



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

FIFTH SECTION

CASE OF ŤUPA v. THE CZECH REPUBLIC

(Application no. 39822/07)

JUDGMENT

STRASBOURG

26 May 2011

FINAL

26/08/2011

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

In the case of Župa v. the Czech Republic,

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

Dean Spielmann, *President*,

Elisabet Fura,

Karel Jungwiert,

Mark Villiger,

Isabelle Berro-Lefèvre,

Ann Power,

Ganna Yudkivska, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 12 April 2011,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 39822/07) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Czech national, Mr Miloš Župa (“the applicant”), on 31 August 2007.

2. The applicant was represented by Mr V. Peřina, a lawyer practising in Chrudim. The Czech Government (“the Government”) were represented by their Agent, Mr V. A. Schorm of the Ministry of Justice.

3. The applicant alleged, in particular, violations of his right to liberty under Article 5 § 1 of the Convention because his detention in a psychiatric hospital had not been in accordance with a procedure prescribed by law and justified.

4. On 22 June 2010 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Miloš Župa, is a Czech national who was born in 1970 and lives in Bystřice nad Pernštejnem.

6. He lives in a house with his mother, brothers and sisters. On 4 January 2007 the police came to their house with a doctor and took the applicant against his will to Jihlava Psychiatric Hospital.

7. On the morning of 8 January 2007 the hospital informed Jihlava District Court (*okresní soud*) of the applicant's involuntary detention pursuant to Article 191a § 1 of the Code of Civil Procedure.

8. On the afternoon of the same day a senior clerk at the District Court went to the hospital and interviewed the applicant and his treating doctor. A one-paragraph record of the interview with the doctor shows that the latter stated that the applicant had been hospitalised at the recommendation of his general practitioner who had asserted that the applicant had suffered from auditory hallucinations for about a year, thought that his food was being poisoned, slept in a gas mask because he thought somebody had tried to poison him with gas and threatened to kill his brother. It seems that the hospital called the applicant's family to confirm this last event. The doctor further said that the applicant had disputed the information given by the general practitioner, that he had been cooperating only formally and that there was considerable paranoia and lack of logic in his thinking. According to the doctor, because the applicant had not given his consent, it had been decided to admit him involuntarily.

9. The applicant, in his statement to the clerk, disputed these allegations maintaining that he had not seen his general practitioner for several months and that he had had disputes with his mother and brothers who had orchestrated his detention. He further claimed that he had never been treated by a psychologist or psychiatrist before and had never taken psychiatric medication. He also requested his immediate release because the hospital had not informed the court of his detention within twenty-four hours of his admission.

10. The District Court decided a few hours later, based solely on this record of the interview, that the applicant's involuntary admission to the psychiatric hospital was lawful. The decision, after taking note of the content of the record, contains only the following reasoning:

"The court is of the opinion that at the time of the applicant's admission to [the hospital] he was not able, considering his health condition influenced by his mental illness, to express his qualified consent to his admission to [the hospital] which appears to be necessary to protect his life and health. The court has thus decided that his admission was lawful."

The decision was served only on the applicant's court-appointed lawyer and not on the applicant himself.

11. The applicant appealed arguing that his detention was not justified and that it was not in accordance with law because the hospital had not informed the court of his admission within twenty-four hours.

12. On 22 February 2007 Brno Regional Court (*krajský soud*) upheld the first-instance decision. It held that the record of the interview had been

sufficient evidence for the first-instance court to base its decision on, given that it had had to decide without delay. It added that the applicant's claims of disputes in the family had not been concrete enough and that in any case his hospitalisation had been recommended by his general practitioner. It also held that the twenty-four-hour time-limit had not been met but that that did not affect the legality of his detention.

13. The applicant was released from hospital on 9 March 2007.

14. On 16 July 2007 the Constitutional Court (*Ústavní soud*) dismissed the applicant's constitutional appeal as manifestly ill-founded holding that it could not re-evaluate the evidence heard by the ordinary courts and that their decisions regarding the necessity of the applicant's detention were not manifestly unreasonable. It further held that the law sets a twenty-four-hour time-limit for a hospital to inform a court of an involuntary admission but that non-compliance with this time-limit did not make the detention unlawful. It added that such a conclusion did not, as a matter of course, exclude the possibility for an applicant to claim damages against the hospital.

II. RELEVANT INTERNATIONAL AND DOMESTIC LAW AND PRACTICE

A. Relevant domestic law

Charter of Fundamental Rights and Freedoms (Act no. 2/1993)

15. Article 8 provides that personal liberty is guaranteed and the law shall specify the cases in which a person may be committed to or kept in a medical institution without his or her consent. A court must be notified within twenty-four hours that such a measure has been taken, and it shall decide within seven days whether the placement is justified.

Code of Civil Procedure (Act no. 99/1963)

16. Pursuant to Article 191a a hospital that admits a patient against his or her will must inform the competent court within twenty-four hours.

17. Pursuant to Article 191b § 1 the courts must review the lawfulness of the involuntary admission to the hospital within seven days.

The Public Health Care Act (Act no. 20/1966)

18. Under section 23(4)(b) a person can be compulsorily medically treated and even hospitalised if he appears to have signs of a mental illness and endangers himself or his surroundings.

The Civil Code (Act no. 40/1964)

19. Under Article 11, natural persons have the right to protection of their personality rights (personal integrity), in particular their life and health, civil and human dignity, privacy, name and personal characteristics.

20. Under Article 13 § 1, natural persons have the right to request that any unjustified infringement of their personality rights be ended and that the consequences of such infringement be eliminated. They also have the right to appropriate just satisfaction. Paragraph 2 provides that, in cases where the satisfaction obtained under paragraph 1 is insufficient, in particular because the injured party's dignity or social standing has been considerably diminished, the injured party is also entitled to financial compensation for non-pecuniary damage.

B. Relevant domestic practice

21. In its decision of 27 September 2007 (30 Cdo 3126/2007) the Supreme Court upheld a judgment of Prague Municipal Court from 20 April 2006 that awarded each claimant, under Article 13 § 2 of the Civil Code, 15,000 Czech korunas (CZK) in respect of non-pecuniary damage suffered on account of their overnight detention at a police station in breach of their right to liberty.

C. Relevant international documents

Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder (Adopted by the Committee of Ministers on 22 September 2004)

22. The principle in Article 8 provides: "Persons with mental disorder should have the right to be cared for in the least restrictive environment available and with the least restrictive or intrusive treatment available, taking into account their health needs and the need to protect the safety of others."

23. Article 17 contains criteria for involuntary placement:

"1. A person may be subject to involuntary placement only if all the following conditions are met:

- i. the person has a mental disorder;
- ii. the person's condition represents a significant risk of serious harm to his or her health or to other persons;
- iii. the placement includes a therapeutic purpose;

iv. no less restrictive means of providing appropriate care are available;

v. the opinion of the person concerned has been taken into consideration.

2. The law may provide that exceptionally a person may be subject to involuntary placement, in accordance with the provisions of this chapter, for the minimum period necessary in order to determine whether he or she has a mental disorder that represents a significant risk of serious harm to his or her health or to others if:

i. his or her behaviour is strongly suggestive of such a disorder;

ii. his or her condition appears to represent such a risk;

iii. there is no appropriate, less restrictive means of making this determination; and

iv. the opinion of the person concerned has been taken into consideration.”

24. Article 20 contains recommendations on procedures for taking decisions on involuntary placement:

1. The decision to subject a person to involuntary placement should be taken by a court or another competent body. The court or other competent body should:

i. take into account the opinion of the person concerned;

ii. act in accordance with procedures provided by law based on the principle that the person concerned should be seen and consulted.

...

3. Decisions to subject a person to involuntary placement or to involuntary treatment should be documented and state the maximum period beyond which, according to law, they should be formally reviewed. This is without prejudice to the person's rights to reviews and appeals, in accordance with the provisions of Article 25. ...

4. Involuntary placement, involuntary treatment, or their extension should only take place on the basis of examination by a doctor having the requisite competence and experience, and in accordance with valid and reliable professional standards.

5. That doctor or the competent body should consult those close to the person concerned, unless the person objects, it is impractical to do so, or it is inappropriate for other reasons.

THE LAW

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

25. The applicant complained that his right to liberty had been violated because his psychiatric confinement had not been in accordance with a procedure prescribed by law and had not been justified. He relied on Articles 5 and 6 of the Convention.

The Court considers appropriate to examine the present complaint under Article 5 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants ...”

A. Admissibility

1. The parties' submissions

26. The Government maintained that the applicant's complaint regarding the violation of the twenty-four-hour time-limit for notifying a court of a person's involuntary admission to a psychiatric hospital was inadmissible for non-exhaustion of domestic remedies, incompatible *ratione personae* and because of the lack of a significant disadvantage suffered by the applicant.

27. Regarding the non-exhaustion of domestic remedies, they argued that the applicant had only challenged the decision approving the lawfulness of his admission to the hospital, which, if successful, would bring about his release. This remedy was, however, not appropriate for a simple procedural mistake on the part of the hospital. In their view, if a health care institution breaches the twenty-four-hour time-limit but the court still decides within seven days, it is an entirely adequate consequence that the person concerned is not released if statutory grounds for his hospitalisation exist but this error is “only” acknowledged and an opportunity is given to claim compensation in respect of pecuniary and non-pecuniary damage. A different approach would be, in their opinion, unreasonably formalistic and could potentially seriously harm the health or life of the patient or third persons.

28. The Government thus suggested that the applicant should have instituted civil proceedings for compensation in respect of pecuniary or non-pecuniary damage against the hospital as was indicated to him by the Constitutional Court.

29. The applicant disagreed stating that the remedy suggested by the Government had not been available to him.

2. *The Court's assessment*

30. The Court observes that the purpose of Article 35 of the Convention is to afford the Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Convention institutions. Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right through their own legal system. That rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see, for example, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

31. The only remedies which an applicant is required to exhaust are those that relate to the breaches alleged and which are at the same time available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. Moreover, an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999).

32. In the present case, the Court has first to determine whether the applicant's appeal against the District Court's decision approving the lawfulness of his involuntary admission to the hospital was adequate in the sense that it could have addressed his grievance that the hospital had not complied with the twenty-four-hour statutory time-limit.

33. The Court notes that the purpose of the appeal is to review whether the conditions of involuntary hospitalisation under the Public Health Care Act are satisfied, that is, whether the patient has signs of a mental illness and endangers himself or his surroundings. The courts do not deal with the question whether the hospital satisfied its duty to meet the twenty-four-hour time-limit. This was confirmed in the present case by the Regional Court and the Constitutional Court, which acknowledged that the hospital had made a mistake but that it was one which could not have any negative impact on the merits of the court's decision.

34. Accordingly, the remedy used by the applicant was not an adequate remedy for this aspect of his complaint for the purpose of Article 35 § 1 of the Convention.

35. However, it remains to be decided whether a civil action for damages brought against the hospital, as suggested by the Government, was an available and sufficient remedy in the applicant's situation or whether a remedy requiring the applicant's release was necessary.

36. In this context, the Court must firstly determine the nature of the applicant's complaint. Two periods of detention must be distinguished here – before the decision of the District Court and afterwards when the detention was based on that decision (see *Shulepova v. Russia*, no. 34449/03, § 47, 11 December 2008).

37. Regarding the first period, the Court cannot accept the Government's argument that the breach of the twenty-four-hour time-limit by the hospital could be considered as a simple procedural mistake which did not affect the substance of the applicant's detention. The Court notes that the twenty-four-hour rule is an important safeguard against the arbitrary detention of persons by health institutions. Under the rule such detention must be reported to a court, which can immediately rule that it is not justified and thus order the release of the person. Under the Court's case-law the existence of procedural safeguards is an integral component of the legality of any detention. The absence of them makes detention arbitrary and thus unlawful (see *H.L. v. the United Kingdom*, no. 45508/99, ECHR 2004-IX). Similarly, in the case of *Erkalo v. the Netherlands* (2 September 1998, *Reports of Judgments and Decisions* 1998-VI) the Court ruled that the delayed application of a prosecutor to a court for the applicant's continued detention made the detention unlawful until the court decided on the belated request. Consequently, the applicant's allegations that he was held for four days at the psychiatric hospital before it reported the detention to the District Court, if true, would make his detention unlawful because of the lack of procedural safeguards. Accordingly, a request for release would have been an appropriate remedy in that period. It, however, remains to be decided whether this was still the case in the second period after the District Court decided on his detention.

38. The Court notes that the District Court decided on 8 January 2007 that the conditions of the Public Health Care Act had been met, that is, that the applicant was a person of unsound mind and that his detention was necessary for the protection of his life and health. Thus since a court, in observance of the seven-day time-limit, had already decided on the legality of his detention, there was no longer any question that the applicant was being detained without any procedural safeguards. After 8 January 2007 his claim was therefore that his deprivation of liberty was not in accordance with a procedure prescribed by law because the hospital failed to observe the twenty-four-hour time-limit. Since that day the fact that the hospital

failed to report his detention had no bearing on the substance of the matter, that is, the justification of his detention. Accordingly, the Court holds that the applicant's grievance after 8 January 2007 was thus solely of a procedural nature. The Court agrees with the Government that it would be unreasonably formalistic in these circumstances to require a remedy by which the applicant could have been released from detention.

39. Thus in the present case the Court considers that after 8 January 2007 just satisfaction would be an adequate remedy for the applicant's claim that his detention was not in accordance with a procedure prescribed by law.

40. The Court observes that the right to liberty, under the domestic case-law, is an integral part of the personality rights protected by Article 11 of the Civil Code. At the same time the Convention is directly applicable in the Czech legal order. Consequently, it was open to the applicant in the present case to institute these proceedings in which the compliance of his detention with his right to liberty would have been assessed and the actions of the psychiatric hospital could have been found unlawful, and just satisfaction awarded to the applicant. The applicant did not put forward any arguments that would suggest otherwise.

41. The Court thus concludes that after 8 January 2007 a civil claim for damages under the Civil Code was an available and sufficient remedy for the applicant's claim that the hospital had failed to report his detention within twenty-four hours to a court. Since the applicant failed to use this remedy, this part of the application must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention. In these circumstances, the Court considers it unnecessary to decide on the other objections of the Government to the admissibility of this complaint.

42. Regarding the complaint that the applicant's detention was not justified, the Court notes that it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other ground. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

43. The applicant argued that his detention as a person of unsound mind had not been justified, that the domestic courts had given no relevant reasons for his detention, that there had been no medical opinion certifying that it had been necessary to detain him for his own protection or that of his surroundings and that there had been no piece of evidence stating what his alleged mental disorder was.

44. The Government argued that a medical declaration from a treating doctor must be satisfactory for the purpose of the initial review of a person's

detention conducted by the court within the seven-day time-limit. They maintained that a medical report by the hospital doctor had convincingly proved that the applicant had been suffering from a real mental disorder. They further referred to the discretion the Court leaves to the national authorities in evaluating evidence regarding a person's medical diagnosis and the extent of the threat they may pose. They argued that the Court should defer to domestic decisions because national courts were better placed to directly ascertain the circumstances and hear those concerned in person, which is what the District Court had done in the present case.

2. The Court's assessment

45. The Court reiterates that Article 5 of the Convention is, together with Articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of an individual and as such its importance in a democratic society is paramount (see *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-X, and *Storck v. Germany*, no. 61603/00, § 102, ECHR 2005-V).

46. The detention of a person considered to be of unsound mind must be in conformity with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion, and with the aim of the restriction contained in sub-paragraph (e). In this latter respect the Court reiterates that, according to its established case-law, an individual cannot be considered to be of "unsound mind" and deprived of his liberty unless the following three minimum conditions are satisfied: firstly, he must reliably be shown by objective medical expertise to be of unsound mind; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the validity of continued confinement depends upon the persistence of such a disorder (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33).

47. In order to justify detention, the fact that a person is "of unsound mind" must be established conclusively, except in case of emergency. To this end an objective medical report must demonstrate to the competent national authority the existence of genuine mental disturbance whose nature or extent is such as to justify such deprivation of liberty, which cannot be extended unless the mental disturbance continues (see *Herczegfalvy v. Austria*, 24 September 1992, § 63, Series A no. 244). Except in cases of emergency, assessment by a psychiatrist is indispensable, especially if the person concerned has no history of psychiatric disorder (see *C.B. v. Romania*, no. 21207/03, § 56, 20 April 2010).

48. The Court further reiterates that the detention of an individual is such a serious measure that it is only justified where other, less severe measures, have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained. The deprivation of liberty must be shown to have

been necessary in the circumstances (see *Varbanov v. Bulgaria*, no. 31365/96, § 46, ECHR 2000-X).

49. The Court has held on numerous occasions that it gives certain deference to the national authorities in deciding whether an individual should be detained as a “person of unsound mind”. It will not substitute the decisions of states on how to apply the Convention rights to concrete factual circumstances. It is in the first place for the national authorities to evaluate the evidence adduced before them in a particular case; the Court’s task is to review under the Convention the decisions of those authorities (see *Luberti v. Italy*, 23 February 1984, § 27, Series A no. 75). It is not the Court’s task to reassess various medical opinions, which would fall primarily within the competence of national courts; however, it must ascertain for itself whether the domestic courts, when taking the contested decision, had at their disposal sufficient evidence to justify the detention (see *Herz v. Germany*, no. 44672/98, § 51, 12 June 2003). Deference is greater if it is a case of emergency detention (*ibid.*, § 55).

50. The Court also reiterates the fundamentally subsidiary role of the Convention (see, among other authorities, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 97, ECHR 2003-VIII). It considers that subsidiarity and the effective protection of rights at the national level are two sides of the same coin. In order for subsidiarity to be fully operative, it is necessary for the domestic authorities to effectively protect human rights at the domestic level. It is upon them in the first place to ensure that the rights and freedoms set forth in the Convention are fully secured.

51. Consequently, in order to defer to the judgment of domestic authorities, who are indeed better placed to assess the facts of a given case, the Court must be satisfied that they have assessed and scrutinised the pertinent issues thoroughly. These principles are fully applicable to situations of deprivation of liberty, given the fundamental importance of this right in a democratic society. Domestic courts must subject deprivations of liberty to thorough scrutiny so that the detained persons enjoy effective procedural safeguards against arbitrary detention in practice (see also paragraph 37 above).

52. Turning to the present case, the Court firstly notes that this is not a case of emergency detention. It was never suggested at any time during the domestic proceedings that an emergency arose requiring the applicant’s immediate confinement. On the contrary, it seems that the applicant’s detention was planned on the recommendation of his general practitioner. The applicant was detained for four days before the hospital informed the District Court. Under the domestic law the court had three more days to render its decision whether the applicant’s admission to the hospital had been lawful. The Court thus considers that the domestic authorities had enough time to thoroughly assess whether the applicant’s detention was justified.

53. The Court further notes that the applicant stated, and it has not been disputed by the Government, that he had no history of psychiatric illness or violence. He was involuntarily taken from his home to the psychiatric hospital without ever having been examined by a psychiatrist before. These facts alone should have alerted the domestic courts and prompted them to conduct a thorough review of his detention.

54. Nevertheless, the Court observes that the domestic courts based their decisions solely on one document, namely, the record of an interview by the senior court clerk with the doctor from the hospital and the applicant. It notes that in that interview the hospital psychiatrist's diagnosis was based on his own assessment of the applicant and, to a substantial degree, on a collateral history given to him by the applicant's general practitioner. The Court, however, observes that the general practitioner's report was not adduced before the court and neither was she examined as a witness. Thus, there was not any opportunity for such evidence to be tested whether by way of cross-examination or otherwise.

55. Regarding whether the applicant presented a danger, the domestic courts did not provide any reasons why they considered the applicant to be dangerous to himself, the District Court simply stating that this was the case. The Court, however, observes that in his statement, which was the only piece of evidence the domestic courts had, the hospital doctor did not express any view in this regard. It rather seems that the hospital based its decision to detain the applicant on the alleged threats he made to his brother. The Court thus considers that the finding of the domestic courts was not supported by any medical opinion or other evidence (see *Trajče Stojanovski v. "the former Yugoslav Republic of Macedonia"*, no. 1431/03, § 35, 22 October 2009, where the Court was concerned by the fact that the medical opinions contained no reference to the applicant being aggressive but he was still detained on this ground; and, *a contrario*, *Wassink v. the Netherlands*, 27 September 1990, § 25, Series A no. 185-A, where the domestic court had four different medical opinions and other evidence to assess the danger presented by the applicant; and *Herczegfalvy*, cited above, § 64, where, similarly, there were three medical opinions testifying the danger presented by the applicant).

56. As to the alleged general lack of adequate reasons in the domestic court decision, the Court observes that the District Court merely stated in one sentence that the applicant's health condition was influenced by his mental illness and that his detention appeared to be necessary to protect his life and health. In doing so, it essentially only repeated the wording of section 23(4) of the Public Health Care Act. In any case, the District Court did not consider the applicant's claims that he had not been examined by his general practitioner in months and that her allegations were untrue. The Court considers that these statements and arguments, if accepted, would be highly important for the outcome of the case. The situation thus required

more detailed reasoning from the courts for the conclusion that all the conditions for the applicant's detention had been fulfilled (see, *mutatis mutandis*, *Georgiadis v. Greece*, 29 May 1997, § 43, *Reports* 1997-III, and *Pronina v. Ukraine*, no. 63566/00, § 25, 18 July 2006).

57. The Court has already observed that the domestic courts did not hear any evidence that would refute or confirm the above-mentioned statements of the applicant. The court did not summon to a hearing or even try to contact the applicant's general practitioner or members of his family, unspecified members of which had allegedly told the hospital that the applicant presented a danger. The Government argued that the hospital doctor had testified that the applicant had suffered from auditory hallucinations and considerable paranoia for approximately one year and that this convincingly confirmed that the applicant suffered from a real mental disorder. The Court, however, notes that the hospital doctor merely reiterated to the court clerk what was stated in a report of the applicant's general practitioner, the veracity of which was disputed by the applicant. In this context, the absence of any attempt by the domestic courts to hear the applicant's general practitioner or to examine her report is particularly striking. The Court thus considers that the domestic courts, when taking the contested decision, did not have at their disposal sufficient evidence to justify the detention.

58. The Court also notes that the hospital doctor and the applicant were interviewed by a senior clerk and not the District Court judge who decided the case. This fact thus diminishes the strength of the Government's argument that the Court should defer to the domestic decisions because the national courts had made use of their ability to directly ascertain the circumstances and hear those concerned in person.

59. The Court further cannot accept the argument expressed by the Regional Court that any more thorough review was not feasible owing to the requirement to decide without undue delay. The Court observes that the District Court had three days for its decision and, in any case, it did not even try to gather additional evidence.

60. The Court adds that there is no indication in the case file, and the Government submitted no information in this regard, to suggest that any less severe measures than detention in a psychiatric hospital were considered and found insufficient. The domestic courts expressed no view on this matter, although the applicant has never undergone any psychiatric treatment before and it was not a case of emergency detention.

61. In conclusion the Court considers that the domestic courts failed to subject the detention of the applicant to thorough scrutiny as is required by Article 5 § 1 (e) of the Convention. Accordingly, there has been a breach of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

62. The applicant complained that the police had violated his right to respect for his home. He relied on Article 8 of the Convention, which reads:

“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.”

63. The Court observes that the applicant did not institute any domestic proceedings in this regard and it does not seem that he mentioned this complaint at all before the domestic authorities including in his constitutional appeal. It follows that this part of the application is inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and must be declared inadmissible pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. In respect of non-pecuniary damage, the applicant claimed 20,000 euros (EUR).

66. The Government maintained that given the procedural nature of the alleged violations, a finding of a violation would constitute sufficient just satisfaction for any non-pecuniary damage the applicant might have sustained.

67. However, the Court considers that the applicant undoubtedly suffered feelings of frustration and anxiety, which cannot be compensated solely by the finding of a violation. Having regard to the circumstances of the case and ruling on an equitable basis, as required by Article 41, it awards him EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicant also claimed 6,300 Czech korunas for costs and expenses at the domestic level and an unspecified amount for the proceedings before the Court.

69. The Government maintained that no award should be made under this head because the applicant had not submitted any documents to support his claims.

70. 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. Given the absence of any proof of payment, the Court does not award the applicant any amount under this head (see *Melich and Beck v. the Czech Republic*, no. 35450/04, § 62, 24 July 2008).

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the justification of the applicant's detention under Article 5 § 1 of the Convention admissible and the remainder of the complaints inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *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 12,000 (twelve thousand euros) in respect of non-pecuniary damage, to be converted into Czech korunas at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Dean Spielmann
President