclear (see paragraphs 19-21 above). Having regard to the material before it, the Court considers it established that the applicants were held in the hallway of the Misdemeanour Court from approximately 2 p.m. or 2.30 p.m. until 10.30 p.m. on 3 February 2017 (see paragraphs 13 and 15 above). The Court notes that in this regard the applicants complained only of the conditions of detention in the hallway of the Misdemeanour Court (see paragraphs 90 and 113 above). It will therefore address that complaint.

116. The relevant principles have been set out in paragraphs 95, 97 and 98 above.

117. The applicants did not have access to beds or a sufficient number of chairs or benches and were obliged to sit on the floor. However, they were not required to spend the night at the courthouse. Furthermore, while the applicants were detained for approximately eight hours, this duration does not appear excessive in view of the need for the Misdemeanour Court to conduct and conclude proceedings against 18 individuals, including the applicants (see paragraph 13 above). Lastly, and most importantly, the applicants did not allege that the conditions at the courthouse were unhygienic, that they were denied access to sanitary facilities or that there were any other shortcomings in the material conditions of their detention.

118. In the light of the above, the Court finds that the conditions of the applicants' detention at the Misdemeanour Court on 3 February 2017 did not attain a minimum level of severity sufficient to bring the complaint within the scope of Article 3 of the Convention.

119. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

3. *Conditions of the applicants' transfer to and from the Misdemeanour Court in Pirot*

120. The applicants complained that the conditions of their transport to and from the Misdemeanour Court had been incompatible with Article 3 of the Convention. They submitted that they had been confined in a single van together with 23 other individuals two times, and that the transfer from the courthouse in Pirot to the Bulgarian border in those conditions had lasted for 1 hour and 30 minutes.

121. The Government did not submit any observations on this point.

122. In *Tomov and Others v. Russia* (nos. 18255/10 and 5 others, §§ 123-28, 9 April 2019), the Court summarised the principles applicable to complaints concerning inhuman or degrading conditions of transport, as protected under Article 3 of the Convention (citations and references excluded):

“124. The Court reiterates that assessment of whether there has been a violation of Article 3 cannot be reduced to a purely numerical calculation of the space available to a detainee during the transfer. Only a comprehensive approach to the particular circumstances of the case can provide an accurate picture of the reality for the person being transported.

125. Nevertheless, the Court considers that a strong presumption of a violation arises when detainees are transported in conveyances offering less than 0.5 square metres of space per person. Whether such cramped conditions result from an excessive number of detainees being transported together or from the restrictive design of compartments is immaterial for the Court's analysis, which is focused on the objective conditions of transfer as they were and their effect on the applicants, rather than on their causes. The low height of the ceiling, especially of single-prisoner cubicles, which forces prisoners to stoop, may exacerbate physical suffering and fatigue. Inadequate protection from outside temperatures, when prisoner cells are not sufficiently heated or ventilated, will constitute an aggravating factor.

126. The strong presumption of a violation of Article 3 is capable of being rebutted only in the case of a short or occasional transfer. By contrast, the pernicious effects of overcrowding must be taken to increase with longer duration and greater frequency of transfers, making the applicant's case of a violation stronger.

127. As regards longer journeys, such as those involving overnight travel by rail, the Court's approach will be similar to that applicable to detention in stationary facilities for a period of a comparable duration. Even though a restricted floor space can be tolerated because of multi-tier bunk beds, it would be incompatible with Article 3 if prisoners forfeited a night's sleep on account of an insufficient number of sleeping places or otherwise inadequate sleeping arrangements. Factors such as a failure to

arrange an individual sleeping place for each detainee or to secure an adequate supply of drinking water and food or access to the toilet seriously aggravate the situation of prisoners during transfers and are indicative of a violation of Article 3.

128. Lastly, the Court would emphasise the importance of the CPT's role in monitoring conditions of transfer and of the standards which it has developed for that purpose. When deciding cases concerning conditions of transfer, the Court will remain attentive to those standards and to the Contracting States' compliance with them."

123. Turning to the present case, the Court observes that the Government did not dispute the applicants' allegations concerning the conditions of their transfer to and from the Misdemeanour Court. It therefore accepts as established that the applicants were transported on two occasions in a police van together with 23 other individuals, and that the second transfer lasted approximately 1 hour and 30 minutes (see paragraph 21 above). As for the first transfer – from Gradina Border Police Station to the Misdemeanour Court – its exact duration remains unclear. It could hardly have lasted more than 1 hour and 30 minutes given the proximity of the locations (see paragraph 13 above).

124. The dimensions of the van used for the transfers are unknown, as the applicants provided no details in this regard and the Government submitted no evidence. Consequently, the Court cannot determine with certainty the personal space available to each applicant during the transfers. The applicants did not allege that they were unable to stand, nor did they complain of inadequate lighting, ventilation or heating in the vehicle (contrast with *Vlasov v. Russia*, no. 78146/01, § 94, 12 June 2008, and *Idalov v. Russia* [GC], no. 5826/03, § 103, 22 May 2012).

125. The Court further observes that the applicants were transported only twice and that the total duration of the transfers did not exceed three hours. Even assuming that the conditions were cramped (see paragraph 124 above), the situation differs from cases in which the Court has found a violation of Article 3 on account of repeated transfers in overcrowded conditions, sometimes numbering dozens or even hundreds (see *Tomov and Others*, cited above, §§ 117 and 119). By contrast, the Court has held that the minimum threshold of severity was not reached where an applicant was subjected to such conditions only during two 30-minute transfers (see *Seleznev v. Russia*, no. 15591/03, § 59, 26 June 2008). The present case should also be contrasted with *Akkad v. Turkey* (no. 1557/19, §§ 113-15, 21 June 2022), where the Court found a violation of Article 3 on account of, *inter alia*, a twenty-hour transfer of a handcuffed applicant, and *A.E. and T.B. v. Italy* (nos. 18911/17 and 2 others, §§ 85-90, 16 November 2023), where a violation was found in respect of, *inter alia*, two lengthy bus transfers within a few days of immigrants in hot weather conditions.

126. In the light of the foregoing, the Court concludes that the hardship endured by the applicants during their transfers on 3 and 4 February 2017 did

not attain the minimum level of severity required to bring the complaint within the ambit of Article 3 of the Convention.

127. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

4. The manner of the applicants' removal from Serbia and the circumstances surrounding it

128. Relying on Article 3 of the Convention, the applicants alleged that their removal from Serbia was conducted in a manner amounting to inhuman and degrading treatment. They submitted that the expulsion was carried out by the authorities during the night, in freezing temperatures, and involved the use of excessive physical force. Furthermore, they stated that being left to spend the night in a forest in such harsh weather conditions had further contributed to the severity of the treatment, rendering it incompatible with the standards of Article 3 of the Convention.

129. The Court observes that the Constitutional Court, in its decision of 29 December 2020, established that the applicants had been removed from Serbia during a very cold night on 4 February 2017 and that that had amounted to inhuman treatment (see paragraph 29 above).

130. The Government referred to the aforesaid finding of the Constitutional Court.

131. The Court has already held that the applicants can still claim to be victims in respect of this complaint because of the insufficient redress awarded by the Constitutional Court (see paragraphs 66-74 above).

132. The complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

133. As to the merits, the Court sees no grounds to depart from the findings of the Constitutional Court.

134. In the light of the above, the Court finds that in this connection there has been a violation of Article 3 of the Convention.

B. Alleged violation of the procedural limb of Article 3 of the Convention

135. The applicants complained under Article 3 of the Convention that they had been expelled to Bulgaria without any assessment of the consequences of their removal as regards the prohibition enshrined in that provision, contrary to the principle of *non-refoulement*. They submitted that their removal from Serbia had been carried out without any assessment of the risk of ill-treatment in Bulgaria. They maintained that the authorities had known, or ought to have known, of the deficiencies in access to asylum procedures in Bulgaria. Furthermore, the authorities did not take into account the material conditions in reception and asylum centres in Bulgaria before

removing them from Serbian territory. The absence of any coordinated action between the authorities in relation to their expulsion had aggravated those risks. Lastly, the applicants submitted that they had been denied access to asylum proceedings in Serbia.

1. Admissibility

136. The Government accepted that the police had arbitrarily expelled the applicants from Serbia and referred to the findings of the Constitutional Court that the applicants' expulsion had constituted inhuman treatment (see paragraph 29 above).

137. The applicants contended that the authorities had failed to acknowledge a violation of the Convention in that regard.

138. In so far as the above can be understood as an objection on the part of the Government that the applicants can no longer claim to be victims of a violation of Article 3 of the Convention in respect of the complaints set out in paragraph 135 above, the Court observes that it has already found that they retain their victim status in respect of all complaints in relation to which the Constitutional Court found a violation because of the insufficient redress they received (see paragraphs 66-74 above).

139. However, the Court considers it important to add that, in its view, the Constitutional Court did not find a violation of Article 25 of the Constitution on the ground that the authorities had failed to assess the consequences of the applicants' removal for their rights under Article 3 of the Convention. Rather, the Constitutional Court found a violation of Article 25 because of the manner in which the applicants had been expelled – namely, the specific physical acts of removal and the circumstances in which it had occurred – in respect of which this Court has already found a violation of Article 3 of the Convention (see paragraphs 128-134 above). Although the Constitutional Court referred to this Court's case-law concerning the obligations of Contracting States when expelling aliens to third countries without an examination of their asylum claims on the merits, it concluded, after finding a violation of Articles 25 and 39 § 3 of the Constitution, that there was no need to address this aspect of the case (see paragraph 29 above). Accordingly, the Court concludes that the domestic authorities did not acknowledge a breach of the Convention in this regard (see paragraph 70 above and the authority cited therein).

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

2. Merits

(a) The parties' submissions

141. The applicants maintained their above complaints.

142. The Government submitted that the applicants had not been denied the possibility of seeking asylum in Serbia, as evidenced by the decision of the Misdemeanour Court.

(b) The Court's assessment

143. The Court has consistently acknowledged the importance of the principle of *non-refoulement* (see, for example, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 286, ECHR 2011, and *M.A. v. Cyprus*, no. 41872/10, § 133, ECHR 2013 (extracts)). It reiterates that the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment breaching Article 3 in the destination country (see *O.M. and D.S. v. Ukraine*, no. 18603/12, § 81, 15 September 2022). The Court has indicated that where a Contracting State seeks to remove an asylum-seeker to a third country without examining the asylum application on the merits, the main issue before the expelling authorities is whether or not the individual will have access to an adequate asylum procedure in that third country (see *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, § 131, 21 November 2019).

144. Further relevant principles concerning an expelling State's procedural duty under Article 3 of the Convention in cases of removal of an asylum-seeker to a third country without examination of the asylum claim on the merits have been summarised in *Ilias and Ahmed* (cited above, §§ 124-41).

145. In the present case, the Court has established in the context of Article 4 of Protocol No. 4 to the Convention that the Serbian authorities removed the applicants to Bulgaria (see paragraph 88 above). The Court notes that the applicants expressed their wish to apply for asylum in Serbia and that they were recognised as asylum-seekers by the Misdemeanour Court and served with asylum-intention certificates (see paragraphs 15, 16 and 19 above). The Court observes that the applicants' removal from Serbia bore no relation to the examination of their asylum applications and that the authorities expelled them without following any legal procedure and without conducting an assessment of their asylum claims on the merits. Thus, the Court's task is to examine whether the applicants' removal to Bulgaria was compatible with the respondent State's procedural obligations under Article 3 of the Convention (see, *mutatis mutandis*, *H.Q. and Others v. Hungary*, cited above, § 135).

146. In this regard, the Court reiterates that in all cases of removal of an asylum-seeker from a Contracting State to a third country without examination of the asylum application on the merits, notwithstanding whether or not that third country is a State Party to the Convention, it is the duty of the removing State to examine thoroughly the question of whether or not there

is a real risk of the asylum-seeker being denied access, in that third country, to an adequate asylum procedure protecting him or her against *refoulement*. If it is established that the existing guarantees in this regard are insufficient, Article 3 implies a duty that the asylum-seeker should not be removed to the third country concerned (*ibid.*, § 136).

147. In the present case, the Government did not argue that Bulgaria had been a safe third country. Moreover, nothing in the material before the Court indicates that the applicants' removal was based on any assessment of access to an asylum procedure in Bulgaria and of the adequacy of that procedure, notwithstanding the fact that the applicants expressly argued before the Misdemeanour Court that they did not consider Bulgaria to be a safe country (see paragraph 16 above). Furthermore, the clandestine manner in which the applicants were expelled deprived them of any opportunity to substantiate their claims before a body competent to examine their asylum applications. In any event, the Serbian authorities were under an obligation to carry out, of their own motion, an up-to-date assessment of the accessibility and functioning of the receiving country's asylum system and the safeguards it afforded in practice (see *Ilias and Ahmed*, cited above, § 141).

148. Having regard to the above, the Court concludes that the respondent State failed to discharge its procedural obligation under Article 3 of the Convention to examine whether the applicants would have access to an adequate asylum procedure in Bulgaria. It is therefore unnecessary for the Court to examine whether Article 3 was breached on the additional grounds relied on by the applicants (see paragraph 135 above, and *H.Q. and Others v. Hungary*, cited above, § 141).

149. There has accordingly been a violation of Article 3 of the Convention under its procedural limb as regards the respondent State's failure to examine whether the applicants would have access to an adequate asylum procedure in Bulgaria.

VI. ALLEGED VIOLATION OF ARTICLE 5 §§ 1, 2 AND 4 OF THE CONVENTION

150. Relying on Article 5 §§ 1, 2 and 4, the applicants complained that their detention had been unlawful and arbitrary; that they had not been promptly informed, in a language they understood, of the reasons for their arrest and the charges against them; and that they had not been able to challenge the lawfulness of their detention before a competent judicial body. The relevant parts of Article 5 of the Convention read as follows:

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

...

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

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

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

...

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

A. Admissibility

1. Existence of deprivation of liberty and its duration

151. The Court reiterates that in proclaiming the “right to liberty”, paragraph 1 of Article 5 contemplates the physical liberty of the person. Accordingly, it is not concerned with mere restrictions on liberty of movement, which are governed by Article 2 of Protocol No. 4, with regard to persons lawfully within the territory of that State. In order to determine whether someone has been “deprived of his liberty” within the meaning of Article 5, the starting-point must be his or her specific situation, and account must be taken of a whole range of factors such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation and restriction of liberty is one of degree or intensity, and not one of nature or substance (see *Ilias and Ahmed*, cited above, §§ 211-12, and *Z.A. and Others v. Russia* [GC], nos. 61411/15 and 3 others, §§ 133-34, 21 November 2019). The Court reiterates its established case-law to the effect that Article 5 § 1 may also apply to deprivations of liberty of a very short length (see, among many authorities, *M.A. v. Cyprus*, cited above, § 190).

152. The applicants submitted that they had been deprived of their liberty from 12.15 a.m. on 3 February 2017 until between 2.30 and 3 a.m. on 4 February 2017. The Government, on the other hand, argued that the applicants had been detained between 12.15 a.m. on 3 February 2017 and 12.45 a.m. on 4 February 2017, when they were served with the asylum-intention certificates. In this connection, the Court observes that the Constitutional Court considered that the applicants had been deprived of their liberty from the moment of their arrest until the discontinuation of the misdemeanour proceedings against them at 10.30 p.m. on 3 February 2017 (see paragraphs 35 and 15 above).

153. The applicants were arrested at 12.15 a.m. on 3 February 2017 (see paragraph 5 above). According to the detention orders issued by the police, the applicants' detention following arrest and until their transfer to the Misdemeanour Court lasted until 2.30 p.m. on 3 February 2017 (see paragraph 13 above).

154. The subsequent period of detention, lasting from the applicants' arrival at the Misdemeanour Court until the discontinuation of misdemeanour proceedings at 10.30 p.m. on 3 February 2017, was not covered by any detention decision issued by the domestic authorities. However, it is not in dispute that the applicants were deprived of their liberty during those proceedings, as any attempt to leave would have been prevented by the police, who kept them under constant supervision (see paragraph 14 above).

155. Lastly, as regards the period after the conclusion of the misdemeanour proceedings, it could be argued that the applicants were not formally deprived of their liberty. They were recognised as asylum-seekers in Serbia, instructed to report to a reception centre and permitted to stay in Serbia pending asylum proceedings (see paragraph 19 above). Furthermore, the reasons for their arrest and detention (determination of the misdemeanour charges against them) had ceased to exist.

156. However, the Court considers that it would be too far removed from the particular circumstances of the case to reach such a conclusion. The Court notes that the Misdemeanour Court, in discontinuing the proceedings against the applicants, ordered the police officers of Gradina Police Station "to ensure, through the Commissariat for Refugees [and Migration] in Dimitrovgrad, that the migrants are accommodated". The applicants were then handed over to the police (see paragraphs 17 and 19 above). It appears that the applicants only became aware that they would not be provided with such accommodation when they disembarked from the van at the Bulgarian border and were expelled from Serbia (see paragraphs 20 and 21 above).

157. In the light of the above, and contrary to the Government's argument that the applicants' detention had ended at 12.45 a.m. on 4 February when they were served with the asylum-intention certificates (see paragraph 152 above), the Court considers that the applicants were deprived of their liberty up to the moment of their removal from Serbia. It is immaterial in this regard whether they were physically prevented from leaving by the police after they had been given the certificates or whether they were under a false impression, created by the authorities, that they would be provided with accommodation and transported there, and that they would obtain other asylum-seekers' rights.

158. Accordingly, the Court accepts the applicants' submission that they were deprived of their liberty from 12.15 a.m. on 3 February 2017 (when they were arrested) until between 2.30 and 3 a.m. on 4 February 2017 (when they were expelled from Serbia) and finds Article 5 of the Convention applicable.

2. Applicants' victim status

159. In its decision of 29 December 2020 the Constitutional Court found that, in view of the applicants' particular circumstances, the failure of the police to provide them with a lawyer effectively deprived them of the possibility to challenge the lawfulness of their detention (see paragraphs 30 and 31 above). Nevertheless, the Court has held that this finding has not deprived the applicants of victim status with regard to this complaint (see paragraphs 66-74 above).

3. Conclusion

160. The Court notes that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

161. The applicants complained that their detention had been unlawful because the authorities had failed to comply with the requirements of the Police Act and the Misdemeanour Act. They further contended that their detention had been arbitrary and that they had not been permitted to inform third parties of their whereabouts, to contact a lawyer or to obtain medical assistance. In addition, they complained that the police had not informed them of the possibility of seeking asylum. The applicants noted that the misdemeanour proceedings initiated against them had ultimately been discontinued on account of their asylum claims, which in their view rendered their detention unjustified.

162. The applicants also complained that they had not been promptly informed, in a language they understood, of the reasons for their arrest and the charges against them, because the content of the detention orders and the form outlining detainees' rights had been conveyed to them in English, which they had not understood.

163. Lastly, the applicants complained that they had been deprived of the right to challenge the lawfulness of their detention before a competent judicial body.

(b) The Government

164. The Government emphasised its right to control the entry, residence and expulsion of aliens from its territory and submitted that the applicants had been arrested on the grounds of having committed an offence under

Article 65 of the Protection of the State Border Act (see paragraph 49 above) and in order to establish their identities, in accordance with Article 190 §§ 1 (a) and 3 of the Misdemeanours Act and Article 86 of the Police Act (see paragraphs 46 and 48 above). The Government contended that the police had acted within the scope of their authority and in accordance with the procedure prescribed by law. They further submitted that the detention had lasted for the shortest period possible in order to identify the applicants, conclude the misdemeanour proceedings against them and serve them with asylum-intention certificates. As for the applicants' assertion that the discontinuation of the misdemeanour proceedings against them had rendered the previous detention unjustified, the Government contended that at the time of their deprivation of liberty, there had been reasons prescribed by law which had justified their detention.

165. The Government further submitted that the applicants had been promptly informed, in a language they understood, of the reasons for their arrest and of the charges against them, as a Farsi interpreter, Mr P.J., had been present at Gradina Police Station and had assisted them in communicating with the police officers. They also contended that the applicants had been aware that they had crossed the border illegally, which had undoubtedly constituted a punishable offence.

166. As to the applicants' grievance that they had not had the possibility of challenging the lawfulness of their detention, the Government argued that the Misdemeanours Act provided for such a remedy (see paragraph 46 above) and that the detention orders against the applicants had contained that information (see paragraph 9 above). The Government accepted that the Constitutional Court had found a violation of the applicants' rights under Article 27 § 3 and Article 29 § 1 of the Constitution. However, the Government contended that the Constitutional Court had only found that violation because the police had failed to provide the applicants with a lawyer, and that the ruling had no bearing on their rights under Article 5 § 4 of the Convention.

2. *The Court's assessment*

(a) **Relevant principles**

167. The relevant principles relating to Article 5 § 1 of the Convention are set out in *S., V. and A. v. Denmark* ([GC], nos. 35553/12 and 2 others, §§ 73-77, 22 October 2018), and *Denis and Irvine v. Belgium* ([GC], nos. 62819/17 and 63921/17, §§ 123-32, 1 June 2021).

168. In particular, sub-paragraphs (a) to (f) of Article 5 § 1 of the Convention contain an exhaustive list of permissible grounds for deprivation of liberty, and no deprivation of liberty will be lawful unless it falls within one of those grounds (see *Denis and Irvine*, cited above, § 124).

169. Any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1, be “lawful”. Where the “lawfulness” of detention is in issue, including the question whether “a procedure prescribed by law” has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of that law (*ibid.*, § 125).

170. In addition to being in conformity with domestic law, Article 5 § 1 requires that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among recent authorities, *Rooman v. Belgium* [GC], no. 18052/11, § 190, 31 January 2019, and *Denis and Irvine*, cited above, § 129). The relevant principles concerning the notion of arbitrary detention in the context of Article 5 are summarised in *Saadi v. the United Kingdom* ([GC], no. 13229/03, §§ 67-74, ECHR 2008), *James, Wells and Lee v. the United Kingdom* (nos. 25119/09, 57715/09 and 57877/09, §§ 191-95, 18 September 2012) and *Denis and Irvine* (cited above, §§ 129-32). One general principle established in the case-law is that detention will be “arbitrary” where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities or where the authorities neglected to apply the relevant legislation correctly (see *S., V. and A. v. Denmark*, cited above, § 76, with further references).

171. Paragraph 2 of Article 5 lays down an elementary safeguard: any person who has been arrested should know why he or she is being deprived of his or her liberty. This provision is an integral part of the scheme of protection afforded by Article 5: any person who has been arrested must be told, in simple, non-technical language that he or she can understand, the essential legal and factual grounds for his or her deprivation of liberty, so as to be able to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed “promptly”, it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Khlaifia and Others*, cited above, § 115 and the references therein).

172. Regarding the remedy from Article 5 § 4, it must be sufficiently certain, not only in theory but also in practice, failing which it will lack the requisite accessibility and effectiveness (*ibid.*, § 130).

(b) Application of those principles to the present case

(i) Alleged violation of Article 5 § 1 of the Convention

173. The Court notes that the Government argued, and the material before it shows (see paragraphs 8 and 35 above), that the applicants had been deprived of their liberty in the course of misdemeanour proceedings because of an unlawful border crossing in order to establish their identities and bring

them before the Misdemeanour Court. The Court therefore concludes that the applicants had been deprived of their liberty on grounds that fall under either Article 5 § 1 (c) or Article 5 § 1 (f) of the Convention.

174. However, the Court finds that the applicants' detention following the conclusion of the misdemeanour proceedings was completely unrelated to the grounds of detention advanced by the Government (see paragraphs 155-157 above). Furthermore, the Government did not refer to any domestic provision which could serve as alternative grounds of detention for that period.

175. Once the misdemeanour proceedings had been concluded, the applicants' continued detention had no connection to those proceedings. The applicants were kept in detention while waiting to be served with asylum-intention certificates until 12.45 a.m. on 4 February 2017. Once they received them, under the false impression created by the authorities that the police would transport them to one of the asylum reception centres, the applicants were driven to the border and forcibly expelled from Serbia (see paragraphs 157 and 158 above).

176. This is enough for the Court to conclude that the applicants' detention from 10.30 p.m. on 3 February 2017 until between 2.30 and 3 a.m. on 4 February 2017 was unlawful and arbitrary because that period of detention had no basis in national law and the applicants were deprived of their liberty in a deceptive way.

177. In the light of the above, the Court finds that it is not necessary for it to rule on the compliance with Article 5 § 1 of the Convention of the period of the applicants' detention from their arrest until the discontinuation of the misdemeanour proceedings (see paragraphs 153 and 154 above). For the same reasons, the Court holds that it is not necessary to examine whether Article 5 § 1 was breached on the additional grounds relied on by the applicants (see paragraph 161 above).

178. The Court accordingly finds that there has been a violation of Article 5 § 1 of the Convention in respect of the applicants' detention from 10.30 p.m. on 3 February 2017 until between 2.30 and 3 a.m. on 4 February 2017.

(ii) Alleged violation of Article 5 § 2 of the Convention

179. It is undisputed between the parties that the authorities served the applicants with detention orders indicating the reasons for their arrest and the charges against them (see paragraphs 8 and 9 above). The applicants did not allege that that information had not been provided "promptly". The sole issue in dispute is whether the applicants were able to understand that information.

180. The applicants alleged that the content of the detention orders, drafted in Serbian Cyrillic, had been translated for them into English, a language they did not understand. The Government did not dispute that the applicants lacked knowledge of English, but maintained that a Farsi interpreter had been present at Gradina Police Station on 3 February 2017.

181. At the outset, the Court notes that both the detention orders and the accompanying forms on the rights of detained persons were drafted in Serbian Cyrillic. Those documents indicate that their contents were translated for the applicants into English, thereby informing them of their substance.

182. However, the Court is not persuaded by the applicants' contention that that information was provided to them exclusively in English.

183. Firstly, the Court accepts the Government's assertion that a Farsi interpreter was present at Gradina Police Station in the early hours of 3 February 2017. Although the applicants stated that the Farsi interpreter, Mr P.J., had not been at Gradina Police Station at that time and had arrived later, the Court notes that the applicants, represented by lawyers from the BCHR, made a different statement before the Constitutional Court (see paragraphs 26 and 30 above). Furthermore, a report by the BCHR indicates that Mr P.J. had been asked by the police to go to Gradina Police Station in order to assist officers in communicating with the applicants, and contains no reference to any alleged inability to be there immediately (see paragraph 10 above).

184. The detention orders indicate that their content was only translated into English for the applicants. However, the Court is of the opinion that that flaw is not enough to conclude that there has been a violation of Article 5 § 2 of the Convention. This is because it is evident from the case file that a Farsi interpreter was present at Gradina Police Station following the applicants' arrest and that the applicants gave inconsistent statements on that point before the Court and the domestic authorities. In these circumstances, the Court cannot accept their contention that the interpreter had not been present to translate the reasons for their arrest and the charges against them, but only to assist the police in establishing their identities (as argued by the applicants in their constitutional appeal). The Court finds it difficult to accept that the authorities would have engaged the services of Mr P.J. solely for that purpose, given their inability to communicate effectively with the applicants.

185. Accordingly, there has not been a violation of Article 5 § 2 of the Convention.

(iii) Alleged violation of Article 5 § 4 of the Convention

186. The applicants complained under Article 5 § 4 of the Convention that they had been deprived of the right to challenge the lawfulness of their detention before a competent judicial body.

187. The Court observes that, in its decision of 29 December 2020, the Constitutional Court held that, in view of the applicants' particular circumstances, the police's failure to provide them with legal assistance had effectively deprived them of the possibility of challenging the lawfulness of their detention (see paragraphs 30 and 31 above). Having regard to this specific finding, the Court cannot accept the Government's argument that the

Constitutional Court did not rule on the applicants' rights under Article 5 § 4 of the Convention (see paragraph 166 above).

188. Having already found that the applicants can still be considered victims in respect of this complaint (see paragraphs 66-74 above), the Court finds no reason to disagree with the finding of the Constitutional Court which is based on its own case-law (see, *mutatis mutandis*, *Černák v. Slovakia*, no. 36997/08, § 78, 17 December 2013).

189. The Court accordingly concludes that there has been a violation of Article 5 § 4 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION AND ARTICLE 4 OF PROTOCOL No. 4 TO THE CONVENTION

190. Relying on Article 13 of the Convention in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4 to the Convention, the applicants complained that they had had no remedy with suspensive effect at their disposal to challenge their removal from Serbia. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

191. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has examined the main legal questions raised in the present application. It thus considers that there is no need to examine the admissibility and the merits of these complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and *S.S. and Others v. Hungary*, nos. 56417/19 and 44245/20, § 72, 12 October 2023).

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

192. 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

193. The second and seventh applicants claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

194. The Government argued that the applicants' claims were excessive.

195. The Court reiterates that Article 41 empowers it to afford the injured party such just satisfaction as appears to be appropriate. In the present case, the Court has found multiple breaches of the Convention, notably of both the substantive and procedural aspects of Article 3. Taking into account the amounts already awarded for non-pecuniary damage by the Constitutional Court and paid to the applicants (see paragraphs 32 and 33 above), and in order to avoid double compensation and unjust enrichment (see *Karadeniz and Others v. Türkiye*, no. 35922/20, § 124 *in fine*, 10 December 2024 and *Tsaava and Others*, cited above, § 475), as well as respecting the principle *ne ultra petitem* (see *Nagmetov v. Russia* [GC], no. 35589/08, § 71, 30 March 2017), the Court considers it appropriate to award each applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

196. The applicants also claimed EUR 300 for the costs of postal correspondence with their legal representative.

197. The Government did not make any comments in this regard.

198. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. That is, the applicant must have paid them or be bound to pay them pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress (see, among other authorities, *Durić v. Serbia*, no. 24989/17, § 95, 6 February 2024, with further references). In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the applicants' claim.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike the application out of its list in so far as it concerns the complaints of the first, third, fourth, fifth, sixth, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth and seventeenth applicants;
2. *Declares* the complaints under Article 3 of the Convention in respect of the second (Mr H.A.) and seventh (Ms Z.F.) applicants concerning the conditions of detention in Gradina Border Police Station, the manner of their removal from Serbia and the circumstances surrounding it as well as their complaints under the procedural limb of that provision admissible, and their remaining complaints under Article 3 of the Convention inadmissible;

3. *Declares* the complaints under Article 5 §§ 1, 2 and 4 of the Convention in respect of the second and seventh applicants admissible;
4. *Declares* the complaints under Article 4 of Protocol No. 4 of the Convention in respect of the second and seventh applicants admissible;
5. *Holds* that there has been no violation of Article 3 of the Convention in respect of the second and seventh applicants on account of the conditions of their detention in Gradina Border Police Station;
6. *Holds* that there has been a violation of Article 3 of the Convention in its substantive limb in respect of the second and seventh applicants on account of the manner of their removal from Serbia and the circumstances surrounding it and in its procedural limb as regards the respondent State's failure to examine whether they would have access to an adequate asylum procedure in Bulgaria;
7. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the second and seventh applicants because of their unlawful detention from 10.30 p.m. on 3 February 2017 until between 2.30 and 3 a.m. on 4 February 2017;
8. *Holds* that there has been no violation of Article 5 § 2 of the Convention in respect of the second and seventh applicants;
9. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of the second and seventh applicants;
10. *Holds* that there has been a violation of Article 4 of Protocol No. 4 to the Convention in respect of the second and seventh applicants;
11. *Holds* that there is no need to examine the admissibility and merits of the second and seventh applicants' complaints under Article 13 in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4 to the Convention;
12. *Holds*
 - (a) that the respondent State is to pay the second and seventh applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

13. *Dismisses* the remainder of the second and seventh applicants' claim for just satisfaction.

Done in English, and notified in writing on 3 February 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Ioannis Ktistakis
President

APPENDIX

List of applicants:

Application no. 57185/17 (anonymity has been granted)

No.	Applicant's Name	Gender	Year of birth	Nationality
1.	O.H.	M	2000	Afghan
2.	H.A.	M	1992	Afghan
3.	F.A.	F	1990	Afghan
4.	M.A.	F	2011	Afghan
5.	Mi.A.	F	2015	Afghan
6.	Mo.A.	M	2013	Afghan
7.	Z.F.	F	1993	Afghan
8.	M.H.	F	1962	Afghan
9.	T.H.	M	1994	Afghan
10.	H.N.	M	2001	Afghan
11.	J.N.	M	1996	Afghan
12.	A.J.R.	M	2014	Afghan
13.	A.R.	F	2009	Afghan
14.	N.R.	M	1975	Afghan
15.	S.R.	F	1982	Afghan
16.	S.R.	F	2010	Afghan
17.	T.R.	F	2011	Afghan