



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

FOURTH SECTION

CASE OF ROSSELET-CHRIST v. SLOVAKIA

(Application no. 25329/05)

JUDGMENT

STRASBOURG

26 October 2010

FINAL

26/01/2011

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

In the case of Rosselet-Christ v. Slovakia,

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

Nicolas Bratza, *President*,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić,

Vincent Anthony de Gaetano, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 5 October 2010,

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

PROCEDURE

1. The case originated in an application (no. 25329/05) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Swiss national, Ms Dagmar Rosselet-Christ (“the applicant”), on 4 July 2005.

2. The applicant was originally represented by Ms P. Komárová, a lawyer practising in Prostějov, Czech Republic. On 4 June 2010 she appointed Mr O. Zumsteg, a lawyer practising in Neuchâtel, Switzerland, to represent her before the Court. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. The applicant alleged, in particular, that there had been no relevant reasons for her detention and that it had lasted an excessively long time.

4. On 18 January 2010 the President of the Fourth Section decided to give notice of the application to the Government.

5. The Chamber decided to dispense with an oral hearing in the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1945 and lives in Peseux, Switzerland.

1. Criminal proceedings against the applicant and her detention in that context

7. On 7 January 2003 the Slovakian police arrested the applicant. On 8 January 2003 the Regional Office of the Judicial Police in Nitra accused her of forgery and attempted fraud. She and another person were suspected of having attempted to cash two cheques for more than seven million pounds sterling (GBP) and 1,800,000 United States dollars (USD) in November 2002. Those cheques were considered to have been forged.

8. The applicant denied involvement in any unlawful action. She maintained that the cheques had been issued by foreign investors interested in a business activity which she had been planning to launch in Slovakia. She further argued that the British bank concerned had never contested the validity of the cheque in pounds sterling.

9. On 12 January 2003 the Nitra District Court remanded the applicant in custody with effect from 7 January 2003. Her detention was considered necessary as there was a risk of her absconding within the meaning of Article 67 § 1 (a) of the Code of Criminal Procedure. The judge considered it relevant that the applicant was a foreign national and that she risked a prison term of between ten and fifteen years for the offences in issue. Reference was also made to Article 67 § 2 of the Code of Criminal Procedure. The District Court heard the applicant and referred to the statement of the applicant's co-accused and available documentary evidence.

10. On 27 June 2003 the District Court extended the applicant's detention to 7 January 2004. It held that, in addition to the above-mentioned grounds, her detention was also necessary as she might influence witnesses or otherwise hamper the investigation within the meaning of Article 67 § 1 (b) of the Code of Criminal Procedure. In particular, important witnesses had to be heard in Spain whom the applicant had contacted by phone and fax prior to her detention. The District Court found no delays in the investigation and noted that the authorities of the United Kingdom, Spain and the United States of America had to be asked for assistance.

11. On 30 June 2004 the District Court extended the applicant's detention until 7 November 2004. As the Spanish authorities had not complied with the requests for legal assistance it had been impossible to complete the investigation. It risked being jeopardised if the applicant was released.

12. On 28 October 2004 the Banská Bystrica Regional Court granted a further extension of the detention, until 7 January 2005. That decision was justified by the fact that the General Prosecutor's Office had requested the assistance of the Spanish authorities in obtaining witness statements and that those statements had not yet been submitted. The statements were necessary to establish the relevant matters in respect of which the statements of the accused differed. Reference was also made to the applicant's nationality, the serious nature of the offence of which she was accused and the risk that she might influence witnesses if released. The Regional Court relied on Articles 67 §§ 1(a), (b) and 2 of the Court of Criminal Procedure.

13. On 22 December 2004 the Supreme Court extended the applicant's detention until 7 July 2005. It noted that no procedural steps had been taken between May and December 2004. That was, however, due to the absence of a reply from the Spanish authorities. The Supreme Court expressed the view that the applicant's detention was strictly necessary until 7 July 2005 only and that the preliminary proceedings should be completed before that date.

14. On 19 May 2005 the applicant lodged a request for release, with reference, *inter alia*, to Article 5 §§ 1 (c), 3 and 4 of the Convention. She argued that the reasons invoked for her detention had fallen away and requested that the court dealing with the request hear her.

15. On 1 July 2005 the Nitra District Court dismissed the request. With reference to the applicant's arguments, the evidence and the statements of witnesses and the applicant's co-accused it considered that the accusation of the applicant was justified and that the reasons for her detention, as specified in the earlier decisions, persisted. In particular, the applicant might influence witnesses and the law foresaw a minimum penalty exceeding eight years' imprisonment for the offence imputed to her.

16. The District Court decided *in camera*. Its decision was served on the applicant's counsel on 29 July 2005 and 19 October 2005. The applicant lodged a complaint on 29 July 2005 and again on 20 October 2005. On 3 November 2005 the Nitra Regional Court dismissed the complaint.

17. In the meantime, on 8 July 2005 the applicant and her co-accused were indicted before the Nitra Regional Court. On 18 July 2005 that court dismissed the applicant's request for release. It pointed to the applicant's nationality and the heavy penalty for the offence of which she was accused. It had been established in the course of preliminary proceedings that in her correspondence the applicant had attempted to influence witnesses. The Regional Court's decision was served on counsel for the applicant on 29 August 2005. The applicant lodged a complaint. On 29 September 2005 the Supreme Court dismissed that complaint.

18. In parallel, on 27 June 2005 the Prosecutor General petitioned for a further extension of the detention of the applicant and her co-accused, until 7 October 2005. The applicant contested that request. She stated, in

particular, that all witnesses had been heard and that her foreign nationality did not in itself justify her deprivation of liberty. She argued that the case was not complex and that there had been delays in the proceedings.

19. On 6 July 2005, the Supreme Court extended the applicant's detention until 7 October 2005. It noted that the applicant was accused of having attempted to cash two forged cheques and that the suspicion against her and her co-accused persisted. It invoked the risk of the applicant's absconding with reference to the heavy penalty for the offences imputed to her and the fact that she was a foreign national. Her detention was therefore necessary within the meaning of Article 67 § 1(a) of the Code of Criminal Procedure.

20. The Supreme Court further admitted that witnesses had been heard. Nevertheless, the applicant's detention within the meaning of Article 67 § 1(b) of the Code of Criminal Procedure remained necessary as the file contained correspondence, which had been written by the applicant or addressed to her, indicating that she had attempted to influence the investigation in the case. The criminal activity imputed to the accused persons was inseparable. There was a risk that they could influence each other or witnesses even at the trial stage of the proceedings. No particular delays in the proceedings had been established; the relevant procedural steps had been delayed for objective reasons. The Supreme Court decided in camera in accordance with the relevant law.

21. On 14 September 2005 the Nitra Regional Court petitioned the Supreme Court for a further extension of the applicant's detention. It was argued that the reasons for her and her co-accused's detention still existed and that the proceedings risked being jeopardised if they were released. On 26 September 2005 the applicant's counsel submitted written observations on that request. She argued that there had been no progress in the case following the indictment and that the length of the proceedings and her detention was excessive. The applicant also requested that the Supreme Court hear her.

22. On 29 September 2005 the Supreme Court, at a meeting held in camera, extended the applicant's detention until 30 June 2006. It based its decision on the fact that the applicant was a foreign national and held that the indictment indicated that her prosecution was justified. Both the applicant and her co-accused were foreign nationals residing abroad. Considering also the heavy penalty set down in law for such offences, their detention was justified within the meaning of Article 67 §§ 1(a) and 2 of the Code of Criminal Procedure. Specific reasons for which it had been earlier concluded that the accused might influence witnesses and hamper the proceedings persisted. Reference was also made to the Supreme Court's decision on the applicant's request for release given on the same day (see paragraph 17 above).

23. The Supreme Court further noted that the case was complex from both the factual and the legal point of view. The file comprised nearly eight hundred pages. Given the short period of time which had lapsed after the filing of the bill of indictment, the Regional Court had not yet had sufficient time to prepare the main hearing and decide on the case. The above extension by nine months of the period of the applicant's detention should suffice to bring the criminal proceedings to a close.

24. On 21 December 2005 the Nitra Regional Court returned the case to the public prosecutor for further investigation. It decided that the applicant should remain in custody.

25. On 1 February 2006 the Supreme Court quashed the Regional Court's decision in the part ordering the case to be returned to the public prosecutor. In particular, it did not consider relevant the argument that the file, to the extent that it concerned the applicant's co-accused, had to be translated into French. The Supreme Court ordered the Regional Court to examine the charges against the applicant and her co-accused and dismissed their complaint against the decision ordering their continued detention.

26. The applicant was released on 18 May 2006 following the below-mentioned order of the Constitutional Court (see paragraph 36). She returned to Switzerland.

27. The main hearing in the criminal proceedings was scheduled for 13 and 14 June 2006. The applicant was absent for health reasons. The Regional Court decided to deal with the charges against her in a separate set of proceedings.

28. On 22 October 2007 the applicant informed the Regional Court that she insisted on the charges against her being determined in her presence and that she still could not attend a hearing for health reasons.

29. On 30 November 2007 the Nitra Regional Court discharged the applicant's co-accused and ordered his release. On 10 January 2008 the Supreme Court quashed that judgment and returned the case to the public prosecutor for further investigation. The Supreme Court noted that witness statements included in the file were contradictory. The facts of the case had not been sufficiently established. In particular, the public prosecutor had proceeded erroneously in that he had abstained from having a witness examined in Switzerland prior to the filing of the bill of indictment on 8 July 2005. Such evidence could have shed light on the matter.

30. On 1 April 2008 the Regional Court returned the applicant's case to the public prosecutor for further investigation, with reference to the Supreme Court judgment of 10 January 2008. Subsequently the charges against the applicant and her co-accused were again examined jointly and the authorities of the United Kingdom, Switzerland and the Czech Republic were asked for assistance.

31. On 13 October 2009 the applicant informed the investigator that she was unable, because of serious health problems, to undergo a cross-examination with a witness scheduled for 30 October 2009.

32. In January 2010 the Slovakian authorities decided to request their British counterpart to hear a representative of the bank concerned as a witness. The proceedings are pending.

2. Constitutional proceedings

(a) Complaint of 8 September 2005

33. On 8 September 2005 the applicant lodged a complaint with the Constitutional Court. She specified that she sought the finding of a breach of Article 5 §§ 1 (c) and 5 of the Convention in the proceedings leading to the Supreme Court's above-mentioned decision of 6 July 2005. In the reasons for her complaint the applicant also invoked Article 5 §§ 3 and 4 of the Convention. She argued that there had been no relevant reasons for her continued detention, that she had not been released, that the Supreme Court had neither heard her nor had it addressed the arguments which she had submitted in writing, and that she had been informed of the decision in issue on 13 July 2005 only.

34. On 28 September 2005 the Constitutional Court rejected the complaint as being manifestly ill-founded. It held that neither the way in which the Supreme Court had proceeded nor the conclusion which it had reached were contrary to the applicant's rights under Article 5 §§ 1 and 5 of the Convention a breach of which she had formally alleged. In particular, the Supreme Court had examined the circumstances of the case and concluded, for reasons which the Constitutional Court considered to be relevant and sufficient, that her continued detention was still necessary within the meaning of the relevant provisions of the Code of Criminal Procedure.

(b) Complaint of 25 November 2005

35. On 25 November 2005 the applicant lodged a second complaint with the Constitutional Court. She alleged a breach of Article 5 §§ 1 (c), 3 and 4 of the Convention in the proceedings leading to the Supreme Court's decision of 29 September 2005 to extend her detention to 30 June 2006. In particular, the applicant argued that there had been no relevant reasons for her continued detention, that it had lasted an excessively long time, and that the Supreme Court had not heard her. The applicant requested the Constitutional Court to order reimbursement of the costs of her legal representation in the constitutional proceedings, which amounted to 7,414 Czech korunas (CZK), plus value-added tax.

36. In a judgment of 17 May 2006 the Constitutional Court held that the Supreme Court had breached the applicant's right under Article 5 § 4 of the Convention in that it had failed to hear her prior to its decision of 29 September 2005 to extend her detention. It quashed that decision, ordered the Supreme Court to release the applicant immediately and to reimburse 5,302 Slovak korunas (the equivalent of CZK 3,918) in respect of the costs of her legal representation. In view of this conclusion the Constitutional Court considered the examination of the applicant's other complaints unnecessary.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure

37. The following provisions of the Code of Criminal Procedure applicable at the material time are relevant in the present case.

38. Under Article 67 § 1, a person charged with a criminal offence can be detained, *inter alia*, where there are reasonable grounds for believing that he or she would abscond (sub-paragraph (a) of Article 67 § 1), influence the witnesses or the co-accused or otherwise hamper the investigation (sub-paragraph (b)) or continue criminal activities, complete an attempted offence or commit an offence which he or she had prepared or threatened to commit (sub-paragraph (c)).

39. Article 67 § 2 provides that an accused person can be remanded in custody where he or she is being prosecuted for an offence punishable with a minimum prison sentence of eight years.

40. Article 71 § 2 provides that a person's detention in the context of both preliminary proceedings and during trial must not exceed two years. In justified cases the Supreme Court may extend its duration to a maximum of three years and, in cases of particularly serious offences, up to five years.

41. Article 72 § 1 obliges investigators, prosecutors and judges to examine, at each stage of criminal proceedings, whether reasons for the accused person's detention persist.

B. Constitutional Court Act 1993 and relevant practice

42. Section 20(1) provides that a request for proceedings to be started before the Constitutional Court must indicate, *inter alia*, the decision which the plaintiff seeks to obtain, specify the reasons for the request and indicate evidence in support.

43. Under paragraph 3 of section 20, the Constitutional Court is bound by a request from a plaintiff for proceedings to be started unless the Act expressly provides otherwise.

44. Pursuant to section 50(1)(a), a complaint must indicate, in addition to the information mentioned in section 20, the fundamental rights or freedoms the violation of which a plaintiff alleges. Paragraph 3 of section 50 requires that plaintiffs who seek a just satisfaction award should specify its extent and indicate the reasons for their claim.

45. The Constitutional Court has declared itself bound, in accordance with section 20(3) of the Constitutional Court Act 1993, by a party's submission aimed at initiating proceedings before it. The Constitutional Court has expressly stated that the above was particularly relevant as regards the order which parties seek to obtain as it can only decide on matters which a party requests to be determined (see, for example, decisions III. ÚS 166/02 of 6 November 2002 or III. ÚS 65/02 of 9 October 2002).

THE LAW

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

46. The applicant complained that her detention had lasted an unreasonably long time. She relied on Article 5 § 3 of the Convention, which in its relevant part reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial...”

A. Admissibility

47. The Government referred to the Constitutional Court's judgment of 17 May 2006 and argued that the applicant could no longer claim to be a victim.

48. The applicant disagreed.

49. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive the applicant of his or her status as a 'victim', within the meaning of Article 34 of the Convention, unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see the *Amuur v. France* judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

50. In the present case, the Constitutional Court, on 17 May 2006, found that the Supreme Court had breached the applicant's right under Article 5 § 4 of the Convention in that it had failed to hear her prior to its decision of 29 September 2005 to extend her detention. It quashed that decision, ordered the Supreme Court to release the applicant immediately and to pay a sum to the applicant in respect of the costs of her legal representation in the constitutional proceedings. In view of that conclusion the Constitutional Court considered the examination of the applicant's other complaints, including that under Article 5 § 3 of the Convention, unnecessary.

51. The Court notes that the rights guaranteed under paragraph 3 of Article 5 are distinct from those under paragraph 4 of that provision. Since the Constitutional Court made no separate finding on the alleged breach of Article 5 § 3 of the Convention, the argument that she can no longer claim to be a victim in respect of this part of the application cannot be accepted.

52. The applicant was detained from 7 January 2003 to 18 May 2006. Her detention thus lasted three years, four months and ten days.

53. 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.

B. Merits

54. The applicant maintained that the arguments put forward by Slovak courts were not sufficient to justify her continued detention, which she considered to be arbitrary. There had been several shortcomings in the proceedings, which rendered her detention excessively long, contrary to the requirements of Article 5 § 3 of the Convention.

55. The Government, with reference to domestic courts' decisions, argued that the applicant was suspected of a serious offence and that her detention had been justified, in particular, by the risk that she might abscond and influence witnesses. The authorities involved had displayed due diligence when dealing with the applicant's case.

56. The Court reiterates that the general principles regarding the right "to trial within a reasonable time or to release pending trial", as guaranteed by Article 5 § 3 of the Convention were stated in a number of its previous judgments (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110 et seq., ECHR 2000-XI; *Labita v. Italy* [GC], no. 26772/95, §§ 152-153, ECHR 2000-IV; and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-X, with further references).

57. In the present case, the authorities, in addition to the suspicion against the applicant, relied in their detention decisions principally on (i) the serious nature of the offences of which she had been accused; (ii) the severity of the penalty to which she was liable; (iii) the risk that the applicant might abscond, as she was a foreign national; (iv) the risk that she might attempt to induce witnesses and her alleged accomplice to give false testimony; and (v) at a later stage, also on the complexity of the case.

58. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant her detention. Also, the need to secure the proper conduct of the proceedings, in particular obtaining evidence from witnesses, constituted valid grounds for at least a part of the applicant's detention. The likelihood of the applicant's absconding, in combination with the severe sentence the offence imputed to her could attract, also constituted relevant elements justifying the applicant's continued detention. However, the Court does not consider it necessary to determine whether the reasons relied upon by the Slovakian courts were relevant and sufficient to justify the overall duration of the detention of the applicant as, in any event, it considers that the conduct of the proceedings was not compatible with the requirements of Article 5 § 3, for the following reasons.

59. The first indictment against the applicant was filed on 8 July 2005. On 21 December 2005 the Regional Court decided to return the case to the public prosecutor for reasons which the Supreme Court, in its decision of 1 February 2006, found irrelevant. Furthermore, in its decision of 10 January 2008 the Supreme Court found that the facts of the case had not been sufficiently established prior to the filing of an indictment on 8 July 2005. In particular, the public prosecutor had proceeded erroneously in that he had refrained from having a witness in Switzerland examined notwithstanding that such evidence could have shed light on the matter. When that indictment was filed the applicant had been detained for two and a half years. She was subsequently detained for more than ten months in the context of proceedings which, as a result of the above shortcoming, ultimately transpired to be of little utility if any from the point of view of determination of the criminal charge against her.

60. The prosecuting authorities decided to obtain witness evidence from a representative of the British bank involved concerning the validity of the cheque in issue in January 2010. While it is true that the applicant had been released in the meantime, this fact is indicative of shortcomings in the way in which the authorities had proceeded at the pre-trial stage when the applicant had been deprived of liberty. In particular, such evidence has been clearly relevant for determining whether or not the suspicion against the applicant was justified and, accordingly, whether there were relevant reasons for her prosecution and continued detention. There is no information before the Court indicating that this evidence could not have

been obtained at the pre-trial proceedings when the applicant was deprived of liberty. It is also relevant in this context that, between May and December 2004, the prosecuting authorities were waiting for a reply from the Spanish authorities without taking any other procedural steps.

61. The Court reiterates that Contracting States are under an obligation to ensure that their judicial and/or prosecution systems are organised in such a way as to avoid unnecessary delays in the conduct of both civil litigation and criminal prosecutions. When a person is detained pending trial, the authorities concerned must show special diligence in the conduct of the proceedings.

62. The foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities involved had not displayed special diligence when dealing with the applicant's case.

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

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

64. The applicant complained that her detention had been unlawful as there had been no relevant reasons for it. She relied on Article 5 § 1 (c) of the Convention, which reads as follows:

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

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

A. Detention orders of the Supreme Court of 6 July 2005 and 29 September 2005

65. The Court observes that the relevant principles are set out, for example, in *Baranowski v. Poland*, no. 28358/95, §§ 50-51, ECHR 2000-III; *K.-F. v. Germany*, 27 November 1997, §§ 50-54, *Reports of Judgments and Decisions* 1997-VII; and *O'Hara v. the United Kingdom*, no. 37555/97, §§ 34 and 36, ECHR 2001-X. In particular, the expressions “lawful” and “in accordance with a procedure prescribed by law” essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the “lawfulness” of detention under domestic law is the primary but not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of

Article 5 § 1, which is to prevent persons from being deprived of their liberty in an arbitrary fashion. It is also a requirement under Article 5 § 1 that the detention be effected for the purpose of bringing the person concerned before the competent legal authority, *inter alia*, on reasonable suspicion of having committed an offence.

66. By its decisions of 6 July 2005 and 29 September 2005 the Supreme Court extended the applicant's detention in the context of criminal proceedings in which she was suspected of, and from 8 July 2005 charged with, forgery and attempted fraud. Basing its decisions on the relevant provisions of the Code of Criminal Procedure the Supreme Court invoked the risk of the applicant's absconding with reference to the fact that she was a foreign national and risked a heavy penalty for the offences imputed to her. It also noted that the applicant had attempted to influence witnesses and investigation into the case.

67. In view of the documents before it the Court accepts that the applicant was remanded in custody following the two Supreme Court decisions mentioned above, in accordance with the domestic law. It finds no appearance of unlawfulness or arbitrariness in the applicant's detention under the above Supreme Court orders rendering her detention contrary to the requirements of Article 5 § 1.

68. To the extent that the applicant's arguments concern the lack of justification of the protracted length of her detention, they raise an issue which falls under Article 5 § 3 of the Convention (see also *Punzelt v. the Czech Republic* (dec.), no. 31315/96, 4 May 1999, with further reference). The Court has found above a breach of that provision on the ground that the domestic authorities had failed to display special diligence, and a further examination of that issue is therefore not called for.

69. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Other decisions on the applicant's detention

70. To the extent that the applicant complained under Article 5 § 1 about the other decisions concerning her detention, the Court notes that she has not shown to have sought redress by means of a complaint to the Constitutional Court. In this respect the applicant has not, therefore, used the remedies available as required by Article 35 § 1 of the Convention.

71. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

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

72. The applicant complained about the Supreme Court's refusal to hear her prior to its decisions of 6 July 2005 and 29 September 2005 to extend her detention. In her observations dated 18 June 2010 she also complained that she had not been heard by the Constitutional Court in the proceedings leading to its decision of 28 September 2005 and judgment of 17 May 2006. She relied on Article 5 § 4 of the Convention, which provides:

“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. As regards the proceedings leading to the Supreme Court's decision of 6 July 2005

73. The Government argued that the applicant had not exhausted domestic remedies. In particular, she had not specified Article 5 § 4 of the Convention in the wording of the operative part of the Constitutional Court's finding which she had sought to obtain.

74. The applicant disagreed.

75. The Court reiterates that, in order to comply with Article 35 § 1 of the Convention, applicants must use domestic remedies in accordance with formal requirements, as interpreted and applied by domestic courts (see, for example, *Lawyer Partners A.S. v. Slovakia*, nos. 54252/07, 3274/08, 3377/08, 3505/08, 3526/08, 3741/08, 3786/08, 3807/08, 3824/08, 15055/08, 29548/08, 29551/08, 29552/08, 29555/08 and 29557/08, § 39, ECHR 2009-...).

76. The Constitutional Court has considered itself bound, in accordance with section 20(3) of the Constitutional Court Act 1993, by a party's submission, in particular as regards the order which a party seeks to obtain. In her complaint to the Constitutional Court of 8 September 2005 the applicant did not specifically indicate, in the text of the operative part of the judgment which she sought to obtain, a breach of Article 5 § 4 of the Convention or its constitutional equivalent. In these circumstances, the Government's objection must be accepted (see also *Lubina v. Slovakia*, no. 77688/01, § 63, 19 September 2006).

77. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. As regards the proceedings leading to the Constitutional Court's decision of 8 September 2005

78. In her observations dated 18 June 2010 the applicant complained that the Constitutional Court had failed to hear her when deciding on her complaint of 8 September 2005.

79. The Court does not consider it necessary to determine whether the guarantees of Article 5 § 4 should be extended to the constitutional proceedings in issue (see also, *mutatis mutandis*, *Smatana v. the Czech Republic*, no. 18642/04, §§ 121-123, 27 September 2007 and *Husák v. the Czech Republic*, no. 19970/04, § 50, 4 December 2008) since the applicant raised this complaint more than six months after the delivery of the impugned decision of the Constitutional Court.

80. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

C. As regards the proceedings leading to the Supreme Court's decision of 29 September 2005

81. The Government objected that the applicant had obtained appropriate redress before the Constitutional Court as regards her complaint about the proceedings leading to the Supreme Court's decision of 29 September 1995. In that respect she could no longer claim to be a victim.

82. The applicant disagreed.

83. In the judgment of 17 May 2006 the Constitutional Court found that the Supreme Court had breached the applicant's right under Article 5 § 4 of the Convention in that it had failed to hear her prior to its decision of 29 September 2005 to extend her detention. It quashed that decision, ordered the Supreme Court to release the applicant immediately and granted in part her claim for reimbursement of the costs of her legal representation in the constitutional proceedings.

84. With reference to its practice quoted in paragraph 49 above, the Court is satisfied that the Constitutional Court in its judgment expressly acknowledged and then afforded appropriate redress for the breach of the Convention in issue. It is relevant in this context that before the Constitutional Court the applicant sought no compensation for damage which she may have suffered. In respect of this complaint the applicant can therefore no longer claim to be a victim within the meaning of Article 34 of the Convention.

85. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicant claimed 202,619.97 euros (EUR) in respect of pecuniary damage. That sum comprised rent for the applicant's apartment during the period of her detention, lost profit of the company of which the applicant was the sole owner, as well as losses from the company's failure to comply with a contract concluded in 2002. The applicant also claimed that the respondent State should be ordered to restore the cheque in issue to her or, in the alternative, reimburse her its value amounting to EUR 8,399,184.11.

The applicant claimed EUR 266,666.66 in respect of non-pecuniary damage. She also requested that the respondent Government should apologise to her in writing within ten days from the date of notification of the Court's judgment failing which they should be ordered to pay EUR 100,000 to her.

Finally, the applicant claimed that the Government should also pay default interest in respect of the above sums.

88. The Government argued that in respect of any pecuniary damage the applicant could have obtained redress by means of an action for damages. They considered the sum claimed in respect of non-pecuniary damage to be excessive.

89. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 5,400 in respect of non-pecuniary damage.

B. Costs and expenses

90. The applicant also claimed EUR 50,000 for the costs and expenses incurred before both the domestic courts and the Court. She submitted a copy of a contract with the law office of Mr E. Zumsteg dated 4 June 2010, under which she undertook to pay an hourly fee of 285 Swiss francs (CHF) plus tax and other costs and expenses incurred for her legal representation.

91. The Government considered that any award should be based on the Court's relevant practice.

92. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the above criteria and also the fact that the applicant was only partly successful, the Court considers it reasonable to award the sum of EUR 1,500 covering costs under all heads.

C. Default interest

93. 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* the complaint under Article 5 § 3 of the Convention concerning the length of the applicant's detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
 - (i) EUR 5,400 (five thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and
 - (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President