



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

FIFTH SECTION

CASE OF ŽIROVNICKÝ v. THE CZECH REPUBLIC

(Application no. 23661/03)

JUDGMENT

STRASBOURG

30 September 2010

FINAL

21/02/2011

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

In the case of Žirovnický v. the Czech Republic,

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

Renate Jaeger, *President*,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre,

Zdravka Kalaydjieva,

Ganna Yudkivska, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 7 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 23661/03) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Czech national, Mr Albert Žirovnický (“the applicant”), on 25 July 2003.

2. The applicant, who had been granted legal aid, was represented by Ms E. Schwab-Gyss, a lawyer practising in Strasbourg. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm from the Ministry of Justice.

3. The applicant complained, in particular, about a violation of his rights under Article 5 in connection with his detention.

4. On 6 June 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Mírov.

6. On 6 March 2001 the applicant was arrested. On this occasion he received a written notice of accusation that there was a strong suspicion that on 13 October 2000 at around 3.45 a.m., he, acting with a certain J.F.,

murdered M.H. in order to acquire property, which constituted an offence under Article 219 §§ 1 and 2 h) of the Criminal Code committed in complicity under Article 9 § 2 of the Criminal Code. The applicant was escorted to Prague Ruzyně remand prison.

7. On 8 March 2001 the applicant was heard by a judge at the Prague 3 District Court (*obvodní soud*). His lawyer could not attend the hearing and the applicant refused to testify in the latter's absence. The lawyer arrived a little later and the hearing resumed. At the end of the hearing, the judge remanded the applicant in custody, under Articles 67 § 1 a) and c) and 67 § 2) of the Code of Criminal Procedure ("the CCP"), referring to a danger that he would abscond and influence witnesses, with backdated effect from 6 a.m. on 6 March 2001

8. According to the applicant, the detention order was notified to him on 14 March 2001, but according to the Government, he had already made a complaint against it on 12 March 2001.

9. The applicant's wife and a certain Ž. were also charged with complicity in murder. The applicant's wife was not remanded in custody.

10. On 2 April 2001 the Prague Investigation Office (*Úřad vyšetřování hl.m. Prahy*) discontinued a criminal prosecution against the applicant's co-defendant, a certain F., which had been pending since 6 December 2000. The applicant allegedly learned this fact on 18 September 2001, when he was allowed to study his case file.

11. On 18 April 2001 the applicant was questioned. At the end of the interview, he asked to be allowed to study the case file; this was refused by the investigator. No specific reason was given for the refusal. On the next day, the applicant was transferred to Prague Pankrác remand prison where, according to him, the conditions of detention were much more rigorous.

12. On 24 April 2001 the Prague Municipal Court (*městský soud*), sitting in private, dismissed the applicant's complaint against the District Court's detention order of 8 March 2001, upholding the grounds for his detention pursuant to Article 67 a) and c) of the CCP, referring, *inter alia*, to the applicant's earlier prosecution on suspicion of murder. The court made it clear that from the material evidence gathered so far, including records of telephone tapping and from the statements of the applicant's wife, the criminal prosecution against the applicant was justified. According to the applicant, this decision was notified to him on 11 May 2001.

13. On 16 May 2001 the applicant complained that he had been denied the opportunity to consult his investigation case file. On the same day, he also complained that the investigator was not impartial.

14. On 28 May and 7 August 2001 the Prague Municipal Prosecutor (*městská státní zástupkyně*) informed the applicant that submissions which he had earlier addressed to the Municipal Prosecutor and the Prague High Prosecutor's Office (*vrchní státní zastupitelství*) respectively had been included in his case file as part of his defence, and dismissed his complaints

about the course of the investigation. In respect of the applicant's complaint that he had been refused access to the case file by the investigator, the prosecutor stated on 28 May 2001 that his denial was based on Article 65 § 2 of the Code of Criminal Procedure and was substantiated by the current state of evidence.

15. On 28 May 2001 the police investigator dismissed the applicant's complaint of partiality. The applicant's complaint against this dismissal was rejected by the head of the Prague Investigation Office on 10 July 2001.

16. On 27 June 2001 the applicant was informed that his complaint of 16 May 2001 had been transferred to the Municipal Prosecutor's Office. On 26 July 2001 his lawyer was allowed to study the case file.

17. On 15 August 2001 the judge at the District Court extended the applicant's detention until 6 December 2001. The applicant's complaint against this extension, submitted according to the Government on 23 August 2001, was dismissed by the Municipal Court on 16 October 2001, which decision was allegedly notified to the applicant on 9 November 2001.

18. On 18 September 2001 the applicant studied his case file.

19. On 20 November 2001 the judge at the District Court, at the Municipal Prosecutor's request of 15 November 2001, extended the applicant's detention under Article 67 a) and c) of the CCP, until 31 December 2001. He held in particular that the applicant was likely to be sentenced to a lengthy prison term, which created the risk that he would abscond abroad if released, and that he might conspire with his two co-defendants in order to procure an alibi. According to the judge, it appeared from the case file that the applicant would fabricate a strategy to set up an alibi for him and his co-defendant for the time of the murder. The judge agreed with the Municipal Prosecutor that the case was complex, that the accused would need to study the file and, if necessary, to suggest that further evidence be assessed, and that the Municipal Prosecutor needed time to prepare a bill of indictment.

20. On 27 November 2001 the applicant submitted a complaint against the last extension of his detention.

21. On 1 January 2002 an amendment to the Code of Criminal Procedure entered into force. Article II(4) provided that in cases where a term of detention had commenced before the entry into force of the amendment, time-limits within which a decision had to be taken as to a continuation of the detention started running on 1 January 2002.

22. In a letter of 8 January 2002 the Municipal Prosecutor informed the applicant that, pursuant to the CCP as amended, his continued detention would be decided under Article 71 § 3 of the CCP within three months and five days, this time-limit starting to run on 1 January 2002. The applicant was also told that the maximum detention period as provided for in Article 71 §§ 8 and 9 of the CCP as amended would expire on 6 July 2002.

23. On the same day, the Municipal Prosecutor held that pursuant to Article 71 § 2 of the CCP as amended the applicant had already been detained for three months and that there was no reason justifying his remand in custody for fear of collusion or intimidation, under Article 67 b) of the CCP as amended. The applicant allegedly submitted a complaint against this decision, which has, however, never been dealt with by the competent authority.

24. On 17 January 2002 the Municipal Court rejected the applicant's complaint against the District Court's decision of 20 November 2001 by which his detention had been extended to 31 December 2001. The decision was served on the applicant allegedly on 1 February 2002.

25. On 24 January 2002 the judge at the District Court rejected the applicant's requests for release dated 29 December 2001 and 2 January 2002 respectively, which, according to the Government, had been submitted to him on 8 January 2002. He stated, *inter alia*, that there was still a risk that the applicant would abscond if released and that, consequently, his detention was necessary under Article 67 a) of the CCP as amended.

26. On 30 January 2002 the Municipal Prosecutor filed a bill of indictment against the applicant.

27. On 11 February 2002 the Municipal Court decided to keep the applicant in detention, the reason for his detention as provided for in Article 67 a) of the CCP as amended still applying. According to the applicant, he has never received a written copy of this decision. Apparently, he learnt the existence of this decision from the Municipal Court's decision of 28 May 2002.

28. On 14 February 2002 the Municipal Court quashed the judge's decision of 24 January 2002, holding that the applicant had been indicted in the meantime and that consequently the Municipal Court no longer had jurisdiction to deal with the applicant's complaints against the lower court's refusals to release him from custody. The applicant argues that this document was backdated, having regard to the date on the last page, namely 22 January 2002. The Government regret to acknowledge that this was a typographical error.

29. On 28 February 2002 the Prague High Court (*vrchní soud*) quashed the Municipal Court's decision of 11 February 2002. While upholding the material and procedural accuracy of the decision concerned, it ordered the lower court to decide on the two requests for release the applicant had submitted before he was indicted.

30. On 12 March 2002 the Municipal Court dismissed the applicant's request for release of 4 February 2002, finding that the reason for his detention under Article 67 a) of the CCP as amended continued to apply.

31. In a judgment of 25 March 2002 the Municipal Court convicted the applicant of murder and sentenced him to sixteen years' imprisonment. The applicant appealed.

32. On 9 May 2002 the Municipal Court decided, under Article 71 § 6 of the CCP as amended, to keep the applicant in custody as there was still a risk of his absconding if released as provided for in Article 67 a) of the CCP as amended. The court referred to the lengthy prison sentence imposed on the applicant by its judgment of 25 March 2002.

33. On 28 May 2002 the Municipal Court rejected the applicant's request for release submitted on 21 May 2002, not accepting his written pledge. On 9 July 2002 the High Court rejected the applicant's complaint against this decision. The applicant received this decision apparently on 12 July 2002.

34. On 15 July 2002 the applicant submitted a further request for release. He was told, on 18 July 2002, that the High Court would not deal with it, as it had been introduced less than fourteen days after the dismissal of his previous request for release had become final, namely on 9 July 2002.

35. On 2 August 2002 the High Court rejected the applicant's request for release dated 24 July 2002.

36. In a judgment delivered on the same day, the higher jurisdiction upheld the meritorious judgment adopted by the Municipal Court on 25 March 2002. The judgment became legally effective from its delivery.

37. On 24 October 2002 the Supreme Court (*Nejvyšší soud*) rejected the applicant's complaint against the High Court decision of 2 August 2002, holding in particular that the final judgment in the applicant's criminal case had been adopted on 2 August 2002 and that a further examination of justification of his detention was therefore superfluous. According to the applicant, the Supreme Court's decision was notified to him on 4 December 2002.

38. On 30 January 2003 the applicant introduced a constitutional appeal (*ústavní stížnost*) invoking Articles 2 § 2, 8 §§ 2, 3 and 5, 12 §§ 1 and 2, 36 § 1, 38 § 2, 40 § 3 of the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*), and Article 5 §§ 2 and 3 and Article 6 §§ 1 and 3 of the Convention, challenging the decision of the Supreme Court of 24 October 2002, together with the decision of the High Court of 2 August 2002 and all previous decisions rendered in his case. He claimed, in particular that his detention after 31 December 2001 had been unlawful, that he had had no opportunity to study his case file for a couple of months, and that his complaints against the extensions of his detention and his requests for release had not been dealt with promptly. In respect of his claim relating to denial of access to the case file, the applicant did not refer to any relevant case-law adopted by the Constitutional Court on the matter.

39. On 22 May 2003 the Constitutional Court (*Ústavní soud*) dismissed the applicant's constitutional appeal, holding in particular:

“In the constitutional appeal lodged in time ... and in conformity with other formal statutory requirements (sections 30(1), 34, 72(1)(a) and 72(4) of the Constitutional Court Act), the applicant challenged the decision of the Supreme Court of 24 October 2002 and all previous decisions concerning his detention ...

By its decision ..., the Supreme Court dismissed the applicant's complaint ... against the Prague High Court, referring to the reasons expressed in all the previous detention decisions. [It] underlined that it was superfluous to examine the reasons justifying the applicant's detention because his criminal case had been finally settled by the judgment of the High Court of 2 August 2002 and the applicant had started serving his prison sentence. The Constitutional Court shares the Supreme Court's opinion.

In the present circumstances, when the applicant is serving his prison sentence, a possible annulment of the challenged decisions ... would lack any effect. Actually, the litigation became purely academic when the theory and practice of other constitutional courts tend to the opinion not to deal with such a case as no measure can be adopted which would have an imminent ... impact on the situation of the applicant.”

II. RELEVANT DOMESTIC LAW

A. Code of Criminal Procedure

40. The relevant provisions of the Code of Criminal Procedure and the domestic law and practice concerning the possibility of compensation for unlawful aspects of it are mostly set out in the Court's judgment *Smatana v. the Czech Republic*, no. 18642/04, §§ 49-76, 27 September 2007, and *Crabtree v. the Czech Republic*, no. 41116/04, §§ 25-26, 25 February 2010.

41. Article 65 § 1 provides, *inter alia*, that the accused, the injured and the participating person, their counsel and representatives shall have the right of access to the files except for the record of any votes and the personal data of a witness under Article 55 § 1, to make excerpts and notes therefrom, and to have duplicates of the files and the parts thereof made at their own expense. Article 65 § 2 provides that during the pre-trial procedure the prosecutor or the police authority may, for serious reasons, deny access to the files and the exercise of other rights set out in paragraph 1. Upon a request from a person denied such access by the police authority, the prosecutor must expeditiously review the seriousness of reasons on which the police authority based such denial. These rights shall not be denied to the accused and counsel once they have been notified of the possibility to study the files.

42. Article 72 § 3 of the Code of Criminal Procedure entitles the accused to apply for release at any time. The court shall decide immediately, but within five working days at the latest. In the event that the application is dismissed, the accused may renew it fourteen days after the decision becomes final unless he or she invokes other reasons.

B. Law no. 265/2001 on Amendment to the Code of Criminal Procedure and the Criminal Code (entered into force on 1 January 2002)

43. Part II includes the final and transitional provisions. Under Article 4, in cases where pre-trial detention was ordered before the entry into force of the law, the time-limits within which a decision had to be taken as to a continuation of the detention of the detention shall start running on the day of the entry into force of the law; this does not prejudice the maximum statutory term of the detention.

THE LAW

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

44. The applicant complained that he had never been properly indicted under national law and that his detention had been unlawful. He challenged the reasons for his detention. According to him, the period of his detention had expired on 31 December 2001, the amendment to the Code of Criminal Procedure which had entered into force on 1 January 2002 not having been applicable in his case. Moreover, until 9 May 2002, there had been no court decision to keep him in detention. He argued that the evidence against him had not been sufficient to lead to the conclusion that he was guilty of an offence. He relied on Article 5 §§ 1 c) and 3 of the Convention.

45. The Court considers it appropriate to examine the present complaints under Article 5 § 1 of the Convention, 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:

(a) the lawful detention of a person after conviction by a competent court ...;

(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.”

A. The applicant's detention from 6 March to 31 December 2001, from 11 February to 25 March 2002 and after 25 March 2002

46. The Court observes that in the period from 6 March to 31 December 2001 the applicant's detention was extended by the judge at the District

Court on two occasions on the grounds of the gravity of the charges against him and his co-defendants, the likelihood of a lengthy prison sentence being imposed on the applicant which created the risk that he would abscond abroad if released, and that he might conspire with his two co-defendants (see paragraphs 17 and 19 above).

47. The judge acted within his powers in making the above decisions, and there is nothing to suggest that they were invalid or unlawful under domestic law, or that they were not justified for the purpose of Article 5 § 1 c) of the Convention.

48. In respect of the period from 11 February to 25 March 2002, the Court observes that the applicant's detention was ordered by the Municipal Court, which decided to keep the applicant in detention under Article 67 a) of the CCP (see paragraph 27 above). The fact that the High Court subsequently found that the Municipal Court had erred under domestic law in making this decision does not affect the validity of the intervening period of the applicant's detention (see *Mooren v. Germany* [GC], no. 11364/03, § 74, 9 July 2009), the superior court expressly upholding the material and procedural accuracy of the decision concerned (see paragraph 29 above).

49. As to the period after 25 March 2002, the Court observes that the applicant was deprived of his liberty after conviction by a competent court. In the light of the material in its possession the Court is satisfied that the applicant's deprivation of liberty met all the conditions for detention under Article 5 § 1 a) of the Convention.

50. Accordingly, this part of the complaint is manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

B. The applicant's detention between 1 January and 10 February 2002

1. Admissibility

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

2. Merits

a) The parties' submissions

52. The Government contested the applicant's assertion that the time-limit for his custody expired on 31 December 2001. In fact, on 27 November 2001 he challenged the District Court's order of 20 November 2001 whereby his detention had been extended to 31 December 2001. He

could not be released until his complaint had been dealt with, that is until 17 January 2002. In the meantime, on 1 January 2002, Law no. 265/2001 had entered into force, which in point 4 of section II laid down that in cases where custody had started prior to the effective date of this law, the time-limits within which decisions on further continuation of custody would have to be made would only start running on 1 January 2002. Moreover, a prosecutor rather than a court would decide, in pre-trial proceedings, on further continuation of custody.

53. Since the applicant's detention had been ordered on 8 March 2001, the time-limit of three months and five working days for the prosecutor to decide, under Article 71 § 3 of the CCP, on the applicant's continuing detention, started running on 1 January 2002 and expired therefore five working days after 31 March 2002. However, as the applicant was officially indicted on 30 January 2002, the prosecutor was no longer entitled to decide on whether to keep him in detention, and since then it has been for the Municipal Court to decide within thirty days, as provided for in Article 71 § 5 of the CCP, on the applicant's continuing detention, which it actually did on 11 February 2002.

54. For the sake of completeness the Government added that the reasons for the applicant's detention had been further reviewed by the Municipal Court on 12 March 2002, when his request for release had been rejected and on 9 May 2002 when this court decided to maintain the applicant in custody under Article 71 § 6 of the CCP.

55. The Government concluded that the applicant's detention from 1 to 24 January 2002 and also thereafter had been in accordance with national law and Article 5 § 1 of the Convention.

56. The applicant disputed the Government's arguments. He argued in particular that the District Court's decision of 20 November 2001 had extended his detention until 31 December 2001. He further maintained that he had continued to be illegally detained until 25 March 2002 and that the District Court's decision of 24 January 2002 whereby his requests for release had been dismissed had not remedied the illegality of his detention during the previous period.

b) The Court's assessment

57. The Court reiterates that 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 thereof. 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. The Court must further ascertain in this connection whether domestic law itself is in conformity with the Convention, including the general principles

expressed or implied therein, notably the principle of legal certainty (see *Mooren v. Germany*, cited above).

58. In the present case, the Court observes that from 1 January 2002, the day after the expiry of the detention order of the judge at the District Court of 20 November 2001 (see paragraph 19 above), until 10 February 2002, the day before the Municipal Court decided to keep the applicant in custody (see paragraph 27 above), no detention warrant was issued by a court or other judicial body authorising the applicant's continued remand in custody. The fact that during this period of time the criminal case file was sent, together with the bill of indictment, to the trial court (see paragraph 26 above) and that the District Court dealt with the reasons for the applicant's detention upon his requests for release (see paragraph 25 above) did not substitute for a proper judicial decision ordering the applicant's continued detention.

59. The Government invoked section II(4) of the transitional provisions of Law No. 265/2001, which amended the Code of Criminal Procedure and which in their view constituted a legal basis for the applicant's detention after the expiry of his detention warrant of 20 November 2001 (see paragraphs 52-53 above).

60. Having analysed them, the Court considers that these provisions together with the relevant provisions of the Code of Criminal Procedure (see paragraph 40 above), which set up a new time-limit for the prosecutor to decide on the applicant's continued detention, extended the applicant's detention in a way that left him in a state of uncertainty as to the grounds for his detention. Admittedly, the Municipal Prosecutor informed the applicant about the legislative changes in his letter of 8 January 2002 (see paragraph 22 above). However, this was a rather informal way of proceeding. In this connection, the Court reiterates that the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time is incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (see *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002).

61. It follows from the above that the applicant's detention from 1 January to 10 February 2002 had no "lawful" basis within the meaning of Article 5 § 1 of the Convention.

62. There has accordingly been a violation of Article 5 § 1 of the Convention.

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

63. The applicant complained of various matters concerning the review of his detention. He firstly maintained that he had been arbitrarily denied access to his file for a period from 6 March to 26 July 2001, when his lawyer had been allowed to consult the file. The applicant had been granted

access to the file on 18 September 2001. Secondly, he complained that apart from an interview carried out immediately after his arrest, neither he nor his lawyer had been allowed to take part in the proceedings in which the grounds for his detention had been examined. Thirdly, he alleged that the courts had not dealt with his detention issues speedily. He finally complained that his detention issues had not been dealt by the national courts fairly and contradictorily, that the decisions had not been sufficiently substantiated and reasoned, that he could not defend himself before the Constitutional Court which, moreover, decided the case after the Czech Government had submitted their written observations in the applicant's case no. 46170/99¹, which gave rise to doubts as to its impartiality. The applicant invoked in this respect Article 6 §§ 1 and 3 c) of the Convention.

64. According to the Court's settled case-law, Article 6 does not apply to proceedings in which detainees try to challenge their deprivation of liberty; these are to be examined solely by reference to Article 5 § 4, which is the *lex specialis* in such situations (see *Reinprecht v. Austria*, no. 67175/01, §§ 47-55, ECHR 2005-XII) and which reads as follows:

“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. Alleged refusal of access to the case file

65. The Government noted at the outset that the applicant did not specify whether his complaint concerned the custody file or the investigation file. In any case, as neither he nor his lawyer had asked to study the custody file, the applicant's complaint should concern the investigation file, which, however, did not relate to the lawfulness of his detention but rather to the justifiability of the criminal charges against him. Nonetheless, the Government referred to Article 65 § 2 of the Code of Criminal Procedure, which authorised the prosecutor or the police to deprive, for serious reasons, the accused of his right to consult files. In the present case the police had not granted the applicant leave to consult the file because of the coincident prosecution of his two co-accused, whose depositions the applicant would be able to read and change his own statements accordingly. The applicant and his counsel had been granted leave to consult the relevant file on 26 July 2001, but had done so on 1 August 2001.

66. The applicant contested the existence of the two different files. According to him, his criminal file had not contained any specific file concerning his detention. In any event, all the decisions relating to his detention had inevitably been based on the content of his criminal file. He

¹ The application was declared inadmissible by a chamber of the Second Section on 6 January 2004.

argued that Article 65 § 2 of the CCP violated the principle of equality of arms and that he had not been informed accurately of the exact charges brought against him, he could not discuss and verify material evidence gathered against him and could not affect the course of the investigation. Consequently, he had been unable to present relevant arguments against the reasons for his detention and accusation. Not having had access to the file until about four months before the prosecutor officially indicted him, he could not prepare his defence properly.

67. The Court acknowledges the need for criminal investigations to be conducted efficiently, which may imply that part of the information collected during them is to be kept secret in order to prevent the accused from tampering with evidence and undermining the course of justice. However, this legitimate goal cannot be pursued at the expense of substantial restrictions on the rights of the defence. Therefore, information which is essential for the assessment of the lawfulness of a person's detention should always be made available in an appropriate manner to his or her lawyer. The Court adds in this respect that the concept of lawfulness of detention is not limited to compliance with the procedural requirements set out in domestic law, but also concerns the reasonableness of the suspicion grounding the arrest, the legitimacy of the purpose pursued by the arrest and the justification of the ensuing detention (see *García Alva v. Germany*, no. 23541/94, §§ 39-43, 13 February 2001).

68. The Court does not consider relevant the Government's argument that the applicant did not specify which file – investigation or custody – he wanted to study. In fact, from the documents submitted by the parties it appears that there was no misunderstanding or lack of communication between the applicant and the competent authorities involved in the criminal proceedings as to the identification of the case file the defence wished to consult.

69. It is not disputed that the applicant and his lawyer were not given access to the case file from 6 March to 26 July 2001 because of compelling reasons for refusing access under Article 65 § 2 of the Code of Criminal Procedure. The question arises, however, whether the defence was deprived of information contained in the file which was essential for the assessment of the lawfulness of the applicant's detention during this period. The Court observes in this respect that on the day of his arrest, the applicant was informed of the suspicions raised against him in the written notice of accusation of 6 March 2001 (see paragraph 6 above). He was heard before he was taken into custody, in the presence of his lawyer, and was able to dispute the detention order on appeal (see paragraphs 7, 8 and 14 above). Moreover, during the relevant period, he could, but did not, apply for release from custody; nor did he claim that he could not exercise this right because he did not have access to the case file. On the contrary, while his lawyer was given access to the case file on 26 July 2001, as was the

applicant himself on 18 September 2001, the latter challenged the reasons for his detention on 29 December 2001, so more than three months later (see paragraphs 25 above). Accordingly, the applicant has not shown that there was anything in the case file to which he needed access in order to be able to challenge the lawfulness of his detention.

70. The Court concludes that an examination of this part of the application does not disclose that the applicant was not sufficiently informed of the essential legal and factual grounds for his arrest, thereby preventing him from questioning the lawfulness of his detention.

71. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4 of the Convention.

B. Alleged lack of a speedy judicial review

1 The applicant's detention after 25 March 2002

72. The Court recalls at the outset that where an applicant is convicted and sentenced by a competent court to a determinate term of imprisonment for the purposes of punishment, the review of the lawfulness of detention is incorporated in the trial and appeal procedures (see, *mutatis mutandis*, *V. v. the United Kingdom*, no. 24888/94, ECHR 1999-IX, § 119; *Stafford v. the United Kingdom*, no. 46295/99, ECHR 20025-IV, § 87).

73. The Court notes in the present case that on 25 March 2002 the Municipal Court delivered a meritorious judgment in the applicant's case which was subsequently upheld by the High Court on 2 August 2002 (see paragraphs 31 and 36 above). Accordingly, after 25 March 2002 the requirements of Article 5 § 4 of the Convention were incorporated in the sentence of the Municipal Court.

74. Accordingly, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant's detention from 6 March 2001 until 25 March 2002

a) Admissibility

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

b) Merits

76. The Government considered that the intervals of time in which the domestic courts decided on the applicant's complaints against custody and on his requests for release from custody were not unreasonable in the light of the voluminous and complex nature of the applicant's submissions and also with regard to the complexity of his criminal case.

77. The applicant maintained his complaint.

78. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful. The question whether a person's right under Article 5 § 4 has been respected has to be determined in the light of the circumstances of each case (see *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII, with further references).

79. Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention and for hearing applications for release. Nevertheless, a State which institutes such a system must in principle accord to the detainees the same guarantees on appeal as at first instance. An overall assessment is required in such cases in order to determine whether a decision was given "speedily" (see *Shannon v. Latvia*, no. 32214/03, § 67, 24 November 2009, with further references).

80. The applicant challenged the lawfulness of his detention on 12 March 2001 by lodging a complaint against the detention order, which was dismissed by the Municipal Court on 24 April 2001 (see paragraph 12 above). The examination of the applicant's complaint thus lasted one month and twelve days. Moreover, the Government did not dispute the applicant's assertion that he was notified only on 11 May 2001.

81. The applicant further challenged the judge's two decisions by which his detention had been subsequently extended. His complaints of 23 August and 27 November 2001 were dismissed by the Municipal Court on 16 October 2001 and 17 January 2002 (paragraphs 17 and 24 above). The examination of the applicant's complaints thus lasted one month and twenty-three days and one month and twenty days respectively. The applicant was notified on 9 November 2001 and 1 February 2002.

82. His requests for release dated 29 December 2001 and 2 January 2002 were dismissed by the judge at the District Court on 24 January 2002 (see paragraph 25 above). This decision was quashed by the Municipal Court on 14 February 2002 (see paragraph 28 above). The examination of the applicant's requests by courts at two levels of jurisdiction thus lasted one month and sixteen days and one month and twelve days respectively.

83. As to the applicant's request for release of 4 February 2002, it was dismissed by the Municipal Court on 12 March 2002 (see paragraph 30 above), so one month and six days later.

84. The Court considers that the aforementioned periods of time which the national authorities needed to deal with the applicant's complaints or his requests for release were mostly excessively long and fell short of the "speediness" requirement of Article 5 § 4 of the Convention, especially taking into account that their entire duration appears to have been attributable to the authorities (compare, as an example, *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006, where review proceedings which lasted from twenty-nine to thirty-six days were not considered "speedy"). Also, additional argument in this respect is that under national law, the courts shall decide on requests for release immediately, but within five working days at the latest (see paragraph 42 above), which the courts in the present case never respected.

85. It follows that there has been a violation of Article 5 § 4 of the Convention.

3. Participation in proceedings on lawfulness of the detention

86. The applicant complained that apart from the interview carried out after his arrest, neither he nor his lawyer had been allowed to take part in the proceedings in which the grounds for his detention had been examined.

87. The Court observes that the applicant failed to raise either in form or in substance this complaint before the Constitutional Court.

88. It follows that this part of the applicant's complaint under Article 5 § 4 of the Convention must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

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

89. The applicant further complained that under domestic law he had had no enforceable right to compensation for his detention. He relied on Article 5 § 5 of the Convention which provides as follows:

"5. 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."

A. Admissibility

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

B. Merits

91. The Government submitted that the applicant could have sought compensation for non-pecuniary damage in respect of unlawful deprivation of liberty under Act no. 82/1998, which provided for the possibility of compensation for damage caused by exercise of public authority. Secondly, they contended that the applicant could have brought an action for protection of personality under Articles 11 and 13 of the Civil Code.

92. The applicant disputed the Government's arguments. He noted that he tried to pursue the legal avenues suggested by the Government. On 14 May 2004 he brought an action for damages under Act no. 82/1998 to the Prague 2 District Court which did not hear the case and transferred it to the Prague Municipal Court in February 2005. The latter re-qualified the applicant's action as an action for protection of personal rights under Article 11 of the Code of Civil Procedure. While actions for damages under the Act no. 82/1998 are exempted from court fees, actions for protection of personal rights are not. The applicant, having been in detention since 6 March 2001, did not have the financial means to pay the court fees and consequently the Municipal Court rejected his action *a limine* on 26 July 2007.

93. In *Crabtree v. the Czech Republic* (no. 41116/04, §§ 28-29 and 52-53, 25 February 2010), the Court held that neither of the two possibilities referred to by the Government had been sufficiently certain in practice and offered reasonable prospects of success as required by the relevant case-law and that consequently there had been a violation of Article 5 § 5 of the Convention. The Court sees no reason to depart from those findings in the case at hand.

94. There has, accordingly, been a violation of Article 5 § 5 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

95. Under Article 3 of the Convention the applicant further complained of the unsatisfactory detention conditions in Prague-Pankrác remand prison, which were more rigorous than those in Prague-Ruzyně remand prison where he had been kept until 18 April 2001.

96. Relying on Article 13 of the Convention the applicant contended that the remedies he had sought before the Supreme Court and the Constitutional Court had been ineffective as allegedly neither of them had examined the matter on the merits.

97. Invoking Article 14 of the Convention the applicant complained that he had been treated differently from his wife, who, while charged with the same criminal offence, had not been remanded in custody. He further complained that in comparison with other detainees in the same position who had been released, he had been remanded in custody. The applicant

also submitted that the Constitutional Court, which in the analogous cases (no. I. ÚS 46/96 of 6 June 1996 and no. IV. ÚS 582/99 of 24 February 2000) had adopted a different approach, had discriminated against him. He finally felt discriminated against in connection with his placement in Prague-Pankrác remand prison.

98. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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

100. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

101. The Government found this amount excessive.

102 The Court considers that the applicant suffered non-pecuniary damage which cannot be compensated by the mere finding of a violation of his Convention rights. Having regard to the circumstances of the case and ruling on an equitable basis, as required by Article 41, it awards him EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

103. The applicant did not put forward any claim in respect of the costs and expenses incurred before the domestic courts and before the Court. Accordingly, the Court makes no award under this head.

C. Default interest

104. The Court considers it appropriate that the default interest 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* admissible the complaint under Article 5 § 1 of the Convention concerning the lawfulness of the applicant's detention from 1 January to 10 February 2002, the complaint under Article 5 § 4 of the Convention concerning the alleged lack of speedy judicial review of the applicant's detention from 6 March 2001 to 25 March 2002, and the complaint under Article 5 § 5 of the Convention, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 1 January to 10 February 2002 having had no “lawful” basis within the meaning of that provision;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the lack of speedy judicial review of the applicant's detention;
4. *Holds* that there has been a violation of Article 5 § 5 of the Convention on account of the lack of an enforceable right to compensation under the domestic legislation for the applicant's deprivation of liberty in breach of Article 5 §§ 1 (c) and 4 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Czech korunas at the rate applicable on 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Renate Jaeger
President