



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

FOURTH SECTION

**CASE OF AYDEMIR v. SLOVAKIA**

*(Application no. 44153/06)*

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 Aydemir 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. 44153/06) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Halis Aydemir (“the applicant”), on 20 October 2006.

2. The applicant was represented by Mr J. Havlát, 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 he had been remanded in detention arbitrarily, that the proceedings in respect of his appeal against detention had fallen short of the applicable requirements and that he had been denied an enforceable right to compensation in that respect.

4. On 15 March 2010 the President of the Fourth Section decided to communicate the above-mentioned and other related complaints to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Sontheim an der Brenz (Germany).

### **A. Criminal proceedings**

6. On 25 November 2003 the applicant was charged in Slovakia with blackmail within the meaning of Article 235 of the Criminal Code (Law no. 140/1961 Coll., as applicable at the relevant time).

7. The charge was based on the suspicion that the applicant had sent a number of text messages from a German mobile telephone number to A. in Slovakia which contained serious threats that he would harm and kill her and their child.

8. On 10 March 2004 the applicant was handed over to the Slovakian authorities to be prosecuted in Slovakia. He was subsequently detained in Slovakia pending trial there (see below).

9. On 22 November 2004 the Levice District Court (*Okresný súd*) found the applicant guilty as charged and sentenced him to two years' imprisonment, suspended for thirty months. The applicant waived his right of appeal and, on the same day, the judgment became final and binding and the applicant was released.

### **B. Detention order and related constitutional complaint**

10. In so far as can be established from the applicant's submissions and the content of the documents in the case file, on 11 March 2004 a single judge of the District Court gave an order (*uznesenie*) for the applicant to be detained pending trial. The order was upheld following an interlocutory appeal (*sťažnosť*) by the applicant examined by the Nitra Regional Court (*Krajský súd*) on 20 May 2004. The decision on the appeal was served on the applicant's lawyer on 5 August 2004.

11. On 5 October 2004 the applicant lodged a complaint with the Constitutional Court (*Ústavný súd*) under Article 127 of the Constitution.

The applicant relied on Article 5 of the Convention and contended that his detention was unlawful and arbitrary since there was neither any "reasonable suspicion" with a basis in admissible evidence against him nor sufficient reasons to detain him. The applicant also argued that the impugned decisions lacked adequate reasoning and that the proceedings on his interlocutory appeal had not been speedy. He sought, *inter alia*, that the decision of 20 May 2004 be quashed, that he be released and that the Regional Court be ordered to determine his interlocutory appeal anew.

12. On 22 June 2005 the Constitutional Court declared the complaint admissible.

13. In a written submission of 31 August 2005 the applicant, *inter alia*, requested for comment a copy of any observations that the District Court and the Regional Court, as the defendants in the proceedings before the Constitutional Court, might have submitted in reply to his complaint.

14. On 15 February 2006 the Constitutional Court gave a judgment (*nález*) in which it found that the Regional Court had violated the applicant's rights under Article 5 § 4 of the Convention in that it had failed to provide adequate reasoning for its decision of 20 May 2004 and in that the proceedings on the applicant's interlocutory appeal had not been speedy.

15. The Constitutional Court quashed the decision of 20 May 2004. It observed that the applicant had meanwhile been released. The part of his constitutional complaint, which was aimed at his release and at a fresh examination of his interlocutory appeal, had therefore become moot. Nevertheless, while accepting that the applicant had sustained non-pecuniary damage, the Constitutional Court did not award him any just satisfaction on the ground that the finding of a violation of the applicant's rights was sufficient redress for him. However, the Constitutional Court allowed a part of the applicant's claim for legal costs

16. The Constitutional Court took into account observations made in reply to the applicant's complaint by the District Court and the Regional Court but made no mention of the part of the applicant's complaint which concerned the substantive aspects of his detention.

17. The judgment of the Constitutional Court was served on the applicant through the intermediary of his lawyer on 6 July 2006. No appeal lay against it.

### **C. Request for release and related constitutional complaints**

18. In so far as can be established from the applicant's submissions and the content of the documents in the case file, on 17 May 2004 the applicant requested release, offered a pledge, under Article 73 § 1 (b) of the Code of Criminal Procedure (Law no. 141/1961 Coll., as applicable at the relevant time) ("the CCP"), that he would live in accordance with the law and, as an alternative, applied for bail under Article 73a of the CCP.

19. By law the request fell to be determined first by the regional prosecutor, who dismissed it and on 3 June 2004 forwarded it *ex officio* to the District Court for judicial determination.

20. The request for release was then dismissed in turn by a three-judge bench of the District Court on 26 July 2004 and, on an interlocutory appeal by the applicant, by the Regional Court on 28 October 2004. The decision on the appeal was served on the applicant on 20 December 2004.

21. The applicant challenged the decisions and various aspects of the procedure by way of two complaints under Article 127 of the Constitution.

22. On 10 January 2006 the Constitutional Court declared inadmissible the complaint by which the applicant had mainly challenged the length of the proceedings in respect of his request for release, in so far as these proceedings had taken place before the public prosecution service and the District Court.

The Constitutional Court found that any possible delays on the part of the public prosecution service had been insignificant and that, in so far as the District Court was concerned, the complaint was manifestly ill-founded on the ground that, at the time of its introduction with the Constitutional Court, the request for release was no longer pending before the District Court, which was why the applicant was no longer in need of protection by the Constitutional Court.

The decision of the Constitutional Court was served on the applicant on 21 April 2006.

23. On 23 August 2006 the Constitutional Court declared inadmissible as manifestly ill-founded a part of the applicant's outstanding constitutional complaint, which concerned the fact that the decision of 26 July 2004 had wrongfully been made by a bench whereas the body authorised to make it was a single judge. The Constitutional Court declared admissible the remainder of the complaint, as specified below. The decision was served on the applicant on 30 October 2006.

24. In a judgment of 21 June 2007 the Constitutional Court found that there had been a violation of the applicant's rights under Article 5 §§ 1, 3 and 4 of the Convention, in that the Regional Court had failed to provide the applicant with a copy of the observations made by the prosecution service in reply to the applicant's request for release, combined with the fact that it had also failed to hear the applicant in person, rule on all claims in the appeal and provide adequate reasoning for its decision. Moreover, the proceedings before both the District Court and the Regional Court had not been "speedy". In reaching this last conclusion the Constitutional Court observed that, prior to the ordinary court's involvement in deciding on the applicant's request for release, his request had been examined by the public prosecution service. The Constitutional Court found no issue in the length of the proceedings before the public prosecution service.

25. The Constitutional Court held that there was no point in quashing the decision of the Regional Court in view of the fact that the applicant had meanwhile been released.

26. The applicant was awarded 100,000 Slovakian korunas (SKK) in just satisfaction for non-pecuniary damage and the reimbursement of legal costs.

The judgment was served on the applicant's lawyer on 17 August 2007.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### **A. The State Liability Act 1969 (Law no. 58/1969 Coll.) and practice of the ordinary courts in its application**

27. Until 30 June 2004 State liability for damage caused by decisions concerning pre-trial detention was governed by Chapter (*hlava*) 2 of Part

(*časť*) 1 of the Act on State Liability for Damage Caused by a State Body's Decisions or Erroneous Official Action (*Zákon o zodpovednosti za škodu spôsobenú rozhodnutím orgánu štátu alebo jeho nesprávnym úradným postupom* – “the State Liability Act 1969”).

28. Persons deprived of their liberty had a claim against the State for damages when the criminal proceedings against them were dropped or they were acquitted (section 5(1)).

However, such compensation was excluded when the persons concerned were responsible for their own detention, in particular when they had tried to abscond or had otherwise given rise to the facts on which the decision concerning their detention was based.

29. Section 18(1) rendered the State liable for damage caused in the context of carrying out functions vested in public authorities resulting from wrongful official action of persons entrusted with the exercise of those functions. An award of compensation could be made when the plaintiff showed that he or she had suffered damage as a result of the wrongful official action of a public authority, quantified its amount, and showed that there was a causal link between the damage and the wrongful action in question.

30. The State Liability Act 1969 was traditionally interpreted and applied as not allowing for compensation to be awarded for non-pecuniary damage unless it was related to the deterioration of a person's health (see, for example, *Pavletić v. Slovakia*, no. 39359/98, § 55, 22 June 2004, and *Havala v. Slovakia* (dec.), no. 47804/99, 13 September 2001).

31. By its judgment of 31 May 2007 in an appeal on points of law (no. 4Cdo 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, pursuant to Article 154c § 1 of the Constitution, prevailed over the statutory text.

This line of reasoning was followed in judgments of the Banská Bystrica Regional Court of 26 March 2009 and the Nitra Regional Court of 26 February 2010 when deciding on appeals nos. 12Co 5/2009 and 6Co 237/2009.

## **B. State Liability Act 2003 (Law no. 514/2003 Coll.) and practice of the ordinary courts in its application**

32. In June 2002 the Minister of Justice submitted to the Government a draft bill providing for a new legislative framework for official liability.

The bill was accompanied by an introductory report (*predkladacia správa*) in which the Minister observed, *inter alia*, that the old State Liability Act had been on the statute book since 1969 and that, owing to subsequent changes to the social system and the adoption of the Convention, there was a new understanding of the concept of State liability for damage, which called for the introduction of new legislation.

33. The bill was later submitted to Parliament with an explanatory report, the relevant part of which stated that it was necessary to extend the current concept of the right to damages to incorporate just satisfaction in respect of non-pecuniary damage as well as pecuniary damage. The purpose of the proposed Act was, *inter alia*, to render the mechanism of compensation for damage caused by public authorities more effective and thereby reduce the number of cases in which claimants were obliged to seek redress before the European Court of Human Rights.

34. The bill was adopted with effect from 1 July 2004 (*Zákon o zodpovednosti za škodu spôsobenú pri výkone verejnej moci*) and replaced the State Liability Act 1969.

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

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

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

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

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

40. The Act applies only to damage caused by decisions and wrongful official action occurring after it entered into force (section 27(1)).

41. In a judgment of 16 March 2007 (in case no. 4C 258/2006) the Brezno District Court granted an action for damages by two individuals against the State under the State Liability Act 2003 and ordered the defendant to pay the costs of their defence in a criminal trial on charges of 2005 that had ended with their acquittal with final and binding effect in 2006.

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

42. On 14 October 2009 the Bratislava Regional Court granted an appeal (case no. 2Co 238/2008) in an action brought by an individual against the State under the State Liability Act 2003 for damages and awarded him an amount of money in compensation for non-pecuniary damage caused by detention on remand in 2005 in the context of a criminal trial on charges of the same year that had ended with his acquittal with final and binding effect in 2006.

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

The impugned wrongful official action concerned the extension by a decision of 12 October 2004 until 28 April 2005 of the claimant's detention pending trial.

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

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

## THE LAW

### I. THE GOVERNMENT'S OBJECTION OF NON-EXHAUSTION OF DOMESTIC REMEDIES

#### A. The submissions of the Government

44. At a late stage of the proceedings, following the applicant's observations in reply and the submission of his claims for just satisfaction, the Government raised an argument, in general terms, 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 failed to claim compensation from the State under the State Liability Act 1969 and the State Liability Act 2003 in respect of "wrongful official action" (see paragraphs 29 and 37 above).

45. The Government referred to the current judicial practice (see paragraphs 31 and 41-43 above) and asserted that both under the State Liability Act 1969 and the State Liability Act 2003 the applicant could have obtained compensation in respect of both pecuniary and non-pecuniary damage.

**B. The Court's assessment in respect of the complaints under Article 5 §§ 1, 3 and 4 of the Convention**

46. The Court considers that in respect of the requirement to exhaust domestic remedies a distinction has to be made between, on the one hand, the applicant's complaints under Article 5 §§ 1, 3 and 4 of the Convention and, on the other hand, his complaint under Article 5 § 5 of the Convention.

47. As to the complaints under Article 5 §§ 1, 3 and 4 of the Convention, which concern the lawfulness and justification of the applicant's deprivation of liberty and conformity of the relevant procedure with the Convention requirements, the Court observes that the remedies advanced by the Government are only compensatory in nature.

48. In particular, the Court observes that these remedies were not aimed at and capable of redressing the applicant's situation in its essence, that is to say to bring about an end to his continued deprivation of liberty and rectification of the alleged shortcomings in the proceedings (see *Weeks v. the United Kingdom*, 2 March 1987, § 61, Series A no. 114; *Pavletić v. Slovakia*, cited above, § 69; and, *mutatis mutandis*, *Smatana v. the Czech Republic*, no. 18642/04, § 111, 27 September 2007).

These remedies had to be examined by the civil courts and there is no indication that such courts could in any way interfere with matters concerning the applicant's continued detention on remand that fall within the jurisdiction of the criminal courts (see *Haris v. Slovakia*, no. 14893/02, § 38, 6 September 2007).

49. The Court considers that for these reasons alone the Government's objection cannot be sustained in so far as it concerns the complaints under Article 5 §§ 1, 3 and 4 of the Convention.

**C. The Court's assessment in respect of the complaint under Article 5 § 5 of the Convention**

50. As to the complaint under Article 5 § 5 of the Convention, which concerns the alleged lack of an enforceable right to compensation in respect of proceedings for review of the lawfulness of the applicant's detention, the Court observes that, in its judgment of 15 February 2006, the Constitutional Court found that no compensation in respect of the applicant's non-pecuniary damage was warranted.

51. The Court further observes that the Constitutional Court is the supreme authority for the protection of human rights and fundamental freedoms in Slovakia with jurisdiction to examine the applicant's complaints and to afford him redress if appropriate (see, *mutatis mutandis*, *Lawyer Partners A.S. v. Slovakia*, nos. 54252/07, 3274/08, 3377/08, 3505/08, 3526/08, 3741/08, 3786/08, 3807/08, 3824/08, 15055/08, 29548/08, 29551/08, 29552/08, 29555/08 and 29557/08, § 45, ECHR 2009-..., with further references).

52. The Court also observes that, if entertaining jurisdiction in the present case under the State Liability Act, in respect of alleged wrongful official action, an ordinary court would be confronted with essentially the same question as the Constitutional Court when ruling on the applicant's claim for just satisfaction as specified in the previous paragraph (see *Michalko v. Slovakia*, no. 35377/05, § 95, 21 December 2010).

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

53. In sum, for this reason alone, the Government's objection of non-exhaustion of domestic remedies in respect of the complaint under Article 5 § 5 of the Convention has to be dismissed.

## II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION IN THE REMAND PROCEEDINGS

### A. The complaints

54. The applicant complained that there had been no reasonable suspicion against him with a basis in admissible evidence for the purposes of his detention under the decisions of 11 March and 20 May 2004; that his detention under those decisions had not been justified; and that it had been disproportionate.

The applicant also complained that the proceedings leading up to the judgment of the Constitutional Court of 15 February 2006 had not been adversarial; that the Constitutional Court had omitted to rule on the substantive aspects of his detention; that its judgment had not been supported by adequate reasoning and that there had not been an effective remedy available in respect of that judgment.

### B. The applicable provisions of the Convention

55. The Court observes that the applicant has not submitted a copy of the decisions of 11 March and 20 May 2004 and that his submissions are

directly or indirectly linked to the way in which the Constitutional Court dealt with his complaint under Article 127 of the Convention.

56. The Court considers that, in the circumstances, the matter raised by the applicant most naturally falls 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.”

### C. Admissibility

57. The Government submitted first of all that the guarantees of Article 5 § 4 of the Convention were inapplicable to proceedings under Article 127 of the Constitution.

58. As to the proceedings before the ordinary courts, the Government argued that, in view of the redress that the applicant had obtained under the judgment of the Constitutional Court of 15 February 2006, he could no longer claim to be a victim of a violation of his rights.

59. In particular, the Government pointed out that in that judgment the Constitutional Court had found a violation of the applicant's rights under Article 5 § 4 of the Convention and had quashed the decision on the applicant's interlocutory appeal against detention.

60. The Government also submitted that the time during which the applicant had been detained pending trial had been offset against his prison sentence. To that end, they relied on the Court's judgment in the case of *Pavletić v. Slovakia* (cited above, § 110) and argued that, in that case as well as in a number of others, the Court had accepted that a finding of a violation of an individual's Article 5 rights was in itself sufficient just satisfaction.

61. The applicant pointed out that proceedings under Article 127 of the Constitution could result in his release and therefore considered that the guarantees of Article 5 § 4 of the Convention were applicable to such proceedings.

62. The applicant argued that the time he had spent in detention pending trial had not been taken into account in determining his sentence and objected that the Constitutional Court had only acknowledged some of the violations of Article 5 § 4 of the Convention of which he had complained. He submitted that the Constitutional Court's dismissal of his claim for just satisfaction in respect of non-pecuniary damage was inconsistent with the Constitutional Court's own practice.

63. The Court reiterates that Article 5 § 4 of the Convention guarantees to everyone the right to take proceedings by which the lawfulness of his or her detention shall be decided by a court with the power to order release if detention is unlawful.

64. The Court considers that in the present case its primary task is to examine whether the applicant had the benefit of proceedings compatible with the requirements of Article 5 § 4 of the Convention.

In carrying out this task the Court will have regard to all the relevant facts obtained in all the proceedings following the remand of the applicant in custody.

65. The Court observes that in its judgment of 15 February 2006 the Constitutional Court found a violation of the applicant's rights under Article 5 § 4 of the Convention on account of the Regional Court's failure to provide adequate reasoning for its decision of 20 May 2004 and to deal with the applicant's interlocutory appeal against detention speedily. The Constitutional Court quashed the decision of 20 May 2004 and awarded the applicant part of his legal costs. However, it did not deem it fit to award any compensation in respect of non-pecuniary damage despite being aware that the essence of the applicant's right under Article 5 § 4 of the Convention to proceedings for determination of the lawfulness of his remand in detention had been frustrated by becoming moot (see paragraph 15 above).

66. The Court observes that, although this does not constitute a separate Convention issue in the circumstances of the present case, by failing to provide adequate reasoning for its decision, the Regional Court made it impossible to verify whether or not the deprivation of the applicant's liberty was as such justified. Exercise of judicial power in such a manner is not reconcilable with the purpose of Article 5, namely, to protect the individual from arbitrariness (see *Mooren v. Germany* [GC], no. 11364/03, § 72, ECHR 2009-... and *Michalko v. Slovakia*, cited above, § 158).

67. The Court considers that, in these circumstances, the redress provided to the applicant at the domestic level cannot be considered adequate and sufficient. It follows that the applicant did not lose his status as a victim within the meaning of Article 34 of the Convention.

68. The Court notes that 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.

#### **D. Merits**

69. The parties made no separate submissions other than as mentioned in paragraphs 57 to 62 above.

70. The Court reiterates that, by virtue of Article 5 § 4, arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", within the meaning of Article 5 § 1, of their deprivation of liberty (see *Lexa v. Slovakia* (no. 2), no. 34761/03, §§ 66 and 67, 5 January 2010, with further references).

A court examining an appeal against detention must provide guarantees of a judicial procedure. The proceedings must be adversarial and must always ensure “equality of arms” between the parties, the prosecutor and the detained person (see, among many other authorities, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 204, ECHR 2009-..., and *Sanchez-Reisse v. Switzerland*, 21 October 1986, § 51, Series A no. 107).

Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see, among many other authorities, *Reinprecht v. Austria*, no. 67175/01, § 31, ECHR 2005-XII).

71. The Court observes that in the present case the applicant was remanded in custody by order of the District Court of 11 March 2004. He then challenged the lawfulness of his detention by way of an interlocutory appeal which was dismissed by the Regional Court on 20 May 2004. In its judgment of 15 February 2006, the Constitutional Court quashed the decision of 20 May 2004 having established that the proceedings before the Regional Court lacked the guarantees of Article 5 § 4 of the Convention. It observed that the issue of a fresh examination of the applicant's interlocutory appeal against detention had become moot in view of the fact that he had been released in the meantime.

72. The Court also observes that there has been no allegation or indication that, following the quashing of the decision of 20 May 2004 by the Constitutional Court, the applicant's interlocutory appeal against detention has been examined anew. The applicant's request for review of the lawfulness of his detention has thus remained undetermined.

73. In these circumstances, the Court concludes that the applicant did not have the benefit of a procedure by which the lawfulness of his remand in detention could be decided.

74. In sum, there has been a violation of Article 5 § 4 of the Convention.

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

75. The applicant also complained that he had been unable to obtain compensation in respect of the lack of proceedings for review of the lawfulness of his remand in detention, contrary to Article 5 § 5 of the Convention, which 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

76. The Government submitted that the redress, which the applicant had obtained under the judgment of the Constitutional Court of 15 February 2006, was compatible with the guarantees of Article 5 § 5 of the Convention and considered that, consequently, the complaint was manifestly ill-founded.

77. The applicant disagreed.

78. Referring to its conclusions in respect of exhaustion of domestic remedies (see paragraphs 51 to 53 above) and the applicant's victim status as regards his complaint under Article 5 § 4 of the Convention in relation to the remand proceedings (see paragraphs 65 to 67 above) the Court notes, for similar reasons, 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

79. The parties made no separate submissions other than as mentioned in paragraphs 76 and 77 above.

80. 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. 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).

81. In the present case the Court has found a violation of Article 5 § 4 of the Convention (see paragraph 74 above).

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

82. The Court observes that the present case seems to raise no issue of pecuniary damage (see paragraph 96 below). It also observes that, after the decision on his interlocutory appeal against detention was quashed by the Constitutional Court on 15 February 2006, that appeal became moot and does not appear to have been determined anew due to the applicant's intervening release (see paragraph 15 above) thus defeating the essence of the applicant's rights under Article 5 § 4 of the Convention.

Despite having been aware of these consequences and having acknowledged that the applicant had sustained non-pecuniary damage, the Constitutional Court dismissed the applicant's claim for compensation in

that respect with no more than a general statement as to the underlying reasons (see paragraphs 15 above).

The Court finds it also to be of relevance in this context that, by intent or oversight, the Constitutional Court has taken no position in respect of the applicant's complaints concerning the substantive aspects of his detention despite having declared them admissible (see paragraphs 12 and 16 above).

83. The Court also observes that, as concluded above, the remedy advanced by the Government had no reasonable prospects of producing more favourable results for the applicant (see paragraphs 51 to 53 above) (see, *mutatis mutandis*, *Sakık and Others v. Turkey*, 26 November 1997, § 59).

84. 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 violation of his rights under Article 5 § 4 of the Convention as found above (see paragraph 74 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.

#### IV. ALLEGED VIOLATION OF ARTICLE 5 §§ 1, 3 AND 4 OF THE CONVENTION IN CONNECTION WITH THE REQUEST FOR RELEASE

85. The applicant complained that his request for release pending trial had been arbitrarily refused; that the lawfulness of his detention had not been decided “speedily” and the decision of 26 July 2004 had been wrongfully taken by a bench of three judges instead of a single judge. He relied on Article 5 § 1, 3 and 4 of the Convention.

86. The Government referred to the Constitutional Court's judgment of 21 June 2007 and argued that the applicant could no longer be considered to be a victim of the alleged violations.

87. The applicant disagreed and argued, in particular, that the Constitutional Court had not examined the length of the proceedings in respect of his request for release in their entirety in that, unlike in other cases, the Constitutional Court had examined separately and dismissed his complaint in so far as it related to the period when his request for release had been under review by the public prosecution service.

88. The applicant also argued that the amount of just satisfaction awarded to him by the Constitutional Court had not been adequate and sufficient in view of his personal circumstances, in particular the fact that he lives in Germany.

89. The Court observes that in its judgment of 21 June 2007 the Constitutional Court found a violation of the applicant's rights under

Article 5 § 1 (c), 3 and 4 of the Convention on account of the Regional Court's failure to provide the applicant with a copy of the observations made by the prosecution service in reply to the applicant's request for release, combined with the fact that it had not heard the applicant in person, and on account of its failure to rule on all claims in the appeal and to provide adequate reasoning for its decision. The Constitutional Court also found that the District Court and the Regional Court had failed to decide on the lawfulness of the applicant's detention speedily. It awarded the applicant reimbursement of his legal costs and SKK 100,000 in respect of non-pecuniary damage (see paragraphs 24 and 26 above).

90. As to the complaint concerning the length of the proceedings in respect of the applicant's request for release, the Court observes in particular that although the operative part of its judgment only concerns the District Court and the Regional Court, in examining the applicant's complaint the Constitutional Court also took into account the fact that the applicant's request for release had first been examined by the public prosecution service (see paragraph 24 above).

91. In view of the Constitutional Court's findings under Article 5 § 4 of the Convention, the Court has found no reasons for a separate examination of the issue of the composition of the District Court's bench determining the applicant's request for release at first instance.

92. In sum, the Court considers that the redress obtained by the applicant under the Constitutional Court's judgment of 21 June 2007 is adequate and sufficient in terms of the Court's case-law. In consequence, the applicant can no longer claim to be a victim within the meaning of Article 34 of the Convention of the violations asserted under Article 5 §§ 1 (c), 3 and 4 of the Convention in connection with his request for release.

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

## V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

93. In connection with the above-mentioned claims the applicant also relied on Articles 6, 13 and 14 of the Convention.

94. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the applicant's rights under those provisions.

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.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicant stated that he was not claiming compensation in respect of pecuniary damage. However, he claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

97. The Government considered the claim overstated.

98. The Court finds that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the applicant EUR 3,500 under that head.

### B. Costs and expenses

99. The applicant claimed EUR 8,230.62 for legal assistance, submitting itemised invoices from his lawyer, EUR 150 for administrative expenses and EUR 50 for postal expenses, incurred both at the national level and before the Court.

100. Relying on the Court's judgment in the case of *Young, James and Webster v. the United Kingdom* ((former Article 50), 18 October 1982, § 15, Series A no. 55), the Government considered that the claim in respect of legal fees was overstated. They objected that the claims concerning administrative and postal expenses were not supported by evidence.

101. 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 74 and 84 above), the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 2,000 to cover legal representation both at the national level and before the Court.

### C. Default interest

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

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaints under Article 5 §§ 4 and 5 of the Convention in respect of the alleged lack of proceedings by which the lawfulness of the applicant's remand in detention could be decided and the alleged lack of an enforceable right to compensation in that respect;
2. *Declares* inadmissible the remainder of the application;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
5. *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 3,500 (three thousand five hundred 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;
6. *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