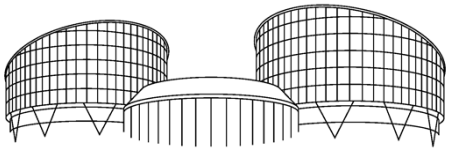

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ZELČS v. LATVIA

(Application no. 65367/16)

JUDGMENT

Art 5 § 1 • Deprivation of liberty • Administrative detention in police car for less than two hours with a view to drawing up an administrative-offence report • Legal basis for detention lacking foreseeability

Art 6 § 1 (criminal) and Art 6 § 3 (d) • Inability to question certain witnesses before the appellate court • Overall fairness not impaired

STRASBOURG

20 February 2020

FINAL

20/06/2020

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

In the case of Zelčs v. Latvia,

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

Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
André Potocki,
Mārtiņš Mits,
Lado Chanturia,
Anja Seibert-Fohr, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 28 January 2020,

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

PROCEDURE

1. The case originated in an application (no. 65367/16) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr Ringolds Zelčs ("the applicant"), on 11 November 2016.

2. The applicant was represented by Mr Ā. Stoks, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agent, Ms K. Līce.

3. The applicant alleged that his detention in a police car on 20 November 2015 had been unlawful and that he had not had sufficient opportunities to question police officers during administrative-offence proceedings against him, contrary to Articles 5 § 1 and 6 §§ 1 and 3 (d) of the Convention.

4. On 5 July 2017 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Riga.

A. Traffic incident of 20 November 2015

1. Facts that are not disputed

6. At 8.46 p.m. on 20 November 2015 the applicant was administratively detained by the police. He was placed in a police car.

7. The police drew up the following reports:

1) an administrative-detention report (*administratīvās aizturēšanas protokols*) stating that the applicant had been detained with a view to drawing up an administrative-offence report in relation to an administrative offence under Article 149^{15} of the Code of Administrative Offences (*Latvijas Administratīvo pārkāpumu kodekss* – hereinafter, "the Code");

2) an administrative-offence report (*administratīvā pārkāpuma protokols*) stating that the applicant had violated Article 149^{15}(3) of the Code by driving a vehicle in reverse gear under the influence of alcohol (report no. PC082928); and

3) another administrative-offence report stating that the applicant had violated Article 149^{4}(14) of the Code by driving a vehicle in reverse gear and causing a traffic incident (report no. PC 082973).

8. The applicant disagreed with both administrative-offence reports and submitted a written statement, which was annexed to the first report. He alleged that his wife, I.Z., had been in the driver's seat at the time when the traffic incident had taken place.

9. At 10.24 p.m., less than two hours later, the applicant was released.

2. Disputed facts

10. The Government alleged that on 20 November 2015 N.S., E.P. and R.S., officers of the State police, had received information about a traffic incident in a car park of a residential building in Riga, in which one of drivers had possibly been under the influence of alcohol. On arrival at the scene, the police officers had observed that the Mazda car, owned by the applicant, had crashed into another car, a Mercedes Benz owned by J.Č. At that time, only the applicant, J.Č. and her spouse, S.H., had been present at the scene.

11. The police officers had obtained initial statements from those present. J.Č. had asserted that the applicant had been driving the Mazda, as she had seen him leaving the car from the driver's side, but the applicant's spouse, I.Z., and their child had been sitting in the passenger seat. After the incident, J.Č.'s spouse S.H. had come to the scene and talked to the applicant. It had been S.H. who had called the police because he had smelt alcohol on the applicant's breath.

12. The police officers had asked the applicant to get into the police car for a breath test. The test had indicated a strong presence of alcohol (1.4720 ‰). Subsequently, the police officers had drawn up two administrative-offence reports: one for driving under the influence of alcohol and the other for causing a traffic incident (see paragraph 7 above). Both reports had been based on the statement of J.Č. The applicant had read those reports, then had signed the report for driving under the influence of alcohol, but not the report for causing the traffic incident.

13. The applicant averred that he had not been driving the car at issue that evening. Having bought some groceries at a nearby store, the applicant with his spouse and their two-year old daughter, had stopped by his car on the way home to get some tools. It had started to drizzle and they had decided to sit in the car. As he had consumed alcohol, he had sat in the passenger seat with their daughter on his lap. His spouse had sat in the driver's seat. About ten minutes later, when it had started to get cold, I.Z. had asked the applicant for the car key with a view to switching on the heating. When I.Z. had switched on the engine, the car had suddenly moved backwards because the gearstick had been left in reverse. They had had a minor traffic incident with the car driven by J.Č. It had been around 8 p.m.

14. The applicant had rushed out of the car. His spouse – holding their daughter – had followed. An argument between J.Č. and I.Z. had ensued, the latter had decided to go home to put their daughter to bed with the intention of returning afterwards. The applicant had stayed at the scene, as had J.Č. The latter had called her spouse, S.H., who had arrived some minutes later. A conflict between the applicant and S.H. had ensued regarding payment for repairs; S.H. had called the police. The applicant had not attempted to leave the scene; instead he had waited for his spouse to arrive, intending to give a statement to the police.

15. At around 8.45 p.m. the police had arrived at the scene. To his surprise, the applicant had been administratively detained, placed in the police car and had had to undergo a breath test. Subsequently, his spouse had arrived on the scene. She had wished to give a statement to Officer E.P., but he had refused to take it. At 9.05 p.m. the officer had drawn up the first report for driving under the influence of alcohol. At 9.30 p.m. Officer R.S. had drawn up the second report for causing the traffic incident. Both reports had referred to statements made by J.Č., but her statement had not been attached to either of them. The applicant had asked to see J.Č.'s statement; that was refused. He had signed both reports but had disagreed with their contents. In his statement he had submitted that his wife had been sitting in the driver's seat at the time of the traffic incident.

16. On 25 November 2015 the applicant had acquainted himself with the case material and had been surprised to discover that written statements of J.Č. and S.H., dated 20 November 2015 and supposedly drawn up at the scene, had been included in the case material. He concluded that those statements had been falsified.

B. Proceedings before the domestic courts

17. On 25 November 2015 the Riga City Ziemeļu District Court (*Rīgas pilsētas Ziemeļu rajona tiesa*, hereinafter – the "District Court") commenced the adjudication of the administrative-offence proceedings as regards driving under the influence of alcohol. The applicant pleaded not

guilty and testified that he had not driven the car that evening; his wife had been in the driver's seat at the time of the traffic incident. The hearing was postponed in order to summon J.Č., her spouse S.H., and Officer N.S. as witnesses. The applicant's application to summon his spouse, I.Z., was also allowed.

18. On 11 January 2016 another hearing was held. All those summoned were present save for S.H. J.Č. gave a brief testimony to the effect that the applicant had left the car from the driver's side; however, she could not give lengthy testimony that day. The applicant's spouse, I.Z., testified that she had been sitting in the driver's seat at the time of the traffic incident. She did not have a driving licence. She had wished to give a statement, but had been refused. Officer N.S. testified that he had prepared a report on the traffic incident, but not the administrative-offence reports, and taken statements from J.Č. and S.H. The applicant had denied driving the car, but had not mentioned who had. His colleague had taken the applicant's statement. The hearing was postponed in order to summon J.Č. following an application by the applicant, and S.H. and Officer E.P. following an application by the other party.

19. On 25 January 2016 another hearing was held. J.Č. and her spouse S.H. failed to appear. Officer E.P. testified that he had prepared the administrative-offence report for driving under the influence of alcohol, and had taken the applicant's statement. The latter had provided controversial explanations about the traffic incident to Officer E.P. Firstly, he had stated that his spouse had been driving the car, had got scared and had left the scene. Secondly, he had stated that he had been giving driving lessons to his spouse; she had not had a driving licence. Nobody had presented themselves to Officer E.P. as being the driver of the Mazda. The hearing was postponed in order to summon J.Č. and her spouse S.H. as witnesses following applications by both parties.

20. On 5 February 2016 the District Court heard evidence from J.Č. and her spouse S.H. J.Č. testified that the applicant had left the car from the driver's seat, whereas his spouse and their daughter – from the passenger seat some moments later. The following day the police officers had visited them at home because they had not taken a statement from her spouse. S.H. testified that the applicant had initially admitted that he had caused the traffic incident; both parties had been ready to make a joint incident statement. Then he had smelt alcohol on the applicant's breath and had called the police. The following day the police officers had visited them at home and enquired about something, which he no longer recalled. Having heard those statements, the District Court enquired as to whether parties had any additional requests. The court also asked whether they consented to completion of the adjudication on the merits (*lietas izskatīšana pēc būtības*). No objections were raised.

21. In his closing argument (*tiesu debates*) the applicant found it suspicious that the statements of J.Č. and S.H. had not been annexed to either of the administrative-offence reports. Perhaps, they had not been prepared at the scene and had only been completed the following day. He found that unacceptable. The applicant concluded that the administrative-offence reports had been drafted on officers' assumptions, which had been subjective. Also, he had been detained on subjective assumptions. The statement of J.Č. had been drafted later on the basis of those reports. His request to have his spouse's statement taken at the scene had been refused and thus his defence rights had been breached.

22. On 8 February 2016 the District Court found that the applicant had committed an offence under Article 149^{15}(3) of the Code. The administrative-offence report had contained all the necessary information, the applicant could understand for which events his administrative liability was to be established. Accordingly, he could exercise his defence rights. The District Court held that the police officers had received initial statements indicating that the applicant had been the driver of the car. Thus, the reports were drawn up on the basis of that information. They dismissed the applicant's allegation that the statement of J.Č. had not been drafted at the scene. The District Court relied on the witness testimony by J.Č. and S.H. and both police officers to establish the applicant's administrative liability. They did not find the applicant's and his spouse's testimony to be reliable. The District Court imposed the following penalties on the applicant: five day's administrative custody (*arests*); a fine of 850 euros (EUR); a two-year driving ban; and a ban on obtaining a licence to operate recreational craft (boats) for two years. He had also to compensate the expenses related to the alcohol test in the amount of EUR 15.65.

23. On 1 March 2016 the applicant lodged an appeal against that judgment. He argued that, *inter alia*, he had been unlawfully detained. There had been no grounds to detain him under Article 252(1) of the Code because the administrative-offence reports had been drawn up at the scene, he had not been taken anywhere, his identity had been known and there had been no need to prevent the continuation of an administrative offence. He had been placed in the police car with no rights to step out of it or to communicate with others. The applicant questioned the police officers' and J.Č.'s and S.H.'s objectivity on the grounds that the day following the incident the police officers had visited the witnesses at home and that fact had not been recorded. Thus, their evidence was inadmissible. On 19 May 2016 the applicant further supplemented his appeal and indicated reasons for which he considered the evidence by J.Č., S.H and the police officers to be unreliable and inadmissible.

24. On 11 March 2016 the Riga Regional Court (*Rīgas apgabaltiesa* hereinafter – the "Regional Court") instituted appellate proceedings and

informed the parties that the case would be examined using the written procedure.

25. On 7 June 2016 the Regional Court upheld the judgment of the District Court and dismissed the applicant's appeal. The Regional Court held that the District Court had established the applicant's administrative liability on the grounds of its assessment of all the evidence in the case material: the administrative-offence report, the report and printout in relation to the results of the alcohol test, the administrative-detention report, the testimony and internal reports by police officers N.S. and E.P., the testimony and written statements of J.Č. and S.H. (dated 20 November 2015), the testimony by I.Z. and the applicant's statement and testimony. The Regional Court referred to the written statements of J.Č. and S.H. (dated 20 November 2015) when dismissing the applicant's allegation that they had not been included in the case material. The Regional Court dismissed the applicant's allegation that the police officers had breached procedure as follows:

> "In contrast to [the applicant's] allegation, [the Regional Court] does not find any procedural breaches [in actions taken by] the police officers, because the applicant's administrative-detention report was drawn up in accordance with Article 256 of the Code."

The Regional Court concluded that they "have not established any breaches of the Code, which would allow [them] to quash the judgment of the District Court."

II. RELEVANT DOMESTIC LAW

26. The relevant provisions of the Code of Administrative Offences ("the Code"), as in force at the relevant time, read as follows:

Article 149[4](14)
General road traffic regulation offences

> "In the case of offences of road traffic regulations that are not mentioned in this Code –
>
> a warning shall be issued or a fine shall be imposed on the driver of the vehicle in the amount of EUR 7."

Article 149[15](3)
Driving under the influence of alcohol or narcotics or other intoxicating substances

> "In the case of driving or instructing a driver of a vehicle, if alcohol concentration found in the exhaled air or blood test exceeds 1.0 permilles, but does not exceed 1.5 permilles –
>
> ... an administrative custody of five to ten days, a fine of EUR 850 to 1,000 and a suspension of the driving licence for two years shall be imposed on a driver of any other vehicle [bar a bicycle or moped]."

Article 248(1) and (4)
Content of the administrative-offence report

"An administrative-offence report shall indicate the time and place it was drawn up, the name and surname of person who prepared it, the position and institution which he or she represents; information about the offender; the place, time and nature of the offence, normative act and provision, which stipulates responsibility for the offence; other information necessary to decide the matter ..."

"If the person, who has committed [the administrative] offence, refuses to sign the report, an entry about the refusal shall be included in the report. The person, who has committed [the administrative] offence, shall have the right to make a statement and comment on the content of the report, as well as to indicate the reasons why he or she refuses to sign the report."

Article 252(1)
Measures to ensure record-keeping in administrative-offence matters

"In cases specifically provided for in this Code in order to prevent the continuation of an administrative offence if other means have been exhausted, to determine the identity of the offender, to draw up an administrative-offence report, if this cannot be done on site and if the drawing up of a report is mandatory, and to enforce a decision taken within administrative-offence proceedings, [taking a person into] administrative detention (*administratīvā aizturēšana*) ... shall be permitted."

Article 253(1)
Administrative detention

"An administrative-detention report shall be drawn up indicating the date and place of the drawing up thereof, the position, name and surname of the person who has drawn up the report, information about the detainee, and the time of and reasons for the detention. The report shall be signed by the official who has drawn it up and the detainee. If the detainee refuses to sign the report, an entry about the refusal shall be included in the report."

Article 254(1)
Institutions (officials) authorised to impose administrative detention

"Only the following institutions (officials) have the right to [take a person] who has committed an administrative offence into administrative detention:

1) police employees (officials) –... if traffic regulations have been violated ..."

Article 255(1) and (4)
Time-limits for administrative detention

"A person who has committed an administrative offence may be detained for no longer than four hours ..."

"The time-limit for administrative detention ... in respect of a person who has been under the influence of alcoholic beverages, narcotics or other intoxicating substances [shall run] from the time of [his or her] becoming sober."

Article 260(2)
Rights and obligations of the person subject to administrative liability

"A person who is subject to administrative liability has the right personally or with an assistance of a representative ... to get acquainted with the material of the case, make a duplicate, an extract or a copy of the material, to participate in the adjudication of the matter, to provide explanations, to submit requests, as well as to appeal against the decision taken in the matter."

Article 289^{7}(6)
Hearing [before a regional (city) court]

"In a court hearing, parties to the administrative-offence proceedings shall have the right to submit ... applications, to participate in an examination of evidence and participate in legal debate, to provide their argument in reply, and to participate in the examination of other matters, which have arisen during the course of the adjudication of the administrative-offence matter."

Article 289^{21} (1)-(3)
Adjudication procedure before an appellate court

"A regional court shall adjudicate an appeal collegially by a panel of three judges.

An appeal shall be examined using the written procedure. Parties shall be notified of the examination [of the matter] and sent a copy of the appeal, indicating the right to submit an application for recusal in respect of the composition of the court or a separate judge within two weeks, indicating the right to submit an opinion on the appeal and informing about the date on which the appeal will be examined using the written procedure and the date on which the decision shall be available at the court's registry.

The court may of its own motion decide on the oral hearing of an appeal giving parties to the administrative-offence proceedings a minimum of two weeks' notice before the hearing of the case."

27. Article 256(1)-(4) of the Code, as in force at the relevant time, laid down the procedure for examination of persons (*personas aplūkošana*) and inspection of objects (*mantu apskate*) as follows:

"Examination of persons and inspection of objects shall be carried out by authorised officials of the State police ....

Examination of persons shall be carried out by an official of the same sex.

Inspection of objects shall be carried out in the presence of the owner ...

A separate report shall be drawn up in respect of examination of persons and inspection of objects or a note shall be made in the administrative-detention report [to that effect]."

28. Since 21 June 2007 Article 259 of the Code, which provided for the right to lodge an appeal against administrative detention with a higher-ranking institution or prosecutor (see *Djundiks v. Latvia*, no. 14920/05, § 37, 15 April 2014) has no longer been in force.

29. As of 1 July 2020 the Code of Administrative Offences is to be replaced by a new Administrative Liability Law (*Administratīvās atbildības likums*).

THE LAW

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

30. The applicant complained that his administrative detention on 20 November 2015 in the police car had been unlawful and thus contrary to Article 5 § 1 of the Convention. The relevant parts of that Article 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:
>
> ...
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;
>
> ..."

31. The Government contested that argument.

A. Admissibility

1. Applicability of Article 5 § 1

(a) The parties' submissions

32. The Government disputed the applicability of Article 5 § 1 of the Convention and argued that the applicant's placement in the police car had amounted to a mere restriction on his movement within the meaning of Article 2 of Protocol No. 4 to the Convention. He had been asked to get into the police car to carry out a formal procedure: to take an alcohol test and to draw up administrative-offence reports. The restrictions had been of a short duration (one hour and thirty-eight minutes) and the applicant had been released immediately after the necessary procedure had been completed. They distinguished the present case from the first applicant's situation in the case of *Čamans and Timofejeva v. Latvia*, no. 42906/12, 28 April 2016.

33. The applicant submitted that he had been deprived of his liberty. He had been pushed into the police car in a humiliating manner and physical force had been applied. He had not been allowed to communicate with the

outside world in any way, to contact relatives by telephone or to inform anyone about the situation he had found himself in. Officer E.P. had kept him under strict supervision, not even allowing him to leave the police car to go to a toilet. Pressure had been exerted on him to "sign all papers" rapidly.

(b) The Court's assessment

(i) General principles

34. 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. 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 *De Tommaso v. Italy* [GC], no. 43395/09, § 80, 23 February 2017, with further references, and *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 64, 15 December 2016).

35. The characterisation or lack of characterisation given by a State to a factual situation cannot decisively affect the Court's conclusion as to the existence of a deprivation of liberty (see *Creangă v. Romania* [GC], no. 29226/03, § 92, 23 February 2012).

36. 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*, no. 41872/10, § 190, ECHR 2013 (extracts)).

(ii) Application of these principles to the present case

37. The Court can accept the Government's contention that the situation, in which the present applicant found himself was quite different from that of the first applicant in *Čamans and Timofejeva*. By contrast to Mr Čamans, in respect of whom no procedural record was drawn up (see *Čamans and Timofejeva*, cited above, §§ 59 and 128), a measure of "administrative detention" was imposed on the present applicant. It was expressly stated in the procedural report that he was administratively detained with a view to drawing up an administrative-offence report (see paragraph 7 above). That measure was applied to the applicant for a relatively short period of time of less than two hours.

38. As to effects and manner of implementation of that measure, the parties disagree whether the applicant was under strict supervision by a

police officer during the period under consideration. However, it remains undisputed that the police officers placed the applicant in the police car and that he was not allowed to leave it. Nothing suggests that, as a matter of fact, on 20 November 2015 the applicant could have freely decided not to comply with the police officers' instruction to get into the police car or leave it at any moment without incurring adverse consequences. The applicant did not physically resist the police officers as he understood that he had to give a statement to the police. However, his willingness to comply with the police officers' instructions cannot be taken to indicate that the applicant remained in the police car of his own volition.

39. The Government considered that some of the applicant's submissions about the nature of restrictions imposed on him in the police car had been lodged belatedly (see paragraph 42 below). The Court notes in that respect that, at the material time, the Code did not provide for an appeal against the measure of "administrative detention" (see paragraph 28 above). In such circumstances and, bearing in mind that the applicant complained about his placement in the police car to the appellate court (see paragraph 23 above), the Court dismisses the Government's submission as to the belatedness of this particular aspect of the applicant's complaint.

40. In view of the aforementioned, the Court considers it sufficiently established that, notwithstanding the short duration of the applicant's time in administrative detention, the effects and manner of implementation of the measure in question, including an element of coercion, were indicative of a deprivation of liberty within the meaning of Article 5 § 1 (see, *mutatis mutandis*, *Shimovolos v. Russia*, no. 30194/09, § 50, 21 June 2011, and *Emin Huseynov v. Azerbaijan*, no. 59135/09, § 82, 7 May 2015, where applicants were brought to police stations and were not free to leave for about forty-five minutes and three hours and thirty minutes, respectively).

41. Accordingly, the Court finds that the applicant was deprived of his liberty on 20 November 2015 from 8.46 p.m. to 10.24 p.m. while being held in the police car. Article 5 § 1 is, therefore, applicable and the Government's objection is dismissed.

2. No significant disadvantage

(a) The parties' submissions

42. The Government submitted that the complaint was inadmissible because the applicant had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention. Given that the alleged restrictions had been imposed at the scene and had lasted for a short period of time, their impact on the applicant's rights had been minimal. The applicant's allegations about being pushed into a police car in a humiliating manner, being denied a chance to communicate with others outside the car and being under strict supervision by Officer E.P. (see paragraph 33 above)

had been raised for the first time before the Court. He had not lodged complaints or made any remarks in that connection at the domestic level; there had been no evidence corroborating his allegations. Those allegations fell outside the scope of the present case.

43. The applicant's description of the circumstances relating to his detention has been summarised above (see paragraph 33). In addition, he pointed out that the present case concerns a matter of principle to him.

(b) The Court's assessment

44. In the light of the prominent place that the right to liberty has in a democratic society, the Court has so far rejected the application of the "no significant disadvantage" admissibility criterion in relation to complaints under Article 5 of the Convention (see *Van Velden v. the Netherlands*, no. 30666/08, §§ 33-39, 19 July 2011; *Sýkora v. the Czech Republic*, no. 23419/07, § 56, 22 November 2012; *Bannikov v. Latvia*, no. 19279/03, § 58, 11 June 2013; *Lagunov v. Russia* [Committee], no. 40025/10, § 13, 1 March 2016; and *Zhulin v. Russia* [Committee], no. 22965/06, § 15, 18 October 2016). The Court finds no reason to rule otherwise in the circumstances of the present case, which concerns the applicant's allegations that his administrative detention had been unlawful as it had been in breach of domestic law (see paragraph 46 below). The Court considers that genuine respect for human rights requires it to continue examination of the complaint in this case. The Court rejects the Government's contention that the applicant's allegations as regards his placement in the police car and the nature of restrictions imposed therein falls outside the scope of the present case. The Court has examined those issues above as they pertain to the question of whether the applicant was deprived of liberty (see paragraphs 38-41). Accordingly, the Court dismisses the Government's objection.

3. Conclusion

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

B. Merits

1. The parties' submissions

(a) The applicant

46. The applicant argued that his detention had been unlawful as it had been in breach of domestic law. Under Article 252(1) of the Code, the measure of administrative detention with a view to drawing up an

administrative-offence report was only allowed in exceptional circumstances, which included among other things to stop an administrative offence, to determine the perpetrator, and if it could not be done at the scene. As administrative-offence reports on him had been drawn up at the scene and he had not been taken anywhere, that provision had been breached.

47. The appellate court's reference to Article 256 of the Code had been misleading as that provision had laid down the procedure for examination of persons and inspection of objects (see paragraph 27 above).

(b) The Government

48. The Government argued that applicant's detention had been covered by sub-paragraphs (b) or (c) of Article 5 § 1 of the Convention. The applicant's detention had been authorised under the second limb of Article 5 § 1 (b) in order to "secure the fulfilment of any obligation prescribed by law". The Government did not point to a specific and concrete obligation which the applicant had failed to fulfil. The police had needed to complete the relevant procedural records and the applicant's presence had been necessary. The applicant's detention had also been authorised under Article 5 § 1 (c) on the grounds of "reasonable suspicion" of him having committed an administrative offence of driving under the influence of alcohol. They explained the elements on which "reasonable suspicion" had been based.

49. The legal grounds for the applicant's detention had been Article 252(1) of the Code. Under Article 254(1) of the Code the police had been able to detain individuals in connection with traffic-related offences. The Government distinguished the present case from the cases of *Djundiks* and *Čamans and Timofejeva* (both cited above), where no administrative-offence or administrative-detention reports had been drawn up. The Government disagreed with the applicant's interpretation of Article 252(1) of the Code. The police officers opted for a more favourable and less restrictive measure, that is to say they did not bring him to a short-term detention facility; they completed the relevant records at the scene.

50. Lastly, the District Court and the Regional Court examined and assessed all the evidence in the case file, including the detention record, and established that the applicant's detention had been lawful (they referred to the Regional Court's conclusion summarised in paragraph 25 *in fine* above).

2. The Court's assessment

(a) General principles

51. Any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1, be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the

Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of that law (see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 135, 4 December 2018; *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 74, 22 October 2018).

52. In laying down that any deprivation of liberty must be effected "in accordance with a procedure prescribed by law", Article 5 § 1 primarily requires any arrest or detention to have a legal basis in domestic law. However, these words do not merely refer back to domestic law. They also relate to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention. On this last point, the Court stresses that where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Khlaifia and Others*, cited above, §§ 91-92, and *Del Río Prada v. Spain* [GC], no. 42750/09, § 125, ECHR 2013, with further references).

(b) Application of these principles to the present case

53. In view of specific allegations made by the applicant (see paragraph 46 above), the Court will begin its analysis with establishing whether there was a legal basis in national law to detain the applicant. In order to do that the Court must examine whether the applicant's detention in the police car was authorised under any of the legal grounds provided for in Article 252(1) of the Code, on the basis of which the applicant was administratively detained by the police. It has not been argued, and the Court cannot find any indication in the case material to conclude otherwise, that any of the following legal grounds – the need to halt an ongoing administrative offence, to determine the identity of the offender, or to enforce another decision (see paragraph 26 above) – could be invoked to justify the applicant's detention. The applicant's detention report expressly referred to the fact that he was being detained "with a view to drawing up an administrative-offence report", which was also the legal ground for detention laid down in Article 252(1) of the Code (see paragraphs 7 and 26 above). It was also on this legal ground that the Government relied to justify the applicant's detention (see paragraph 49 above).

54. The Court observes that it is not obvious from the text of Article 252(1) of the Code that the phrase "to draw up an administrative-offence report, if this cannot be done on site" (see paragraph 26 above) authorises a

person's "administrative detention" in a police car on site rather than in a police station or any other similar facility. In the domestic proceedings the applicant raised an argument that he had been detained in breach of domestic law as he had not been taken anywhere (see paragraph 23 above). The Regional Court, however, did not address this argument but referred to Article 256 of the Code (see paragraph 25 above), which laid down the procedure for "examination of persons" and "inspection of objects" (see paragraph 27 above). There is no information in the case material, however, that the legal basis for the applicant's administrative detention by the police had been "examination of persons" or "inspection of objects" on site. Furthermore, no note was made about such examination or inspection in the administrative-detention report, nor any separate report drawn up in that respect as required by Article 256(4) of the Code (see paragraph 27 above). In any event, the domestic courts have not provided any further reasons as to how the reference to the procedure for "examination of persons" and "inspection of objects" relate to Article 252(1) of the Code on the basis of which the police effected the administrative detention.

55. While the Government also relied on Article 254(1) of the Code listing institutions and officials authorised to impose administrative detention (see paragraph 26 above), the Court notes that no such reference can be found either in the administrative-detention report drawn up by the police or in the domestic courts' rulings. The Court, accordingly, dismisses the Government's contention that the applicant's detention was authorised on the grounds of Article 254(1) of the Code.

56. As noted above, it is essential that the conditions for deprivation of liberty be clearly defined and that the law itself be precise and its application foreseeable (see paragraph 52 above). The text of Article 252(1) of the Code expressly authorises detention to draw up an administrative-offence report "if this cannot be done on site". In view of the lack of any explanation from the domestic courts as to how that legal ground for administrative detention was applicable to the applicant's case, the Court finds that the applicant could not have foreseen that he would be detained on the site of the offence in the circumstances of the present case. Moreover, the different legal provisions invoked by the domestic authorities and the respondent Government to justify the applicant's administrative detention attest to the lack of clarity as to the actual legal basis applicable. Accordingly, the Court considers that the application of Article 252(1) of the Code was not sufficiently foreseeable in the present case and thus it fell short of the "quality of law" standard required under the Convention.

57. The above considerations are sufficient for the Court to conclude that the applicant's detention on 20 November 2015 from 8.46 p.m. to 10.24 p.m. in the police car was not "prescribed by law" for the purposes of Article 5 § 1 of the Convention. The requirement that any deprivation of liberty must be "lawful" is common to all the exceptions set out in sub-

paragraphs (a) to (f) of Article 5 § 1 of the Convention (see paragraph 51 above). In view of the above finding, the Court does not consider it necessary to further analyse whether the applicant's detention complied with specific requirements of subparagraph (b) or (c) of Article 5 § 1.

58. Accordingly, there has been a violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 and 3 (d) OF THE CONVENTION

59. The applicant complained of a violation of his right to a fair trial in the light of his inability to question police officers E.P. and N.S. a second time during the administrative-offence proceedings against him. He relied on Article 6 §§ 1 and 3 (d) of the Convention, the relevant part of which reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> ..."

60. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

62. The applicant submitted that he had not had a fair trial, in breach of Article 6 §§ 1 and 3 (d) of the Convention. He pointed out that he had not had a chance to question Officers E.P. and N.S. before the Regional Court about circumstances that he had discovered after their testimony to the

District Court. He was of the view that sole and decisive evidence against him had been provided by J.Č.

63. As regards the proceedings before the District Court, he had not been able to cross-examine all the witnesses in one hearing with a view to establishing discrepancies in their testimonies. He deplored the tactic employed by the State police to send its witnesses for hearings one after another. The District Court had not imposed any sanctions on witnesses for their failure to attend. In response to the Government's argument that he had not lodged further requests or objections in the last hearing, the applicant pointed out that he had defended himself in person. He had not been advised of his rights or given any time to reflect on any further requests. Also, the bill for his car, which had been taken to a police pound, had been increasing by 11.38 euros (EUR) per day, and he had no longer been able to bear any further proceedings.

64. As regards the proceedings before the Regional Court, the applicant was dissatisfied that the proceedings had been conducted using the written procedure and that he could not cross-examine the police officers. The appellate court had failed to address his arguments about inadmissiblity of evidence. He remained convinced that S.H. and the police officers had known each other and that S.H. had wished to take revenge against him.

(b) The Government

65. According to the Government, the District Court and the Regional Court had established the applicant's administrative liability on the basis of the administrative-offence report, the report on the results of the alcohol test, the administrative-detention report, the internal reports by police officers N.S. and E.P., the written statements of J.Č. and S.H. and the applicant's statement.

66. As regards the proceedings before the District Court, the procedural safeguards had been duly observed. All of the witnesses had been summoned and heard. Hearings had been adjourned when witnesses had failed to appear. The applicant himself had had witnesses summoned and had cross-examined them. Moreover, the applicant had not lodged any further requests or objections in the last hearing (see paragraph 20 above), which indicated that he had not wished to re-examine or have more witnesses summoned.

67. As regards the proceedings before the Regional Court, the Government pointed out that the applicant had not objected to using the written procedure. It was not necessary to have an oral hearing before the Regional Court since all the facts and legal circumstances had been duly established by the District Court. The applicant had failed to bring any new arguments or evidence. The applicant had not requested that an oral hearing be held and that the police officers be summoned. In any event, any additional evidence by the police officers had not been related to the charges

against the applicant; such evidence had not been included in the case material and had not been used to establish his administrative liability.

2. The Court's assessment

(a) General principles

68. The Court notes at the outset that the police officers were not "absent" witnesses (contrast with *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, ECHR 2011, and *Schatschaschwili v. Germany* [GC], no. 9154/10, ECHR 2015). The question for the Court to address is not whether all the elements of the test set out in *Al-Khawaja and Tahery* have been met, but rather whether the proceedings as a whole were fair (see, for a similar approach, *Campion v. Ireland* (dec.) [Committee], no. 29276/17, § 30, 10 October 2017).

69. In this regard, the Court has consistently underlined that the admissibility of evidence is primarily a matter for regulation by national law and as a general rule it is for the national courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, among other authorities, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 50, *Reports of Judgments and Decisions* 1997‑III; *Gäfgen v. Germany* [GC], no. 22978/05, § 162, ECHR 2010; and *Al-Khawaja and Tahery*, cited above, § 118).

(b) Application of these principles to the present case

70. As noted above, the police officers were not "absent" witnesses as they gave their statements before the first-instance court and the applicant was able to cross-examine them directly in open court (see paragraphs 18-19 above). The applicant takes issue with the fact they were not questioned again about the circumstances relating to their visiting witnesses in their homes on the day following the traffic incident (see paragraph 20 above).

71. The Court notes that the applicant was able to provide his own version of the events and to cast doubt on the credibility of the police officers' testimony before the first-instance and the appellate courts (see paragraphs 21 and 23 above).

72. It is evident from their decisions that the domestic courts examined the applicant's allegation that the witness statements had not been drafted at the scene. In examining the reliability of the police officers' testimony in that regard, they weighed in the balance factors such as their value, their significance to the proceedings and their reliability (see paragraphs 22 and 25 above). Hence the Court dismisses the applicant's allegation that the domestic courts did not examine the issue of admissibility of evidence. Furthermore, the domestic courts relied on other evidence, which also corroborated the police officers' testimony, such as the reports that had been

drawn up on the day of the traffic incident (see paragraphs 22 and 25 above). It is important to note that J.Č., an eyewitness to the traffic incident, also gave evidence in person before the District Court. The applicant was able to cross-examine her about the traffic incident and about the events that took place on the following day (see paragraph 22 above).

73. Moreover, the applicant's applications to summon witnesses were allowed by the District Court (see paragraphs 17-19 above). As to the applicant's argument that he was handicapped in that he had ensured his own defence, the Court notes that this fact did not prevent him from submitting requests to summon witnesses in other hearings. Hence he had a real possibility to cross-examine those witnesses, which he considered necessary for his defence position. He was given a further opportunity to submit requests to the District Court, an opportunity which he did not use (see paragraph 20 *in fine* above).

74. In his appeal, the applicant sought to further question the reliability of the evidence given by J.Č., S.H. and the police officers, but he did not apply for a hearing to be held or any witnesses to be heard (see paragraph 23 *in fine* above). Article 289^{21}(2) of the Code provided that the administrative-offence proceedings before the appellate court were normally conducted using the written procedure (see paragraph 26 above) and the applicant was informed of the decision to have his case examined in such procedure (see paragraph 24 above). The applicant could have been expected to apply for an oral hearing before the appellate court and to request that witnesses be summoned if he had attached importance to them.

75. Therefore, having regard to the proceedings as a whole, the Court is satisfied that overall fairness of the administrative-offence proceedings against the applicant was ensured.

76. There has accordingly been no violation of Article 6 §§ 1 and 3 (d) of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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

78. The applicant claimed 1,815.63 euros (EUR) in respect of pecuniary damage, which comprised EUR 850 (the fine levied in the administrative-offence proceedings), EUR 949.98 (the bill for keeping the seized vehicle in the police pound) and EUR 15.65 (the alcohol-test related

expenses). He also claimed EUR 18,000 in respect of non-pecuniary damage.

79. The Government considered that there had been no causal link between the alleged violation and the pecuniary damage claimed. As regards non-pecuniary damage, they considered his claim to be unsubstantiated.

80. The Court reiterates that it has found a violation of Article 5 § 1 of the Convention only. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

81. As regards non-pecuniary damage, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

B. Costs and expenses

82. The applicant did not submit a claim for the costs and expenses incurred before the domestic courts and the Court. Accordingly, the Court will not award any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

5. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Síofra O'Leary
Deputy Registrar	President