



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

FOURTH SECTION

**CASE OF GÁL v. SLOVAKIA**

*(Application no. 45426/06)*

JUDGMENT

STRASBOURG

30 November 2010

**FINAL**

*28/02/2011*

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



**In the case of** Gál v. Slovakia,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 9 November 2010,

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

## PROCEDURE

1. The case originated in an application (no. 45426/06) 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 Slovak national, Mr Lukáš Gál (“the applicant”), on 26 October 2006.

2. The applicant was 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 applicant alleged, in particular, that his detention pending trial had been unlawful and that the procedure in respect of it had fallen short of the applicable requirements.

4. On 1 March 2010 the President of the Fourth Section decided to give notice of the application to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1980 and normally lives in Sered’.

### A. Detention on the charge of 4 April 2006

6. At 3.30 p.m. and 7.55 p.m. respectively on 3 April 2006 the applicant was taken to a police station (*predvedený*) and detained (*zadržaný*) on suspicion of illegal production, possession and trade in dangerous drugs. Official charges to that effect were brought against him the following day.

7. At 3.03 p.m. on 5 April 2006 the Galanta District Office of Public Prosecution (*Okresná prokuratúra*, “the District Prosecutor”) lodged a request with the Galanta District Court (*Okresný súd*) for the applicant to be remanded in custody pending trial.

8. At 11.05 a.m. on 6 April 2006 the applicant was brought before a single judge of the District Court to be heard in connection with the request for a detention order against him.

The applicant complained that he had not been brought before a judge within twenty-four hours of his arrest, as required by Article 8 § 3 of the Charter of Basic Rights and Freedoms (Constitutional Law no. 23/1991 Coll.) (*Listina základných práv a slobôd* – “the Charter”), requested release and offered a pledge under Article 80 § 1 (b) of the Code of Criminal Procedure (Law no. 301/2005 Coll., as applicable at the relevant time) (“the CCP”) that he would live in accordance with the law.

It was true that the time-limit for bringing a detained person (*zadržaná osoba*) 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.) 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 him broader legal protection and had to be applied in his case.

9. Following the hearing, on the same day, the District Court remanded the applicant in custody pending trial and rejected his pledge under Article 80 § 1 (b) of the CCP. It found that there were fears that if released the applicant might commit a previously attempted offence, continue to offend, or carry out new criminal activities within the meaning of Article 71 § 1 (c) of the CCP. The applicant submitted an oral interlocutory appeal (*sťažnosť*) and stated that he would lodge his reasons for the appeal within three days.

10. A written version of the detention order of 6 April 2006 was served on the applicant at an unspecified later point. The District Court summarised the charge against the applicant and the submissions of the District Prosecutor and those made orally by the applicant. It referred to the conclusions of an expert analysis concerning the substance found on the applicant and observed that illegal drugs had been found on him for the second time. The applicant's explanation that he had found and had been going to dump the drug so that it would not be found by anyone else was

implausible because the applicant had had the opportunity to report the find to the police and had not done so.

11. On 7 April 2006, which was a Friday, the applicant's lawyer requested that he be allowed to inspect the case file. Arrangements were made for the inspection to take place on 10 April 2006, which was a Monday.

12. The applicant subsequently sent the grounds of his appeal in writing to the District Court, where they arrived on 13 April 2006. The applicant developed the twenty-four-hour time-limit argument in detail and sought release.

13. On 25 April 2006, sitting in private (*neverejné zasadnutie*), the Trnava Regional Court (*Krajský súd*) dismissed the applicant's interlocutory appeal. In a one-and-a-half-page decision, the Regional Court summarised the impugned decision and the applicant's appeal. Referring in general to “the contents of the case file”, the Regional Court found that all formal and substantive requirements for remanding the applicant in custody pending trial had been fulfilled. In particular, a formal charge had been brought against the applicant, there was a well-founded suspicion against him in the present case and in the other case mentioned below (see paragraphs 17 to 19 below) and the applicant was unemployed. This provided good grounds to fear that, if at liberty, the applicant would carry on making his living from similar criminal activities. The Regional Court did not specifically address the applicant's argument under the Charter. The decision was served on the applicant and his lawyer on 23 May 2006.

14. On 25 June 2006 the applicant lodged a complaint, under Article 127 of the Constitution, with the Constitutional Court (*Ústavný súd*). Relying on Article 5 § 4 of the Convention, he contended that the proceedings before the District Court and the Regional Court in respect of his appeal against the detention order of 6 April 2006 had not been “speedy”.

15. On 31 October 2006 the Constitutional Court declared the applicant's complaint admissible, in so far as it concerned the Regional Court. In so far as it concerned the District Court, the complaint was declared inadmissible as “manifestly ill-founded, on the ground that, at the time of the introduction of the applicant's complaint, the matter had no longer been pending before the District Court, which is why the District Court could not have been committing a violation of the applicant's said rights”.

16. On 19 April 2007 the Constitutional Court ruled on the admissible part of the applicant's complaint. It found that the Regional Court had not violated the applicant's rights under Article 5 § 4 of the Convention. It observed that it had taken twenty-two days for the Regional Court to rule on the applicant's appeal and to transmit its decision to the District Court, whose task it was to have the decision served on the parties. It noted that although the applicant had lodged his appeal orally on 6 April 2006, he had submitted the grounds of his appeal in writing on 13 April 2006. In view of

all the circumstances and the Constitutional Court's previous practice, the conduct of the Regional Court had been constitutionally acceptable.

### **B. Previous arrest and detention**

17. The applicant had previously been remanded in custody on 3 February 2006 on another drug-related charge.

18. The applicant appealed against this detention on a number of grounds, including that he had not been brought before a judge within twenty-four hours as required under the Charter.

19. On 16 February 2006 the Regional Court quashed the detention order of 3 February 2006 and ordered the applicant's immediate release, noting that it had “examined the written interlocutory appeal of [the applicant] as submitted by his defence counsel ... and [it had] identified itself with the objections raised therein”.

Nevertheless, the Regional Court made no specific reference to any of those objections and offered no reasons other than as mentioned above. The applicant was subsequently released.

## **II. RELEVANT DOMESTIC LAW AND PRACTICE**

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

20. 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.

21. 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.

22. 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*)**

23. 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.

24. 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.

25. 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.

26. 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. Practice of the Constitutional Court in respect of Article 8 of the Charter**

27. 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, 5 October 2005 and 9 March 2005 in cases nos. II. ÚS 38/05, II. ÚS 369/06, III. ÚS 220/04, III. ÚS 273/05 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.

#### **D. The Code of Criminal Procedure**

28. Until 31 December 2005 criminal procedure in Slovakia was governed by the 1961 Code of Criminal Procedure (Law no. 141/1961 Coll.). This Code has been amended numerous times.

29. 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.

30. On 1 January 2006 a new Code of Criminal Procedure (Law no. 301/2005 Coll.) was enacted.

The time-limit for delivering a detained person (*zadržaná osoba*) to a court is laid down in Article 87. A detained person has to be released or delivered to a court with a request for a detention order within twenty-four hours of the moment of detaining him or her.

#### **E. Rules on making legislation**

31. 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.

32. 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).

33. 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.

34. 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.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

35. The applicant raised several generic complaints that can be summarised as follows: (i) that his detention following his arrest on 3 April 2006 had been unlawful because he had not been brought before a judge within twenty-four hours of the arrest as required under the Charter; (ii) that the detention order of 6 April 2006 and the decision of 25 April 2006 lacked adequate reasoning; and (iii) that the proceedings by which the lawfulness of his detention under the detention order of 6 April 2006 was to be decided had not been “speedy”.

The applicant relied on Article 5 of the Convention, which – in so far as relevant - 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;

...

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. *“Speediness” (within the meaning of Article 5 § 4 of the Convention) of the proceedings in the applicant's interlocutory appeal against detention*

36. The applicant complained that the proceedings on his interlocutory appeal against the detention order of 6 April 2006 had not been decided “speedily”. He pointed out that he had lodged the written grounds of his appeal without delay after his lawyer had been allowed to inspect the case file on 10 April 2006.

37. The Government observed that the Constitutional Court had been confronted with the issue of speediness of the proceedings in the applicant's

appeal in their entirety. It had nevertheless examined the applicant's constitutional complaint by a method different from that used by the Court in *A.R., spol. s r.o. v Slovakia*, no. 13960/06, 9 February 2010.

The Government acknowledged that the complaint raised serious questions concerning interpretation and application of the Convention and left them for the Court to answer and thereby to give guidance to the Constitutional Court.

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

2. *“Lawfulness” (within the meaning of Article 5 § 1 (c) of the Convention) of the applicant's arrest*

39. The applicant complained that his detention had been unlawful on the ground that he had not been brought before a judge within twenty-four hours of his arrest on 3 April 2006 as required under the Charter.

40. The applicant reiterated his arguments from the domestic proceedings (see paragraphs 8 and 12 above), relied on the decision of the Regional Court of 16 February 2006 in relation to his previous detention (see paragraph 19 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 31 to 34 above). He considered that, in respect of this complaint, he was not required to seek redress from the Constitutional Court under Article 127 of the Constitution for the purposes of Article 35 § 1 of the Convention in view of the Constitutional Court's decision-making practice (see paragraphs 27 above).

41. The Government objected first of all that the applicant had failed to raise his Charter-based argument in the Constitutional Court.

As to the substance, they 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 defined beyond dispute and that the invoked provisions of the Charter were inapplicable in the applicant's case.

As to the temporal application of the Charter, the Government relied on Article 152 of the Constitution (see paragraph 26 above) and pointed out the consistent practice of the Constitutional Court in applying it (see paragraph 27 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 general, no reference was made to any of the applicant's arguments, the decision contained no reasoning and, in any event, it was unique and without precedent or follow up.

42. The Court observes that the applicant's complaint raises questions which are mainly of a substantive-law nature and considers that they fall

to be examined under Article 5 § 1 (c) of the Convention. It is of the view that it is not necessary to rule separately on the issue of exhaustion of domestic remedies as the complaint is in any event inadmissible for the following reasons.

43. 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).

44. 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).

45. Turning to the circumstances of the present case, the Court observes that the legal rules concerning the time-limit for bringing the applicant 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.

46. 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.

47. 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 27 above). It may be of some significance that, being well aware of this case-law, the applicant himself opted not to resort to the Constitutional Court under Article 127 of the Constitution (see paragraph 40 above).

48. 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 26 above).

49. The Court observes that a divergent view was expressed by the Trnava Regional Court in its decision of 16 February 2006 (see paragraph 19 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.

50. As to the rules on making legislation relied on by the applicant, 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.

51. 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 applicant before a judge was the time-limit under Article 17 § 3 of the Constitution and Article 87 of the CCP, as in force at the relevant time, that is to say forty-eight hours.

52. The Court observes that the applicant's claim essentially rests on the twenty-four-hour Charter-based argument. Neither before the Court nor before the Constitutional Court has he made any complaint about non-observance of the forty-eight-hour time-limit or about generally not having been brought before a judge "promptly" in terms of Article 5 § 3 of the Convention.

53. It follows that, to the extent the relevant part of the application has been substantiated and domestic remedies exhausted, it is manifestly

ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

*3. Procedural guarantees under Article 5 § 4 of the Convention, other than “speediness”, in the applicant's interlocutory appeal against detention*

54. The applicant complained that the remand in custody of 6 April 2006 and the decision on his interlocutory appeal against it lacked adequate reasoning, in particular in respect of his twenty-four-hour Charter-based argument, which he considered essential and deserving of a specific judicial answer.

The applicant considered that it would have been of no use for him to raise the present complaint in the Constitutional Court, in view of its decision-making practice (see paragraph 27 above).

55. The Government pointed out that the complaint was of a procedural nature, namely the alleged lack of reasons for a decision, and objected that the applicant had failed to exhaust domestic remedies by raising it in the Constitutional Court under Article 127 of the Constitution. Nevertheless and in any event, they considered that the complaint was manifestly ill-founded because the reasons given by the District Court and the Regional Court were sufficient and relevant.

56. The Court observes that the applicant's complaint is essentially procedural in nature and considers that it falls to be examined under Article 5 § 4 of the Convention.

To that end, the Court finds it appropriate to draw a distinction between the substantive outcome of the domestic proceedings, which it has dealt with above under Article 5 § 1 (c) of the Convention (see paragraphs 39 – 53 above), and the procedural protection afforded to the applicant under Article 5 § 4 of the Convention in the form of the right to take proceedings by which the lawfulness of his detention would be decided by a court, of which the right to a reasoned decision is one of the components. The purpose of the latter right is to ensure transparency and to provide for scrutiny of the exercise of judicial power as opposed to ensuring a specific substantive outcome.

57. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with the matter after all domestic remedies have been exhausted.

58. The Court observes that the complaint under Article 127 of the Constitution is normally considered a remedy that an applicant is required to make use of for the purposes of Article 35 § 1 of the Convention in respect of individual complaints under Article 5 § 4. It has found no reasons for exempting the applicant from this requirement.

59. The Court further observes that, in his constitutional complaint of 25 June 2006, the applicant asserted solely his right to proceedings by which the lawfulness of his detention be decided “speedily”.

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

## **B. Merits**

61. The parties made no separate submissions other than as mentioned above (see paragraphs 36 and 37 above).

62. 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 recapitulation of the applicable principles, see *Mooren v. Germany* [GC], no. 11364/03, § 106, ECHR 2009-...).

63. In the present case the applicant lodged his interlocutory appeal orally immediately after the detention order had been pronounced on 6 April 2006. The appeal was decided on 25 April 2005. The decision was however not pronounced publicly and the applicant only learned of it when a written version of it was served on him and his lawyer on 23 May 2006 (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 forty-six days.

64. The Court observes that, in its examination of the “speediness” of the proceedings in question, the Constitutional Court distinguished in the context of the total duration of the proceedings periods in which the case file had technically been with the District Court and with the Regional Court and that it examined those proceedings separately (see paragraphs 15 and 16 above).

In particular, the Constitutional Court declared inadmissible the part of the applicant's constitutional complaint that concerned the District Court on the ground that at the time of the introduction of the constitutional complaint the case file was no longer with that court.

Similarly, the Constitutional Court examined the part of the proceedings that had technically taken place before the Regional Court in isolation and had concluded that the complaint of their duration was manifestly ill-founded.

65. In this context the Court considers that it is first of all for the national authorities to devise means and methods of examining individual complaints so as to render the protection of their rights effective.

66. The Court reiterates that it is then its task to satisfy itself in each individual case whether the protection of the applicant's rights granted by the national authorities is comparable with that which the Court can provide under the Convention. In cases concerning the problem of length of proceedings such a requirement would generally only be met where the domestic courts' decision is capable of covering all stages of the proceedings complained of and thus, in the same way as decisions given by the Court, of taking into account their overall length (see *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005).

This has however not been so in the present case. In fact, if the practice used by the Constitutional Court in the present case were to be accepted, the overall length of proceedings concerning detention would never be examined if in the course of the proceedings the case file moved from one court to another (for contrast and comparison see *A.R., spol. s r.o. v. Slovakia*, cited above, §§ 34 to 39).

67. The Court will accordingly examine the above-defined period (see paragraph 62 above) in its totality. It observes that in this period the applicant's interlocutory appeal was judicially examined by a single court, the Regional Court.

68. The Court has found nothing to justify a conclusion that the applicant's detention case was of any particular complexity.

As to the conduct of the applicant, it is true that at least four days passed between the date when he lodged his appeal orally, on 6 April 2006, and the date when he submitted the grounds of his appeal in writing. However, it would appear natural that he could only do so meaningfully after his lawyer had had an opportunity to consult the case file on 10 April 2006.

As to the conduct of the authorities, the Court notes in particular that it took at least twelve days from 13 April 2006 to have the applicant's appeal with written reasons decided on 25 April 2006 and a further twenty-eight days to have the decision served on him on 23 May 2006.

69. Regard being had to the Court's case-law on the subject (see, for example, *Sanchez-Reisse v. Switzerland*, 21 October 1986, §§ 59-60, Series A no. 107; *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 applicant's remand in custody.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

72. The Government considered the claim overstated.

73. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,200 under that head.

### B. Costs and expenses

74. The applicant claimed EUR 2,723.64 for legal assistance, submitting itemised invoices from his lawyer, and EUR 50 for administrative expenses plus EUR 30 for postal expenses, incurred both at the national level and before the Court.

75. 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 claim in respect of legal fees was overstated. They also objected that the claims concerning administrative and postal expenses were not supported by evidence.

76. 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 69 above), the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 900 to cover legal representation both at the national level and before the Court.

### C. Default interest

77. 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 concerning the alleged lack of a speedy determination of the lawfulness of the applicant's remand in custody admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 4 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, EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and EUR 900 (nine 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 30 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President