



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

FOURTH SECTION

CASE OF ŠTETIAR AND ŠUTEK v. SLOVAKIA

(Applications nos. 20271/06 and 17517/07)

JUDGMENT

STRASBOURG

23 November 2010

FINAL

23/02/2011

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

In the case of Štetiar and Šutek v. Slovakia,

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

Nicolas Bratza, *President*,

Lech Garlicki,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 2 November 2010,

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

PROCEDURE

1. The case originated in two applications (nos. 20271/06 and 17517/07) 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 two Slovak nationals, Mr Marián Štetiar (“the first applicant”) and Mr Rastislav Šutek (“the second applicant”), on 4 May 2006 and 13 April 2007, respectively.

2. The applicants were represented by Mr R. Toman, a lawyer practising in Bratislava. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. The applicants alleged that their detention had been unlawful and unjustified, that the procedure in respect of it had fallen short of the applicable requirements, that they had not had an effective remedy and that they had been discriminated against.

4. On 1 and 8 March 2010, respectively, the President of the Fourth Section decided to give notice of the applications to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were both born in 1977. The first applicant lives in Ružomberok while the second applicant lives in Prievidza.

A. Arrest and criminal proceedings

6. At 11.10 p.m. on 21 February 2005 the applicants were arrested (*zadržaný*) by the police and subsequently charged with assaulting a public official (Article 155 § 1 (a) of the Criminal Code (Law no. 140/1961 Coll., as applicable at the relevant time) – “the CC”) and with breaching the peace (Article 202 § 1 of the CC).

It was suspected that, earlier that evening, the applicants had caused damage to goods in a hypermarket, had behaved in an offensive manner in public and had insulted, punched and grabbed by the uniform a policeman who had been called to the scene.

7. On 17 May 2005 the applicants were charged with a further count of assaulting a public official (Article 156 § 1 (b) of the CC) and with criminal damage (Article 251 § 1 of the CC).

It was alleged that, while being escorted to the police station after the incident of 21 February 2005 and while at the police station, they had made death threats against the above-mentioned policeman and another police officer, and that they had damaged their handcuffs, a bench, a wall and a radiator in their cell.

8. On 21 July 2005 the Prievidza District Public Prosecutor's Office (*Okresná prokuratúra*) indicted the applicants to stand trial on the above-mentioned charges before the Prievidza District Court (*Okresný súd*).

9. On 18 January 2006 the District Court found the applicants guilty as charged and sentenced each of them to two years' imprisonment. The judgment was upheld on appeal by the Trenčín Regional Court (*Krajský súd*) on 4 May 2006. It thereby became final and binding.

10. On 18 September 2006 the second applicant was released from prison on parole. The first applicant was released on 21 February 2007 after having served his sentence.

B. Detention order and related constitutional complaint

11. After the arrest at 11.10 p.m. on 21 February 2005, the applicants were taken to the police station and placed in a cell.

12. At 2.21 p.m. on 23 February 2005, the District Public Prosecutor's Office lodged a request with the District Court for the applicants to be placed in detention pending trial. The request relied, *inter alia*, on a video-recording by the hypermarket's camera system.

13. On 23 February 2005 both applicants were examined by a single judge of the District Court in connection with the prosecutor's request. The second applicant was brought before him at approximately 5.15 p.m.. The first applicant was brought before him at approximately 6 p.m.

Assisted by a lawyer of their choosing, who then represented both applicants throughout the proceedings, the applicants denied the charges

and argued that there was no admissible evidence against them because all existing witness statements had been taken by officers of the local police force, who had been directly involved in the incident. Those officers were therefore biased by definition.

Moreover, the applicants contended that they had not been brought before a judge within twenty-four hours of their arrest, as required by Article 8 of the Charter of Basic Rights and Freedoms (Constitutional Law no. 23/1991 Coll.) (*Listina základných práv a slobôd* – “the Charter”).

The applicants asked to be released; they offered a pledge, under Article 73 § 1 (b) of the Code of Criminal Procedure (Law no. 141/1961 Coll., as applicable at the relevant time – “the CCP”), that they would live in accordance with the law and, in the alternative, applied for bail, under Article 73a of the CCP.

14. At approximately 7 p.m. on 23 February 2005 the District Court gave an order (*uznesenie*) for the detention of the applicants, rejecting their pledge and refusing bail.

15. The District Court observed that the suspicion against the applicants was based on the statements of three witnesses and that nothing had been submitted by them or their lawyer that could refute the charges against them.

The District Court held that the admissibility of the evidence would be established in the further course of the proceedings.

16. The District Court observed that the first applicant had already stood trial and faced charges in two other similar sets of proceedings.

The second applicant had five previous convictions, including for violent offences. In addition, he had stood trial and faced charges in two other similar sets of proceedings also for violent offences. As the second applicant had himself accepted, in the incident of 21 February 2005 he had been intoxicated and “might have eaten some groceries” at the hypermarket.

The District Court concluded that the applicants had a tendency to commit violent offences of the same nature. This prompted fears that, if released, they might complete a previously attempted offence, continue to offend, or undertake new criminal activities within the meaning of Article 67 § 1 (c) of the CCP.

It was therefore necessary to keep the applicants detained and, accordingly, neither their pledge nor bail application was acceptable.

17. As to the applicants' objection concerning the alleged failure to bring them before a judge within the applicable time-limit, the District Court observed that the applicants had been arrested at 11.10 p.m. on 21 February 2005 and that the application for the detention order had been lodged with the court at 2.21 p.m. on 23 February 2005. The time-limit applicable under the CCP was forty-eight hours and had been observed.

The District Court held, specifically, that “it [was] not up to a judge of an ordinary court, whose task it [was] to decide on detention, to examine

compliance of the provisions of the [CCP] with a constitutional law or an international treaty”. The written version of the decision was served on the applicants' lawyer on 2 March 2005.

18. When the decision was pronounced on 23 February 2005, the applicants orally lodged an interlocutory appeal (*sťažnosť*) against it. On 28 February 2005 they submitted their grounds of appeal in writing.

The applicants relied on Article 5 of the Convention and reiterated that, under Article 8 of the Charter, their detention was unlawful on the ground that after their arrest they had not been brought before a judge within twenty-four hours. It was true that the time-limit for bringing an arrested person before a judge under Article 17 § 3 of the Constitution (Constitutional Law no. 460/1992 Coll.), as amended with effect from 1 July 2001 (Constitutional Law no. 90/2001 Coll.), and under Articles 76 § 4 and 77 § 1 of the CCP, as amended with effect from 1 August 2001 (Law no. 253/2001 Coll.) was forty-eight hours.

However, neither the Constitution nor any other legislation had expressly repealed the Charter and an implicit repeal was not permissible. The Charter guaranteed them broader legal protection and had to be applied in their case.

The applicants again challenged the evidence and requested release or, in the alternative, bail, and offered a pledge under Article 73 § 1 (b) of the CCP.

19. On 16 March 2005 the Regional Court, sitting in private (*neverejné zasadnutie*), dismissed the applicants' appeal. It noted that the time-limit for bringing the applicants before a judge under the Constitution and the CCP had been observed and that the victim and witnesses had given their statements after duly receiving instructions concerning their procedural rights and duties. The Regional Court held that it was not up to courts in pre-trial proceedings to deal with questions concerning the impartiality of investigating authorities, and observed that “in the recent period, the applicants ha[d] been accused of having intentionally committed several criminal offences, while neither their previous prosecution nor the bill of indictment of 20 April 2004 ha[d] had the required effect on them”. The decision was served on the applicants and their lawyer on 31 March 2005.

20. On 18 May 2005 the applicants lodged a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*). The complaint was amended on 23 May 2005.

Besides the above-mentioned complaints, the applicants contended that the decision of 16 March 2005 was arbitrary and not susceptible to review because of a lack of relevant reasoning and that the proceedings in respect of their appeal against the decision of 23 February 2005 had lasted too long.

The applicants relied on Article 5 §§ 1 (c), 3 and 4 of the Convention and on their constitutional counterparts.

21. On 5 October 2005 the Constitutional Court, sitting in private, declared the complaint inadmissible, essentially for being manifestly ill-founded.

As to the time-limit for bringing the applicants before a judge after their arrest, the Constitutional Court endorsed the position which it had taken in previous decisions (on 9 June and 8 September 2004 in cases nos. I. ÚS 100/04 and I. ÚS 141/04, respectively), to the effect that, by virtue of Article 152 §§ 1 and 4 of the Constitution, the Constitution took precedence over legislation (including constitutional laws) which was in effect at the time of the entry into force of the Constitution. Furthermore, the forty-eight-hour time-limit under the Constitution also took precedence over the twenty-four-hour time-limit under the Charter in accordance with the maxim *lex posterior derogat legi priori*.

As to the admissibility of evidence in support of the case against the applicants, the solidity of which was a prerequisite for their detention, the Constitutional Court held, somewhat inconsistently, that it was a matter to be examined by the ordinary courts and that it was not the task of the ordinary courts dealing with detention to examine the lawfulness and constitutionality of the criminal proceedings as such.

Lastly, the Constitutional Court found that the reasons given in the decisions of 23 February and 16 March 2005 were adequate and sufficient and that, although not optimal, the length of the proceedings in respect of the applicants' appeal against their detention was acceptable, the time between submitting their appeal orally (23 February 2005) and in writing (28 February 2005) being attributable to the applicants.

The decision of the Constitutional Court was served on the applicants on 10 January 2007.

C. Request for release and related constitutional complaint

22. During a hearing before the District Court on 21 September 2005, the applicants again requested release or, in the alternative, bail and offered a pledge under Article 73 § 1 (b) of the CCP. The District Court dismissed the request immediately, in response to which the applicants orally lodged an interlocutory appeal and indicated that they would submit the reasons for the appeal in writing once the written version of the decision had been served on their lawyer.

23. The written version of the decision of 21 September 2005 was served on the applicants on 30 September 2005. "Having regard to the evidence examined hitherto" the District Court was of the opinion that "the reasons for the applicants' detention persisted". In particular "in view of the applicants' character, their previous conduct and the fact that they had been convicted of a similar criminal offence by the District Court, which conviction was [at that time] pending before the Regional Court on appeal",

the District Court observed that, when shopping, the applicants regularly behaved in the manner of which they stood accused.

The applicants had a tendency to behave, and would continue behaving, this way despite a prosecution in court which had brought about no change in their behaviour. Therefore, the applicants' request for release on bail and their pledge were not acceptable, and those two proposals could not be regarded as more than a mere formality.

Without offering any details, the District Court declared that, “when dealing with the applicants' request, [it] had examined the applicants' remand in custody and the conduct of the prosecuting authorities for compliance with the applicants' fundamental rights and freedoms under the Constitution and international treaties, and that [it] had established no such facts [on the basis of which it could accept the complaint]”.

24. On 10 October 2005 the applicants submitted written grounds in support of their appeal of 21 September 2005. They referred to the arguments in their appeal against the decision of 23 February 2005 and reiterated that their detention had been unlawful *ab initio* because the time-limit for bringing them before a judge after their arrest had not been observed. They also submitted that their pledge and bail requests were by no means a mere formality because they were ready to pledge specifically not to behave in the manner for which they had been indicted and, furthermore, the amount that they were offering in bail was substantial.

Relying on the principle of the presumption of innocence, the applicants also submitted that the previous conviction that the District Court had been referring to had been quashed on appeal by the Regional Court on 13 September 2005.

25. On 16 November 2005 the Regional Court, sitting in private, dismissed the appeal. In a two-page decision, after referring to the impugned decision, the Regional Court considered that it was only necessary to add that, although the applicants' previous conviction had been quashed, the existing evidence indicated that they were in fact guilty of assaulting a police officer in a manner similar to the present case. The applicants' detention was justified on the grounds of protecting the public from persons who, having been suspected of committing criminal offences, might commit other such offences. Therefore, neither the bail application nor the applicants' pledge could be accepted. The decision was served on the applicants and their lawyer on 2 and 5 December 2005 respectively. The latter of these dates fell on a Monday.

26. On 6 February 2006, which was also a Monday, the applicants lodged a complaint with the Constitutional Court under Article 127 of the Constitution. They argued that, as a matter of principle, detention was not to be used as a sanction or a rehabilitative tool. Keeping them in detention was not necessary or proportionate. The purpose of their detention could be served by other measures, such as acceptance of their pledge or bail. The

decisions of 21 September and 16 November 2005 were arbitrary and not susceptible of review for lack of reasons. Finally, the time that the District Court and the Regional Court had taken to rule on their request for release of 21 September 2005 had been excessive.

27. By two separate decisions taken on 7 July and 23 August 2006 the Constitutional Court declared the complaint inadmissible in so far as it concerned the first applicant and the second applicant, respectively.

In both decisions the Constitutional Court observed that a complaint under Article 127 of the Constitution was subject to a two-month time-limit.

The Constitutional Court found that in the applicants' case the time-limit had commenced with the service of the last of the impugned decisions on the applicants, that is to say, on 2 December 2005. As the complaint had not been lodged before 6 February 2006, it was out of time.

The Constitutional Court's decisions were served on the applicants on 4 and 12 October 2006, respectively.

D. Second request for release

28. On 20 February 2006, following their appeal against his first-instance conviction, the applicants again requested release.

29. On 24 February 2006 the District Court dismissed the request finding, *inter alia*, that the reasons for keeping the applicants detained persisted.

30. On 28 March 2006 the Regional Court dismissed the applicants' interlocutory appeal of 9 March 2006 against the decision of 24 February 2006. From the official Internet site of the Constitutional Court (<http://www.concourt.sk>) it appears that the applicants lodged a constitutional complaint against the decision of 28 March 2006 and that it was declared inadmissible as being manifestly ill-founded on 31 October 2006 and 21 March 2007 respectively.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Charter of Basic Rights and Freedoms (*Listina základných práv slobôd*)

31. The Charter was introduced into the legal order by way of a constitutional law which was enacted by the Federal Assembly of the Czech and Slovak Federal Republic on 9 January 1991 and which entered into force on 8 February 1991. It is a valid law in Slovakia today.

32. Pursuant to Article 1 § 1 of that constitutional law, constitutional legislation (*ústavné zákony*), other Acts of Parliament (*zákony*) and legal

regulations (*d'alšie právne predpisy*), and their interpretation and implementation, must be compliant with the Charter.

33. Under Article 8 § 3 of the Charter, a person arrested as a suspect or on the basis of a charge against him or her (*zadržaná osoba*) must be brought before a judge within twenty-four hours. The judge must examine the arrested person and decide whether he or she should be remanded in custody or released, within twenty-four hours of his or her presentation.

B. The Constitution (*Ústava*)

34. The Constitution was adopted by the National Council of the Slovak Republic on 1 September 1992 and its relevant part entered into force on 1 January 1993. It has the status of constitutional legislation in Slovakia.

35. Pursuant to Article 17 § 3, as in force until 30 June 2001, a person arrested as a suspect or on the basis of a charge against him or her (*zadržaná osoba*) had to be brought before a judge within twenty-four hours of the arrest. The judge had to examine the person and order detention pending trial or release within twenty-four hours of presentation.

36. Some provisions of the Constitution were amended with effect from 1 July 2001. Since then, pursuant to Article 17 § 3, a person arrested as a suspect or on the basis of a charge against him or her (*zadržaná osoba*) has had to be brought before a judge within forty-eight hours of arrest. The judge has to examine the detained person and order his or her detention pending trial or release within forty-eight hours and, in the case of particularly serious offences, within seventy-two hours of presentation.

37. Under Article 152, which has not been affected by any amendments, constitutional legislation, other Acts of Parliament and other generally binding legal regulations remain in force in the Slovak Republic, provided that they are not contrary to the Constitution (§ 1). Their interpretation and application must be compliant with the Constitution (§ 4).

C. The Constitutional Court Act (Law no. 38/1993 Coll., as amended)

38. Section 53(3) provides that a complaint to the Constitutional Court can be lodged within two months of the date on which the decision in question has become final and binding or on which a measure has been notified or notice of other interference with the complainant's interests has been given. As regards measures and other types of interference, this period commences when the complainant has a practical possibility of becoming aware of them.

39. Under section 31a, except where otherwise provided or where the nature of the matter at hand precludes their application, the provisions of the

Code of Civil Procedure and the CCP are to be applied accordingly in proceedings before the Constitutional Court.

D. Practice of the Constitutional Court in respect of Article 8 of the Charter

40. In decisions of 9 June and 8 September 2004 and 13 January 2005, in cases nos. I. ÚS 100/04, I. ÚS 141/04 and I. ÚS 2/05 respectively, the First Chamber of the Constitutional Court held that, by virtue of Article 152 §§ 1 and 4 of the Constitution, the time-limit of forty-eight hours under the Constitution took precedence over the time-limit of twenty-four hours under the Charter. The same position was taken by the Second, Third and Fourth Chambers of the Constitutional Court in decisions of 6 February 2005, 22 November 2006, 30 June 2004 and 9 March 2005 in cases nos. II. ÚS 38/05, II. ÚS 369/06, III. ÚS 220/04 and IV. ÚS 64/05, and appears to have been taken by the First Chamber and the Fourth Chamber of the Constitutional Court in their decisions of 16 December and 25 August 2004 in cases nos. I. ÚS 239/04 and IV. ÚS 235/04.

E. Practice of the Constitutional Court in respect of section 53(3) of the Constitutional Court Act

41. In a decision of 23 August 2006 in case no. II. ÚS 246/06, the Second Chamber of the Constitutional Court took the view that, in respect of final decisions under the CCP which were served on both the complainant and his or her lawyer, the decisive date for the start of the two-month time-limit was the date when the decision was served on the complainant. The same position was taken by the Third Chamber of the Constitutional Court in decisions of 26 March and 21 August 2003 and 3 November 2004 (cases nos. III. ÚS 90/03, III. ÚS 188/03 and III. ÚS 332/04). The conclusion of the Constitutional Court in all these decisions in respect of the two-month time-limit is supported by analysis.

The same line of interpretation was followed by the Constitutional Court in subsequent decisions, including those of 20 June and 14 September 2006, 17 April 2008, 12 February, 24 June and 8 September 2009 and 21 January 2010 in cases nos. II. ÚS 166/06, II. ÚS 288/06, IV. ÚS 131/08, IV. ÚS 37/09, I. ÚS 177/99, III. ÚS 281/09 and IV. ÚS 9/2010.

42. On 13 January 2005, in case no. I. ÚS 2/05, the First Chamber of the Constitutional Court declared admissible part of a complaint under Article 127 of the Constitution which was lodged with the Constitutional Court on 7 December 2004, concerning a decision that had been served on the complainant on 6 October 2004, while he was in detention, and on his lawyer on 7 October 2004. The decision contains no analysis in respect of the two-month time-limit.

43. In decisions of 25 November 2004 and 1 June 2005 under respective file numbers IV. ÚS 372/04 and IV. ÚS 157/05, the Constitutional Court took as decisive for the commencement of the two-month time-limit the date when an interlocutory appeal was determined, irrespective of when the decision was served on the detained complainants and their lawyers.

F. The Code of Criminal Procedure

44. At the relevant time and until 31 December 2005, criminal procedure in Slovakia was governed by the 1961 Code of Criminal Procedure. This Code has been amended numerous times.

45. The time-limit for delivering a detained person to a court was laid down in Articles 76 § 4 and 77 § 1.

Until 31 July 2001 a person arrested as a suspect or on the basis of a charge against him or her (*zadržaná osoba*) had to be released or brought before a judge with a request for a detention order within twenty-four hours of arrest.

On 1 August 2001 an amendment took effect, pursuant to which a person arrested as a suspect or on the basis of a charge against him or her had to be released or brought before a judge with a request for a detention order within forty-eight hours of arrest.

46. Under Article 143 § 1, which remained unchanged throughout the relevant period, interlocutory appeals were to be lodged within three days of service of the decision appealed against. If the decision was served on both the accused and his or her lawyer, the time-limit started to run on the later date of service.

G. Practice of the ordinary courts in respect of Article 8 of the Charter

47. In a decision of 16 February 2006 the Trnava Regional Court overturned a detention order issued by the Galanta District Court on 3 February 2006 and ordered the release of the detainee. The Regional Court did so having “examined the written interlocutory appeal of the person charged as submitted by his defence counsel ... and [having] identified itself with the objections raised therein”.

The objections in question included a claim that the authorities had failed to observe the twenty-four-hour time-limit under the Charter for bringing the person charged before a judge. Nevertheless, the Regional Court made no specific reference to that argument and offered no reasons other than those mentioned above.

H. Rules on making legislation

48. The rules on making legislation were approved by the National Council of the Slovak Republic by way of a resolution passed on 18 December 1996 and published in the Collection of Laws under the number 19/1997.

49. The rules apply to constitutional legislation and other Acts of Parliament (Article 1 § 1) and provide, *inter alia*, that amendments to legislation are to be made by means of a direct and explicit amendment and that indirect or implicit amendments are impermissible (Article 11 § 1).

50. Identical rules were adopted by the Government in the form of a resolution passed on 8 April 1997 under the number 241 and published in the Collection of Laws under the number 372/2000.

51. Under section 2 of the Collection of Laws Act (Law no. 1/1993), anything that has been published in the Collection of Laws is presumed to have become known to all those concerned on the day of publication. This presumption is non-rebuttable.

I. State Liability Act of 2003 (Law no. 514/2003 Coll., as amended)

52. Under the Act the State's liability is engaged for damage caused by public authorities, *inter alia*, through unlawful arrest, detention (*zadržanie*) or other deprivation of personal liberty (section 3(1)(b)); decisions concerning detention on remand (*väzba*) (section 3(1)(c)); and wrongful official action (section 3(1)(d)).

53. The right to compensation for damage caused by a decision on arrest, by detention (*zadržanie*) or by other deprivation of personal liberty is vested in the person who was subjected to it provided that the decision has been quashed for being unlawful or wrongful official action has been taken in connection with it (section 7).

54. The right to compensation for damage caused by a decision concerning detention on remand (*väzba*) is vested in the person who was detained on remand provided that the criminal proceedings against him or her have been dropped (section 8(5)(a)) or he or she has been acquitted (section 8(5)(b)) or the matter has been referred to another authority (section 8(5)(c)).

55. However, no such right arises when the person concerned himself or herself gave cause for the detention on remand (section 8(6)(a)).

56. The State is also liable for damage caused by wrongful official action which comprises, *inter alia*, a public authority's failure to take an action within the time-limit set, inactivity or any other unlawful interference with rights and legally recognised interests of individuals and legal entities (section 9(1)).

57. The right to compensation for damage caused by wrongful official action is vested in the person who suffered the damage (section 9(2)).

58. Under section 17 the compensation is to cover pecuniary damage, including loss of profit, and, where appropriate and necessary, non-pecuniary damage.

J. Judicial practice in respect of the State Liability Act of 2003

59. In a judgment of 16 March 2007 (in case no. 4C 258/2006) the Brezno District Court granted an action for damages by two individuals against the State under the State Liability Act of 2003 and ordered the defendant to pay the costs of their defence in a criminal trial that had ended with their acquittal.

On 22 November 2007 the Banská Bystrica Regional Court upheld the judgment following the defendant's appeal.

60. On 14 October 2009 the Bratislava Regional Court granted an appeal (case no. 2Co 238/2008) in an action by an individual against the State under the State Liability Act of 2003 for damages and awarded him an amount of money in compensation for non-pecuniary damage caused by detention on remand in the context of a criminal trial that had ended with his acquittal.

61. In a judgment of 17 August 2009 (in case no. 19C 47/2006) the Bratislava District Court granted an action for damages by an individual against the State under the State Liability Act of 2003 and awarded the claimant an amount of money in compensation for non-pecuniary damage caused by wrongful official action in connection with his detention pending a criminal trial.

The impugned wrongful official action concerned extension of the claimant's detention pending trial.

The action was preceded by a judgment of the Constitutional Court of 19 October 2005 (in case no. I. ÚS 65/05) in which the Constitutional Court had found a violation of the claimant's rights under Article 5 §§ 3 and 4 in connection with the same facts.

However, the Constitutional Court had been unable to award the claimant damages as he had made no claim to that effect.

THE LAW

I. JOINDER OF THE APPLICATIONS

62. The Court notes that the two applications under examination concern the same proceedings and decisions. It is therefore appropriate to join them, in application of Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

63. The applicants raised a number of generic complaints which can be summarised as follows: (i) that no reasonable suspicion against them had been established with a basis in admissible evidence to justify their detention; (ii) that they had not been brought before a judge within twenty-four hours of their arrest as required under the Charter of Basic Rights and Freedoms; (iii) that, on account of the discrepancy in the applicable time-limits, the relevant law lacked the required quality; (iv) that they had arbitrarily been denied release pending trial; (v) that the decisions in respect of their remand and first request for release had lacked adequate reasoning and the procedure preceding them had fallen short of the applicable requirements; and (vi) that the procedure in respect of their appeal against detention and their request for release had not been speedy.

The applicants relied on Article 5 of the Convention, of which the relevant part 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:

...

(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;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge ... and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

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

A. Admissibility

1. *The Government's objection of non-exhaustion of domestic remedies*

64. In their further observations, following the applicants' observations in reply, the Government argued that the applicants had failed to comply with the requirement of Article 35 § 1 of the Convention to exhaust domestic remedies in that they had failed to claim compensation from the State under the State Liability Act of 2003 in respect of “wrongful official action” (see paragraphs 52 to 58 above).

65. The Government referred to the relevant domestic practice (see paragraphs 59 to 61 above) and asserted that under the State Liability Act of 2003 the applicants could have obtained compensation in respect of both pecuniary and non-pecuniary damage.

66. The Government also submitted that it was not a prerequisite for a damages claim in respect of wrongful official action to obtain a prior finding by the Constitutional Court of a violation of the claimant's fundamental rights.

67. The applicants, in reply, considered that none of the existing domestic judicial decisions concerned a case comparable to theirs.

According to the applicants, it was not fair to make them bear the consequences of the non-existent domestic practice invoked to support the Government's claim, which they considered to be speculative.

68. As to the exhaustion of domestic remedies in the particular circumstances of the present case, the Court will first examine the position in respect of the applicants' complaint concerning the alleged lack of “speediness” of the proceedings on the applicants' interlocutory appeal against detention.

69. The Court reiterates that where there is a choice of remedies, the exhaustion requirement must be applied to reflect the practical realities of the applicant's position, so as to ensure the effective protection of the rights and freedoms guaranteed by the Convention. Moreover, an applicant who has used a remedy which is apparently effective and sufficient cannot be required also to have tried others that were also available but probably no more likely to be successful (see *Adamski v. Poland* (dec.), no. 6973/04, 27 January 2009, with further references).

70. In the present case the applicants had sought protection of their fundamental rights before the Constitutional Court under Article 127 of the Convention.

71. The Constitutional Court, as the supreme authority for the protection of human rights and fundamental freedoms in Slovakia, had jurisdiction to examine the applicants' complaint and to afford them redress if appropriate (see, *mutatis mutandis*, *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, § 45, ECHR 2009-..., with further references).

72. The Court further notes that the course of action chosen by the applicants is normally considered to be effective for the purposes of the domestic-remedies rule under Article 35 § 1 of the Convention. Moreover, the Constitutional Court entertained the applicants' complaints without requiring them first to exhaust the remedy now relied on by the Government.

In these circumstances the Court cannot but find that the applicants' course of action was reasonable and appropriate.

73. Moreover, the Court notes that, in its decision of 5 October 2005, the Constitutional Court found the applicants' complaint about the alleged lack of "speediness" of the proceedings in issue manifestly ill-founded (see paragraph 21 above).

74. The Court considers that the dismissal of the applicants' complaint by the Constitutional Court distinguishes the present case from the above-mentioned case (see paragraph 61 above) where, after having obtained from the Constitutional Court a finding of a violation of his rights under Article 5 §§ 3 and 4 of the Convention, the victim of such violation was successful in claiming damages under the State Liability Act of 2003.

Moreover, and in any event, Court finds that any persuasive value of that judgment is relative in view of the fact that it appears to be a single occurrence of such a finding, originating from a lower court, and there is no indication whether, and if so with what result, it has been tested on appeal.

75. Furthermore, if entertaining jurisdiction in the present case under the State Liability Act of 2003 in respect of alleged wrongful official action, in relation to the applicants' complaint that the proceedings in question were not "speedy", an ordinary court would be confronted with the same question as the Constitutional Court when ruling on the applicants' constitutional complaint.

The Court has not found any reason to conclude that there was any realistic prospect that an ordinary court would have arrived at conclusions contrary to those of the Constitutional Court.

76. Accordingly, in respect of the applicants' complaint concerning the alleged lack of "speediness" of the proceedings on their interlocutory appeal against detention, the applicants were not required to have recourse to the remedy relied upon by the Government. The Government's objections to the admissibility of that complaint must therefore be rejected.

77. . The Court considers that, subject to the complaint dealt with under point 8 below, it is not called upon to rule separately on the Government's objection in relation to the remainder of the application as the complaints are, in any event, inadmissible for the respective reasons given below.

2. *“Speediness” (within the meaning of Article 5 § 4 of the Convention) of the proceedings on the applicants' interlocutory appeal against detention*

78. The Court notes that the 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.

3. *“Lawfulness” (within the meaning of Article 5 § 1 (c) of the Convention) of the applicants' arrest and the quality of the applicable law*

79. The applicants complained that their detention had been unlawful on the grounds that they had not been brought before a judge within twenty-four hours of their arrest as required under the Charter and that the law concerning the applicable time-limit lacked the required quality on account of inconsistency.

80. The applicants reiterated their arguments from the domestic proceedings (see paragraphs 13, 18, 20 and 24 above), relied on the decision of the Trnava Regional Court of 16 February 2006 in an unrelated case (see paragraph 47 above) and pointed out the statutory rules on making legislation, pursuant to which indirect or implicit amendments to legislation had never been permissible (see paragraphs 48 to 51 above).

81. The Government maintained that the time-limit rule under the Constitution and the CCP, as in force at the relevant time, was legally authoritative, that this time-limit was established beyond dispute and that it had undoubtedly been met in the applicants' case.

As to the temporal application of the Charter, the Government relied on Article 152 of the Constitution (see paragraph 37 above) and pointed to the consistent practice of the Constitutional Court in applying it (see paragraph 40 above).

In the Government's view, the legal relevance of the decision of the Trnava Regional Court of 16 February 2006 was limited in that it was vaguely worded and, in any event, peculiar and without precedent or follow-up.

82. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. It is in the first place for the national authorities, and notably the courts, to interpret domestic law, and in particular, rules of a procedural nature, and the Court will not substitute its own interpretation for theirs in the absence of arbitrariness. However, since under Article 5 § 1 of the Convention failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should

exercise a certain power to review whether this law has been complied with (see, for example, *Toshev v. Bulgaria*, no. 56308/00, § 58, 10 August 2006, and *Öcalan v. Turkey* [GC], no. 46221/99, § 84, ECHR 2005-IV).

83. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court has stressed 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, for example, *Paladi v. Moldova* [GC], no. 39806/05, § 74, ECHR 2009-..., and *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

84. Turning to the circumstances of the present case, the Court observes that the legal rules concerning the time-limit for bringing an individual before a judge are provided for at the level of constitutional legislation and under other Acts of Parliament.

The constitutional rules are embodied in the Charter and the Constitution, while the other statutory rules are laid down in the CCP.

From the early 1990s the applicable time-limit was defined in all these sources of legislation as twenty-four hours, calculated from the time when the restriction on the individual's personal liberty began.

In 2001 the Parliament of the Slovak Republic enacted amendments to the Constitution and the CCP which extended the relevant time-limit to forty-eight hours. However, the provisions of the Charter were not affected by these amendments and the legislative status quo has persisted until the present day.

85. In these circumstances, although it is aware that the doctrine of binding precedent is not as such formally recognised in Slovakia, the Court finds judicial practice to be of consequence.

86. In that connection, the Court observes that the case-law of the Constitutional Court, both prior to the events of the present application and subsequent to them, appears to be quite extensive and unequivocally uniform in acknowledging the precedence of the forty-eight-hour time-limit under the Constitution over the twenty-four-hour time-limit under the Charter (see paragraph 40 above). In developing this position, the Constitutional Court has relied on the legal maxim *lex posterior derogat legi priori* and the provisions of Article 152 of the Constitution. The latter appear to provide a sound, albeit indirect, basis for favouring the Constitution over any other legislation, including the Charter (see paragraph 37 above).

87. The Court observes that a divergent view was expressed by the Trnava Regional Court in its decision of 16 February 2006 (see paragraph 47 above). However, the Regional Court did not explain its position in express terms and, in any event, its decision does not appear to have been followed.

88. As to the rules on making legislation relied on by the applicants, the Court would observe that they were adopted by resolutions of the Parliament and the Government and that they were published in the Collection of Laws. However, they do not have the legal status of an Act of Parliament and their legally binding nature and effect are somewhat unclear, especially in the face of the uniform case-law and convincing reasoning of the Constitutional Court.

89. In the light of the above considerations the Court finds no reason relating to the principle of legal certainty and no other grounds to reach a conclusion other than that the applicable law was in conformity with the Convention and that the legal time-limit for bringing the applicants before a judge was the time-limit under Article 17 § 3 of the Constitution and Articles 76 § 4 and 77 § 1 of the CCP, as in force at the relevant time, that is to say forty-eight hours.

90. The Court notes that there has been no dispute about the observance in the present case of the time-limit mentioned in the preceding paragraph.

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

4. “Reasonable suspicion” (within the meaning of Article 5 § 1 (c) of the Convention) for the purposes of the applicants’ arrest

92. As before the domestic courts (see paragraphs 13, 18 and 20 above), the applicants contended that witness evidence taken by officers of the local police force had been inadmissible. It had been legally irrelevant and could not serve as a basis for establishing a reasonable suspicion against the applicants, which was a Convention prerequisite for taking them into custody.

93. The Court observes that, in this connection, the applicants’ arguments revolve around admissibility of evidence, which is essentially a domestic-law matter (see, for example, *mutatis mutandis*, *Ramanauskas v. Lithuania* [GC], no. 74420/01, § 52, ECHR 2008-...; *Doorson v. the Netherlands*, 26 March 1996, § 67, *Reports of Judgments and Decisions* 1996-II, and *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 50, *Reports* 1997-III).

The Court, however, finds it appropriate to make a clear distinction between, on the one hand, the national-law rules on evidence and, on the other, the legal protection available to the applicants under Article 5 of the Convention.

94. As to the latter, the Court reiterates that the “reasonableness” of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1 (c).

Having a reasonable suspicion presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence (see *Labita v. Italy* [GC], no. 26775/95, § 155, ECHR 2000-IV).

95. The Court further reiterates that, in order for an arrest on reasonable suspicion to be justified under Article 5 § 1 (c), it is not necessary for the police to have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant is in custody (see, for example, *Gusinskiy v. Russia*, no. 70276/01, § 53, ECHR 2004-IV, and *Brogan and Others v. the United Kingdom*, 29 November 1988, § 53, Series A no. 145-B).

Neither is it necessary that the person detained should ultimately have been charged or brought before a court. The object of detention for questioning is to further a criminal investigation by confirming or dispelling the suspicions grounding the arrest (see *Murray v. the United Kingdom*, 28 October 1994, § 55, Series A no. 300-A, and *Lexa v. Slovakia* (no. 2), no. 34761/03, §§ 46-50, 5 January 2010).

96. In the present case, the applicants were apprehended in a hypermarket following an incident involving the damaging of goods and a skirmish with a police officer. In their request for a detention order for the applicants, the public prosecution service argued that the incident had been recorded by the shop's camera system (see paragraph 12 above). On the day of the arrest, the applicants were charged with assaulting a public official and breaching the peace (see paragraph 6 above). Two days later, the applicants were remanded in custody by the District Court, citing statements of three witnesses as the basis for the suspicion against them (see paragraph 15 above).

The Court considers that such evidence is sufficient to have created a “reasonable suspicion” against the applicants within the meaning of the case-law cited above.

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

5. Bringing of the applicants “promptly” before a judge for the purposes of Article 5 § 3 of the Convention

97. In so far as the applicants can be understood as wishing to rely on Article 5 § 3 of the Convention in connection with their complaint that they had not been brought before a judge within the applicable time-limit, and to the extent that such complaint raises any issue different from those

addressed above under Article 5 § 1 (c) of the Convention (see paragraphs 79–91 above), the Court observes that Article 5 § 3 requires that an arrested individual be brought promptly before a judge or judicial officer, the purpose of this guarantee being prevention of ill-treatment and unjustified interference with individual liberty.

While promptness has to be assessed in each case according to its special features (see, among others, *Aquilina v. Malta*, [GC], no. 25642/94, § 48, ECHR 1999-III), the strict time constraint imposed by this requirement of Article 5 § 3 leaves little flexibility in interpretation, otherwise there would be a serious weakening of a procedural guarantee to the detriment of the individual and the risk of impairing the very essence of the right protected by this provision (see, for example, *Medvedyev and Others v. France* [GC], no. 3394/03, § 121, ECHR 2010-..., and *McKay v. the United Kingdom* [GC], no. 543/03, § 33, ECHR 2006-X).

98. In its case-law, the Court has found that even in the context of terrorism a period of four days and six hours between the arrest and the presentation of the arrested person before a judge is excessive and violates Article 5 § 3 (see *Brogan and Others v. the United Kingdom*, cited above, § 62, and *Günay and Others v. Turkey*, no. 31850/96, §§ 20-23, 27 September 2001).

99. In the present case the applicants were arrested on 21 February 2005 at 11.10 p.m. and brought before a judge on 23 February 2005 at 5.15 p.m. and 6 p.m., respectively. That is to say they were brought before a judge after forty-two hours and five minutes and forty-two hours and fifty minutes, respectively.

100. The Court finds that the material in its possession does not disclose any appearance of a violation of the applicants' right under Article 5 § 3 of the Convention to be brought promptly before a judge.

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

6. Necessity of the applicants' detention in terms of Article 5 § 1 (c) of the Convention and trial within a “reasonable time” or “release pending trial” pursuant to Article 5 § 3 of the Convention

101. The applicants complained that they had been arbitrarily remanded in custody and, upon their first request for release, had not been released pending trial. They submitted in particular that detention was an unnecessarily stringent measure as its purpose could have been served by less severe means such as, for example, acceptance of a pledge under Article 73 § 1 (b) of the CCP or bail.

102. The Government argued, first of all, that the applicants had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention, in that they had failed to assert their rights under Article 5 § 3

of the Convention to a trial within a “reasonable time” or “release pending trial”, by bringing proceedings before the Constitutional Court under Article 127 of the Constitution. To that end, they pointed out that in their submissions to the ordinary courts and the Constitutional Court (see paragraphs 13, 18 and 20 and 27 above) the applicants had solely complained of what they considered to amount to non-compliance with the applicable time-limit for bringing them before a judge. As to the substance, the Government relied on the conclusions of the domestic courts (see paragraphs 16 and 19 above) and considered that the complaint was manifestly ill-founded.

103. The Court finds that the complaint falls to be examined under paragraph 1 (c) (initial remand in custody) in conjunction with paragraph 3 (continued detention) of Article 5. It holds that it is not necessary to examine separately the issue of exhaustion of domestic remedies in relation to this complaint because, for the following reasons, it is in any event manifestly ill-founded.

104. The applicants were deprived of their liberty on 21 February 2005 and their detention for the purposes of Article 5 § 3 of the Convention ended on 18 January 2006 when they were convicted at first instance (see, among other authorities, *Wemhoff v. Germany*, 27 June 1968, pp. 23-24, § 9, Series A no. 7, and *Černák v. Slovakia* (dec.), no. 67431/01, 1 March 2005). It therefore lasted ten months and twenty-six days, in which period two sets of criminal charges (see paragraphs 6 and 7 above) were investigated and adjudicated at one level of jurisdiction.

105. As regards the reasons underlying the applicants' detention, the domestic courts mainly cited their previous prosecution for two similar incidents. In the case of the second applicant, the courts also referred to his five previous convictions. The courts concluded that, in the circumstances, it was necessary to protect the public from similar offences that the applicants were likely to continue committing. Accordingly, neither the applicants' pledge that they would live in accordance with the law, nor the possibility of bail, were considered acceptable.

It is also noted that the “reasonable suspicion” that the applicants had committed the offences of which they stood accused persisted throughout the period of their detention and was endorsed by the Regional Court on 4 May 2006 when it dismissed the applicants' appeal against the first-instance judgment.

106. Having regard to all the elements in its possession, including the overall length of the applicants' detention for the purposes of Article 5 § 3 of the Convention, the Court has found no indication of a violation of the applicants' right not to be detained arbitrarily and to be tried within a reasonable time or released pending trial pursuant to Article 5 § 1 (c) in conjunction with Article 5 § 3 of the Convention.

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

7. Procedural guarantees under Article 5 § 4 of the Convention, other than “speediness”, on the applicants' interlocutory appeal against detention

107. The applicants contended that the procedure in respect of their interlocutory appeal against detention had fallen short of the applicable requirements and, in particular, that the decision on this appeal had lacked adequate reasoning.

108. The Government considered that the proceedings in question had satisfied all applicable procedural requirements. They submitted that the District Court and the Regional Court (see paragraphs 15 to 17 and 19 above) had given adequate answers to all of the applicants' arguments.

In so far as the applicants had argued that evidence was inadmissible on account of bias on the part of the police officers who had taken the incriminating statements (see paragraphs 13 and 18 above), such argument was to be raised in the proceedings on the merits. Moreover, it had been open to the applicants to challenge the officers in question for bias.

109. The applicants disagreed both with the findings of the domestic authorities and with the Government.

110. The Court reiterates that, by virtue of Article 5 § 4, arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the “lawfulness”, within the meaning of Article 5 § 1, of their deprivation of liberty (see, for example, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 202, ECHR 2009-..., and *Lexa v. Slovakia* (no. 2), cited above, §§ 66 and 67, with further references).

A court examining an appeal against detention must provide guarantees of a judicial procedure. The proceedings must be adversarial and must always ensure “equality of arms” between the parties, the prosecutor and the detained person (see, among many other authorities, *A. and Others*, cited above, § 204, and *Sanchez-Reisse v. Switzerland*, 21 October 1986, § 51, Series A no. 107).

In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see, among many other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 162, *Reports* 1998-VIII).

Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of

liberty in question (see, among many other authorities, *Reinprecht v. Austria*, no. 67175/01, § 31, ECHR 2005-XII).

In order to determine whether proceedings provide adequate guarantees, regard must be had to the particular nature of the circumstances in which such proceedings take place (see *Lexa v. Slovakia* (no. 2), cited above, § 67).

111. In the present case the applicants were remanded in custody on 23 February 2005, under Article 5 § 1 (c) of the Convention, following a remand hearing in which the applicants took part in person and with the assistance of defence counsel of their choosing. In its detention order of the same date the District Court addressed at length the applicants' arguments, identified the "reasonable suspicion" against them and gave reasons why their detention was considered necessary.

112. The applicants, who were assisted by their lawyer throughout, had ample opportunity to state their arguments, to challenge the submissions made by the prosecution and to submit anything they considered relevant to the outcome in the remand hearing and subsequently by way of their interlocutory appeal and, thereafter, their constitutional complaint. However, none of the courts involved found any substance to their arguments.

113. As to the applicants' specific argument concerning the admissibility of witness evidence, the domestic courts found that the victim and witnesses had given their statements after being duly instructed on their procedural rights and duties. They held that to rule on procedural admissibility of evidence was not the purpose of the remand proceedings but rather of the trial.

114. Taking the proceedings as a whole, the Court finds that the reasons put forward by the domestic courts do not appear manifestly arbitrary, irregular or otherwise wrong.

Bearing in mind the level of procedural guarantees applicable in such proceedings, as opposed to the trial, the Court has found nothing to justify a conclusion that such guarantees were not afforded.

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

8. Procedural guarantees under Article 5 § 4 of the Convention, including "speediness", on the applicants' first request for release

115. The applicants complained that the decisions in respect of their first request for release had lacked adequate reasoning and that the preceding procedure had fallen short of the applicable requirements and had not been speedy.

116. The Government objected that the applicants had failed to exhaust domestic remedies because they had not filed their constitutional complaint in time.

They submitted that the Constitutional Court's interpretation of the relevant rules in respect of the statutory two-month time-limit was settled and congruent with the interpretation given in the decisions of 7 July and 23 August 2006 in the applicants' case.

The decision of the Constitutional Court of 13 January 2005 in case no. I. ÚS 2/05, which was relied upon by the applicants, had no bearing on that contention as it had been no more than a random and single occurrence.

117. The applicants disagreed and contested the Government's argument on the principle of legal certainty. In that context, they pointed to the differing decisions of the Constitutional Court (see paragraphs 42 and 43 above). Moreover, they submitted that, in any event, no case-law of the Constitutional Court could be taken into account in the assessment of their own situation if it post-dated their constitutional complaint.

118. The Court reiterates that in order to exhaust domestic remedies as required by Article 35 § 1 of the Convention, applicants should use the remedies available in compliance with the formal requirements and time-limits laid down in domestic law, as interpreted and applied by domestic courts (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports* 1996-IV).

119. The Court observes that a complaint under Article 127 of the Constitution is normally considered to be one of the remedies that an applicant is required to exhaust for the purposes of Article 35 § 1 of the Convention in respect of individual complaints under Article 5 § 4. The Court further observes that such complaint is subject to a two-month time-limit and that, pursuant to section 53(3) of the Constitutional Court Act, that time-limit starts to run on the date when the decision in question has become final and binding or when the measure in question has been notified or notice of other interference with the complainant's interests has been given (see paragraph 38 above).

120. As regards decisions concerning detention, a question arises as to whether the decisive moment is the date of service of such decisions on the detainee or on his or her lawyer. Whilst bearing in mind the limitation noted above (see paragraph 85 above), in establishing which law is applicable the Court will nevertheless scrutinise existing judicial practice.

121. To that end, it appears that there had been at least three admissibility decisions by the Constitutional Court, before the applicants lodged their constitutional complaint on 6 February 2006, in which the Constitutional Court had legally explained and congruently decided that the decisive date was the date of service of the impugned decision on the detainee (see paragraph 41 above).

122. A divergent decision favouring the applicants' interpretation of the relevant law appears to have been taken only once (see paragraph 42 above) and has not been followed. Moreover, it contains no analysis whatsoever in respect of the two-month time-limit.

123. The Court considers that the applicants, who were at all times represented by a lawyer, no doubt could and should have known about the existing practice. Should there have been any doubts as regards the decisive date in connection with the decision of the Constitutional Court of 13 January 2005 under case file no. I. ÚS 2/05, the Court considers that in the circumstances of the present case the risk inherent in using the remedy at the time in question was for the applicants to assume. In reaching this conclusion the Court has taken into account *inter alia* the fact that the time-limit for lodging a complaint under Article 127 of the Constitution is as long as two months, that there is no indication that the applicants did not have ample opportunity to lodge their complaint earlier and that, consequently, the essence of the remedy at issue was not impaired.

124. It follows that the remainder of the applicants' complaints under Article 5 § 4 of the Convention must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

125. For the sake of completeness, in so far as the applicants relied on the decisions of the Constitutional Court of 24 November 2004 and 1 June 2005 in cases nos. IV. ÚS 372/04 and IV. ÚS 157/05 (see paragraph 43 above), the Court observes that they provide an even stricter interpretation of the relevant law and accordingly do not favour the applicants' individual case.

B. Merits

126. The Government relied on the Constitutional Court's finding in its decision of 5 October 2005 that the length of the proceedings in respect of the applicants' interlocutory appeal against the detention order was acceptable. They submitted that the time between 23 February 2005 when the applicants had lodged their interlocutory appeal orally and 28 February 2005 when they had submitted the grounds of their appeal in writing was imputable to the applicants. They also submitted that it was to be taken into account that, following the applicants' interlocutory appeal, the case file had to be transmitted to the Regional Court, which had to study it, come to a decision, deliver the decision in writing and have it served on the parties through the first-instance court.

127. The applicants disagreed.

128. The Court reiterates that Article 5 § 4, 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. In order to determine whether the requirement that a decision be given “speedily” has been complied with, it is necessary to effect an overall assessment where the proceedings were conducted at more than one level of jurisdiction. The question whether the right to a speedy decision has been respected must – as is the case for the “reasonable time” stipulation in Articles 5 § 3 and 6 § 1 of the Convention – be determined in the light of the circumstances of each case, including the complexity of the proceedings, their conduct by the domestic authorities and by the applicant and what was at stake for the latter (for a recapitulation of the applicable principles, see *Mooren v. Germany* [GC], no. 11364/03, § 106, ECHR 2009-...).

129. In the present case the applicants lodged their interlocutory appeal orally immediately after the detention order had been issued on 23 February 2005. Following the submission by the applicants of the grounds of their appeal on 28 February 2005, the appeal was decided on 16 March 2005. The decision was, however, not delivered publicly and the applicants only learned of it when a written version of it was served on them on 31 March 2005 (see, for example, *Cabala v. Slovakia*, no. 8607/02, § 68, 6 September 2007, and *Singh v. the Czech Republic*, no. 60538/00, § 74, 25 January 2005). The proceedings under examination thus lasted thirty-six days, in which period the applicants' appeal was judicially examined by a single court.

130. The Court has found nothing to justify finding that the applicants' detention case was of any particular complexity.

As to the conduct of the applicants, it is true that five days passed between the date when they lodged their interlocutory appeal orally and the date when they submitted the grounds of their appeal in writing.

As regards the conduct of the authorities, the Court notes in particular that it took 16 days from 28 February 2005 to have the applicants' appeal with written grounds decided on 16 March 2005 and a further 15 days to have the decision served on them on 31 March 2005.

131. Regard being had to the Court's case-law on the subject (see *Sanchez-Reisse v. Switzerland*, cited above, §§ 59-60; *M.B. v. Switzerland*, no. 28256/95, § 31, 30 November 2000; *G.B. v. Switzerland*, no. 27426/95, § 27, 30 November 2000; *Rehbock v. Slovenia*, no. 29462/95, § 85, ECHR 2000-XII; *Sarban v. Moldova*, no. 3456/05, § 120, 4 October 2005; *Kadem v. Malta*, no. 55263/00, §§ 44-45, 9 January 2003; *Sakık and Others v. Turkey*, 26 November 1997, § 51, *Reports* 1997-VII; and *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, §§ 57-58, Series A no. 77), the foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 5 § 4 of the Convention on account of the lack of a speedy determination of the lawfulness of the applicants' remand in custody.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

132. Lastly, the applicants claimed that the decisions of the Constitutional Court of 7 July and 23 August 2006 had violated their rights under Articles 13 and 14 of the Convention because they were based on an inconsistent interpretation and application of the two-month time-limit for bringing an individual complaint under Article 127 of the Constitution.

133. The Court has found above that the applicants' objections in relation to the Constitutional Court's decision of 7 July and 23 August 2006 were devoid of merit (see paragraphs 118–125 above). It does not discern any separate issue under Articles 13 and 14 of the Convention. It follows that the applicants' complaints under those Articles are likewise 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

134. 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

135. The applicants each claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

136. The Government considered the claim overstated.

137. The Court finds that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards each of them EUR 1,000 under that head.

B. Costs and expenses

138. The applicants claimed EUR 2,782.90 and EUR 2,723.64, respectively, for legal assistance, submitting itemised invoices from their lawyer, and EUR 150 for administrative expenses plus EUR 50 for postal expenses, incurred both at the national level and before the Court.

The applicants each also claimed EUR 345.55 for translations, submitting an invoice from a translation service.

139. Relying on the Court's judgment of 18 October 1982 in the case of *Young, James and Webster v. the United Kingdom* ((former Article 50) Series A no. 55, § 15), the Government considered that the claims in respect

of legal fees were overstated. They accepted the claims in respect of translation costs and objected that the claims concerning administrative and postal expenses were not supported by evidence.

140. 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 violation found (see paragraph 131 above), the documents in its possession and the above criteria, the Court considers it reasonable to award each of the applicants the sum of EUR 850 to cover legal representation both at the national level and before the Court and translation costs.

C. Default interest

141. 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. *Decides* to join the applications;
2. *Declares* the applicants' complaints under Article 5 § 4 of the Convention concerning the alleged lack of a speedy determination of the lawfulness of their remand in custody admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of each of the applicants;
4. *Holds*
 - (a) that the respondent State is to pay each of the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and EUR 850 (eight hundred and fifty euros), plus any tax that may be chargeable to the applicants, 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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President