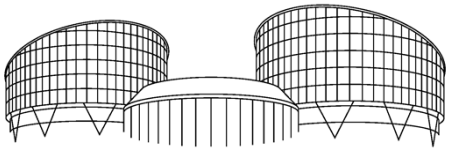

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF AL HUSIN v. BOSNIA AND HERZEGOVINA (No. 2)

(Application no. 10112/16)

JUDGMENT

STRASBOURG

25 June 2019

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision

In the case of Al Husin v. Bosnia and Herzegovina (no. 2),

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

Jon Fridrik Kjølbro, *President,*
Faris Vehabović,
Paul Lemmens,
Iulia Antoanella Motoc,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Jolien Schukking, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 28 May 2019,

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

PROCEDURE

1. The case originated in an application (no. 10112/16) against Bosnia and Herzegovina lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Syrian national, Mr Imad Al Husin ("the applicant"), on 17 February 2016.

2. The applicant was represented by Vaša Prava, a local non-governmental organisation. The Government of Bosnia and Herzegovina ("the Government") were represented by their Agent, Ms B. Skalonjić.

3. The applicant alleged, in particular, that he had been unlawfully detained in the Immigration Centre, in breach of Articles 3 and 5 § 1 of the Convention, that he had not had adequate remedies at his disposal, in breach of Article 5 § 4 of the Convention, and that he did not have an enforceable right to compensation as required by Article 5 § 5 of the Convention.

4. On 10 July 2017 the Government were given notice of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in Syria in 1963. He currently lives in Ilidža, Sarajevo Canton.

A. Relevant background

6. In 1983 the applicant went to the then Socialist Federal Republic of Yugoslavia to pursue his studies. He first studied at Belgrade University, in Serbia, and then at Rijeka University, in Croatia.

7. It would appear that the last time the applicant was in Syria was in January 1993. He stayed for one month and obtained a new Syrian passport.

8. In 1993, having returned from Syria, the applicant met a refugee from Bosnia and Herzegovina ("BH") in Croatia. They were married in a Muslim wedding ceremony in 1993 and then in a civil ceremony in 1995. They have three children together, born in 1994, 1997 and 1999.

9. During the 1992-95 war the applicant was a member of the El Mujahedin unit which had been organised as a unit within the local forces of the Army of the Republic of Bosnia and Herzegovina ("the ARBH") in August 1993 (for more information about foreign mujahedin in BH see *Al Husin v. Bosnia and Herzegovina*, no. 3727/08, §§ 8-14, 7 February 2012). On an unknown date the applicant obtained BH citizenship.

10. Article III of Annex 1A to the Dayton Peace Agreement called for the withdrawal of all foreign forces (including individual advisors, freedom fighters, trainers, volunteers and personnel) from neighbouring and other States, irrespective of whether they were legally and militarily subordinated to any of the local forces. Accordingly, on 14 December 1995 the ARBH disbanded the El Mujahedin unit and ordered its foreign members to leave the country by 10 January 1996. Whereas most of the unit's foreign members left BH, some of them (such as the present applicant) applied for BH citizenship and continued to live in BH. After the attacks in the United States of 11 September 2001, the official attitude towards foreign mujahedin changed. Many lost their BH citizenship or were deported from BH after being declared a threat to national security.

11. In the immediate aftermath of the 1992-95 war, the applicant acted as the leader of a group of foreign mujahedin and their local supporters based in Donja Bočinja, a village in central BH. The group advocated the Saudi-inspired Wahhabi/Salafi version of Islam. In his role as the group's leader, the applicant interrogated two local Serbs for a couple of hours in 1998. This led to his conviction for unlawful deprivation of liberty in May 2000 and a suspended prison sentence.

12. On 5 April 2007 the applicant's BH citizenship was revoked, as a result of which he became unlawfully resident in BH. The authorities held that he had acquired BH citizenship by means of fraudulent conduct, false information and the concealment of relevant facts.

13. On 6 October 2008 the applicant was placed in an immigration centre on security grounds, pursuant to section 99(2)(b) of the 2008 Aliens Act, because it had been established that he posed a threat to national security.

14. Following the dismissal of an asylum claim lodged by the applicant, the Aliens Service issued a deportation order in respect of him on 1 February 2011. It was decided to expel the applicant and to prohibit his re-entry to BH for five years. On 2 March 2011 and 29 November 2011, following appeals by the applicant, the Ministry of Security and the State Court of Bosnia and Herzegovina ("the State Court"), respectively, upheld that decision. Thereafter the applicant was detained with a view to his deportation, pursuant to section 99(1)(a) of the 2008 Aliens Act.

15. On 29 December 2011 the applicant lodged a constitutional appeal with the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") against the decisions of the Aliens Service, the Ministry of Security and the State Court of 1 February 2011, 2 March 2011 and 29 November 2011, respectively (see paragraph 14 above). The applicant invoked Articles 2, 3, 5 and 8 of the Convention and Article 2 of Protocol No. 4 to the Convention. The Constitutional Court gave a decision on 30 October 2012 (see paragraph 20 below).

B. The applicant's first case before the Court

16. On 22 January 2008 the applicant lodged his first application with the Court (see *Al Husin*, cited above), complaining, in particular, that his deportation to Syria would expose him to the risk of treatment contrary to Article 3 of the Convention and that his detention amounted to a breach of Article 5 § 1 of the Convention. On 15 March 2011, after a deportation order against the applicant had been issued and become final (see paragraph 14 above), the Court decided, in the interests of the parties and the proper conduct of the proceedings, to indicate to the Government that the applicant should not be expelled to Syria until further notice (Rule 39 of the Rules of Court).

17. In a judgment of 7 February 2012 the Court held that there would be a violation of Article 3 in the event of the applicant's deportation to Syria (see *Al Husin*, cited above, § 54). The Court considered that the indication made to the Government under Rule 39 should remain in force until the above-mentioned judgment became final or until the Court took a further decision in that connection (*ibid*., § 92). The Court furthermore found a violation of Article 5 § 1 with regard to the period of the applicant's detention from 6 October 2008 until 31 January 2011 because during that time he had been detained without a deportation order having been issued against him (*ibid*., §§ 62-66; see also paragraph 14 above). As regards his detention from 1 February 2011 onwards, the Court found that there had been no violation of Article 5 § 1 of the Convention (*ibid*., §§ 67-69). That judgment became final on 9 July 2012.

C. The present case

1. Deportation proceedings

18. On 6 March 2012 the Appeals Chamber of the State Court reversed the State Court's judgment of 29 November 2011, quashed the decisions of 1 February 2011 and 2 March 2011 (see paragraph 14 above) and remitted the case to the Aliens Service for reconsideration. The Appeals Chamber held that the administrative authorities and the State Court had failed to take into account the situation in the country of the applicant's origin and the potential violations of his rights under Article 3 and 5 of the Convention in the event of his deportation to Syria.

19. On 15 March 2012 the Aliens Service issued a new deportation order in respect of the applicant, which prohibited his re-entry into BH for five years. The order furthermore stated that once the applicant had become subject to expulsion, in the event that he failed to voluntarily leave the country, an additional "removal directions" (*zaključak o dozvoli izvršenja*) order would be issued specifying a destination country and the manner, the time, and the place of the enforcement thereof. On 3 April 2012 and 4 July 2012, following appeals by the applicant, the Ministry of Security and the State Court, respectively, upheld that decision. The State Court rejected, in particular, the applicant's complaint concerning the lack of specification of a destination country in the deportation order. It emphasised that under the 2008 Aliens Act a destination country was to be specified only in the relevant removal directions (see paragraph 77 below).

20. On 30 October 2012 the Constitutional Court dismissed the applicant's constitutional appeal (see paragraph 15 above). It held that the circumstances of the applicant's case had changed following the Court's judgment of 7 February 2012 (see paragraph 17 above) and that consequently, the further examination of his complaints was no longer necessary.

2. The applicant's detention in the Immigration Centre

(a) Decisions of the administrative authorities and the State Court

21. On 16 February 2012 the Aliens Service extended the applicant's detention, with a view to his deportation, for a period of thirty days on the same grounds as before (see paragraph 13 above). Thereafter, throughout 2012 and 2013, the applicant's detention was regularly examined and extended every month (and, following changes to the 2008 Aliens Act, every two months; see paragraph 76 below). The Aliens Service held that the reasons for the applicant's detention still pertained – specifically in view of evidence provided by the National Security Agency that indicated that the applicant still posed a threat to national security. He was an unlawful resident in BH who had refused to leave the country voluntarily.

Furthermore, the Aliens Service had regard to the Court's finding that the applicant's deportation to Syria would have led to a violation of Article 3 of the Convention and to the fact that the conditions for his deportation to a safe third country had not been met. Each time the applicant's detention was extended, the Aliens Service examined whether it was justified to impose less strict preventive measures.

22. The applicant repeatedly challenged his detention. His appeals were rejected by the Ministry of Security and the State Court, respectively, which had essentially endorsed the reasons advanced by the Aliens Service.

23. On 26 February 2014 the Aliens Service further extended the applicant's detention. That decision was upheld on 3 March 2014 and 10 March 2014 by the Ministry of Security and the State Court, respectively.

24. On 14 May 2014 the Appeals Chamber of the State Court quashed the judgment of 10 March 2014 (see paragraph 23 above) and remitted the case for re-examination. The Appeals Chamber, referring to the Court's case-law, held that the applicant should have been informed of the reasons for his continued detention and of the grounds on which he was deemed to be a security risk. It emphasised that it was not necessary to present all of the relevant information to the applicant. However, the information provided to him by the National Security Agency had not satisfied the minimum requirements under Article 5 of the Convention to justify the extension of the applicant's detention. The Appeals Chamber furthermore emphasised that the courts were entitled to assess the existence of any reasonable doubt – that is to say the reasons given by the National Security Agency. Without such an assessment the examination by a court of the applicant's case would constitute a pure formality, which would be contrary to Article 5 of the Convention. Furthermore, the State Court's examination of the possibility to apply other less strict preventive measure had involved the assessment of general and abstract arguments, without any further consideration. The Appeals Chamber invited the State Court to examine that possibility in the light of the circumstances of the case – in particular, the length of the applicant's detention, the applicant's personal circumstances and the evidence related to national security.

25. On 5 June 2014 the State Court again upheld the Ministry of Security's decision of 3 March 2014 (see paragraph 23 above). The court stated that on 21 May 2014 the National Security Agency had submitted classified evidence for the court's review and "open" evidence for the applicant's review. On 23 May 2014 the court heard the applicant and disclosed to him the open evidence, the relevant part of which reads as follows:

> "Imad Al Husin arrived [in Bosnia and Herzegovina] immediately after the outbreak of war ... [At the time he] was a member of the El Mujahedin unit, in which he was one of the main persons in charge of logistical support. The applicant acted as one of

the leaders in the formation of a mujahedin community in Donja Bočinja, in the municipality of Maglaj; [the mujahedin community] was a closed community and the first of that sort in Bosnia and Herzegovina ... the applicant was in charge of reconstruction and building and of maintaining contacts with the authorities.

Security information shows that Imad Al Husin owns various real estate in Bosnia and Herzegovina worth millions, as well as [holding] bank accounts abroad ... the members of the Bočinja community claimed that they did not 'respect the laws of Bosnia and Herzegovina' and did not 'recognise the Bosnian Government'... [The applicant], as one of the leaders of the mujahedin community, knew that some members of his community had left to fight with other mujahedin, mostly in Afghanistan ... He had contacts with mujahedin who had fought or were still fighting in Afghanistan, Chechnya, Iraq, Libya and Syria. Most of those persons were declared to be a threat to national security ... Imad Al Husin was involved in the humanitarian agency Islamic Relief, [which was] led at the time by Enam Arnaout, who was later convicted of terrorism in the United States ... In 1995 Imad Al Husin maintained contacts with a certain Ahmed Zuhair ... from Saudi Arabia, who has been involved in several terrorist attacks in Bosnia and Herzegovina ... Together with several other foreign citizens, Imad Al Husin has established [several companies, including] PP Al Karamein [and] Bedr Bosna, which have employed mostly former foreign fighters who participated in the war in Bosnia and Herzegovina. In 2002 and 2005 the Federal Financial Police discovered a number of irregularities concerning the Bedr Bosna company, mostly concerning tax evasion ... From mid-2007 he maintained closer contacts with members of criminal circles in Sarajevo ... On 25 June 2008 Imad Al Husin attempted to buy ammunition, most probably for a gun, in an ammunition shop located in Hifzi Bjelavca Street ... in Sarajevo ... but was refused because he did not possess a gun licence ... In 2008 he was visited by a certain Hussam Mousaa El Abed, who at the time lived in Denmark; on that occasion he gave [to the applicant] money collected abroad ... Al Abed was suspected of providing financial support to terrorist organisations ... On 3 April 2007 Imad Al Husin obtained a passport from the Syrian Embassy in Belgrade ... His family in Syria is very influential and its members serve at the highest level of Bashar Al Assad's government. His brother used to be a colonel in the Syrian Army. Imad Al Hussin is or has been in contact with many persons suspected of international terrorism, including [persons] who lived in the mujahedin community in Bočinja, as well as [persons] living abroad who visited the community."

26. The applicant dismissed all the information as general and unsubstantiated. He in particular denied the assertion that he had advocated the Saudi-inspired Wahhabi/Salafi version of Islam. He argued that he should not have been perceived as a terrorist just because he spoke Arabic and moved in the BH Arabic community. The applicant submitted that on one occasion he and some of his friends had helped the National Security Agency to locate and arrest persons connected with the killing of a police officer. He furthermore pointed out that, following a request by Human Rights Watch and Amnesty International, the United States State Department's 2007 Country Report on Terrorism – specifically, the entry for Bosnia and Herzegovina, in which the applicant had been wrongly identified as Abu Hamza al-Masri, an Egyptian national and a convicted terrorist – had been amended in 2008. The applicant also submitted that he had always responded to summonses issued by the authorities. He

furthermore provided a certificate issued by the BH Islamic Community confirming that he had been one of its members and statements given by two imams from Sarajevo attesting that the applicant had never given any lectures in their respective mosques. Moreover, the applicant also denied the veracity of the allegation regarding his bank accounts and real estate. He asked to be presented with evidence in support of those claims.

27. The State Court held that the applicant had not succeeded in calling into question or refuting the open evidence submitted by the National Security Agency. Rather, he had used abstract and general statements in an effort to downplay the importance of the information provided therein. Furthermore, the applicant had submitted certain documents (written statements, letters and so on) for the first time at the hearing of 23 May 2014, even though it was apparent that he had had them before. Having assessed the reasons given by the Aliens Service and the Ministry of Security, the content of the classified and open evidence, and the applicant's arguments, the court concluded that there still existed reasonable doubt as to whether or not the applicant posed a threat to national security and that the imposition of a less strict preventive measure was not justified, given the particular circumstances of the case. The State Court concluded that there had been no violation of Article 5 § 1 of the Convention. The court furthermore held that, contrary to the applicant's arguments that he feared criminal prosecution in Syria, it was evident from the case file that his family was very influential and close to Bashar Al Assad's regime. Many members of the applicant's family occupied high positions in government. His brother was a retired colonel in the Syrian Security Forces. Moreover, on 3 April 2007 the applicant had obtained a passport from the Syrian Embassy in Belgrade. The court concluded that in the prevailing circumstances there were no longer any obstacles to the applicant's deportation to Syria. Lastly, the court assessed the Ministry of Security's efforts in finding a safe third country and concluded that it had acted diligently and in close cooperation with the Ministry of Foreign Affairs. However, thirty-two countries, including all the Arab states, had refused to accept the applicant, giving as a reason his personality and the circumstances surrounding him.

28. On 16 July 2014 the Appeals Chamber of the State Court upheld the judgment of 5 June 2014.

29. In the meantime, on 27 May 2014 the Aliens Service further extended the applicant's detention. On 2 June 2014, following an appeal by the applicant, the Ministry of Security upheld that decision.

30. On 11 June 2014 the State Court, following an appeal by the applicant, quashed the decisions of 27 May 2014 and 2 June 2014 (see paragraph 29 above) and remitted the case to the Aliens Service for reconsideration. The court noted in particular that the deportation order had been issued on 1 February 2011 (see paragraph 14 above) and that the

applicant had been detained with a view to deportation for more than three years, and on national-security grounds for more than five years. During that time no criminal proceedings had been opened against him. Furthermore, the open evidence presented to the applicant was widely known as it had already been published in the media. The deportation order was unlikely to be enforced: the relevant authorities had contacted more than thirty countries, but none of them had agreed to accept the applicant. Moreover, it was apparent from the case file that the National Security Agency did not have any new evidence that would justify the applicant's continued detention. The evidence on which his continued detention was based was the same as that which had been cited as justification for his initial detention. The court furthermore added that a concern that the applicant could pose a threat to national security, without any new evidence, was not enough to draw a reasonable conclusion regarding the actual threat that he represented. A detention based solely on security grounds was contrary to Article 5 § 1 of the Convention. The administrative authorities had not justified their conclusion concerning the persistence of a reasonable suspicion that the applicant would pose a risk to national security if released. Furthermore, their examination of the possibility to apply less strict preventive measures had involved general and abstract arguments, without any further explanation being given. The court ordered the Aliens Service to examine such a possibility in the light of the arguments presented in its judgment.

31. Following the remittal of the case, on 20 June 2014 the Aliens Service further extended the applicant's detention with a view to his deportation and on national-security grounds. On 13 June 2014 the applicant was heard by the Aliens Service concerning the possibility of less strict preventive measures being applied. On that occasion he submitted that he had accommodation (his registered place of residence) outside the Immigration Centre but that he did not have any financial means. Furthermore, the applicant submitted that a preventive measure that included a prohibition on his leaving his registered place of residence, which was in Ilidža, would not have been suitable for him because he needed the services of a medical-care service located in Sarajevo. The Aliens Service held that the circumstances justifying the applicant's detention remained the same. It furthermore emphasised that all necessary steps were being taken with a view to finding a safe third country to which the applicant could be deported.

32. On 23 June 2014 and 27 June 2014 the Ministry of Security and the State Court, respectively, upheld the Aliens Service's decision of 20 June 2014.

33. Thereafter, until the end of 2014 and throughout 2015 the applicant's detention was continually extended. All of his appeals were dismissed by

the Ministry of Security, the State Court and the Appeals Chamber of the State Court, respectively.

34. During this period several hearings were held before the State Court.

35. At a hearing of 9 September 2014 the applicant submitted that he had contacted the authorities of the Republic of Turkey concerning the possibility of his moving there, but that his request had been refused on the basis of information provided by the National Security Agency. Moreover, the applicant objected that he had not been given the possibility to comment on the open evidence. Since the National Security Agency did not have any new information concerning the applicant, the State Court decided to join to the applicant's submissions the minutes of the hearing of 23 May 2014 at which he had had the possibility to comment on open evidence (see paragraph 25 above).

36. At a hearing of 3 March 2015 the State Court presented to the applicant open evidence submitted by the National Security Agency. The same information had already been submitted to the applicant's representative on 6 February 2015 by the National Security Agency. The information essentially described the applicant's role as that of the self-proclaimed leader of the mujahidin community in Donja Bočinja and referred to his conviction for unlawful deprivation of liberty in 2000 (see paragraph 11 above). It furthermore stated that until being placed in detention, the applicant had consistently advocated the Saudi-inspired Wahhabi/Salafi version of Islam and had publicly expressed his support for Osama bin Laden. The rest of the information was identical to that disclosed to the applicant at the hearing of 23 May 2014 (see paragraph 25 above). The applicant rejected that information as too general and submitted that no criminal proceedings had ever been initiated against him.

37. In its decisions following the hearing the State Court held in particular that the relevant authorities were diligently working on finding a safe third country, in compliance with Article 5 § 1 of the Convention, and that the applicant still posed a threat to national security. The authorities had contacted more than fifty countries, of which thirty-nine had given a negative response to a request to accept the applicant, while the others had not responded at all. The State Court furthermore endorsed the administrative bodies' conclusion concerning the possibility of applying a less strict preventive measure.

38. At a hearing of 3 June 2015 the applicant was informed that there had been no new information or evidence submitted against him by the National Security Agency. Accordingly, the State Court decided to join to the applicant's submissions the minutes from the hearing of 3 March 2015 at which he had had the possibility to comment on the open evidence (see paragraph 36 above).

39. At a hearing of 28 August 2015 the State Court ruled that a report submitted by the National Security Agency on 17 August 2015 did not

contain any new information concerning the applicant. The State Court thus joined again to the applicant's submissions the minutes of the hearing of 3 March 2015 at which he had had the possibility to comment on the open evidence (see paragraph 36 above).

40. At a hearing of 30 November 2015 the State Court held that the National Security Agency's report, submitted on 16 November 2015, did not contain any new information concerning the applicant. Accordingly, the court again referred to the applicant's submissions during the hearing of 3 March 2015 at which the open evidence had been presented to him (see paragraph 36 above).

(b) The Constitutional Court's decisions

41. The applicant lodged several constitutional appeals concerning the extension of his detention, relying on Articles 3 and 5 §§ 1 and 4, and on Articles 8 and 13 of the Convention. He alleged in particular that he had not been granted access to closed evidence, that he had been placed in preventive detention and that it was unrealistic to expect any other country to accept a person who had been declared a threat to national security.

42. In a decision of 28 February 2013 (decision no. AP 222/13) the Constitutional Court examined the lawfulness of the applicant's detention from 12 November 2012 until 10 December 2012 and dismissed his appeal as manifestly ill founded, essentially endorsing the reasoning of the State Court and the relevant administrative bodies.

43. On 17 June 2015 (decision no. AP 2742/13) the Constitutional Court examined an appeal lodged by the applicant against sixteen judgments delivered by the State Court between 14 March 2013 and 25 March 2015 concerning the lawfulness of his detention in the period between 21 March 2013 and 7 June 2015. The Constitutional Court found a violation of Article 5 § 1 (f) of the Convention with regard to the period of the applicant's detention from 21 March 2013 until 14 March 2014 (the lawfulness of which had been addressed by the State Court in judgments delivered between 14 March 2013 and 6 January 2014). It dismissed the rest of the applicant's complaints as manifestly ill-founded. That decision was delivered to the applicant on 13 August 2015.

The relevant part of the Constitutional Court's decision reads as follows:

> "46. As regards the judgments delivered between 14 March 2013 and 6 January 2014 the Constitutional Court notes ... that is evident that the appellant's detention was extended in accordance with the law because it had been established that he posed a threat to national security ... The appellant had the possibility to challenge those decisions. However, the fact that the appellant posed a threat to national security was established on the basis of [information held by] the National Security Agency. The appellant alleged that he had not been informed of the charges against him in this respect, but the State Court considered that those arguments were unsubstantiated, because the relevant provisions prohibited the examination of secret evidence if to do so would be against the public interest.

47. The Constitutional Court reiterates that in case no. AP 4064/13 ... it found a violation of Article 5 § 1 (f) of the Convention in respect of a situation in which ... the appellant had been detained on the basis of [information held by] the National Security Agency whose content had never been disclosed to him, not even in substance, and the State Court had failed to adequately examine that information and assess its reliability.

48. The Constitutional Court does not see any reason to depart from [that] practice ... in the present case as regards the judgments delivered in the period from 14 March 2013 until 6 January 2014, since the content of the [National Security Agency's] information, on the basis of which he was declared a threat to national security, was not disclosed to the appellant, and the State Court failed to adequately examine that information and assess its reliability. The Constitutional Court concludes that there has been a violation of Article 5 § 1 (f) of the Convention in relation to those judgments.

...

55. [As regards the other impugned judgments] ... the Constitutional Court notes that the appellant was detained because it had been established that he posed a threat to national security; his detention was extended in accordance with the law ..., and he had the possibility of [seeking] judicial review of these decisions ... [On 14 May 2014 the Appeals Chamber of] the State Court quashed the judgment of 10 March 2014 because the State Court and the administrative bodies should have disclosed to the appellant the reasons for his detention and the circumstances and facts which had led ... [the National Security Agency] to conclude that he posed a threat to national security ...

...

57. The Constitutional Court notes furthermore that the appellant is a Syrian national and not a stateless person, that his BH citizenship was revoked because it was established that he had acquired it by means of fraudulent conduct, false information and the concealment of relevant facts; and that he was placed in detention ... on national-security grounds and that a deportation order has been issued against him. On the other hand, in its judgment no. 3727/08, cited above, the European Court held ... that there was a real risk that the appellant would be exposed to inhuman treatment if deported to Syria ... It is evident from the impugned judgments that thirty-nine countries have refused a request by BH to accept the appellant. All of the above indicates the existence of special circumstances in the present case. In view of that – and the fact that the authorities have displayed particular diligence in the case of the applicant, who is neither a refugee nor a stateless person ... and the adequate assessment of the existence of a *prima facie* reasonable suspicion that if released the appellant would pose a threat to national security – the Constitutional Court concludes, all the while taking into account the excessive length of the appellant's detention, that there was no violation of Article II/3.d of the Constitution of Bosnia and Herzegovina and no violation of Article 5 § 1 (f) of the Convention as regards the rest of the impugned judgments [delivered between 6 January 2014 and 25 March 2015] ...

...

64. The Constitutional Court considers it necessary to emphasise that although it has found a violation of Article 5 § 1 (f) of the Convention in respect of the judgments delivered between 14 March 2013 and 6 January 2014, given that it did not find such a violation in respect of the rest of the [impugned] judgments, it considers that

exceptionally, in the particular circumstances of the case, the finding of a violation is sufficient and that there is no need to remit the case for a rehearing ..."

44. On 22 December 2015 (decision no. AP 2832/15) the Constitutional Court examined an appeal lodged by the applicant against the judgments delivered by the State Court between May and December 2015. The applicant relied on the same provisions as before. The Constitutional Court held that there had been no substantial changes in the legal and factual circumstances of the case since its decision of 17 June 2015 (see paragraph 43 above) and found that there had been no violation of the applicant's constitutional rights. Essentially, the court referred to the reasons given in its decision of 17 June 2015. It considered that the authorities had acted diligently in their efforts to find a safe third country (more than fifty countries had been contacted) and had examined the possibility of applying a less strict preventive measure. The court had furthermore taken into account the fact that the applicant had been heard regarding the circumstances of his detention in judicial-review proceedings and that an adequate assessment had been made of the (*prima facie* reasonable) suspicion that if released he would pose a threat to national security.

3. Application of preventive measures

45. In response to a request from the Aliens Service for new information concerning the applicant, on 25 January 2016 the National Security Agency indicated that it had no new information but that it still considered that the applicant constituted a potential threat to national security. However, taking into account the provisions of the 2015 Aliens Act (see paragraphs 78 and 79 below), the National Security Agency submitted that the purpose of the supervision could be achieved by means of a less strict preventive measure.

46. On 3 February 2016 the National Security Agency submitted to the Aliens Service national-security-related material concerning the applicant; it also indicated to the Aliens Service which part of that material could be disclosed to him.

47. On 10 February 2016 the applicant was heard by the Aliens Service; certain open evidence was presented to him, while certain material remained closed. The applicant submitted to the Aliens Service that he had already been informed of the content of the open evidence during the proceedings before the State Court. He furthermore stated that he had accommodation and his registered place of residence and financial support. The applicant's wife, who was also heard, confirmed that he would be staying at her house and that she would be providing for him during his stay.

48. On 17 February 2016 the Aliens Service terminated the applicant's detention, in accordance with the 2015 Aliens Act, because it had exceeded eighteen months (see paragraph 78 below). By the same decision preventive measures were imposed on the applicant, which included the following: a

prohibition on his leaving the Sarajevo Canton (which encompasses Ilidža municipality); the duty to report to the Ilidža police in person between 9.30 a.m. and 10.30 a.m. every Wednesday, Saturday and Sunday; and the duty to report to the Aliens Service by telephone (from his landline number) every Monday, Tuesday, Thursday and Friday between 9.30 a.m. and 10.30 a.m. Furthermore, the applicant's passport, which had expired on 2 April 2009, was seized. In doing so Aliens Service referred to section 119 of the 2015 Aliens Act, which provided that the total period of a person's detention could not exceed eighteen months (see paragraph 78 below).

49. The preventive measures were to remain in force until the applicant left the country voluntarily or until he was forcibly removed, for as long as the reasons for which he was placed under supervision remained the same.

4. Efforts to secure the applicant's admission to a safe third country

50. On 10 September 2012 the Aliens Service asked the Ministry of Foreign Affairs to contact countries which were geopolitically and culturally close to Syria. On 10 October, 9 November and 29 November 2012 the Aliens Service contacted the Ministry of Foreign Affairs, asking for updates on the proceedings.

51. By 19 October 2012 Slovenia, Jordan and Cyprus had informed the Ministry of Foreign Affairs that they were not willing to accept the applicant.

52. Between 9 November 2012 and 27 November 2013 nine countries were contacted (Austria, Egypt, Kuwait, Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman and Yemen).

53. By January 2013 negative responses had been received from twenty-three countries (Estonia, Spain, France, Belgium, the Czech Republic, Slovakia, Lichtenstein, Denmark, Switzerland, Hungary, Moldova, Montenegro, Ukraine, Austria, Norway, the Netherlands, the former Yugoslav Republic of Macedonia, Poland, Turkey, Germany, Serbia, Italy and Bulgaria).

54. On 21 August and 28 November 2013 the Ministry of Foreign Affairs informed the Aliens Service that Yemen and Oman, respectively, had refused to accept the applicant.

55. On 27 November 2013 the Ministry of Foreign Affairs asked Kuwait, Saudi Arabia, Bahrain, Qatar and the United Arab Emirates to provide responses to the requests that they agree to accept the applicant.

56. On 9 December 2013 Qatar refused to accept the applicant.

57. On 4 March 2014 the Ministry of Foreign Affairs informed the Aliens Service that Kuwait was not willing to accept the applicant.

58. On 30 April 2014 the United Arab Emirates informed the Ministry of Foreign Affairs that they did not wish to accept the applicant.

59. On 16 June 2014 and 13 November 2014 the Ministry of Foreign Affairs lodged a request with the Syrian Embassy in Belgrade for Syria to accept the applicant.

60. On 8 and 14 August 2014 the Aliens Service and the Ministry of Foreign Affairs, respectively, informed the applicant that ten more countries had refused their request (Egypt, Latvia, Lithuania, Greece, Romania, Sweden, Morocco, Croatia, Saudi Arabia and Bahrain).

61. On 12 and 13 August 2014 the Ministry of Foreign Affairs again contacted the United Arab Emirates.

62. On 14 November 2014 and 17 February 2015 the Ministry of Foreign Affairs informed the applicant that there had been no new developments concerning the search for a safe third country.

63. On 18 February and 3 March 2015 the Aliens Service contacted the Ministry of Foreign Affairs, asking for updates concerning the proceedings aimed at finding a safe third country.

64. At the request of the Aliens Service, on 19 May 2015 the Ministry of Foreign Affairs asked Canada to accept the applicant. On 27 August 2015 Canada refused the request.

65. On 15 June 2015 the Aliens Service lodged a request with the Turkish Embassy in Sarajevo for the applicant to be accepted by Turkey.

66. Furthermore, throughout 2015 attempts were made to organise a meeting at Saudi Arabia's embassy in Sarajevo with a view to discussing the possibility of the applicant's admission to that country. However, it would appear that the meeting did not take place.

67. On 12 February 2016 the Aliens Service proposed that the Ministry of Foreign Affairs lodge a request for the applicant's admission to Kazakhstan. On 22 February 2016 the Ministry of Foreign Affairs informed the Aliens Service that it had asked the BH Embassy in Russia (which also covered Kazakhstan) to lodge such a request.

68. On several occasions the applicant's representatives requested access to information concerning the activities undertaken by the authorities with a view to finding a safe third country. Such access was regularly granted and the relevant information provided by the Aliens Service and the Ministry of Foreign Affairs.

5. Conditions of detention

69. The Government submitted the following information concerning conditions in the Immigration Centre.

70. The applicant had been placed in a cell with a surface area of 20.5 square metres in which a maximum of four detainees were held at any one time. Thus, each of them had five square metres of personal space. Each cell had a glass window (160 centimetres tall and 120 centimetres wide), sanitary facilities, direct access to drinking water, and heating. Each inmate was regularly provided with the necessary toiletries.

71. Detainees had three meals per day and a schedule of daily activities (sporting activities, medical examinations, leisure time, and so on). The Immigration Centre possessed a library and premises for religious activities and for spending leisure time.

72. Each detainee had a right to one visit per week. The head of the Immigration Centre could authorise more frequent visits should they be in the interests of the family of the detainee concerned. There were no facilities for conjugal visits.

73. Throughout his detention the applicant was afforded adequate health care, including several examinations conducted by specialists.

6. Information submitted by the applicant concerning his Syrian nationality

74. In his reply to the Government's observations, the applicant submitted a copy of a decision of 8 November 2007, written in Arabic and issued by the Syrian Ministry of Interior, by which his Syrian nationality had been revoked. The applicant also enclosed a copy of the certified translation, dated 28 July 2015, of that decision into one of the official languages of Bosnia and Herzegovina.

II. RELEVANT DOMESTIC LAW

A. The 2008 Aliens Act

75. Under section 99(2)(b) of the 2008 Aliens Act (*Zakon o kretanju i boravku stranaca i azilu*, Official Gazette of Bosnia and Herzegovina (OG BH), nos. 36/08 and 87/12), as worded until 30 October 2012, an alien had to be detained if it had been established that he or she constituted a threat to public order or national security, irrespective of whether a deportation order has been issued. Once a deportation order had been issued, the alien concerned could also be detained under section 99(1)(a) of that Act. From 30 October 2012 onwards an alien, in respect of whom it had been established that he or she constituted a threat to public order or national security, could only be detained after a deportation order had been issued (section 99(2) of the Act, as amended in 2012).

76. Until 30 October 2012 an initial detention order had been valid for thirty days and could have been extended any number of times for up to thirty days at a time. From 30 October 2012 onwards an initial detention order was valid for ninety days (section 100(3) of the Act). It could be extended any number of times for up to ninety days at a time. However, the total period of detention could only exceed 180 days in exceptional circumstances, such as if an alien prevented his or her own removal or if it was impossible to remove an alien within 180 days for other reasons. The

total period of detention could not exceed eighteen months continuously, except if it had been established that an alien constituted a threat to public order or national security (section 102 (6)). If it was impossible to remove an alien within eighteen months, a less strict preventive measure could be imposed.

77. Under section 88(1)(h) of the 2008 Act, the authorities were entitled to issue deportation orders against aliens constituting a threat to public order or national security. Under section 93 of the 2008 Act, once an alien had become subject to expulsion, removal directions were to be issued within seven days. A destination country, together with the manner, the time, and the place of enforcement, were to be specified in the removal directions (section 93(4)).

B. The 2015 Aliens Act

78. The 2015 Aliens Act (*Zakon o strancima*, OG BH, no. 88/05) entered into force on 25 November 2015, replacing the 2008 Act. The provisions relevant to the present case remained the same, except that under section 119, which regulates the detention (with a view to deportation) of an alien in respect of whom it has been established that he or she constitutes a threat to public order or national security, the maximum period of detention cannot exceed eighteen months; no exceptions to this provision are stipulated.

79. The imposition of preventive measures is regulated by sections 118 and 119 of the Act. A preventive measure restricting liberty of movement to a certain place or area, with the obligation to report to the Aliens Service or police, can be imposed on an alien (i) if, *inter alia*, it has been established that he or she constitutes a threat to public order or national security, or (ii) for the purpose of his removal from the country (section 118 (2)). Such a measure will remain in force until the alien's removal or voluntary departure from the country or for as long as the reasons for that preventive measure persist (section 119 (2)).

C. The 2005 Secret Data Act

80. The 2005 Secret Data Act (*Zakon o zaštiti tajnih podataka*, OG BH, nos. 54/05 and 12/09) entered into force on 17 August 2005. Under section 5 of that Act, the judges of the State Court and the Constitutional Court have access to all levels of classified data without the need to observe any formalities (such as obtaining security clearance or special authorisation) if such access is required for the exercise of their duties.

D. The 2003 Criminal Procedure Code

81. Under Article 436 of the 2003 Criminal Procedure Code (*Zakon o krivičnom postupku*, OG BH, nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09 and 72/13) a person who has been detained but against whom criminal proceedings were never instituted or were discontinued – or if he or she was acquitted, or if the criminal charges in question were dismissed – has a right to compensation. The same right belongs to a person who has been arrested or detained for a period longer than necessary owing to a mistake or unlawful action on the part of the authorities.

E. The 2004 Civil Procedure Code

82. In accordance with Article 21 of the Civil Procedure Code (*Zakon o parničnom postupku*, OG BH, nos. 36/04, 84/07, 58/13 and 94/16), the State Court has a jurisdiction to examine an action for the protection of personality rights, submitted with or without a compensation claim.

F. The 1978 Civil Obligations Act

83. In accordance with section 200 of the 1978 Civil Obligations Act (*Zakon o obligacionim odnosima*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/78, 39/85, 45/89 and 57/89, and Official Gazette of the Republic of Bosnia and Herzegovina nos. 2/92, 13/93 and 13/94), a court shall award compensation for non-pecuniary damage in respect of a breach of personality rights, such as a breach of the right to liberty.

III. RELEVANT INTERNATIONAL DOCUMENTS

84. On 26 September 2012 the Committee of Ministers of the Council of Europe, in its supervisory function under the terms of Article 46 § 2 of the Convention, adopted a decision concerning the implementation of the *Al Husin* judgment (see document no. CM/Del/Dec(2012)1150/6), which reads as follows:

> "The Deputies
>
> 1. noted that the Court found a potential violation of Article 3 of the Convention in the event of the applicant's deportation to Syria;
>
> 2. welcomed the fact that the authorities of Bosnia and Herzegovina have rapidly given assurances that the applicant would not be deported to Syria;
>
> 3. invited the authorities to keep the Committee regularly informed on the developments concerning the identification of a safe third country for the possible

deportation of the applicant, including on the assurances obtained from the third country against his repatriation to Syria;

4. noted that the Parliamentary Assembly of Bosnia and Herzegovina adopted at the first reading legislative amendments in order to ensure that detention of aliens on security grounds will only be possible after a deportation order is issued;

5. invited the authorities to provide more detailed information on the content of these new legislative amendments."

85. On 1 February 2017 the Committee of Ministers adopted a resolution deciding to close its examination of the implementation of the *Al Husin* judgment (see document no. CM/ResDH(2017)28).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

86. The applicant contended that his detention had been unlawful and incompatible with Article 5 § 1 of the Convention, the relevant part of which reads 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:

...

(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."

A. Admissibility

1. Whether the applicant may claim to be a "victim"

87. The Government submitted that on 17 June 2015 the Constitutional Court had found a violation of Article 5 § 1 as regards the period of the applicant's detention between 21 March 2013 and 14 March 2014 (see paragraph 43 above). The applicant could therefore no longer claim to be a victim of the alleged violation within the meaning of Article 34 of the Convention in relation to that period.

88. The applicant disagreed.

89. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a victim unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the relevant breach of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 180,

ECHR 2006-V, and *Rooman v. Belgium* [GC], no. 18052/11, § 129, 31 January 2019). The redress afforded by the national authorities must be appropriate and sufficient (see *Kudić v. Bosnia and Herzegovina*, no. 28971/05, § 17, 9 December 2008). Furthermore, the Court has already had occasion to indicate in the context of different Convention Articles that an applicant's "victim" status may also depend on the level of compensation awarded at domestic level, where appropriate, or at least on the possibility of seeking and obtaining compensation for the damage sustained, having regard to the facts about which he or she complains before the Court (see *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 262, ECHR 2012 (extracts)). In respect of a complaint under Article 5 § 1, the Court has held that in specific circumstances it can accept that the existence of a clear and established avenue under domestic law under which an adequate amount of compensation can be claimed may constitute sufficient redress within the meaning of the Court's case-law on Article 34 of the Convention (see *Klinkel v. Germany* (dec.), no. 47156/16, § 29, 11 December 2018).

90. Turning to the circumstances of the present case, the Court notes that while the Constitutional Court did not award the applicant any redress, it had expressly acknowledged the breach of his rights under Article 5 § 1 of the Convention with respect to the period of his detention between 21 March 2013 and 14 March 2014. Such acknowledgement opened up the possibility for the applicant of claiming compensation in a separate set of proceedings. The 2003 Civil Proceedings Code provides for an action for the protection of personality rights before the State Court and the general rules of tort law provide for an action for damages for the breach of liberty and other personality rights (see paragraphs 82 and 83 above). In these circumstances, the Court finds that the applicant could reasonably have been expected to turn to the domestic courts to obtain compensation for the acknowledged breach of his rights under Article 5 § 1 of the Convention, rather than turning to this Court to seek confirmation of the already recognised unlawfulness of his detention (see *Klinkel*, cited above, § 30).

91. Therefore, the Court upholds the Government's objection and considers that the applicant can no longer claim to be the "victim" of a violation of Article 5 § 1 of the Convention for the purposes of Article 34 of the Convention as regards the period of his detention between 21 March 2013 and 14 March 2014. This part of the application must therefore be rejected in accordance with Article 35 § 4 of the Convention.

2. Other grounds of inadmissibility

92. The Court notes that the complaint concerning the period of the applicant's detention between 9 July 2012 and 21 March 2013 and between 14 March 2014 until his release on 17 February 2016 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It

furthermore notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

93. The applicant argued that he had been detained for more than eight years continually – from 6 October 2008 until 17 February 2016. He furthermore submitted that his removal had been impossible at the beginning of the proceedings and had remained so throughout his detention by virtue of the fact that he had been deemed to constitute a threat to national security – a fact indicated in all requests to third countries to admit him. In such circumstances, it had been clear that no country would have an interest in accepting him on its territory. Furthermore, requests for the applicant to be admitted to other countries had always been sent only a few days before the Aliens Service had been due to examine and extend his detention. Therefore, it was evident that the deportation proceedings had not been pursued with due diligence and that the domestic authorities had not acted in good faith. Moreover, the domestic authorities had contacted the Syrian Embassy in Belgrade in 2014, asking it to accept the applicant, despite their already having guaranteed that he would not be expelled to his country of origin. The applicant furthermore alleged that since 8 November 2007 he had been a stateless person (see paragraph 74 above).

94. The Government argued that the applicant's detention had been ordered, in accordance with domestic law, with a view to deportation (see paragraph 14 above). All the decisions extending his detention had been subject to judicial review before the State Court and the Constitutional Court, respectively. After the Court's judgment of 7 February 2012 (see *Al Husin*, cited above), the relevant domestic authorities had initiated proceedings to secure the applicant's admission to a safe third country. It was evident from the case file that those proceedings had been pursued diligently. Although throughout the applicant's detention the domestic authorities had viewed his removal as a realistic prospect, they could not have compelled a third country to accept him.

95. As regards the applicant's submissions regarding the loss of his Syrian nationality, the Government contended that this information had been submitted for the first time in the applicant's written observations (see paragraph 74 above). A copy of the decision of 8 November 2007 by which his nationality had allegedly been revoked had never been submitted to the national authorities. While it was unclear when the applicant had obtained that decision, it was evident that he had been aware of it at least since 28 July 2015, when it had been translated into one of the official languages of Bosnia and Herzegovina (see paragraph 74 above). However, before and

after that date in all the applicant's submissions to the national authorities he had been referred to as a Syrian national.

2. The Court's assessment

(a) General principles

96. Article 5 of the Convention enshrines a fundamental human right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty and no deprivation of liberty will be lawful unless it falls within one of those grounds. One of the exceptions, contained in sub-paragraph (f), permits the State to control the liberty of aliens within the context of immigration (see *Saadi v. the United Kingdom* [GC], no. 13229/03, §§ 43 and 64, ECHR 2008).

97. Article 5 § 1 (f) does not demand that detention be reasonably considered necessary, for example to prevent the individual in question from committing an offence or fleeing. Any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified, however, only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f). The deprivation of liberty must also be "lawful". Where the "lawfulness" of detention is at issue, including the question of 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 national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1, and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention. To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009).

98. Lastly, the Court reiterates that the domestic authorities have an obligation to consider whether removal is a realistic prospect and whether detention with a view to removal is from the outset, or continues to be,

justified (see *Amie and Others v. Bulgaria*, no. 58149/08, § 77, 12 February 2013, and *Kim v. Russia*, no. 44260/13, § 53, 17 July 2014).

(b) Application to the present case

99. It is not disputed that the applicant's placement in the Immigration Centre amounted to "deprivation of liberty" and that the detention fell within the ambit of sub-paragraph (f) of Article 5 § 1 of the Convention.

100. The Court notes that the applicant was detained on 6 October 2008 (see paragraph 13 above) and released under a preventive measure on 17 February 2016 (see paragraph 48 above). In its judgment of 7 February 2012 (see *Al Husin*, cited above) the Court examined the applicant's detention during the period between 6 October 2008 and 7 February 2012 and found a violation of Article 5 § 1 with regard to the period during which he had been detained without a deportation order (from 6 October 2008 until 31 January 2011 – see paragraphs 14 and 17 above). Furthermore, the indication made to the Government in the course of those proceedings under Rule 39 of the Rules of Court (namely that the applicant should not be expelled to Syria) remained in force until 9 July 2012, when the judgment became final (see paragraph 17 above; see also *Al Husin*, cited above, § 92). The Court reiterates in that regard that the Contracting States are obliged under Article 34 of the Convention to comply with interim measures indicated under Rule 39 (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 99-129, ECHR 2005-I, and *Al Husin*, cited above, § 67).

101. Therefore, the period of detention to be considered for the purposes of the present case began on 9 July 2012, when the interim measure was lifted and the domestic authorities initiated proceedings for the applicant's removal to a safe third country, and ended on 17 February 2016, when the applicant was released under a preventive measure. The Court has already concluded above that the applicant has lost his victim status in respect of the period of detention between 21 March 2013 and 14 March 2014 (see paragraph 91 above). The relevant period thus lasted from 9 July 2012 until 17 February 2016 with the subtraction of the period covered by the Constitutional Court in respect of which the applicant has lost his victim status.

102. As to the lawfulness of the detention, the Court notes that the applicant's deprivation of liberty was based on section 99 of the 2008 Aliens Act and on section 119 of the 2015 Aliens Act, on security grounds and with a view to deportation (see paragraphs 13, 14, 75 and 78 above). Accordingly, the applicant's detention was in compliance with the letter of the national law.

103. The salient issue in the present case is whether it can be said that the "action [in question was] taken with a view to deportation" throughout

the duration of the applicant's detention and, consequently, whether it was justified under Article 5 § 1 (f).

104. As already stated above (see paragraphs 17 and 100 above), Article 3 prevented the applicant's removal to Syria. The Court reiterates that where there are obstacles to deportation to a given country, but where other destinations are in principle possible, detention pending active efforts by the authorities to organise removal to a third country may fall within the scope of Article 5 § 1 (f) (see *M. and Others v. Bulgaria*, no. 41416/08, § 73, 26 July 2011). In that connection, the Court notes that from September 2012 the domestic authorities started looking for another State willing to accept the applicant (see paragraph 50 above). The Court further notes that from then until 17 February 2016, when the applicant was released under a preventive measure, the authorities contacted forty-three countries (contrast, *Kim*, cited above, § 52, and *M. and Others v. Bulgaria*, cited above, §§ 73 and 74). However, by August 2014 thirty-eight countries had refused to accept the applicant (see paragraphs 51, 53, 54, 56, 57, 58 and 60 above). The Court considers that at the latest from that point in time it must have become clear to the authorities that the attempts to remove the applicant to a safe third country were bound to fail.

105. After that period, the authorities contacted two new countries (Canada and Kazakhstan – see paragraphs 64 and 67 above) and sent fresh requests to the United Arab Emirates and Turkey (see paragraphs 61 and 65 above). Moreover, there was also a failed attempt to organise a meeting at the Saudi Arabian embassy (see paragraph 65 above).

106. The applicant was released under a preventive measure only when his detention had exceeded the maximum duration under the new Aliens Act (see paragraph 48 above).

107. The foregoing considerations are sufficient to enable the Court to conclude that the grounds for the applicant's detention – action taken with a view to his expulsion – did not remain valid for the whole period of his detention owing to the lack of a realistic prospect of his expulsion.

108. There has accordingly been a violation of Article 5 § 1 (f) of the Convention with regard to the period of the applicant's detention after August 2014 until his release on 17 February 2016. There has been no violation of this provision as regards the period of detention from 9 July 2012 until 21 March 2013 and from 14 March 2014 until August 2014.

109. In view of this conclusion, the Court does not find it necessary to examine whether the proceedings were conducted with due diligence or to consider the applicant's claims about his alleged statelessness.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

110. The applicant contended that the proceedings before the domestic courts in respect of his efforts to challenge his detention had not complied with the requirements of Article 5 § 4, which states:

> "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

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

B. Merits

1. The parties' submissions

112. The applicant submitted that before the Appeals Chamber of the State Court's judgment of 14 May 2014 (see paragraph 24 above) neither he nor his representatives had had access to any relevant material related to national security; this had rendered completely ineffective the proceedings challenging the lawfulness of his detention, contrary to Article 5 § 4 of the Convention. Furthermore, the open evidence disclosed to him (following the judgment ordering the disclosure thereof) had contained only general allegations, and not any firm evidence. The applicant had never been informed, at least in substance, of the content of the closed evidence; accordingly, he had not been able to prepare his defence adequately.

113. The Government submitted that the applicant had had the possibility to seek judicial review of the decisions to extend his detention before the State Court and the Constitutional Court (fully independent courts that could have examined all the relevant evidence, both closed and open). Furthermore, following the State Court's judgment of 14 May 2014 (see paragraph 24 above), the applicant had been given access to the part of the national-security-related material that had been declassified (see paragraph 25 above). The open material against him had contained sufficiently detailed allegations for him to be able to effectively challenge them. Moreover, the open evidence had been decisive in determining the lawfulness of the applicant's detention.

2. The Court's assessment

114. As the Court explained in *A. and Others v. the United Kingdom* (cited above, § 203), the requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances of the case in question. As a general rule, an Article 5 § 4 procedure must have a judicial character, but it is not always necessary that the procedure be attended by the same guarantees as those required under Article 6 in respect of criminal or civil litigation. The guarantees it provides must be appropriate to the type of deprivation of liberty in question (see *Sher and Others v. the United Kingdom*, no. 5201/11, § 147, ECHR 2015 (extracts)).

115. In particular, the authorities must disclose adequate information to enable an applicant to know the nature of the allegations against him and to have the opportunity to lead evidence to refute them. They must also ensure that the applicant or his legal advisers are able effectively to participate in court proceedings concerning continued detention (*ibid*., § 149).

116. Turning to the facts of the present case, the Court notes that the applicant was detained with a view to his deportation on national-security grounds. The Court has previously held that in cases concerning matters of strong public interest, an applicant's right under Article 5 § 4 to procedural fairness has to be balanced against that interest (see *A. and Others v. the United Kingdom*, cited above, § 217).

117. The Court notes that in its decision of 17 June 2015 the Constitutional Court found a violation of Article 5 § 1 with regard to the period of the applicant's detention from 21 March 2013 until 14 March 2014 because of the failure to disclose evidence related to national security and because of the lack of adequate judicial review of that evidence (see paragraph 43 above). The Court furthermore notes that the Constitutional Court found no violation of Article 5 § 1 as regards the applicant's subsequent detention from 15 March 2014 until 7 June 2015 (see paragraph 43 above). The court took into account the fact that, following the judgment of the Appeals Chamber of the State Court of 14 May 2014 (see paragraph 24 above), the applicant had been given access to that part of the national-security-related evidence that had been declassified. It also held that the subsequent judicial-review proceedings had offered an adequate guarantee that there had been at least *prima facie* grounds for believing that, if the applicant were at liberty, national security would be put at risk.

118. The Court furthermore notes that at the hearings before the State Court of 23 May 2014 and of 3 March 2015 (see paragraphs 25 and 36 above) and at the hearing before the Aliens Service of 10 February 2016 (see paragraph 47 above), the applicant was given access to the open evidence against him. At the hearings of 3 June, 28 August and 30 November 2015 the State Court informed the applicant that the National

Security Agency's reports did not contain any new information regarding him (see paragraphs 38, 39 and 40 above).

119. In *A. and Others v. the United Kingdom* (cited above) the Court observed generally that, where evidence was to a large extent disclosed and open material played the predominant role in the determination of the grounds for his deprivation of liberty, it could not be said that an applicant had been denied an opportunity effectively to challenge the reasonableness of any suspicions about him. It also noted that even where all or most of the underlying evidence remained undisclosed, if the allegations contained in the open material were sufficiently specific, it should have been possible for an applicant to provide his representatives and a special advocate with information with which to refute them, if such information existed, without his having to know the details or sources of the evidence that form the basis of the allegations in question (ibid., § 220).

120. In the present case the State Court – which was a fully independent court and could examine all the relevant evidence, both closed and open – was best placed to ensure that no material was unnecessarily withheld from the applicant (see, *mutatis mutandis*, *Sher and Others*, cited above, § 153). Although the legal system of the respondent State did not allow for the provision of special advocates, the Court notes nonetheless that the applicant still had the possibility to effectively challenge the allegations against him: he was informed of the legal basis and reasons for his detention; he was given access to the open material and had the opportunity to challenge it; he was legally represented and able to make submissions to the State Court; and he had the possibility (which he used) to seek judicial review at three instances (the State Court, the Appeals Chamber of the State Court and the Constitutional Court).

121. Furthermore, the allegations contained in the open material were sufficiently specific to allow the applicant to effectively challenge the suspicions against him. An example would be the allegation made that the applicant had been a member of the El Mujahedin unit and one of the leaders of a mujahedin community in Donja Bočinja, or the allegations about an attempt to purchase ammunition on a specific date and at a specific place. Moreover, the names of the suspected terrorists and their supporters, with whom the applicant had allegedly met, were provided, as well as details concerning the applicant's activities in Bosnia and Herzegovina after the war (see paragraph 25 above).

122. In the light of the foregoing, the Court considers that the applicant was given a reasonable opportunity to present his case. There has accordingly been no violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

123. The applicant furthermore complained that he had no enforceable right to compensation, as required by Article 5 § 5. Although his detention during the period between 21 March 2013 and 14 March 2014 had been found to be in breach of Article 5 § 1 by the Constitutional Court in a decision of 17 June 2015, he had not been awarded any compensation. Article 5(5) of the Convention provides:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

124. The Government contested that argument. They argued that the applicant had a right to compensation under Article 436 of the 2003 Criminal Procedure Code (see paragraph 81 above), in connection with section 200 of the 1978 Civil Obligations Act (see paragraph 83 above), but he had failed to used that remedy. Therefore, this complaint should be should be rejected on non-exhaustion grounds.

125. The Court notes that the domestic remedy envisaged under the 2003 Civil Procedure Code concerns arrests and detention in the context of the criminal proceedings, while the present applicant was detained in the course of the administrative proceedings for his deportation. However, the Court notes that the 2003 Civil Proceedings Code provides for an action for the protection of personality rights, with or without compensation claim, before the State Court, as well as that the general rules of tort law provide for an action for damages for breach of liberty and other personality rights (see paragraphs 82 and 83 above).

126. The applicant did not contest the effectiveness and availability of this remedy nor did he offer any reason for the failure to use it. In these circumstances, the Court considers that this complaint is inadmissible on non-exhaustion grounds and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

127. The applicant complained that the conditions of his detention in the detention centre for aliens had been incompatible with Article 3 of the Convention, which reads as follows:

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

128. The Government contested that argument.

129. The Court notes that the applicant did not dispute the facts submitted by the Government concerning conditions in the Immigration Centre (see paragraphs 70-73). Apart from general, vague and

unsubstantiated complaints, the applicant did not offer any evidence in support of his allegations (contrast *Kim*, cited above, §§ 31-35). It follows that this complaint is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

130. 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

131. The applicant claimed 150,000 euros (EUR) in respect of non-pecuniary damage.

132. The Government submitted that the amount claimed was unjustified and excessive, in particular in view of the amount of just satisfaction awarded in the applicant's first case (see *Al Husin*, cited above, § 87).

133. The Court accepts that the applicant suffered distress as a result of the breach found and that an award in respect of non-pecuniary damage is therefore justified. Making its assessment on an equitable basis, as required by the Convention, and having regard to the fact that it has already found a violation in the applicant's case (see *Al Husin*, cited above), the Court awards the applicant EUR 9,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

134. As the applicant did not claim costs and expenses, the Court makes no award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 5 § 1 of the Convention, concerning the applicant's detention between 9 July 2012 and 21 March 2013, and between 14 March 2014 and 17 February 2016 admissible;

2. *Declares* the complaint under Article 5 § 4 admissible of the Convention;

3. *Declares* the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention with regard to the period of the applicant's detention after August 2014 until his release on 17 February 2016 and that there has been no violation of that provision as regards the periods of detention from 9 July 2012 until 21 March 2013 and from 14 March 2014 until August 2014;

5. *Holds* that there has been no violation of Article 5 § 4 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 25 June 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	Jon Fridrik Kjølbro President