



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

FOURTH SECTION

CASE OF MICHALÁK v. SLOVAKIA

(Application no. 30157/03)

JUDGMENT

STRASBOURG

8 February 2011

FINAL

08/05/2011

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

In the case of Michalák v. Slovakia,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić,

Vincent A. de Gaetano, *judges*

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 30157/03) 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 Ján Michalák (“the applicant”), on 2 September 2003.

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 pre-trial detention had been unlawful, arbitrary, unjustified and excessively lengthy, that the procedure in respect of it had fallen short of applicable requirements, that he had not had an enforceable right to compensation in that respect, that his telephone communications had been monitored unlawfully and arbitrarily, and that he had had no effective remedy in that respect.

4. On 11 September 2006 the President of the Fourth Section decided to communicate the complaints concerning the matters noted in the preceding paragraph to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and lives in Poprad.

A. Criminal proceedings

6. On 14 August 2002 the Prešov Regional Investigation Office commenced a criminal investigation into a suspicious money transfer between two bank accounts.

7. On 9 October 2002 the Prosecutor General ruled that the investigation should be supervised by the Trenčín Regional Prosecutor. It was observed that the suspected offence had been committed in the region of Prešov and that the Prešov Regional Prosecutor would normally have had jurisdiction to deal with it. It was, however, presumed that the offence had been part of a larger criminal transaction involving several individuals in various places and requiring extensive investigation. In order to ensure the effectiveness and expeditious determination of the proceedings, it was necessary to transfer jurisdiction to the Trenčín Regional Prosecutor.

8. On 29 November 2002 the Prosecutor General took a similar measure in respect of an investigation into irregularities in insolvency proceedings concerning bank A.

9. On 9 December 2002 the applicant and seven other individuals were charged with conspiracy and embezzlement on suspicion of having fraudulently and in an organised fashion drained money from the insolvency estate of A.

The applicant for his part was suspected of having organised a bank transfer of the money in question. The decision was based on “previously obtained testimonies and documentary evidence”.

10. On 14 December 2002 the applicant was placed in detention pending trial. He remained detained until his release on 22 January 2004. The circumstances and decisions relating to his detention are described in paragraphs 19 to 80 below.

11. On 24 April 2003 the investigation in question was joined to inquiries in two other cases concerning murders which had connections with the insolvency proceedings in respect of bank A.

12. After the investigation had been completed, the applicant was invited to inspect the investigation file. He did so on 21 June and 30 July 2004. He discovered, *inter alia*, that the file contained information which had been obtained by monitoring his telephone calls. This information comprised the transcript of a specific phone call from the applicant’s mobile telephone and a list of outgoing and incoming calls in a specific period.

13. The applicant unsuccessfully complained to the prosecution service and the Constitutional Court that the monitoring of his telephone communications had been unlawful and unjustified. The details concerning his constitutional complaint are set out in paragraphs 81 and 82 below.

14. On 10 September 2004 the Trenčín Regional Prosecutor indicted the applicant and committed him to stand trial before the Prešov Regional Court (*Krajský súd*) on charges of conspiracy and embezzlement. The indictment

was also directed against 13 other individuals, including two lawyers, and included charges of money laundering, murder and illegal possession of firearms.

15. On 14 October 2004 the Prešov Regional Court ruled that the case fell within the jurisdiction of the Special Court (*Špeciálny súd*), which had been established a short time before in order to try cases involving corruption, organised crime and other serious offences. Both the applicant and the prosecution service challenged this ruling.

16. On 19 January 2005 the Supreme Court (*Najvyšší súd*) upheld the jurisdiction of the Special Court. The applicant then unsuccessfully challenged this decision before the Constitutional Court, which rejected his constitutional complaint on 5 May 2005, and before the Prosecutor General.

17. On 1 July 2005 the case was transferred to the Special Court, which decided, on 12 December 2005, to hive off the applicant's trial to a separate set of proceedings.

18. Following a judgment of the Constitutional Court of 20 May 2009 finding that the legislation establishing the Special Court was contrary to the Constitution and the subsequent replacement of that court by a newly established Specialised Criminal Court (*Špecializovaný trestný súd*) (for details see *Fruni v. Slovakia*, no. 8014/07), the applicant's trial was transferred to the latter court and it is still pending there.

B. Detention order and related constitutional complaint

19. On 12 December 2002, at 6 a.m., the applicant was arrested on charges which had been brought on 9 December 2002.

20. On 13 December 2002, at 7 p.m., the regional prosecutor lodged a request with the Trenčín District Court (*Okresný súd*) that the applicant and the other suspects be placed in detention pending trial.

21. On the evening of 13 December 2002 the applicant's brother appointed a lawyer to represent the applicant. At 10 p.m. the Trenčín District Investigation Office, in whose custody the applicant was at that time, refused the lawyer access to the applicant.

22. On the morning of 14 December 2002 the lawyer and the applicant met for about ten minutes.

23. On 14 December 2002, at 10 a.m., the District Court opened a hearing on the prosecutor's request. One by one, the suspects were questioned. The applicant was questioned in the presence of his lawyer. Neither of them had access to the case file. At 7 p.m. the District Court ordered the detention of the applicant and the other suspects pending trial.

24. The District Court found that there was a well-founded suspicion against the accused. The investigation was in its initial stages and there was still much evidence to be gathered. This, together with the "character and circumstances of the offence", gave rise to fears that the suspects would

collude within the meaning of Article 67 § 1 (b) of the Code of Criminal Procedure (“the CCP”). Furthermore, the information available indicated that other criminal offences had been committed in connection with the insolvency of bank A. The accused were suspected of having been involved in those offences. This prompted fears that the accused would continue criminal activities within the meaning of Article 67 § 1 (c) of the CCP.

25. On 19 December 2002 the applicant lodged an interlocutory appeal (*sťažnosť*) against his detention and on 30 December 2002 he adduced further grounds of appeal.

He argued first of all that the Trenčín District Court had no territorial jurisdiction to decide on his detention. The court competent to do so had been the court in the judicial district where the offence had purportedly been committed.

The applicant further argued that he had not had adequate time and facilities to confer with his lawyer and to prepare his defence. Both the prosecutor’s proposal and the decision on detention had been so vague that it had been impossible to mount any meaningful defence.

The applicant went on to argue that the suspicion against him had been ill-founded and that there had been no admissible evidence in support of it. There had been no reasons for detaining him and the decision had lacked adequate reasoning.

26. On 16 January 2003 the Trenčín Regional Court, sitting in private (*neverejné zasadnutie*), dismissed the applicant’s appeal. In summary reasoning, it simply referred to and fully concurred with the District Court’s reasons for detention. The decision was served on the applicant on 3 February 2003.

27. In the meantime, the applicant’s lawyer had unsuccessfully requested access to the case file on several occasions.

28. On 7 March 2003 the applicant lodged a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*).

He challenged the above-mentioned decisions concerning his detention and claimed a violation of a number of his procedural rights. The applicant complained that: (i) the court which had issued the detention order had had no territorial jurisdiction in the matter; (ii) he had not had adequate time and facilities to confer with his lawyer and prepare his defence; (iii) he and his lawyers had been refused access to the case file; (iv) there had been no reasonable suspicion against him and no reason for detaining him; (v) the decisions had lacked adequate reasoning; and (vi) the proceedings had been too lengthy.

The applicant sought a ruling setting aside the impugned decisions, releasing him and awarding him damages.

29. On 26 March 2003 the Constitutional Court declared admissible the complaint concerning the refusal of access to the case file, and the remaining complaints inadmissible.

30. As to the inadmissible complaints, the Constitutional Court observed that the territorial jurisdiction of the Trenčín District Court had been based on Article 26 of the CCP, pursuant to which territorial jurisdiction in matters concerning the preparatory stage of proceedings was vested in the court in the judicial district in which the prosecutor acted. The offences of which the applicant was suspected and the reasons for his detention had been stated and had been adequately explained.

The applicant had known as far back as December 2002 how much time he had had to consult his lawyer. His constitutional complaint alleging that the time had been insufficient had been made in March 2003 – that is to say, outside the statutory two-month time-limit.

The length of the proceedings in respect of the applicant's detention had been acceptable, given that the applicant had not fully specified his appeal until 30 December 2002.

31. On 11 March 2004 the Constitutional Court delivered a judgment (*nález*) on the merits of the admissible complaint. It held that the absolute refusal of access to the case file had been incompatible with Article 5 § 4 of the Convention. However, this had had no material impact on the lawfulness and constitutionality of the detention as such. That finding was therefore sufficient compensation for any non-pecuniary damage the applicant might have sustained.

C. First request for release and related constitutional complaint

32. On 19 May 2003 the applicant applied for release or, alternatively, for his detention to be replaced by a pledge under Article 73 of the CCP that he would live in accordance with the law.

33. By law the requests fell to be determined first by the regional prosecutor, who dismissed them, and, on 21 May 2003, forwarded them *ex officio* to the District Court for judicial determination.

34. On 22 May 2003 the District Court, sitting in a private session, rejected the request for release. "Having examined the applicant's request and the case file", the District Court "established that the reasons for the applicant's detention persisted". The offences under investigation were very serious. The investigation had been carried out on a large scale and with due diligence, and given that it was in its early stages there was a well-founded fear that the applicant would collude with the other suspects and continue criminal activities.

The District Court made no formal ruling in respect of the alternative proposal to replace the applicant's detention with a pledge of lawful conduct. It merely observed in its reasoning that such a move was not possible if a person stood accused of such offences as the applicant did. The applicant lodged an interlocutory appeal.

35. On 7 August 2003 the Trenčín Regional Court, sitting in private, dismissed the applicant's appeal. In summary reasoning it simply referred to and fully concurred with the reasons given by the District Court.

36. On 7 October 2003 the applicant challenged the decisions of 22 May and 7 August 2003 and the proceedings leading to them by means of a constitutional complaint. He alleged a violation of several of his procedural rights.

37. As in his previous complaint, the applicant objected that: (i) the court deciding on his detention had had no territorial jurisdiction in the matter; (ii) there had been an irregularity in the assignment of his appeal for determination by a specific chamber at the Regional Court; (iii) the decision-making process had been conducted in private and the applicant had had no opportunity to state his case orally; (iv) neither he nor his lawyer had been granted access to the case file; (v) the decisions had been arbitrary, (vi) had lacked proper reasoning and (vii) had been the outcome of proceedings that had not been speedy; (viii) finally, the total duration of the applicant's detention had been excessive and (ix) the courts had failed to take a formal decision in respect of his petition for his detention to be replaced by a pledge of lawful conduct.

The applicant sought a ruling that the challenged decisions be set aside and claimed 210,000 Slovakian korunas (SKK) in damages.

38. On 26 May 2004 the applicant supplemented his constitutional complaint by arguing that his detention was unlawful on the ground that, when it had begun, he had not been brought before a judge within the period of twenty-four hours required by Article 8 § 3 of the Charter of Fundamental Rights and Freedoms (Constitutional Law no. 23/1991 Coll.) (*Listina základných práv a slobôd* – “the Charter”).

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.), was forty-eight hours. However, neither the Constitution nor any other legislation had repealed the Charter expressly and implicit repeal was not permissible. The Charter guaranteed him a broader extent of legal protection and had to be applied in his case.

39. On 16 December 2004 the Constitutional Court declared admissible the complaints listed under (ii), (iv) and (vi) - (ix) above. The remaining complaints were declared inadmissible for the following reasons.

40. The issue of the territorial jurisdiction of the Trenčín District Court had already been examined and determined in the Constitutional Court's decision of 26 March 2003 (see paragraphs 29 and 30 above).

The applicant had had ample opportunity to present his case in writing and with the assistance of a lawyer, and had in fact done so at length. The lack of an oral hearing therefore raised no issue under Article 5 § 4 of the Convention.

The applicant's continued detention was, as such, justified and lawful. As to the discrepancy between the time-limits for bringing an arrested person before a judge under the Charter (twenty-four hours) and the Constitution (forty-eight hours), the Constitutional Court held that, pursuant to Article 152 § 4 of the Constitution, the constitutional provision prevailed.

41. On 26 October 2005 the Constitutional Court delivered a judgment on the merits of the admissible complaints.

The Constitutional Court found that there had been a violation of the applicant's right under Article 5 § 3 of the Convention to a trial within a reasonable time or release pending trial, in that the courts had failed to take a formal decision on his request for his detention to be replaced by a pledge of lawful conduct.

The Constitutional Court also found that there had been a violation of the applicant's rights under Article 5 § 4 of the Convention, in that: the applicant's appeal had been determined by the wrong chamber of the Regional Court; the applicant had been refused access to the case file; and the proceedings had not been speedy.

The applicant was awarded SKK 80,000 by way of compensation for non-pecuniary damage, and had his legal costs reimbursed.

42. The complaint that the impugned decisions lacked proper reasoning was dismissed as unfounded.

D. First extension of detention and related constitutional complaint

43. On 26 May 2003 the regional prosecutor requested that the Trenčín District Court authorise an extension of the detention of the applicant and all his co-defendants until 30 November 2003. Neither the applicant nor his lawyer was informed of the request.

44. On 2 June 2003, in a private session, the District Court acceded to the prosecutor's request. Neither the applicant nor his lawyer was informed of the session.

45. "Having examined the prosecutor's request and the case file", the District Court "established that the request was well founded". Although the investigation had been carried out with due diligence, it had not been possible to complete it within the period of six months which had elapsed from the start of the applicant's detention. The reasons for keeping the defendants in detention, as established at the time of the detention order, still persisted. Their release might render the investigation and the whole proceedings difficult or even impossible. No appeal lay against the decision.

46. On 5 June 2003 the applicant's lawyer phoned the Regional Prosecutor's Office and was informed that, on 26 May 2003, the regional prosecutor had requested an extension of the applicant's detention. On the same day the lawyer requested in writing that the District Court provide him with a copy of the request.

47. Copies of the decision of 2 June 2003 and of the prosecutor's request were served on the applicant's lawyer on 27 June 2003.

48. On 4 August 2003 the applicant challenged the decision of 2 June 2003 by means of a constitutional complaint.

He argued in the main (i) that the court deciding on the extension of his detention had had no territorial jurisdiction in the matter; (ii) that the prosecutor's request had not been made available to him in good time; (iii) that he had consequently had no opportunity to comment on it and to state his case orally (the decision had been made in private); and (iv) that the decision had been arbitrary and unjustified.

49. On 4 October 2003 the applicant supplemented his complaint by submitting substantially the same arguments as in his submission of 26 May 2004 (see paragraph 38 above).

50. On 30 June 2004 the Constitutional Court declared admissible the complaint that the extension of the applicant's detention had been arbitrary and unjustified and declared the remaining complaints inadmissible. The decision was served on the applicant on 2 August 2004.

51. As to the inadmissible complaints, the Constitutional Court observed that the issue of territorial jurisdiction of the Trenčín District Court had already been examined and determined in the Constitutional Court's decision of 26 March 2003 (see paragraphs 29 and 30 above).

Under applicable law, there had been no legal duty to communicate a copy of the prosecutor's request for extension of detention to the person concerned. The applicant's lawyer ought to have known that, pursuant to Article 71 § 4 of the CCP, a request for an extension of a person's detention had to be submitted to the competent court no later than ten days before the expiry of their detention. In the present case the deadline had been 2 June 2003.

However, the applicant's lawyer had not contacted the prosecution service until 5 June 2003 and his failure to do so at an earlier date could not be imputed to the authorities.

The fact that the decision had been made in a private session was irrelevant because the prosecution service had also not been able to take part in that session. As to the discrepancy between the time-limits for bringing an arrested person before a judge under the Charter and the Constitution, the court found that it had had no relevance to the decision in question and, moreover, had been raised as an issue outside the statutory two-month time-limit.

52. On 11 January 2005 the Constitutional Court found that there had been a violation of the applicant's rights under Article 5 §§ 3 and 4 of the Convention, in that the decision of 2 June 2003 had lacked adequate reasoning. The decision in question had contained a detailed description of the charges, the nature of which had themselves constituted a part of the reason for the applicant's detention. However, the charges had concerned

a group of suspects and it had not been clear from the charges which reasons for detention pertained to which suspects. Although such reasoning had been sufficient to detain the applicant in the initial stage of the proceedings, it had not been sufficiently detailed six months into the proceedings.

The Constitutional Court remarked that this conclusion had no impact on whether the applicant's detention after 2 June 2003 had or had not been justified in substance.

It quashed the decision of 2 June 2003 and awarded the applicant SKK 20,000 in compensation for non-pecuniary damage. It also reimbursed his legal costs.

As the applicant had been released in the meantime, there was no question of ordering the District Court to determine the matter anew.

E. Second request for release and related constitutional complaints

53. On 27 August 2003 the applicant applied for release or, alternatively, for his detention to be replaced by a pledge of lawful conduct. He argued that most of the relevant evidence had already been taken and examined and that it had shown that he was innocent and that there were no reasons for detaining him.

54. The regional prosecutor dismissed the applicant's requests and, on 12 September 2003, forwarded them to the District Court for judicial determination.

55. The applicant challenged the handling of the proceedings by the regional prosecutor – in particular, the length of such examination – by means of a constitutional complaint (for the outcome see paragraphs 60 and 62 below).

56. On 9 October 2003, in a private session, the District Court rejected the application for release. "Having examined the applicant's request and the relevant files", the District Court "established that the reasons for the applicant's detention persisted". It held specifically that there were a number of pieces of evidence which had been secured in the preparatory stage of the proceedings and which still had to be examined by the court. The way in which the suspected offence had supposedly been committed had prompted fears that the applicant would tamper with that evidence.

57. The District Court again made no ruling in respect of the alternative proposal to replace the applicant's detention with a pledge of lawful conduct, observing that such a replacement could only be considered in connection with detention to prevent escape (Article 67 § 1 (c) of the CCP), which was not applicable to the applicant's case. The applicant appealed.

58. On 29 October 2003, in a private session, the Trenčín Regional Court upheld the above-mentioned decision rejecting the applicant's request for release.

At the same time, it ruled that his detention was no longer justified by fears that he would continue criminal activities but merely by the fear that he would collude with other defendants. That concern stemmed from the “manner in which the offence had been committed and covered up and from the status of the accused”. The decision was served on the applicant on 11 November 2003.

59. On 11 January 2004 the applicant lodged another constitutional complaint, directed in the main against the actions and decisions of the District Court and the Regional Court.

He again argued that the courts deciding on his detention had had no territorial jurisdiction in the matter.

Furthermore, he complained that the assignment of his request for release to a District Court judge had not followed the procedure prescribed by law. In particular, the request had not been treated as an independent matter, which should have been randomly assigned to a judge through electronic means, but rather had been assigned to a specific judge who had been administratively designated by the President of the District Court to deal with all matters concerning the applicant.

Moreover, the courts had not held a hearing and had thus deprived the applicant of the chance to plead his case. The decisions had been arbitrary and had lacked proper reasoning. The length of his detention had been excessive.

60. On 25 November 2004, by way of two separate decisions, the Constitutional Court declared admissible the complaint against the Trenčín Regional Prosecutor and inadmissible the complaint against the District Court and the Regional Court. The latter decision was served on the applicant on 24 January 2005.

61. As to the inadmissible complaint, the Constitutional Court observed that under the applicable procedural rules, the decision of the Regional Court of 29 October 2003 had become final and binding on that day. Notwithstanding that the decision had not been served until 11 November 2003, the relevant date for commencement of the statutory two-month period for lodging a constitutional complaint had been 29 October 2003. The complaint against the District Court and the Regional Court had been submitted on 11 January 2004, and had therefore been out of time.

62. On 25 May 2005 the Constitutional Court found that the Trenčín Regional Prosecutor had violated the applicant’s right under Article 5 § 4 of the Convention to a speedy decision concerning his detention, in that it had taken sixteen days for the prosecutor to take a decision in relation to the applicant’s requests of 27 August 2003 and to forward them to the District Court.

The Constitutional Court took into account the fact that the proceedings concerning those requests had lasted a total of seventy-six days before

the final decision was served. It granted the applicant reimbursement of his legal costs but no compensation in respect of non-pecuniary damage. The Constitutional Court held that it was not appropriate to order the prosecution service to compensate the applicant for any non-pecuniary damage, as the prosecution service's share of responsibility for the overall duration of those proceedings was minor compared to that of the ordinary courts.

F. Second extension of detention and related constitutional complaint

63. On 11 November 2003 the regional prosecutor requested that the Trenčín District Court authorise an extension of the detention of the applicant and all his co-defendants until 30 May 2004. No copy of the request was served on the applicant or his lawyer.

64. The applicant's lawyer obtained a copy of the prosecutor's request on his own initiative and, on 20 November 2003, the applicant filed his observations in reply. On the same day, in a separate submission, the applicant challenged the District Court for bias.

The applicant complained, *inter alia*, that the prosecutor's request had not been lawfully and randomly assigned to a judge through electronic means but rather had been assigned administratively by the President of the District Court to another judge following the departure of the judge electronically assigned from that court.

65. On 21 November 2003, in a private session, the District Court dismissed the challenge of bias and authorised an extension of the detention of all the defendants until 29 February 2004. It held that there were still a number of pieces of evidence to be examined by the court and that, if released, the applicant would pose a risk of interfering with such evidence. However, the time frame demanded by the prosecution was excessive and an extension until 29 February 2004 had to suffice.

66. The decision of 21 November 2003 stated that no appeal lay against it. The applicant nevertheless appealed and his appeal was dismissed by the Regional Court on 9 January 2004. That decision was served on him on 29 January 2004.

The Regional Court acknowledged, *inter alia*, that assignment of cases to judges at District Courts was in principle to be carried out randomly through electronic means. In the applicant's case, the judge electronically assigned had been appointed to the Regional Court. It had consequently been the responsibility of the President of the District Court to reassign the applicant's case to another judge, which she had lawfully done.

67. On 22 March 2004 the applicant lodged a constitutional complaint, to which he added further grounds of complaint on 20 April and 28 May 2004. He argued: (i) that the twenty-four-hour period under the Charter for bringing him before a judge had not been observed; (ii) that the

court deciding on the extension of his detention had had no territorial jurisdiction in the matter; (iii) that it had not been impartial; (iv) that the prosecutor's request of 11 November 2003 had not been served on him and that he had been obliged to procure a copy of it himself; (v) that there had been no public hearing of his case and that he had been unable to plead his case; (vi) that the extension of his detention had been arbitrary and (vii) had lacked proper reasoning; (viii) that the proceedings in respect of his detention had not been speedy; and (ix) that the total duration of his detention had been excessive.

The applicant claimed SKK 410,000 in compensation for non-pecuniary damage.

68. On 25 August 2004 the Constitutional Court declared admissible the complaints listed under (iv), (v), (vii); (viii) and (ix) above. The remaining complaints were declared inadmissible.

69. As to the inadmissible complaints, the Constitutional Court observed that the applicant had learned in November 2003 that the extension of his detention would be determined by the District Court. He had raised his complaint in that respect before the Constitutional Court in March 2004 – that is to say, outside the statutory two-month time-limit.

The complaint concerning delays in dealing with the prosecutor's request before the District Court had also been submitted out of time.

The proceedings before the District Court had ended with its decision of 21 November 2003, which the applicant had learned of no later than 1 December 2003 – that is, more than two months before he had lodged his complaint.

The scope of the Constitutional Court's review of the factual and legal conclusions of the ordinary courts was limited to constitutionally relevant errors, and the decisions concerning the impartiality of the District Court judges and the extension of the applicant's detention fell outside the scope of that review.

70. On 26 January 2005 the Constitutional Court found that the fact that the prosecutor's request of 11 November 2003 had not been served on the applicant had violated his rights under Article 5 § 4 of the Convention.

The Constitutional Court allowed a small part of the applicant's claim for reimbursement of his legal costs and dismissed his claim for compensation in respect of non-pecuniary damage. The Constitutional Court considered that such an award was not appropriate because the ordinary courts had conducted the proceedings in accordance with the existing statutory rules.

71. The remaining admissible complaints were also dismissed. The Constitutional Court found the reasons which had been given by the courts for extending the detention to be adequate and that the extended detention had been justified. The length of the proceedings concerning the extension of the applicant's detention had been acceptable, in particular, in view of the factual and legal complexity of the case.

G. Third request for release and related constitutional complaint

72. On 21 November 2003 the applicant applied for release and, alternatively, for his detention to be replaced by a pledge of lawful conduct.

73. On 24 November 2003 the Regional Prosecutor rejected the applicant's requests and forwarded them, with a comment, to the Trenčín District Court for judicial determination.

It was later established that, in his comment, the prosecutor opposed the applicant's request "with reference to [his] arguments in the [second] request for extension of the applicant's detention". The comment had not been made available to the applicant.

74. On 4 December 2003 the applicant challenged the District Court for lack of territorial jurisdiction in the matter and the District Court judges involved in his case for bias.

75. On 9 December 2003 and 9 January 2004 respectively, the District Court and, on appeal, the Regional Court, dismissed the request for release. Both decisions were made in private, the latter being served on the applicant on 29 January 2004. The courts made no separate ruling concerning the applicant's alternative request, merely observing in their reasoning that, in the circumstances, the request was not legally permissible.

The courts concluded that the territorial jurisdiction of the District Court to deal with the case had been based on Article 26 § 1 of the CCP, and observed that the applicant's challenge on the ground of bias had already been examined and dismissed in connection with the second extension of his detention (see paragraph 65 above).

The courts held that the available evidence had borne out the suspicion against the applicant. The manner in which the offence had been committed and covered up, combined with the fact that some additional evidence still had to be examined by the trial court, gave rise to a fear that the applicant would collude with other defendants. His continued detention was therefore justified.

76. On 22 March 2004 the applicant lodged a constitutional complaint, which he fully specified on 26 May 2004. He contended: (i) that his detention had been illegal *ab initio*, in that the time-limit of twenty-four hours for bringing him before a judge under the Charter had not been complied with; (ii) that the courts deciding on his detention had had no territorial jurisdiction in the matter and had been biased; (iii) that the observations by the prosecution service in reply to his request for release had not been communicated to him; (iv) that the courts had held no hearing in relation to his application and that he had not been heard in person; (v) that the courts had failed to take a decision in relation to his alternative proposal and that his continued detention was unjustified; (vi) that the courts' decisions had lacked adequate reasoning; and (vii) that the proceedings had not been speedy.

77. On 9 June 2004 the Constitutional Court declared admissible the complaints under points (iii) – (vii). The remaining complaints were declared inadmissible.

78. As to the inadmissible complaints, the Constitutional Court observed that the applicant had learned in December 2003 that the extension of his detention would be determined by the District Court. He had raised his complaint before the Constitutional Court in March 2004 – that is, outside the statutory two-month time-limit.

The complaint concerning delays in dealing with the prosecutor's request before the District Court had also been submitted out of time. The proceedings before the District Court had ended with its decision on 9 December 2003, which the applicant had learned of no later than 16 December 2003 – that is, more than two months before he had lodged the constitutional complaint. In any event, the complaints concerning the territorial jurisdiction and impartiality of the courts had been repetitive of earlier complaints and had warranted no fresh examination.

Lastly, as to the twenty-four-hour time-limit under the Charter, the Constitutional Court observed that the Constitution took precedence over all other legislation and that the time-limit of forty-eight hours under the Constitution had been observed.

79. On 8 October 2004 the Constitutional Court found that the courts' failure to take a decision in relation to the applicant's alternative proposal to replace his detention by a pledge of lawful conduct had violated his rights under Article 5 § 3 of the Convention. Furthermore, the Constitutional Court found that the courts' failure to ensure that a copy of the prosecutor's comment in reply to the applicant's requests of 21 November 2003 had been served on the applicant had violated his rights under Article 5 § 4 of the Convention. The applicant was granted a small part of his claim for reimbursement of his legal costs, but no compensation in respect of non-pecuniary damage. The Constitutional Court considered that such an award was not appropriate because, *inter alia*, the ordinary courts had conducted the proceedings in accordance with the applicable statutory rules.

80. The remaining admissible complaints were dismissed. The applicant had had, and in fact had made full use of, the chance to present his case in writing and with legal assistance. In the light of this fact, the lack of a hearing had entailed no substantial ramifications for his rights. The suspicion against the applicant and the danger of collusion had been established; the investigation was ongoing and expeditious; the applicant's continued detention had been justified. As to the length of the proceedings concerning the applicant's request for release, in line with its decision on the admissibility of the present complaint, the Constitutional Court reviewed only that part of the proceedings which had taken place before the Regional Court. It found no lack of speed in relation to their determination.

H. Constitutional complaint in connection with the monitoring of the applicant's telephone calls

81. On 21 August 2004 the applicant lodged a constitutional complaint alleging that the monitoring of his telephone calls had been unlawful, arbitrary and unjustified. He relied, *inter alia*, on Article 8 of the Convention.

82. On 16 March 2005 the Constitutional Court declared the complaint inadmissible for non-exhaustion of ordinary remedies.

It came to the conclusion that the applicant was entitled to raise an objection against the evidence obtained from the monitoring in the course of the ongoing criminal proceedings against him.

If the applicant did so, the courts would have to examine whether that evidence had been obtained lawfully. The ordinary courts' power of review excluded a review by the Constitutional Court.

The Constitutional Court further concluded that the applicant could seek redress under civil law.

I. State liability claim for damages

83. On 12 January 2006 the applicant lodged a request under section 9 of the State Liability Act 1969 with the Ministry of Justice for payment of SKK 1,358,907.80 by way of compensation in respect of unlawful detention. He relied on the Constitutional Court's judgment of 11 January 2005 (see paragraph 52 above).

84. As the Ministry had failed to respond, on 11 July 2006 the applicant lodged the claim with the Trenčín District Court.

85. In observations of 18 May 2007 the Ministry submitted that, under section 5(1) of the Act, any compensation for wrongful detention only came into question where the prosecution had been dropped or the person concerned had been acquitted, none of which was the case as regards the applicant. As the charges against the applicant had not been dropped, neither could he be compensated under section 4(1) of the Act for wrongful prosecution.

86. On 9 November 2007 the action was stayed pending the outcome of the applicant's criminal trial.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Charter (*Listina základných práv s slobôd*) and practice of the Constitutional Court and the ordinary courts in respect of it

87. The relevant provisions and judicial practice are summarised in the Court's judgment in the case of *Štetiar and Šutek v. Slovakia* (nos. 20271/06 and 17517/07, §§ 31 to 33, 40 and 47, 23 November 2010); *Gál v. Slovakia* (no. 45426/06, §§ 19 to 22 and 27, 30 November 2010); *Michalko v. Slovakia* (no. 35377/05, §§ 39 to 41, 65 and 77, 21 December 2010).

B. The Constitution (*Ústava*)

88. The relevant provisions are summarised in the Court's judgments in the cases of *Štetiar and Šutek v. Slovakia* (cited above, §§ 34 to 37); *Gál v. Slovakia* (cited above, §§ 23 to 26); *Michalko v. Slovakia* (cited above, §§ 42 to 45).

C. The Code of Criminal Procedure

89. The relevant provisions are summarised in the Court's judgment in the case of *Štetiar and Šutek v. Slovakia* (cited above, §§ 44 to 46); *Gál v. Slovakia* (cited above, §§ 28 to 30); *Michalko v. Slovakia* (cited above, §§ 70 to 75).

D. Rules on making legislation

90. The applicable rules are summarised in the Court's judgment in the case of *Štetiar and Šutek v. Slovakia* (cited above, §§ 48 to 51); *Gál v. Slovakia* (cited above, §§ 31 to 34); *Michalko v. Slovakia* (cited above, §§ 78 to 81).

E. The Constitutional Court Act and practice of the Constitutional Court in respect of its section 53(3)

91. The relevant provisions and judicial practice are summarised in the Court's judgment in the case of *Štetiar and Šutek v. Slovakia* (cited above, §§ 38, 39 and 41 to 43); *Michalko v. Slovakia* (cited above, §§ 46, 47 and 66 to 69).

F. The State Liability Acts 1969 and 2003 and practice of the ordinary courts in their respect

92. By its judgment of 31 May 2007 in an appeal on points of law (no. 4 Cdo 177/2005) concerning an action for damages under the State Liability Act 1969, the Supreme Court upheld the view that neither that Act nor an action for protection of personal integrity provided a legal basis for awarding compensation in respect of non-pecuniary damage caused by unlawful detention.

The State Liability Act 1969 was, however, to be interpreted in line with Article 5 § 5 of the Convention which presupposed compensation for non-pecuniary damage and which, pursuant to Article 154c § 1 of the Constitution, prevailed over the statutory text.

93. The relevant statutory provisions and further judicial practice are summarised in *Michalko v. Slovakia* (cited above, §§ 48 to 64); *Osváthová v. Slovakia* (no. 15684/05, §§ 37 to 46, 21 December 2010); *Pavletić v. Slovakia* (no. 39359/98, §§ 50 to 52, 22 June 2004) and *Havala v. Slovakia* ((dec.), no. 47804/99, 13 September 2001).

G. The Civil Code and practice of the ordinary courts in respect of its Articles 11 *et seq.* (protection of personal integrity)

94. The relevant statutory provisions and judicial practice are summarised in *Furdík v. Slovakia* ((dec.), no. 42994/05, 2 December 2008), *Kontrová v. Slovakia* (no. 7510/04, §§ 33 to 35, ECHR 2007-VI (extracts)), *Nešťák v. Slovakia* (no. 65559/01, §§ 48-52, 27 February 2007), *Pavlík v. Slovakia* (no. 74827/01, §§ 62 to 66, 30 January 2007), *Kvasnica v. Slovakia* ((dec.) no. 72094/01, 26 September 2006), *Babylonová v. Slovakia* (no. 69146/01, § 21, ECHR 2006-VIII), *Kontrová v. Slovakia* (cited above (dec.), 13 June 2006) and *Varga v. Slovakia* ((dec.), no. 47811/99, 22 June 2004).

H. Practice of the Constitutional Court in respect of monitoring of telephone communication

95. The Constitutional Court has dealt with monitoring of telephone communications in cases nos. IV. ÚS 76/05, I. ÚS 274/05, I. ÚS 117/07, III. ÚS 80/08, IV. ÚS 121/09, II. ÚS 280/09 and III. ÚS 180/2010.

96. The Constitutional Court declared inadmissible cases no. IV. ÚS 76/05 (on 16 March 2005), no. IV. ÚS 121/09 (on 9 April 2009), no. II. ÚS 280/09 (on 10 September 2009) and no. III. ÚS 180/2010 (on 4 May 2010) because the complainants had had, but had not used, the chance to challenge in their criminal trials evidence obtained by monitoring

telephone communications and/or because the complaints were manifestly ill-founded.

In none of those cases did the Constitutional Court require the complainants to seek protection of their rights and interests by way of an action for protection of personal integrity for the purposes of exhaustion of ordinary remedies under section 53(3) of the Constitutional Court Act.

97. In cases nos. I. ÚS 274/05 (on 14 July 2006), I. ÚS 117/07 (on 4 February 2009), and III. ÚS 80/08 (on 27 May 2008), the Constitutional Court found a violation of the complainants' rights and freedoms under the Constitution and the Convention on account of monitoring their telephone communications and awarded them compensation in respect of non-pecuniary damage.

In none of those cases is there any indication that the complainants had sought protection of their rights and interests by way of an action for protection of personal integrity, nor that the Constitutional Court had required them to do so for the purposes of exhaustion of ordinary remedies under section 53(3) of the Constitutional Court Act.

98. In the judgments mentioned in the preceding paragraph, the Constitutional Court held that a judicial warrant for monitoring telephone communications was not subject to appeal. It was not reviewable by the ordinary courts, upon which the warrant was binding.

The individuals concerned nevertheless had to have a remedy against the warrant – both in relation to the evidence obtained by the monitoring and the fact of the monitoring itself.

However, the individuals concerned could not seek a court order in respect of the fact of the monitoring itself before the ordinary courts, be they criminal or civil, in the context of protection of personal integrity.

THE LAW

I. CLAIM FOR DAMAGES UNDER THE STATE LIABILITY ACT

99. The Government objected that the applicant had failed to comply with the requirement of Article 35 § 1 of the Convention to exhaust domestic remedies, in that he had not asserted his rights under the State Liability Act 1969. To that effect, they relied on recent developments in the practice of the ordinary courts (see paragraph 92 above) and claimed, in particular, that the issue of the applicant's alleged non-pecuniary damage could have been asserted under the heading of wrongful official action within the meaning of sections 18 *et seq.* of that Act. In case of

contradiction or discrepancy, the entire Act was to be construed and applied in line with international human rights standards.

100. In reply, the applicant disagreed and submitted, in particular, that the Government's argument was pure speculation and that the State Liability Act 1969 was inapplicable to his case. In order to prove that and out of foresight, he had nevertheless lodged an action for damages under that Act.

101. The Court reiterates its previous conclusion to the effect that, in principle, the State Liability Act 1969 did not allow compensation to be awarded for non-pecuniary damage (see, for example, *Pavletić v. Slovakia*, cited above, § 55, and *Havala v. Slovakia*, cited above).

102. In so far as the Government rely on recent developments in the relevant practice of the domestic courts, the Court observes that such developments took place in 2007, after the circumstances complained of under Article 5 of the Convention in the present application.

103. Moreover, and in any event, 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 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).

104. In the present case, the applicant sought protection of his Article 5 rights before the Constitutional Court under Article 127 of the Constitution.

105. The Constitutional Court, as the supreme authority charged with the protection of human rights and fundamental freedoms in Slovakia, had jurisdiction to examine the applicant's complaint and to provide redress to him 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).

106. The Court also notes that the course of action chosen by the applicant is normally considered to be effective for the purposes of the domestic-remedies rule under Article 35 § 1 of the Convention and that the Constitutional Court entertained the applicant's complaints without first requiring him to exhaust the remedy now relied on by the Government.

In these circumstances, the Court cannot but find that the applicant's course of action as to the remedies used was reasonable and appropriate.

107. Moreover, to the extent that the applicant's claims before the Constitutional Court were unsuccessful in substance, the Court has not found any reason to conclude that there was any realistic prospect that an ordinary court would have arrived at conclusions in relation to the State Liability Act 1969 contrary to those of the Constitutional Court.

108. It follows that the Government's objection of non-exhaustion of domestic remedies under the State Liability Act 1969 has to be rejected.

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

109. The applicant complained:

(i) that his arrest and initial detention had not been based on a reasonable suspicion of having committed an offence and had not been necessary;

(ii) that he had not been brought before a judge within twenty-four hours of his arrest, as required under the Charter;

(iii) that the courts deciding on his detention had not had territorial jurisdiction in the matter; and

(iv) that the lawful method of randomly assigning matters to judges by electronic means had not been followed.

110. The Court considers that the complaints laid out in the preceding paragraph fall most naturally to be examined under Article 5 § 1 (c) of the Convention, which reads as follows:

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

...

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

...”

A. Reasonable suspicion and necessity

111. The Court's case-law is summarised in its recent judgment against Slovakia in the case of *Štetiar and Šutek* (cited above, §§ 93 to 95) and *Michalko v. Slovakia* (cited above, §§ 112 and 113).

112. The Court observes that the applicant in the present case was arrested on 12 December 2002 on the charges which were brought on 9 December 2002 against him and seven other individuals and which concerned conspiracy and embezzlement in the context of a complex scheme involving several individuals in various places and that had been subject to extensive investigation.

113. In these circumstances the Court finds that the applicant's arrest and his initial detention clearly fell within the ambit of Article 5 § 1 (c) of the Convention, in that it was done for the purpose of bringing him before the competent legal authority.

At the same time, regard being had to the early stage of the criminal proceedings against him (see, for example, *McKay v. the United Kingdom* [GC], no. 543/03, § 45, ECHR 2006-X) and of the restriction of his liberty (by way of contrast, see paragraphs 127 to 132 below), the Court considers that the suspicion against the applicant relied on by the domestic authorities was reasonable within the meaning of the previously cited case-law.

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

B. Twenty-four-hour time-limit under the Charter

115. The Court has recently analysed at length the twenty-four-hour time-limit argument under the Charter and has found that it is manifestly ill-founded (see *Štetiar and Šutek v. Slovakia* (cited above, §§ 79 to 91); *Gál v. Slovakia* (cited above, §§ 39 to 53); and *Michalko v. Slovakia* (cited above, §§ 98 to 110)). It finds no reasons for reaching a different conclusion in the present case.

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

C. Territorial jurisdiction and method of assignment of cases

117. The Court observes that the matter of territorial jurisdiction of the ordinary courts to deal with the applicant's detention case was examined by the Constitutional Court in its decision of 26 March 2003 (see paragraphs 29 and 30 above).

The Constitutional Court concluded that this issue was governed by Article 26 of the CCP, pursuant to which territorial jurisdiction in matters concerning the preparatory stage of proceedings was vested in the court in the judicial district in which the prosecutor acted.

118. The Court also observes that the applicant's detention case was dealt with by the Trenčín Regional Prosecutor upon a ruling of the Prosecutor General of 9 October 2002 (see paragraph 7 above). Such a ruling, by implication, established territorial jurisdiction over the applicant's detention case in the courts in Trenčín.

119. In view of the Constitutional Court's conclusions and its limited power to review questions of compliance with national law (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), the Court concludes that the territorial jurisdiction of the ordinary courts in Trenčín over the applicant's detention case had a legal basis in domestic law and had been established in accordance with the applicable rules.

120. The Court further observes that the Prosecutor General's ruling of 9 October 2002 to assign the Trenčín Regional Prosecutor the task of supervising and acting in the applicant's detention case was based on the premise that the suspected offence was part of a larger criminal transaction involving several individuals in various places and requiring extensive investigation and was aimed at ensuring the effectiveness and expeditious determination of the proceedings.

121. To the extent that the applicant's argument has been substantiated, the Court has found no indication of any arbitrariness in connection with the assignment of his case to the Trenčín Regional Prosecutor, and, as a consequence, with the establishment of territorial jurisdiction in the courts in Trenčín, such as to render his detention incompatible with Article 5 § 1 (c) of the Convention.

122. As to the complaint that there were irregularities in the assignment of the applicant's detention case at the District Court, even assuming that such was the case, the Court observes that, further to the applicant's interlocutory appeals, the existence of relevant and sufficient reasons for detaining him and procedural lawfulness of his detention were examined and upheld by the court of appeal, as a court of full jurisdiction.

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

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

124. The applicant complained that his continued detention had not been based on a reasonable suspicion of having committed an offence, had not been necessary and had been excessively lengthy.

The Court considers that this part of the application most naturally falls to be examined under Article 5 § 3 of the Convention, which reads as follows:

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

125. The Government referred to the Constitutional Court's judgments of 8 October 2004 and 11 January and 26 October 2005. They observed that in these judgments the Constitutional Court had found violations of the applicant's rights under Article 5 § 3 of the Convention and had awarded him legal costs. Moreover, in the judgments of 11 January and 26 October 2005, the Constitutional Court had also awarded the applicant compensation in respect of non-pecuniary damage.

The Government also submitted, with reference to the Court's judgment of 22 June 2004 in *Pavletić v. Slovakia* (cited above), that if the applicant was ever convicted the period of his pre-trial detention could be deducted from his prison sentence.

The Government concluded that, in these circumstances, the applicant could no longer claim to be a victim within the meaning of Article 34 of the Convention of a violation of his rights under Article 5 § 3.

126. The applicant disagreed. He submitted that the domestic authorities had completely ignored Convention case-law and his attempts at asserting his Convention rights. He further submitted that this had also been reflected in the fact that only a part of his claim for reimbursement of his legal costs had been accepted by the Constitutional Court. Moreover, he ought to have been presumed innocent and, as he had not been convicted, the reference to *Pavletić v. Slovakia* (cited above) was misguided.

127. The Court reiterates that an applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on whether the domestic authorities have acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V).

128. The Court observes that the Constitutional Court found a violation of the applicant's rights under Article 5 § 3 of the Convention on three occasions.

In particular, it found so on 8 October 2004 on account of a failure by the courts to determine the applicant's alternative proposal to replace his detention by a pledge of lawful conduct; on 11 January 2005 on account of a lack of individualised reasons to justify his continued detention; and on 26 October 2005 on account of a recurrent failure to take a formal decision on the applicant's request for replacement of his detention by a pledge of lawful conduct.

129. The Court observes that although these findings do not correspond exactly to the applicant's specific complaints as currently formulated under Article 5 § 3 of the Convention, in substance they essentially concern deficiencies in the legal protection due to the applicant under that provision.

130. The Court also observes that in the above-mentioned judgments the Constitutional Court awarded the applicant reimbursement of his legal costs and, in total, SKK 100,000 in compensation for non-pecuniary damage.

131. In view of all relevant circumstances, including the complexity of the investigation, the seriousness of the suspected offences and the overall duration of the applicant's pre-trial detention (1 year, 1 month and 10 days from 12 December 2002 until 22 January 2004), the Court considers that the findings by the Constitutional Court and the compensation provided to

the applicant under its judgments constituted sufficient and appropriate redress in respect of the asserted violation of the applicant's rights under Article 5 § 3 of the Convention.

132. The Court therefore concludes that the applicant can no longer claim to be a "victim" within the meaning of Article 34 of the Convention of the alleged violation of his rights under Article 5 § 3 of the Convention.

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

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

133. The applicant further complained:

(i) that the judges who had decided on his requests for release and on the extensions of his detention had not been impartial;

(ii) that the procedure in respect of his detention had not been adversarial, direct, oral, speedy and compatible with the equality of arms principle; and

(iii) that the decisions had lacked adequate reasoning.

The Court finds that these complaints most naturally fall to be examined under Article 5 § 4 of the Convention, which provides as follows:

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

A. Admissibility

1. Interlocutory appeal against detention

134. The Government referred to the judgment of the Constitutional Court of 11 March 2004 (see paragraph 31 above) and submitted that, for similar reasons as are summarised in paragraph 125 above, the applicant could no longer be considered a victim within the meaning of Article 34 of the Convention of his rights under its Article 5 § 4.

135. Furthermore, referring to the Constitutional Court's decision of 26 March 2003 (see paragraphs 29 and 30 above), the Government considered that the applicant had failed to exhaust domestic remedies in respect of his complaint that he had not had adequate time and facilities for the preparation of his defence by raising that complaint before the Constitutional Court in time.

136. Lastly, the Government considered that the complaint of the lack of "speedy" determination of the proceedings was manifestly ill-founded.

137. The applicant disagreed and replied by raising similar arguments as mentioned in paragraph 126 above.

138. The Court observes that on 26 March 2003 the Constitutional Court declared inadmissible the applicant's complaint that he had not had adequate time and facilities to confer with his lawyer and prepare his defence. The Constitutional Court observed that the applicant had been aware of the facts complained of on the day that they had occurred – that is to say, on the day of the remand hearing on 14 December 2002. It concluded that the applicant had failed to raise his complaint before the Constitutional Court within the statutory two-month time-limit, counted from that day.

139. The Court also observes that in that conclusion, contrary to its common practice (see, for example, *Štetiar and Šutek v. Slovakia*, cited above, § 21 and *Michalko v. Slovakia*, cited above, § 22), the Constitutional Court seemed to have overlooked that, prior to his constitutional complaint, the applicant had sought protection of his rights by way of an interlocutory appeal, which he was in fact obliged to do under section 53(1) of the Constitutional Court Act.

140. Had the Constitutional Court taken into account the applicant's interlocutory appeal, in relation to which the appeal court had all necessary powers to rectify the applicant's position, it is evident that the appeal court's decision in that respect was served on the applicant (3 February 2003) within the applicable two-month time-limit before the introduction of his constitutional complaint (7 March 2003).

141. The Court therefore concludes that the Government's objection of non-exhaustion of domestic remedies cannot be sustained.

142. The Court further observes that, although the Constitutional Court found a violation of the applicant's rights under Article 5 § 4 of the Convention in its judgment of 11 March 2004, it did so on account of a single component of the applicant's complaint (lack of access to the case file).

In other words, the Constitutional Court's finding does not deal with the remaining components of the applicant's complaint, such as the alleged inadequate time and facilities for the preparation of his defence, the alleged deficiencies in the ordinary courts' reasoning and the alleged lack of "speedy" determination of the proceedings.

The Court also observes that the applicant was granted no compensation in respect of non-pecuniary damage.

143. The Court concludes that, in these circumstances, the applicant has not lost his victim status within the meaning of Article 34 of the Convention and the Court's case-law on the subject (see paragraph 127 above).

144. The Court notes that the relevant part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

2. *First request for release*

145. The parties have presented similar arguments to those mentioned above (see paragraphs 125 and 126 above).

146. The Court observes that, upon the applicant's constitutional complaint, the Constitutional Court examined speed of review and other components of the procedure in respect of the applicant's first request for release under Article 5 § 4 of the Convention.

In its judgment of 26 October 2005 it found that the proceedings had been incompatible with that provision, as the proceedings had not been speedy, the applicant had not had access to the case file and his interlocutory appeal had been determined by the wrong chamber of the appeal court.

The applicant was consequently awarded SKK 80,000 in respect of non-pecuniary damage, as well as reimbursement of his legal costs.

147. In view of all relevant circumstances, including the scope of the violations found and the amount of compensation awarded by the Constitutional Court, the Court considers that the applicant has received sufficient and appropriate redress within the meaning of the Court's case-law (see paragraph 127 above) in respect of the asserted violations of Article 5 § 4 of the Convention in the proceedings concerning his first request for release.

148. It follows that the applicant can no longer claim to be a "victim" within the meaning of Article 34 of the Convention of the alleged violation of his rights under Article 5 § 4 of the Convention in the proceedings in question.

The relevant part of the application is therefore manifestly ill founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

3. *First request for extension of detention*

149. Referring to the Constitutional Court's judgment of 11 January 2005 (see paragraph 52 above), the parties raised similar arguments as those summarised in paragraphs 125 and 126 above.

150. The Court considers that it is not called upon to rule separately on the question of whether the guarantees of Article 5 § 4 of the Convention applied *ratione materiae* to the prosecutor's request for extension of the applicant's detention because, even assuming they did, this part of the application is inadmissible for the following reasons.

151. In so far as the applicant may be understood as wishing to complain of a lack of "speed" in the determination of the proceedings concerning the first extension of his detention, he has not raised such a complaint before the Constitutional Court. In that respect, therefore, he cannot be considered as

having complied with the requirement to exhaust domestic remedies under Article 35 § 1 of the Convention.

152. The applicant raised his remaining objections under Article 5 § 4 of the Convention in respect of the proceedings concerning the first extension of his detention before the Constitutional Court.

In its judgment of 11 January 2005, the Constitutional Court found that the proceedings had not been compatible with the guarantees of that Article.

153. The Court observes that although the findings of the Constitutional Court do not correspond exactly to the complaints that the applicant now formulates under Article 5 § 4 of the Convention, in substance they essentially concern deficiencies in the legal protection due to the applicant under that provision.

154. The Court also observes that in the above-mentioned judgment the Constitutional Court awarded the applicant reimbursement of his legal costs and the equivalent of some EUR 520 in compensation for non-pecuniary damage.

155. In view of all relevant circumstances, including the fact that at any point during the proceedings in question it was open to the applicant to bring proceedings by which the lawfulness of his detention might be decided by a court, the Court considers that the findings by the Constitutional Court and the compensation provided to the applicant under its judgment constituted sufficient and appropriate redress in respect of the asserted violation of the applicant's rights under Article 5 § 4 of the Convention in connection with the first extension of his detention.

156. The Court therefore concludes that, in respect of his remaining complaints under Article 5 § 4 of the Convention, the applicant can no longer claim to be a "victim" within the meaning of Article 34 of the Convention.

157. It follows that, in so far as domestic remedies have been exhausted, the relevant part of the application is manifestly ill founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

4. Second request for release

158. The Court observes that in respect of his second request for release the applicant asserted his rights in the Constitutional Court by way of two separate complaints. However, in neither of them does the applicant seem to have specifically challenged the lack of "speed" in the determination of the proceedings before the ordinary courts. In contrast, he rather seems to have challenged the duration of the proceedings only in so far as they related to the handling of the matter by the prosecution service (see paragraph 55 above).

159. To that end, the Court observes that, in the context of complaints under Article 127 of the Constitution, there is a need to identify separately the authorities which may be liable for a violation of the complainant's

human rights and fundamental freedoms and which, as the case may be, are then ordered to provide appropriate redress to the complainant (see *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005).

160. The applicant's failure to complain of any possible delays in relation to the part of those proceedings which took place before the ordinary courts thus prevented the Constitutional Court from examining any such possible delays. In respect of them, therefore, the applicant cannot be considered as having exhausted domestic remedies for the purposes of Article 35 § 1 of the Convention.

161. As to the handling of the matter by the prosecution service, the Court notes that the relevant period started on 27 August 2003 when the applicant lodged his request for release and ended on 12 September 2003 when the prosecution service forwarded the applicant's request to the District Court for judicial determination.

It thus lasted sixteen days, which the Constitutional Court found to be contrary to Article 5 § 4 of the Convention.

162. Although the overall duration of the proceedings was seventy-six days, the greatest part of the proceedings had taken place before the ordinary courts.

The applicant's complaint was, however, not directed against the ordinary courts, and the Constitutional Court concluded that it was not appropriate to order the prosecution service to compensate the applicant for any possible delays in the proceedings imputable to the ordinary courts (see paragraph 62 above).

163. In view of all the circumstances, including the duration of the handling of the matter by the prosecution service and the duration of the proceedings before the ordinary courts, the Court considers that the finding by the Constitutional Court of a violation of the applicant's right to have his request decided by the prosecution service "speedily" was adequate and provided him with sufficient redress in terms of the Court's case-law (see paragraph 127 above).

164. In respect of the handling of the matter by the prosecution service, the applicant can therefore no longer claim to be a victim of a violation of his right under Article 5 § 4 of the Convention to have the lawfulness of his detention decided "speedily".

165. The Court's case-law relevant to the applicant's remaining complaints under Article 5 § 4 of the Convention has recently been summarised in the Court's judgments against Slovakia in the cases of *Štetiar and Šutek* (cited above, § 110) and *Michalko* (cited above, § 156).

166. The Court observes that, as before the Constitutional Court, the applicant contended that there had been an irregularity in the assignment of his request for release to a District Court judge, that there had been a lack of an oral hearing and that the ordinary court's decisions had been arbitrary and lacking in proper reasoning.

167. The Court notes that the applicant's request for release was examined by the District Court and, following his interlocutory appeal, the Regional Court, both courts having full jurisdiction. It concludes that, to the extent that the relevant part of the applicant's complaint under Article 5 § 4 of the Convention has been substantiated, any possible irregularity in the composition of the bench of the first-instance court was repaired by the re-examination of the case on the applicant's interlocutory appeal (see, *mutatis mutandis*, *De Cubber v. Belgium*, 26 October 1984, § 33, Series A no. 86, p. 19).

168. The Court further notes that a hearing in connection with an application for release is not as such required under national law and that the applicant was examined by a judge at the remand hearing (see paragraph 23 above). There is no indication that, thereafter, the applicant requested a new hearing as regards his detention or that he submitted any points of fact or law requiring such a step.

169. The Court also notes that the ordinary courts found that a reasonable suspicion against the applicant of having committed the offences with which he had been charged persisted, and that it was still necessary to keep him detained because there were fears that he would collude with other defendants. The courts made the latter conclusion with reference to the amount of evidence that still had to be examined by the court and the nature of the suspected offence, which prompted fears that, if at liberty, the applicant would tamper with that evidence.

170. Bearing in mind the level of procedural guarantees applicable in detention proceedings, as opposed to a 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 (a) and 4 of the Convention.

5. *"Speediness" of the proceedings concerning the second request for extension of detention and the third request for release*

171. The Court observes that upon the motion by the prosecution service of 11 November 2003 for extension of the applicant's detention (see paragraph 63 above) and upon the applicant's request of 21 November 2003 for release (see paragraph 72 above), the lawfulness of his detention was examined in parallel in the framework of two separate sets of proceedings. The applicant was an active party to these proceedings, which took place before the same courts, with the final decisions in both sets of proceedings being taken and served on the applicant on the same day.

In these circumstances the Court finds it appropriate to examine both sets of proceedings under Article 5 § 4 of the Convention together (see, *mutatis mutandis*, *Włoch v. Poland*, no. 27785/95, ECHR 2000-XI).

172. As to the requirement of expeditious determination, the Government relied on the Constitutional Court's decisions of 9 June 2004 (see paragraphs 77 and 78 above) and 25 August 2004 (see paragraphs 68 and 69 above) and argued that the applicant had failed to comply with the requirement of Article 35 § 1 of the Convention to exhaust domestic remedies by filing his constitutional complaints in time.

173. The applicant disagreed with the Government's submission.

174. The Court observes that in two separate decisions, on 9 June and 25 August 2004, the Constitutional Court declared inadmissible the applicant's complaint of the lack of speed in the determination of the proceedings concerning his request for release and the prosecutor's request for extension of the applicant's detention.

Although, in both constitutional complaints, the applicant contested the length of the proceedings before both the District Court and the Regional Court, the Constitutional Court came to the conclusion that, in so far as his complaints concerned the District Court, they were belated because they had been lodged more than two months after the District Court's decisions had been served on the applicant.

175. By a similar token, the Constitutional Court examined the part of the proceedings that had taken place before the Regional Court in isolation and concluded that the complaint of their duration was manifestly ill-founded.

176. 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.

177. 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*, cited above).

This has, however, not been so in the present case in respect of the prosecutions' second request for extension of the applicant's detention and in respect of the applicant's third request for release.

178. The conclusions of the Constitutional Court in this respect seem to run counter to its practice in other cases, including the applicant's own in relation to his first request for release (see paragraphs 39 and 41 above).

The Court concludes that, in these circumstances, the complaint cannot be rejected for non-exhaustion of domestic remedies (see also *Gál*, cited above, §§ 37, 38 and 66).

179. The Court notes that the relevant part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

6. Requirements of Article 5 § 4 of the Convention, other than “speediness”, in respect of the second request for extension of detention and the third request for release

180. The Court observes that, as before the Constitutional Court, the applicant contended in particular that: the District Court had not been impartial; the prosecutor’s observations in reply to the applicant’s request for release and the prosecutor’s request of 11 November 2003 had not been served on him and he had been obliged to procure a copy of the latter himself; there had been no oral hearing and he had been unable to plead his case; and that the decisions had been arbitrary and had lacked proper reasoning.

181. The Court notes that the prosecutor’s request for extension of the applicant’s detention and the latter’s request for release were examined by the District Court and, following the applicant’s interlocutory appeals, the Regional Court, both courts having full jurisdiction.

The Court observes that the applicant’s complaints of lack of impartiality on the part of the District Court are similar in nature to those which the Court has examined above. To the extent that they have been substantiated the Court has found no reasons for reaching a conclusion different from that in paragraph 167 above – that is to say, that any possible shortcomings concerning the impartiality of the District Court were repaired by the re-examination of the case on the applicant’s interlocutory appeals (see, *mutatis mutandis*, *De Cubber v. Belgium*, cited above, § 33).

182. The Court further notes that the applicant’s complaints concerning difficulties in obtaining a copy of the prosecutor’s request of 11 November 2003 and his observations in reply to the applicant’s request for release were examined and, in fact, acknowledged by the Constitutional Court, which found, on their account, a violation of the applicant’s rights under Article 5 § 4 of the Convention. It therefore remains to be ascertained whether the redress provided to the applicant by the Constitutional Court was adequate.

183. To that end, the Court observes that, in addition to acknowledging expressly a violation of the applicant’s rights, the Constitutional Court also awarded him compensation in respect of his legal costs. It considered that compensation in respect of non-pecuniary damage was not called for because, *inter alia*, the ordinary courts had acted in conformity with the written law (see paragraphs 70 and 79 above).

184. Having regard to all relevant facts, including that the applicant had eventually obtained a copy of the prosecution’s request of

11 November 2003 and that the prosecution's observations merely referred to that request, the Court finds that the redress obtained by the applicant under the Constitutional Court's judgments of 8 October 2004 and 26 January 2005 was adequate within the meaning of the Court's case-law (see paragraphs 127 above) in respect of the applicant's difficulties in obtaining a copy of the prosecutor's request of 11 November 2003 and his observations in reply to the applicant's request for release.

185. The Court observes that the applicant's complaint concerning the absence of an oral hearing and the ensuing impairment of his chance to plead his case has the same factual and legal background as that examined in paragraph 168 above. The Court finds no reasons for reaching a different conclusion.

186. As to the alleged arbitrariness and lack of proper reasoning of the impugned decisions, the Court observes that they were based on the premise that there were still a number of pieces of evidence to be examined by the court and that there was the risk that, if released, the applicant would present a risk of interfering with such evidence. The latter risk stemmed mainly from the manner in which the suspected offences had been committed and covered up. At the same time, it was held that a time-frame until 29 February 2004 was appropriate for examining all such outstanding evidence.

187. Bearing in mind the level of procedural guarantees applicable in such proceedings, as opposed to a trial, and to the extent that the applicant can still claim to be a victim of a violation of such guarantees, the Court has found nothing to justify a conclusion that the guarantees of Article 5 § 4 of the Convention, other than that which calls for proceedings to be decided speedily, have not been respected in the proceedings in question.

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

B. Merits

1. Guarantees of Article 5 § 4 of the Convention, other than speediness, in respect of the applicant's interlocutory appeal against detention

188. The Court observes that, prior to his remand hearing, the applicant was completely denied contact with his lawyer on one occasion (see paragraph 21 above) and was allowed to confer with the lawyer for about ten minutes on another occasion (see paragraph 22 above). However, neither the applicant nor his lawyer had had access to the case file up until that point and, even after the remand hearing, the lawyer, acting on behalf of the applicant, was repeatedly denied access to it (see paragraph 27 above).

The latter refusal was found by the Constitutional Court to have been contrary to the applicant's rights under Article 5 § 4 of the Constitution.

189. The above considerations are sufficient for the Court to conclude that the applicant did not have the benefit of proceedings by which the lawfulness of his detention would be decided in compliance with Article 5 § 4 of the Convention. There has accordingly been a violation of that provision.

In the light of this conclusion the Court does not deem it necessary to examine separately the applicant's remaining objections under Article 5 § 4 of the Convention, other than those concerning the alleged lack of "speediness" (see paragraphs 190-200 below), in respect of the proceedings in question.

2. Speediness of the proceedings concerning the applicant's interlocutory appeal against detention, the second request for extension of detention and the third request for release

190. The Court has recently summarised its case-law in its judgment against Slovakia in the cases of *Štetiar and Šutek* (cited above, § 128); *Gál* (cited above, § 62); *Michalko* (cited above, § 167) and *Osváthová* (cited above, § 69):

191. In the present case the applicant lodged his interlocutory appeal against detention and adduced further grounds of the appeal on 19 and 30 December 2002, respectively. A decision was given in the appeal on 16 January 2003. The decision was, however, not delivered publicly, and the applicant only learned of it when a written version of it was served on him on 3 February 2004 (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-five days.

192. The Court observes that in this period the applicant's interlocutory appeal against detention was judicially examined by a single court, the Regional Court.

193. As to the second request for extension of detention and the third request for release, their joint examination started on 11 November 2003 and ended on 29 January 2004. It thus lasted seventy-eight days.

194. The Court observes that, in the context of the second request for extension of detention and the third request for release, the lawfulness of the applicant's detention was examined by the prosecution service, the District Court and the Regional Court.

195. The Court further observes that, in general terms, the applicant's detention case was of a certain complexity, in particular, in view of the overall scope and nature of the investigation, the number of detained people and the nature and amount of evidence. However, judging by the level of generality of the content of the reviewed decisions, the Court finds no

evidence to justify a conclusion that this complexity has had any specific impact on the judicial assessment of the applicant's detention case.

196. As to the conduct of the applicant, it is true that he extended the scope of his interlocutory appeal against detention ten days after he had lodged the appeal (see paragraph 25 above), which resulted in some delay in the proceedings imputable to the applicant.

197. No delays attributable to the applicant have been detected in the proceedings concerning the second extension of his detention and his third request for release. Quite the contrary, the applicant's conduct was proactive in seeking access to both the prosecution service's request for extension of his detention and to their comments in respect of the applicant's third request for release.

198. As regards the conduct of the authorities, the Court notes in particular that it took seventeen days, from 30 December 2002 until 16 January 2003, to give a decision with written reasons in respect of the applicant's interlocutory appeal against detention and a further eighteen days, until 3 February 2003, to have that decision served on the applicant.

199. The Court further notes that it took more than one month to determine the applicant's interlocutory appeal against the decision of 21 November 2003 to extend his detention, about a month to determine his interlocutory appeal against the decision of 9 December 2003 rejecting his request for release and twenty days, from 9 to 29 January 2004, to have the decisions in respect of his appeals served on the applicant.

200. Regard being had to the Court's case-law on the subject (see the summary in *Štetiar and Šutek v. Slovakia* (cited above, § 131); *Gál v. Slovakia* (cited above, § 69); *Michalko v. Slovakia* (cited above, § 171 and *Osváthová v. Slovakia* (cited above, § 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 and of his detention in the proceedings concerning the second request for extension of detention, taken together with the third request for release.

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

201. The applicant complained under Article 5 § 5 of the Convention that he had not been granted adequate and sufficient compensation in respect of his detention, which was contrary to the remaining provisions of Article 5 of the Convention. Its paragraph 5 reads as follows:

“Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. Admissibility

1. Compensation for lack of guarantees of Article 5 § 4 of the Convention in the applicant's interlocutory appeal against detention and for lack of "speediness" in the proceedings concerning the second request for extension of detention and the third request for release

202. The Court notes that this part of the application concerns the applicant's complaint that the proceedings in respect of his interlocutory appeal against detention had been incompatible with Article 5 § 4 of the Convention *inter alia* in that the applicant had been denied access to the case file, that he had not had adequate time and facilities for the preparation of his defence and that the proceedings had not been "speedy" (see paragraph 28 above).

This part of the application also concerns the applicant's complaint of the lack of "speediness" in the proceedings concerning the second request for extension of detention and the third request for release (see paragraphs 67 and 76 above).

While the Constitutional Court found a violation of the applicant's Article 5 § 4 rights on account of the denial of access to the case file (see paragraph 31 above), it declared inadmissible or dismissed on the merits all the remaining elements of the applicant's constitutional complaints (see paragraphs 29, 30, 68, 69, 71, 77, 78 and 80 above) for reasons that the Court has found not to be acceptable (see paragraphs 138 to 143 and 174 to 178 above).

At the same time, the Court has found that the facts underlying these complaints were contrary to the applicant's rights under Article 5 § 4 of the Convention (see paragraphs 189 and 200 above).

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

2. Compensation for the alleged violations of Article 5 §§ 1, 3 and 4 of the Convention

203. The applicant's remaining complaints under Article 5 §§ 1, 3 and 4 of the Convention are inadmissible. It follows that the remainder of the Article 5 § 5 complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

204. The Court reiterates that Article 5 § 5 of the Convention is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 of Article 5. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions (see *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X, and *Pavletić v. Slovakia*, cited above, § 95).

205. In the present case the Court has found violations of Article 5 § 4 of the Convention (see paragraphs 189 and 200 above).

It must therefore establish whether or not the applicant had an enforceable right to compensation for these breaches of Article 5 of the Convention.

206. In doing so, the Court observes first of all that the applicant's complaints under Article 127 of the Convention in that respect were rejected or dismissed (see paragraphs 29, 30, 68, 69, 71, 77, 78 and 80 above) for reasons that the Court has found not to be acceptable (see paragraphs 138 to 143 and 174 to 178 above). Consequently, the applicant obtained no compensation.

In this context it is to be noted that the applicant cannot be accused of not having complied with the applicable requirements (see, in particular, paragraphs 139-141 above) (see *Boris Popov v. Russia*, no. 23284/04, § 84, 28 October 2010). The Court also observes that the applicant was not required, for the purposes of Article 35 § 1 of the Convention, to test the other remedy advanced by the Government, as at the relevant time such remedy lacked the capacity to provide the applicant with compensation in respect of non-pecuniary damage and had no realistic prospects of success (see paragraphs 101-107 above) (see *Sakık and Others v. Turkey*, 26 November 1997, § 59, *Reports* 1997-VII). At the same time, there is no support in the text of the applicable law and no domestic jurisprudence has been shown to exist to the effect that a compensation claim can be made in a domestic court based on the findings made by the European Court (see *Michalko v. Slovakia*, cited above, § 176 and *Osváthová v. Slovakia*, cited above, § 83).

207. The foregoing considerations are sufficient to enable the Court to conclude that neither before nor after the findings made by the European Court has the applicant had an enforceable right to compensation for the violations of his rights under Article 5 § 4 of the Convention as found above (see paragraphs 189 and 200 above) (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 67, Series A no. 145-B).

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

VI. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

208. The applicant complained that the monitoring of his telephone calls had been unlawful and arbitrary, that it had violated his right to respect for his private life and correspondence, and that he had had no effective remedy in that respect. He relied on Articles 8, which provides that:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

and Article 13 of the Convention, which provides that:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

209. The Government argued that the applicant had failed to exhaust domestic remedies by: challenging in his criminal trial the evidence obtained through the monitoring of his telephone communications; seeking protection of his personal integrity in the civil courts; and, upon due exhaustion of those remedies, ultimately by resorting to the Constitutional Court anew under Article 127 of the Constitution.

210. The applicant disagreed and referred in particular to an admissibility decision and a judgment in an unrelated case (see paragraph 97 above) where the Constitutional Court had examined a complaint relating to the monitoring of telephone communications without requiring the exhaustion of the remedies advanced by the Government.

211. In reply, the Government submitted that the case relied on by the applicant had to be distinguished from his own, in that the applicant had been indicted and had stood trial before an ordinary court and could therefore have raised his objections to the monitoring of his telephone communications before that court. They referred to an admissibility decision by the Constitutional Court of 16 March 2005 in case no. IV. ÚS 76/05 (see paragraph 96 above) and considered that it supported their view.

212. The Court observes that it has not been disputed that the applicant's telephone communications have been monitored (see paragraphs 12 above), that such monitoring falls *ratione materiae* within the ambit of Article 8 of the Convention and that it amounted to an interference with the applicant's

right under Article 8 to respect for his private life and correspondence (see, for example, *Kvasnica v. Slovakia*, cited above, judgment of 9 June 2009, § 81).

The Court also observes that both the Constitutional Court and the parties appear to make a distinction between the procedural aspects of monitoring telephone communications in the context of a criminal trial, if any, and the repercussions of the monitoring on the personal integrity of the person concerned.

213. In that regard, the Court considers that the procedural dimension of the monitoring of the applicant's telephone communications, which may admittedly be addressed in his criminal trial, has to be distinguished from the protection of his private life and correspondence available to him under Articles 8 and 13 of the Convention. Although the applicant can arguably seek redress in the criminal courts in respect of potential infringements of his right to a fair trial, this has no direct connection with the applicant's rights protected independently under Articles 8 and 13 of the Convention.

The first limb of the Government's non-exhaustion objection cannot therefore be sustained.

214. As to the opportunity for the applicant to assert his rights by way of an action for protection of personal integrity, the Court reiterates that it has already examined this matter in similar circumstances in its decision in the case of *Kvasnica v. Slovakia* (cited above, 26 September 2006). In that decision, the Court concluded that an action for protection of personal integrity did not at the material time offer the applicant reasonable prospects of success and was therefore not a remedy that had to be exhausted for the purposes of Article 35 § 1 of the Convention.

215. The Court notes that the Constitutional Court appears to have accepted, either by implication (see paragraph 96 above) or expressly (see paragraphs 97 and 98 above), that there were no legal remedies before the ordinary courts in respect of telephone communications monitoring.

216. All the elements mentioned above support a conclusion that the second remedy advanced by the Government was not one that the applicant was required to exhaust under Article 35 § 1 of the Convention.

The relevant part of the application therefore cannot be rejected for non-exhaustion of domestic remedies.

217. The Court considers that in the specific circumstances of the present case the applicant's complaints most naturally fall to be examined under Article 13, taken in conjunction with Article 8 of the Convention. To that end, it observes that the legal regime under which the monitoring of the applicant's telephone communications took place in the present case was replaced by a new legal regime, and that various conceptual aspects of the old regime have been subject to challenge under the Convention in the past (see *Kvasnica v. Slovakia*, cited above, as well as *Polka v. Slovakia* (dec.), no. 20066/03, 22 September 2009). The basis of the applicant's claim

therefore has to be considered “arguable” for the purposes of Article 13, in conjunction with Article 8 of the Convention (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52).

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

B. Merits

219. The Court has found above (see paragraphs 213 and 216) that the remedies relied on by the Government were not effective in respect of the applicant’s Article 8 complaints. At the same time, the remedy applied by him was futile. It follows that there has been a violation of the applicant’s right to an effective remedy under Article 13 of the Convention, taken together with Article 8 of the Convention.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

220. Lastly, the applicant complained that he had not had a fair hearing before an impartial tribunal established by law, that he had been discriminated against in connection with the violations of his Convention rights alleged above, and that he had not had an effective remedy at his disposal in respect of such violations (other than as mentioned in paragraphs 208-219 above).

221. However, in the light of all the material in its possession, and in so far as the remainder of the application is within its competence and domestic remedies have been exhausted, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

222. 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

223. The applicant claimed SKK 326,913.50 in respect of lost wages and 50,000 euros (EUR) in respect of non-pecuniary damage.

224. The Government contested the former claim as to its substance and the latter claim as to its amount.

225. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim.

On the other hand, it awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

226. The applicant also claimed SKK 391,700.30 for legal fees, SKK 10,000 for administrative expenses and SKK 4,000 for postal expenses incurred, taken together, before the domestic courts and the Court. He supported the claim in respect of the legal fees by providing detailed invoices.

227. The Government submitted that the applicant's claims in respect of legal costs before the ordinary courts and the Court were overstated and that his claim in respect of legal costs before the Constitutional Court was unfounded. They also contended that the claims in respect of administrative and postal expenses were not supported by any evidence.

228. 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 violations found (see paragraphs 189, 200, 207 and 219 above), the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 in respect of legal fees covering both costs incurred at the domestic level and before the Court.

229. The claim in respect of administrative and postal costs has not been supported by relevant documents (Rule 60 § 2 of the Rules of Court). It accordingly cannot be sustained.

C. Default interest

230. The Court considers it appropriate that default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible
 - (a) the complaint under Article 5 § 4 of the Convention concerning the alleged lack of an effective procedure by which the applicant could challenge the lawfulness of his remand in custody;
 - (b) the complaint under Article 5 § 4 of the Convention concerning the alleged lack of a speedy determination of the lawfulness of the applicant's remand in custody and of his detention in the proceedings concerning the second request for extension of detention, taken together with the third request for release;
 - (c) the complaint under Article 5 § 5 of the Convention concerning the alleged lack of an enforceable right to compensation in relation to the alleged violations of Article 5 § 4 of the Convention in so far as the applicant's complaints under the latter provision are admissible;
 - (d) the complaint under Article 13, in conjunction with Article 8 of the Convention, of the alleged lack of effective remedy in respect of the monitoring of the applicant's telephone communications;
2. *Declares* inadmissible the remainder of the application;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the lack of an effective procedure by which the lawfulness of the applicant's remand in custody could be decided;
4. *Holds* 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 and of his detention in the proceedings concerning the second request for extension of detention, taken together with the third request for release;
5. *Holds* that there has been a violation of Article 5 § 5 of the Convention on account of the lack of an enforceable right to compensation in relation to the violations of Article 5 § 4 of the Convention found;
6. *Holds* that there has been a violation of Article 13, in conjunction with Article 8 of the Convention, on account of the lack of an effective remedy in respect of the monitoring of the applicant's telephone communications;
7. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros),

plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 2,000 (two thousand 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;

8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President