



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

THIRD SECTION

CASE OF FRUNI v. SLOVAKIA

(Application no. 8014/07)

JUDGMENT

STRASBOURG

21 June 2011

FINAL

21/09/2011

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

In the case of Fruni v. Slovakia,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemeļe,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 24 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 8014/07) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovak national, Mr Vladimír Fruni (“the applicant”), on 12 February 2007.

2. The applicant was represented by Ms M. Šuvadová and Mr M. Kuzma, lawyers practising in Košice, and Mr P. Púchovský, a lawyer practising in Banská Bystrica.

The Government of the Slovak Republic (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged, in particular, that the Special Court that had remanded, tried and convicted him had lacked the guarantees of an independent and impartial tribunal established by law and that his pre-trial detention had been too long.

4. On 27 April 2010 the Court decided to give notice of the application 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 1952 and lives in Košice.

A. General framework and legislative background

1. *The applicant's business activities in Slovakia*

6. In 1995 the applicant became one of the executives of a limited-liability company, A.

7. In 1997 the applicant joined a joint-stock company, B., and became the Chairman of its Board of Directors. Later that year, company B. acquired a share in company A.

8. Companies A. and B. were private financial institutions involved mainly in soliciting and accepting money from the public on a large scale for the promise of unusually high returns. Companies A. and B. were not banks and operated on the basis of various private-law contracts.

9. On 31 January 2002 the applicant left Slovakia for the Republic of Croatia after terminating his business activities in companies A. and B.

2. *The applicant's trial and detention*

10. The applicant was subsequently charged with fraud and other offences in Slovakia in connection with his business activities in companies A. and B., arrested in Croatia (1 March 2002) and extradited to Slovakia (26 June 2002), where he was detained pending trial and subsequently tried and convicted. The details are described below.

3. *Legislative developments in Slovakia*

11. In 2003 legislation (Law no. 458/2003 Coll.) was enacted in Slovakia for the establishment of a Special Court (*Špeciálny súd*) with criminal jurisdiction *ratione personae* over certain public officials and *ratione materiae* over corruption, organised crime and other serious offences.

Appeals against judgments and decisions of the Special Court would be determined by (the Special Division of) the Supreme Court (*Najvyšší súd*).

12. On 1 January 2006 the new Criminal Code (Law no. 300/2005 Coll. - "the new CC") and the Code of Criminal Procedure (Law no. 301/2005 Coll. - "the new CCP") entered into force to replace the old Criminal Code (Law no. 140/1961 Coll., as amended - "the old CC") and the old Code of Criminal Procedure (Law no. 141/1961 Coll., as amended - "the old CCP").

The new CC provides for a new penalty scale for the offences of which the applicant was convicted.

The new CCP provides for new rules in respect of the maximum permitted length of pre-trial detention.

13. On 20 May 2009 the Constitutional Court (*Ústavný súd*) found that the legislation establishing the Special Court was contrary to the Constitution.

14. On 17 July 2009 the judgment (*nález*) of the Constitutional Court was published in the Collection of Laws, upon which the impugned legislation ceased to have legal effect.

15. At the same time, on 17 July 2009, a new piece of legislation (Law no. 291/2009 Coll.) entered into force, establishing the Specialised Criminal Court (*Špecializovaný trestný súd*). It has criminal jurisdiction to try serious offences such as, for example, wilful, deliberate and premeditated murder, manipulation in public procurement, counterfeiting, corruption, organised crime and terrorism. Except where provided otherwise, the Specialised Criminal Court replaced the Special Court.

The details are described below.

B. Trial

1. Pre-trial phase

16. On 4 February 2002 a criminal investigation was commenced into actions related to the business of companies A. and B.

17. On 28 February 2002 the applicant and two others were charged with conspiracy (Article 9 § 2 of the old CC), fraud (Article 250 §§ 1 and 5 of the old CC), violation of binding business practices (Article 127 § 1 of the old CC) and unauthorised business activities (Article 118 §§ 1 and 3 of the old CC).

18. The charges were based on the suspicion that, through their involvement in companies A. and B., they were criminally liable for misleading advertising and providing banking services without a banking licence and for accepting and failing to repay the equivalent of some 395,000,000 euros' (EUR) worth of investment from some 170,000 clients with the knowledge that it was economically impossible to repay them.

19. On 20 December 2004 the Supreme Court ruled that the victims were not allowed to take part in the proceedings as third parties claiming damages. As to the exercise of the remainder of their procedural rights, common legal representatives were appointed.

20. On 8 June 2005 the Special Prosecutions Department (*Úrad špeciálnej prokuratúry*) of the Office of the Prosecutor General (*Generálna prokuratúra* - "the Special Prosecutor") indicted the applicant to stand trial on the above charges in the Banská Bystrica Regional Court (*Krajský súd*), which at that time had the powers of the Special Court (*s právomocou Špeciálneho súdu*).

21. Without a formal decision, the case file was later transmitted to the Special Court in Pezinok.

2. Access to the case file

22. At the pre-trial stage, on 13 August 2002, the applicant's lawyers were denied access to certain information in the investigation file on the ground that giving them access could lead to obstruction or endangerment of the investigation. That position was upheld by the Košice Regional Office of Public Prosecution (*Krajská prokuratúra* – “the Regional Prosecutor”) in a letter of 9 January 2003.

23. On completion of the pre-trial stage, on weekdays between 28 February and 12 April 2005, from 8.30 a.m. to 11.30 a.m. and from 1 p.m. to 3 p.m., the applicant was allowed to consult the case file. It then comprised some 58,500 pages. The total time allotted for the consultation amounted to 130 hours.

3. Evidence

24. On 6 February 2002 the Bratislava Police Institute of Criminalistics (*Kriminalisticko-expertízny ústav*) was appointed to secure data in electronic form from the information systems of companies A. and B. This was done by means of inspections of the premises of companies A. and B.

25. Between 11 and 16 February 2002 statements were taken from six witnesses.

26. On 23 April 2002 C. was asked to analyse financial data concerning companies A. and B. in the capacity of an expert on accounting and taxation.

27. Pursuant to a Decree on Appointment (*menovací dekrét*) issued by the President of the Regional Court on 17 September 2002, C. was appointed on the same date as a sworn expert and made a solemn declaration in that capacity.

28. Prior to his indictment (see paragraph 20 above), on 1 June 2005, the Special Prosecutor upheld a decision of the investigator to dismiss a request by the applicant for a number of items of further evidence to be taken.

29. During his trial, on 27 February and 6 June 2006, the applicant asked for some ninety items of additional oral and documentary evidence to be taken.

30. On 22 November 2006 the Special Court ruled that the evidence-taking be concluded.

31. In the judgment of 10 January 2007 (see paragraph 36 below), the Special Court held that the applicant's requests for further evidence to be taken had to be refused, partly because they concerned matters which had already been unequivocally established as fact and partly because they concerned matters that were not relevant. The Special Court concluded that it had taken all evidence necessary for a lawful decision.

4. Jurisdiction and impartiality

32. On 8 February 2006 the Supreme Court upheld a first-instance decision of the Special Court to dismiss the applicant's challenge to the jurisdiction of the Special Court. The applicant had mainly contended that he had been indicted in the Regional Court and that no formal decision had been taken to transfer the case to the Special Court. The Supreme Court found that all statutory requirements for the Special Court to have jurisdiction over the applicant's case had been met and that the case had been transferred to the Special Court by operation of law, which necessitated no formal decision.

33. The applicant brought a challenge of bias against Judge D., who was the President of the Special Court Chamber trying him. The applicant alleged that Judge D. had previously taken unlawful decisions in respect of his detention. The challenge was dismissed as manifestly ill-founded by the Special Court on 11 September 2006 and, following an interlocutory appeal by the applicant, by the Supreme Court on 19 October 2006.

34. The applicant also brought challenges of bias against the President and the members of the Supreme Court Chamber trying him. The applicant argued that they had previously been involved in deciding on his detention and that, at a hearing, the President had remarked that he "[was] fed up with procedural motions being brought by [one of the applicant's lawyers]". The challenges were dismissed as unfounded by the Supreme Court on 22 March and 30 May 2007.

35. A subsequent complaint by the applicant under Article 127 of the Constitution was declared inadmissible as manifestly ill-founded on 6 March 2008. It was noted that the mere fact that a judge had decided on detention did not disqualify him or her from determining the merits in the absence of special circumstances, and that the latter had not been established in the applicant's case. The defence strategy was found to be marked by attempts to obstruct the proceedings. Against that background, the remark of the President of the Chamber of the Supreme Court was within his prerogative, namely that of organising the proceedings and managing the conduct of the parties.

5. Conviction, appeal and related constitutional complaint

36. On 10 January 2007 the Special Court found the applicant guilty of conspiracy and fraud under the provisions of the old CC and sentenced him to eleven years and six months' imprisonment.

37. The applicant appealed, arguing (i) that the Special Court was unconstitutional and did not provide guarantees of a fair trial before an impartial and independent tribunal established by law; (ii) that in any event it had been unlawful to transfer his case from the Regional Court to the Special Court without a judicial decision; (iii) that he had not had

adequate time to study the case file and thus to prepare his defence; (iv) that the witness evidence and other evidence obtained through inspections of business premises (see paragraphs 24 and 25 above) before he was charged (see paragraph 17 above) was procedurally inadmissible; (v) that it was unlawful for the court to take into account pre-trial statements of witnesses who had not been heard by the court in person; (vi) that further evidence should have been taken as he had proposed; (vii) that the applicable procedures had not been followed in the appointment of C. as an expert witness and in the preparation of his report; (viii) that he had not engaged in any unauthorised business; and (ix) that in any event he should have been tried under the new CC, as its provisions were more lenient.

38. On 30 May 2007 the Supreme Court dismissed the appeal. It held (i) that the jurisdiction of the Special Court had been duly established by law; (ii) that C. had been properly appointed after other sworn experts had excused themselves; (iii) that other persons had merely assisted C. in the preparation of his report but had not themselves provided any expert evidence; (iv) that the witness statements and other evidence taken prior to charging the applicant had been obtained lawfully in the framework of criminal proceedings against one or more persons unknown; (v) that no additional evidence was necessary in order to establish the relevant facts; (vi) that the defence strategy had been obstructive and had contributed to the length of the proceedings and detention; (vii) that taken as a whole the new CC was not more lenient for the applicant than the old CC; and (viii) that – in the circumstances – the time available to the defence to inspect the case file had been adequate. As to the remainder of the applicant’s arguments, the Supreme Court fully endorsed the reasons provided by the Special Court.

39. On 29 April 2008 the Constitutional Court declared inadmissible the applicant’s complaint under Article 127 of the Constitution, in which he had raised in principle similar arguments to those raised in his appeal. Among a number of other legal provisions, he relied on Article 50 § 6 of the Constitution (application of subsequent more lenient criminal legislation).

40. The Constitutional Court found that, in part, the applicant’s arguments were to be examined in the framework of proceedings on an appeal on points of law (*dovolanie*) and that, as to the remainder, there was no constitutionally relevant arbitrariness in the impugned decisions of the Special Court and the Supreme Court.

C. Arrest and extradition

41. On 28 February 2002 the Regional Prosecutor requested, and the Košice I. District Court (*Okresný súd*) issued, a warrant for the applicant’s arrest on the charges mentioned above.

42. On 1 and 2 March 2002 respectively the applicant was arrested in Croatia and remanded (by the Split County Court) in custody pending extradition to Slovakia.

43. On 26 June 2002 the applicant was handed over to the Slovakian authorities to be prosecuted in Slovakia. He was subsequently detained in Slovakia pending trial there. The details are described below.

D. Detention

1. Remand in custody, requests for release, extensions of detention and related constitutional complaints

44. On 26 June 2002 a single judge of the District Court remanded the applicant in custody pending trial to prevent him from absconding (Article 67 § 1 (a) of the old CCP) or interfering with the course of justice (Article 67 § 1 (b) of the old CCP).

The lawfulness of the applicant's detention was subsequently examined numerous times in the context of his requests for release (see paragraphs 45 to 47 below) and requests by the prosecution service for extension of his detention (see paragraph 48 below).

45. On 30 September 2002 the applicant made a submission in which he argued, *inter alia*, that his continued detention after 1 September 2002 had been unlawful, since on that day the six-month period for pre-trial detention (from the date of his arrest in Croatia on 1 March 2002) had expired and no extension of his detention had been authorised. He accordingly sought to be released.

The Regional Prosecutor subsequently sought a judicial ruling that the period of the applicant's detention in Croatia be deducted from his detention time in Slovakia.

The District Court granted the request of the prosecution service and dismissed the request of the applicant on 21 and 28 October 2002, respectively.

Following the applicant's interlocutory appeals, the matter was finally resolved by the Regional Court on 18 November 2002 when it upheld the District Court's ruling to the effect that the applicant's detention time in Croatia did not count as pre-trial detention for the purposes of the time-limits on its maximum duration in Slovakia.

46. On 5 December 2002 the District Court dismissed the applicant's further request for release, finding that, although it was no longer necessary to keep him detained to prevent him from interfering with the course of justice, there was a continuing need for his detention to prevent him from absconding.

47. The applicant's further requests for release were dismissed at first instance on 16 December 2004 (by the Regional Court) and 21 July 2005

(by the Special Court) and, following interlocutory appeals by the applicant, on 13 January 2005 and 25 July 2006 (by the Supreme Court), respectively.

The latter decision was made after a previous decision of the Supreme Court had been quashed by the Constitutional Court on account of a technical error.

48. Extensions of the applicant's detention were authorised by decisions of 21 June 2004 (until 26 December 2004), 20 December 2004 (until 26 June 2005), 21 June 2005 (until 26 January 2006), 26 January 2006 (until 31 March 2006), 23 March 2006 (until 26 June 2006) (see below for details), on 26 June 2006 (until 26 October 2006) (see below for details) and 22 February 2007 (until 26 June 2007).

49. The courts observed that the applicant stood accused of wide-ranging criminal activity and that an extensive amount of evidence had to be obtained and assessed, including statements from a very large number of witnesses. Some of the evidence was abroad and had to be obtained by means of international judicial assistance. The length of the applicant's detention was therefore justified.

50. As to the existence of a risk that the applicant would abscond, the courts held that it was of crucial importance that when leaving Slovakia the applicant had known that criminal proceedings concerning his activities might commence shortly. The applicant had not been staying at his habitual residence in Slovakia and his whereabouts in Croatia had been unknown even to his family.

51. The courts observed that if convicted the applicant faced a heavy penalty, that he had four passports, that his financial situation would allow him to settle in any country, and that there were indications that he would do so in a country out of the reach of Interpol.

52. These reasons were endorsed by the Constitutional Court in its decision of 23 August 2005 to declared inadmissible as being manifestly ill-founded the applicant's complaint under Article 127 of the Constitution, in which, represented by a lawyer, the applicant had sought to challenge the decision of the Supreme Court of 20 December 2004 (see paragraph 48 above), arguing that his continued detention had been unjustified and as such contrary to Article 17 §§ 2 and 5 of the Constitution and Article 5 § 1 (c) of the Convention.

2. Decision of 23 March 2006

53. In the decision of 23 March 2006 (see paragraph 48 above) concerning the extension of the applicant's pre-trial detention, the Supreme Court acceded to a request by the President of the Special Court Chamber trying the applicant and extended the applicant's detention until 26 June 2006.

54. At the same time, the Supreme Court expressed the opinion that the limitation on the maximum duration of pre-trial detention to forty-eight

months under the new CCP applied to the applicant's case by operation of the constitutional principle of equality before the law, although, pursuant to the transitional provisions of the new CCP, the applicant's trial and detention continued to be governed by the old CCP, which allowed detention pending trial to last at most five years. Therefore, as the applicant's pre-trial detention in Slovakia had commenced on 26 June 2002, a further extension after 26 June 2006 would not be permissible.

3. *Decision of 26 June 2006 and related constitutional complaint*

55. On 7 June 2006 Judge D. of the Special Court requested that the Supreme Court authorise an extension of the applicant's detention until 26 October 2006.

56. In his observations in reply, the applicant, assisted by his lawyer, relied on the Supreme Court decision of 23 March 2006, considered the matter to be *res judicata* and asked for the request to be dismissed.

Moreover, the applicant submitted that he had not been heard in person in any of the previous proceedings on extension of his pre-trial detention and argued that this was contrary to his right to adversarial proceedings and equality of arms.

57. The request fell to be determined by a different bench of the Supreme Court which, on 20 June 2006, summoned the applicant and his lawyer to a public session (*vereňé zasadnutie*) on the extension of the applicant's pre-trial detention, to be held on 26 June 2006.

58. On 26 June 2006, prior to the scheduled public session, the Supreme Court established that the summons had not been served on the applicant's lawyer within the procedural time-limit of at least five days before the session. The Supreme Court held that in those circumstances the public session could not take place and the matter had to be decided in private session (*nevereňné zasadnutie*), that is to say behind closed doors.

59. Nevertheless, before opening the private session, the Supreme Court allowed, and the applicant used, the opportunity to address the court orally. The applicant was assisted by three defence lawyers and one substitute defence lawyer. He made various submissions, including that he had never had any intention of absconding.

60. Later on 26 June 2006, in private session, the Supreme Court extended the applicant's pre-trial detention until 26 October 2006. The Supreme Court explained in detail that the offences of which the applicant stood accused fell within the category of "extremely serious offences" (*obzvlášť závažný trestný čin*) within the meaning of the old CC and the old CCP, that pre-trial detention on charges of such offences could last up to five years under the old CCP and that the old CCP applied.

In that context, the Supreme Court referred to a decision of the Constitutional Court of 17 May 2006 in an unrelated but similar case, file no. III. ÚS 164/06 (see paragraph 95 in "Relevant domestic law and

practice” below and *Martikán v. Slovakia* (dec.), no. 50184/06, 17 March 2009), in which the Constitutional Court had upheld a previous decision of the Supreme Court of 5 April 2006 interpreting and applying the relevant law in line with the decision taken in the applicant’s case.

61. The applicant then requested that the Minister of Justice challenge the decision by way of an appeal on points of law and lodged a complaint with the Constitutional Court under Article 127 of the Constitution. He argued that his detention beyond the forty-eight-month time-limit under the new CCP was unlawful and complained that there had been no public hearing.

62. In a letter of 17 October 2006 the Ministry of Justice dismissed the applicant’s request, having found no error of law or procedure. As to the maximum duration of detention pending trial in situations such as that of the applicant, the Ministry also referred to the above-mentioned decision of the Constitutional Court in the case file no. II. ÚS 164/06.

63. On 4 October 2006, sitting in private, the Constitutional Court declared the applicant’s constitutional complaint inadmissible. It observed that, although he had complained to the Supreme Court that there had been no oral hearing on the extension of his detention, the applicant had failed to make a formal request for a public hearing. The applicant had had ample opportunity to make written submissions and he had actually used it, both directly and through the intermediary of his lawyers. In addition, the applicant had addressed the Supreme Court orally before the private session on 26 June 2006. The principle of always applying the more lenient criminal legislation was only valid in substantive criminal law and not in respect of detention, which was a procedural measure. There was no doubt that under the relevant statutory provisions the old CCP continued to apply to the applicant’s detention, including the limits on its maximum duration.

The decision was served on the applicant on 4 October 2006.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

64. Article 17 guarantees the right to liberty. Pursuant to its paragraphs 1 and 2, liberty of a person is guaranteed and no one is to be prosecuted or deprived of liberty except for reasons and in a manner provided for by an act of Parliament.

65. Under Article 17 § 5, pre-trial detention is permissible exclusively on grounds and for a period defined by an act of Parliament and on the basis of a court’s ruling.

This provision is to be read in conjunction with the provisions of the CCP providing that pre-trial detention may only last for a period that is inevitably necessary (see paragraph 94 below).

66. The provisions of Article 17 §§ 2 and 5 are understood as comprising the rights under Article 5 § 3 of the Convention not to be deprived of liberty for a period longer than is necessary and to trial within a reasonable time or to release pending trial (see, for example, judgments of the Constitutional Court in cases nos. III. ÚS 7/00, III. ÚS 255/03 and III. ÚS 199/05).

67. Article 127 §§ 1, 2 and 3 of the Constitution provides:

“1. The Constitutional Court shall decide complaints by natural or legal persons alleging a violation of their fundamental rights or freedoms ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.

2. If the Constitutional Court finds a complaint justified, it shall deliver a decision stating that a person’s rights or freedoms as set out in paragraph 1 have been violated by a final decision, specific measure or other act and shall quash such decision, measure or act. If the violation that has been found is the result of a failure to act, the Constitutional Court may order [the authority] which has violated the rights or freedoms to take the necessary action. At the same time it may remit the case to the authority concerned for further proceedings, order such authority to refrain from violating the fundamental rights and freedoms ... or, where appropriate, order those who have violated the rights or freedoms set out in paragraph 1 to restore the situation to that existing prior to the violation.

3. In its decision on a complaint the Constitutional Court may grant appropriate financial compensation to the person whose rights under paragraph 1 have been violated.”

B. Special Court

1. Establishment

68. According to the explanatory report (*dôvodová správa*) on the Special Court Act (Law. No 458/2003 Coll.), the aim of the Act was to create structures for the detection, investigation and prosecution of corruption and organised crime. The Special Court and other authorities established under the Act had national jurisdiction with a view to ensuring better specialisation and protection as well as to severing local ties.

69. Pursuant to Section VII.9 of the Act, the Special Court had criminal jurisdiction over members of Parliament, members of the Government, heads of central administrative agencies, judges, prosecutors, the Ombudsman, the Director of the National Security Agency (*Národný bezpečnostný úrad* – “the NSA”), the Director of the National Intelligence Service and members of the board of the National Bank of Slovakia.

70. Irrespective of who was the perpetrator, the Special Court also had jurisdiction over certain forms of corruption, organised crime, terrorism, “extremely serious offences” (see paragraph 90 below), crimes of an economic nature that resulted in damage equal to or greater than ten thousand times the statutory minimum wage, and other offences.

71. A judge could only be assigned to the Special Court after passing security vetting by the NSA for access to top secret information (Section VI.1 of the Act) and would be recalled if he or she ceased to meet the security vetting criteria (Section VI.4 of the Act). A decision to refuse security vetting clearance (*bezpečnostná previerka*) could be appealed against in a special parliamentary committee and ultimately, by way of an administrative-law action, in the Supreme Court.

72. Special Court judges were entitled to a salary as Supreme Court judges (Section VI.7 of the Act) and to a special monthly allowance equal to double the average nominal wage in the Slovak economy in the previous calendar year (Section VI.12 of the Act). In 2005 the amount of the allowance was increased to six times the average nominal wage in the Slovak economy in the previous calendar year (Law no. 122/2005 Coll.).

2. Abolition and the majority reasoning

73. On 11 February 2008 a group of forty-six members of Parliament challenged in the Constitutional Court the constitutionality of the statutory provisions establishing the Special Court.

74. On 20 May 2009 the Constitutional Court, sitting in plenary, gave a judgment, by majority of seven against six, declaring the statutory provisions establishing the Special Court unconstitutional.

75. At the same time, the Constitutional Court ruled that its judgment gave no ground for reopening proceedings which had ended by final but not yet executed judgments of the Special Court, which would otherwise be the case under section 41b of the Constitutional Court Act.

76. On the publication of the judgment in the Collection of Laws on 17 July 2009, the unconstitutional provisions ceased to have legal effect.

77. The majority of the Constitutional Court relied on a comparative law analysis concerning specialised jurisdictions in various Council of Europe member States. It observed that there was no specific legal basis in Slovakia allowing for an extraordinary jurisdiction whereas the Special Court had mixed features of a specialised court and an extraordinary court. However, the existence of the latter could only be justified by extraordinary circumstances and for the attainment of an extremely serious goal that could not be attained by other means.

78. Restricting the jurisdiction of the Special Court *ratione personae* was an anachronism. This and the requirement for Special Court judges to have valid security vetting clearance from the NSA, which was an agency within the executive, was found to be incompatible with the principles of

legal certainty and division of power. It was also noted that the role of the NSA in respect of appointment of judges to the Special Court unacceptably interfered with the role to the professional body of the judiciary in Slovakia, the Judicial Council (*Súdna Rada Slovenskej republiky*).

79. In reaching the conclusion mentioned in the precedent paragraph, the majority took into account, *inter alia*, that existing remedies against decisions of the NSA were insufficient and limited in effect.

80. Moreover, the remuneration arrangements for the Special Court judges were discriminatory and disproportionate and as such unacceptable.

81. At the same time, it was pointed out in the reasoning of the judgment that the judgment would have no impact on decisions of the Special Court which had become final, because the reasons for the judgment concerned the institutional status of the Special Court within the judiciary and had no bearing on the legal basis of its decisions.

3. *Dissenting opinion*

82. The dissenting judges were of the opinion that the majority had applied an incorrect test for the determination of the compatibility of the Special Court with the judicial system of Slovakia as a whole. The appropriate test was whether such a court offered sufficient guarantees of a fair trial before an independent tribunal.

83. The question of the social need for the Special Court, which the majority had examined, was predominantly political in nature, fell within the discretion of Parliament and the courts should be most cautious in dealing with such questions.

84. The dissenting judges found no support for the conclusion that the Special Court had unacceptable features as an extraordinary court.

85. The requirement for a Supreme Court judge to obtain security vetting clearance from the NSA was legitimate and constitutional. Any doubts as to the powers of the NSA to withdraw and refuse renewal of security vetting clearance could have been eliminated and did not constitute grounds for abolishing the Special Court.

86. In addition, the conclusion of the majority that the remedies existing against the security vetting decisions of the NSA were insufficient was not supported by convincing reasoning and it was contrary to the Constitutional Court's previous case-law.

87. Furthermore, the majority opinion as to the inadequacy and discriminatory nature of the remuneration of the Special Court judges lacked relevant analysis, the remuneration being legitimate and justified.

88. Lastly, the ruling concerning inapplicability of section 41b of the Constitutional Court Act (no ground for reopening) was an intolerable act of judicial activism, by which the Constitutional Court had assumed the role of an active lawmaker in excess of its jurisdiction in the given case and, consequently, in breach of the rule of law.

4. Follow-up

89. With effect from 17 July 2009 the Specialised Criminal Court was established, which, unless provided for otherwise, provides for procedural continuity after the abolition of the Special Court.

C. The Criminal Code

90. The old CC distinguished between “offences” (*trestný čin*) and “extremely serious offences” (*obzvlášť závažný trestný čin*). The latter comprised “offences” for which the minimum penalty was equal to or higher than eight years of imprisonment (Article 41 § 2) and “offences” listed in Article 62 of the Code, such as, for example, treason, terrorism, sabotage, spying, currency counterfeiting, genocide, setting up a criminal enterprise, murder and aggravated forms of robbery, hostage-taking, extortion, rape, fraud and money-laundering.

91. The offence of fraud was defined in Article 250. Pursuant to paragraph 5, in conjunction with Article 89 § 13, if a fraud resulted in damage equal to or greater than five hundred times the statutory minimum monthly salary, it was punishable by imprisonment in the range of five to twelve years.

92. The new CC distinguishes between “transgressions” (*prečin*), “crimes” (*zločin*) and “extremely serious crimes” (*obzvlášť závažný zločin*).

A “crime” that carries as the minimum penalty a term of imprisonment equal to or greater than ten years is considered “extremely serious” (Article 11 § 3).

93. The crime of fraud is defined in Article 221. Pursuant to paragraph 4, in conjunction with Article 125 § 1, if a fraud results in damage equal to or greater than EUR 133,000, it is punishable by imprisonment in the range of ten to fifteen years.

D. The Code of Criminal Procedure

94. Pre-trial detention may only last for a period that is inevitably necessary (Article 71 of the old CCP and Article 76 § 1 of the new CCP).

95. Detailed rules of the old CCP and of the new CCP as well as the existing judicial practice in respect of the maximum duration of detention pending trial are stated in the Court’s decision in the case of *Martikán v. Slovakia* (cited above).

96. Part eight of the new CCP governs extraordinary remedies. These include an appeal on points of law, which is regulated by section two.

97. An appeal on points of law can be lodged against judicial decisions resolving a matter with final effect (Article 368 § 1). An appeal on points of law has no suppressive effect (Article 368 § 2).

98. A convicted person is entitled to lodge an appeal on points of law against rulings that directly concern him or her (Article 369 § 2 (b)) within three years of the date the decision is served (Article 370 § 2) on grounds recognised by Article 371 § 1. These include (i) lack of territorial, material or personal competence of the court, (ii) errors in the composition of the bench, (iii) fundamental breach of the rights of defence, (iv) the matter has been decided upon by a judge who should have been excluded from the proceedings, (v) the decision is based on evidence which has not been lawfully examined, and (vi) the penalty imposed is outside the lawful penalty scale.

99. The merits of an appeal on points of law are determined by the Supreme Court (Article 377) in public session (Articles 384 *et seq.*) and legal representation is mandatory (Article 373).

100. Should the Supreme Court find an appeal on points of law well founded, it makes a finding of a breach of the law (Article 386 § 1) and quashes the decisions concerned (Article 386 § 2).

101. Should a new determination of the matter be required, the Supreme Court makes an order to that effect (Article 388 § 1). Legal opinions and instructions expressed by the Supreme Court are binding upon the bodies making a new determination of the matter (Article 391 § 1).

E. State liability for damage

102. The relevant statutory provisions and the existing judicial practice in respect of State liability for damage are summarised in the Court's judgments in the cases of *Štetiar and Šutek v. Slovakia* (nos. 20271/06 and 17517/07, §§ 52-61, 23 November 2010); *Michalko v. Slovakia* (no. 35377/05, §§ 48-64 with further references, 21 December 2010); *Osváthová v. Slovakia* (no. 15684/05, §§ 34-46, 21 December 2010); *Aydemir v. Slovakia* (no. 44153/06, §§ 27-43, 8 February 2011); and *Michalák v. Slovakia* (no. 30157/03, §§ 92 and 93 with further references, 8 February 2011).

THE LAW

I. CLAIM FOR DAMAGES UNDER THE STATE LIABILITY ACT

103. The Government objected that the applicant had failed to exhaust domestic remedies by seeking compensation under the legislation concerning State liability for damage caused by wrongful official action.

104. The applicant argued that he had lost all faith in the system of justice in the respondent State and that therefore there was no point in resorting to any further domestic remedies.

105. The Court observes that the Government's objection is rather general and indistinct. It reiterates that certain aspects of the remedial mechanism referred to by the Government have recently been addressed by the Court in *Štetiar and Šutek* (cited above, §§ 68-76); *Michalko* (cited above, §§ 86-96); *Osváthová* (cited above, §§ 55-63); *Michalák* (cited above, §§ 101-08); and *Aydemir* (cited above, §§ 46-53).

In those cases, in matters concerning pre-trial detention, the Court found that this mechanism was not effective and did not have to be resorted to for the purposes of Article 35 § 1 of the Convention. The Court finds no reasons to reach a different conclusion in the present case. The relevant part of the Government's objection therefore has to be dismissed.

106. In so far as the applicant complains of the lack of an "independent" tribunal "established by law" within the meaning of Article 6 § 1 of the Convention, the Court observes that the crux of the applicant's complaint appears to lie in the institutional status, constitutional role of and legal framework for the operation of the Special Court.

The Court has found no indication how and against whom such matters could be raised in the ordinary courts exercising jurisdiction under the State Liability Act. The relevant part of the Government's objection therefore has to be dismissed.

107. To the extent that the Government may be understood as proposing the compensatory mechanism in question in order to remedy other aspects of the applicant's case than those in respect of which it has already been found ineffective, the Court considers that it is not called upon to examine separately the Government's objection on the grounds of judicial economy and of the fact that the application is in any event inadmissible, for the reasons specified below.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

108. The applicant complained that he had not had a "fair" hearing by an "independent" and "impartial" "tribunal established by law" in that:

(i) his trial and conviction had been politically motivated, unjustified and arbitrary;

(ii) contrary to the applicable law, his case had been administratively transferred from the Regional Court to the Special Court;

(iii) there had been no transparent rules for the assignment of his case to the appropriate Chamber of the Special Court;

(iv) the Special Court and the Special Division of the Supreme Court could not be considered independent tribunals established by law because, among other reasons, their existence was contrary to the Constitution and

they were under undue influence from the executive, as had eventually been acknowledged by the Constitutional Court in its judgment of 20 May 2009;

(v) the courts had taken into account inadmissible evidence such as witness statements and other evidence obtained prior to the commencement of the proceedings against him;

(vi) contrary to the applicable law, the courts had taken witness statements into account without actually hearing those witnesses, while the applicant had had no opportunity to comment on such statements (see item ix, below) or to question those witnesses;

(vii) the courts had refused to take a substantial amount of evidence cited by the applicant;

(viii) the evidence given by expert C. was flawed, in that the expert had been selected in an irregular and untrustworthy manner, C. had failed to follow the prescribed procedure, and, contrary to the law, there had been no second expert opinion;

(ix) the time allowed for the preparation of the applicant's defence and, in particular, for the review of the contents of the case file, had been inadequate, as a result of which he had no knowledge of, and could not comment on, some of the evidence the courts had taken into account.

109. The applicant relied on Article 6 §§ 1, 2 and 3 (b) and (d) of the Convention, the relevant part which reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him”

A. Admissibility

1. Complaints relating to whether there was an “independent and impartial tribunal established by law”

110. The applicant argued that the existence of the Special Court and the Special Division of the Supreme Court that had decided on his case had been contrary to the Constitution and that they had been under undue influence from the executive, as had eventually been acknowledged by the Constitutional Court in its judgment of 20 May 2009.

111. The applicant also argued that his case had been unlawfully transferred from the Regional Court to the Special Court and that there had been no transparent rules for the assignment of his case to the appropriate Chamber of the Special Court.

112. The Government submitted that the Special Court had been established by an act of Parliament. Pursuant to the doctrine of “presumption of constitutionality”, acts of Parliament were to be considered constitutional and valid until the contrary was established by the Constitutional Court.

113. Therefore, at the time of its operation, the Special Court had been a valid and lawful component of the judicial system in Slovakia. As adjudicated by the Constitutional Court in its judgment of 20 May 2009, that judgment had no impact on judgments and other rulings made by the Special Court.

114. There had not been any actual interference by the executive with the independence of the Special Court. In so far as potential interference could be seen in the power of the NSA to withdraw or deny renewal of security vetting clearance in respect of a Special Court judge, who would then no longer be eligible to sit as a judge at that court, the Government submitted that there had been a system of remedies which included, ultimately, a judicial remedy.

115. In reply, the applicant disagreed and reiterated his complaints. In addition, relying on the opinion of the dissenting judges of the Constitutional Court on the judgment of 20 May 2009 (see paragraph 88 above), the applicant argued that the Constitutional Court had had no power to determine that its judgment of 20 May 2009 constituted no ground for reopening the proceedings.

116. The Court observes first of all that the complaint concerning the administrative transfer of the applicant’s case from the Regional Court to the Special Court does not appear to have been raised before the Supreme Court by way of an appeal on points of law and, as the case may be, upon futile use of that remedy, before the Constitutional Court by way of a complaint under Article 127 of the Constitution. In that respect, the Court notes specifically that on 29 April 2008 the Constitutional Court declared

inadmissible the relevant part of the applicant's constitutional complaint precisely on the ground that he had failed to exhaust ordinary remedies by raising his argument by way of an appeal on points of law (see paragraphs 39 and 40 above).

Similarly, the complaint concerning existence and application of rules for the assignment of the applicant's case to the appropriate Chamber of the Special Court does not appear to have been raised at the domestic level at all.

In that respect, therefore, the applicant cannot be considered as having exhausted domestic remedies as required by Article 35 § 1 of the Convention and the relevant part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention.

117. In so far as the applicant invoked before the Court the right to a hearing by an "impartial" tribunal, the Court observes that, at the domestic level, the applicant unsuccessfully challenged the tribunals that were involved in trying him on various grounds. However, in his submissions to this Court, this part of the applicant's complaint has remained mainly unsubstantiated.

Against this background, except for matters that fall to be examined under the headings of "independent" tribunal "established by law", the Court has found no separate issue of "impartiality".

It follows that the complaint made in reliance on the right to a hearing by an impartial tribunal is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

118. As to the complaints that the Special Court and the Special Division of the Supreme Court could not be considered "independent" tribunals "established by law", the Court notes that the relevant part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Remaining complaints

119. The applicant complained that his trial and conviction had been politically motivated; that the courts had taken inadmissible evidence into account; that the courts had unlawfully taken witness statements into account without actually hearing those witnesses, while he had had no opportunity to comment on such statements and to question those witnesses; that the courts had refused to take a substantial amount of evidence cited by the applicant; that the evidence given by expert C. was flawed, in that the expert had been selected in an irregular and untrustworthy manner and had failed to follow the prescribed procedure; and that the time allowed for the preparation of the applicant's defence had been inadequate.

120. The Government relied on the findings of the Constitutional Court in its decision of 29 April 2008, and objected that the applicant had failed

to exhaust domestic remedies, which he could have done by asserting his rights by way of an appeal on points of law. They also pointed out that the applicant had had as many as thirty working days to study the case file prior to his indictment, and considered that this period was adequate and that his trial was compatible with all the guarantees of “fairness” under the provisions relied on.

121. In reply, the applicant disagreed and reiterated his complaints. In addition, he submitted that to read his case file in that restrictive time frame he would have had to read 450 pages of his case file an hour, which was unfeasible. He had thus not been able to study it all and had accordingly been unable to conduct his defence. The applicant concluded by challenging the entire evidence-taking and assessment by the courts in his case as irregular, chaotic and arbitrary.

122. The Court observes that under Article 371 § 1 of the new CCP the applicant could challenge a judgment against him, *inter alia* on the ground of a fundamental breach of his rights of defence and that the decision had been based on evidence examined in an unlawful manner. The Court also observes that part of the applicant’s constitutional complaint against his conviction was found inadmissible by the Constitutional Court on 29 April 2008, precisely for the reason that he had not availed himself of that remedy (see paragraphs 39 and 40 above). The Court finds that to that extent the applicant cannot be considered to have complied with the requirement of exhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention.

123. The Court further observes that at the completion of the investigation the case file had almost 60,000 pages. The applicant was accorded thirty working days, which comprised 130 working hours, to examine this file.

124. In that respect, the Court reiterates that, in certain circumstances, restrictions on access to a case file may be incompatible with the principles of a fair trial (see, for example, *K.H. and Others v. Slovakia*, no. 32881/04, §§ 64-69, ECHR 2009-... (extracts); *mutatis mutandis*, *Turek v. Slovakia*, no. 57986/00, §§ 115-116, ECHR 2006-II (extracts); *Rasmussen v. Poland*, no. 38886/05, § 54-56, 28 April 2009 and *Poštová banka, a.s. v. Slovakia* (dec.), no. 22736/06, 20 October 2010).

125. Although, on the face of it, the time frame available to the applicant to inspect the case file in the present case may appear insufficient in view of the volume of the file, the Court considers that in its assessment the following factors should be taken into account.

The applicant was assisted by a team of lawyers and the instance of examination of the case file by the defence was linked to a specific procedural stage, namely the completion of the investigation and thereby of the pre-trial proceedings. There is no indication that the applicant’s and his

lawyers' access to the case file was in any way restricted later on, during the trial itself.

126. Moreover, and in any event, as the Court has frequently stated, the admission of evidence is a matter for domestic courts. It is also for domestic courts to decide what evidence is relevant to criminal proceedings and thus to exclude evidence which is considered to be irrelevant. The same is true for witnesses. Article 6 § 3 (d) does not guarantee the accused an unlimited right to secure the appearance of witnesses in court: it is for the domestic courts to decide whether it is appropriate to call a witness (see, for example, *Ubach Mortes v. Andorra* (dec.), no. 46253/99, ECHR 2000-V).

127. To that end, the Court observes that the applicant's conviction was based on extensive documentary, witness and expert evidence and that, in the judgment of 10 January 2007, which was subsequently upheld on appeal, no additional evidence was found to be useful or relevant (see paragraphs 36 and 38 above).

128. The Court considers that, in so far as the remainder of the "fairness" complaints under Article 6 of the Convention has been substantiated, it raises issues which are of no more than a fourth-instance nature, and which the Court has a limited power to review under that Article (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

129. The Court finally observes that the applicant's complaint made in reliance on Article 6 § 2 of the Convention is wholly unsubstantiated.

130. In sum, the Court considers that, to the extent that domestic remedies have been exhausted, the applicant's complaints relating to the "fairness" of his trial and presumption of innocence are manifestly ill-founded.

It follows that the relevant part of the application must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

B. Merits

131. The applicant complained that the Special Court and the Special Division of the Supreme Court could not be considered independent tribunals established by law in particular because their existence had been contrary to the Constitution and they had been under undue influence of the executive, as had eventually been acknowledged by the Constitutional Court in its judgment of 20 May 2009.

132. The Government considered that, at the time of their operation, the Special Court and the Special Division of the Supreme Court had been a valid and lawful component of the judicial system in Slovakia and that the Constitutional Court's judgment of 20 May 2009 had in no way undermined the quality of the justice that they had dispersed. In particular, in that judgment, the Constitutional Court had ruled specifically that it had no impact on judgments and other rulings made by the Special Court.

The Government also submitted that the independence of the Special Court from the executive had been guaranteed by the existence of a remedial mechanism and had been preserved in practice.

133. The Court would point out at the outset that its task is not to review the relevant domestic law and practice *in abstracto* (see, for example, *Allen v. the United Kingdom*, no. 18837/06, § 40, 30 March 2010). Its task is rather to determine whether the manner in which they were applied to or affected the applicant gave rise to a violation of the Convention or its Protocols (see *Mežnarić v. Croatia*, no. 71615/01, § 28, 15 July 2005, with further references).

134. According to the case-law, the object of the term “established by law” in Article 6 of the Convention is to ensure “that the judicial organisation in a democratic society [does] not depend on the discretion of the Executive, but that it [is] regulated by law emanating from Parliament” (see *Zand v. Austria*, application no. 7360/76, Commission’s report of 12 October 1978, Decisions and Reports (DR) 15, pp. 70 and 80, and *DMD GROUP, a.s. v. Slovakia*, no. 19334/03, § 60, 5 October 2010).

Nor, in countries where the law is codified, can organisation of the judicial system be left to the discretion of the judicial authorities, although this does not mean that the courts do not have some latitude to interpret the relevant national legislation (see *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, § 98, ECHR 2000 VII, and *Savino and Others v. Italy*, nos. 17214/05, 20329/05 and 42113/04, § 94, 28 April 2009).

135. In the present case the applicant was tried before the Special Court and his appeal was determined by the Special Division of the Supreme Court. The status of these bodies had an unequivocal legal basis in the Special Court Act, which is a piece of legislation emanating from Parliament.

136. The jurisdiction and competence of these bodies was equally defined by the Special Court Act and the proceedings before them were subject to the CCP.

137. In that respect, the Court takes note in particular of the findings of the Supreme Court in its decisions of 8 February 2006 and 30 May 2007 (see paragraphs 32 and 38 above) to the effect that the jurisdiction and competence of the Special Court to try the applicant’s case was engaged by operation of law and, contrary to the applicant’s suggestion, did not necessitate a separate judicial decision.

138. As to the unconstitutionality of the statutory provisions establishing the Special Court, as established by the Constitutional Court in its judgment of 20 May 2009, the Court observes that the reasons underlying the Constitutional Court’s judgment appear to be linked to the conceptual role and institutional status of the Special Court in the constitutional and judicial system of Slovakia, rather than its quality and independence as a judicial

body. Consequently, the Constitutional Court found specifically that final decisions rendered by the Special Court were in no way affected by the Constitutional Court's judgment.

139. In that connection the Court reiterates that, although the notion of separation of powers between the political organs of government and the judiciary has assumed growing importance in the Court's case-law (see *Stafford v. the United Kingdom* [GC], no. 46295/99, § 78, ECHR 2002-IV), neither Article 6 nor any other provision of the Convention requires States to comply with any theoretical constitutional concepts regarding the permissible limits of the powers' interaction (see *Kleyn and Others v. the Netherlands* [GC], nos. 39343/98, 39651/98, 43147/98 and 46664/99, § 193, ECHR 2003-VI, and *Sacilor-Lormines v. France*, no. 65411/01, § 59, ECHR 2006-XIII). The question is always whether, in a given case, the requirements of the Convention are met (see *Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08, § 46, 30 November 2010).

140. In so far as the circumstances of the present case have been substantiated and domestic remedies exhausted, the Court has found no elements supporting a conclusion other than that the Special Court and the Special Division of the Supreme Court involved in the determination of the applicant's case were a "tribunal established by law" within the meaning of Article 6 § 1 of the Convention. It remains to be ascertained whether this tribunal was "independent".

141. In this context the Court reiterates that, in order to establish whether a tribunal can be considered "independent", regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and to the question whether the body presents an appearance of independence. In this latter connection, what is at stake is the confidence which such tribunals in a democratic society must inspire in the public and, above all, the parties to the proceedings. In deciding whether there is a legitimate reason to fear that a particular court lacked independence or impartiality, the standpoint of the party to the proceedings is important without being decisive. What is decisive is whether the party's doubts can be held to be objectively justified (see, amongst others, *Morris v. the United Kingdom*, no. 38784/97, § 58, ECHR 2002-I, and *Miroshnik v. Ukraine*, no. 75804/01, § 61, 27 November 2008, with further references).

142. The Court also reiterates that, according to the case-law of the Convention institutions (see, *mutatis mutandis*, *X and Y v. Ireland*, no. 8299/78, Commission decision of 10 October 1980, (DR) 51, p. 72), Article 6 § 1 cannot be read as prohibiting the establishment of special criminal courts if they have a basis in law (see *Erdem v. Germany* (dec.), no. 38321/97, 9 December 1999). It acknowledges that fighting corruption and organised crime may well require measures, procedures and institutions of a specialised character.

143. As found above, the legal basis for the Special Court is not in doubt in the present case. Furthermore, the Court considers that what is at the heart of the present case is not the personal independence of the judges of the Special Court trying the applicant but rather the independence of their status, in particular with regard to the requirement for security vetting clearance which was issued and could be withdrawn by the NSA.

144. The Court observes that the judges of the Special Court and of the Special Division of the Supreme Court were career judges whose term of office was not limited in time, and thus had equal status to that of any other judge in Slovakia.

145. Nevertheless, the Special Court judges could be recalled if they ceased to meet the security vetting criteria. In that context the Court reiterates that, in general, the irremovability of judges by the executive during their term of office must be considered a corollary of their independence and thus included in the guarantees of Article 6 § 1 of the Convention (see, for example, *Campbell and Fell v. the United Kingdom*, 28 June 1984, § 80, Series A no. 80).

146. However, in assessing this issue the Court finds it appropriate to have regard not only to the legal provisions concerning the composition of the court but also how these provisions are interpreted and how they actually operate in practice. In so doing the Court must look at the realities of the situation (see *Eccles and Others v. Ireland*, no. 12839/87, Commission decision of 9 December 1988, (DR). 212, p. 219).

147. The Court observes that there is no indication of any specific instance of withdrawal of a security vetting certificate from a Special Court judge. Had there been such an instance, the judge in question could have challenged the withdrawal before a special parliamentary committee and, ultimately, before the Supreme Court and the Constitutional Court.

148. As to its judicial functioning, the Court observes that the Special Court was subject to the supervisory jurisdiction of the Special Division of the Supreme Court upon appeal and that they were both subject to supervision by the Constitutional Court in the event of a constitutional complaint, as in other criminal cases. All these remedies and the entire procedure were subject to standard procedural rules with no special provisions or limitations.

149. Against this procedural background, the Court has found no grounds for the applicant to have legitimate misgivings as to the “independence” of the Special Court which tried him and the Special Division of the Supreme Court which determined his appeal.

These bodies were accordingly compatible with the requirement of “independence” within the meaning of Article 6 § 1 of the Convention.

There has accordingly been no violation of Article 6 § 1 of the Convention.

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

150. The applicant complained that his pre-trial detention had been unlawful and arbitrary because:

(i) when remanded in custody on 26 June 2002 he had not been assisted by a lawyer, contrary to Slovakian law; at the time of his arrest he had not been aware of the charges against him; and in the period after 2 September 2002 it had exceeded the six-month maximum duration without authorisation for its extension (the decision to deduct his detention time in Croatia from his detention time in Slovakia being taken arbitrarily at a later point);

(ii) in the period after 26 June 2006 his pre-trial detention had exceeded the maximum duration of four years under the new CCP and was in breach of the ruling of the Supreme Court of 23 March 2006;

(iii) in the period after 1 March 2007 the applicant's pre-trial detention in any event had exceeded the maximum duration of five years under the old CCP (from his arrest in Croatia).

151. The applicant relied on 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;”

1. Complaints concerning the arrest and initial stages of detention

152. The applicant complained under Article 5 § 1 (c) of the Convention (i) that when remanded in custody on 26 June 2002 he had not had the assistance of a lawyer, (ii) that at the time of his arrest he had not been aware of the charges against him, and (iii) that in the period after 2 September 2002 his detention had exceeded the six-month maximum duration without authorisation for its extension.

153. The Court observes first of all that in respect of this part of the application there are doubts as to whether and to what extent the applicant exhausted domestic remedies before the ordinary courts and, ultimately, before the Constitutional Court.

154. Moreover, and in any event, this part of the application was lodged after the six-month time-limit pursuant to Article 35 § 1 of the Convention.

It follows that these complaints must in any event be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. Complaint concerning the maximum duration of detention under the new CCP

155. The applicant also complained under Article 5 § 1 (c) of the Convention that in the period after 26 June 2006 his pre-trial detention had been unlawful because it had exceeded the maximum duration under the new CCP, as confirmed by the Supreme Court in its decision of 23 March 2006.

156. In reply, the Government submitted that the sole legal effect of the decision of the Supreme Court of 23 March 2006 concerned the period of the applicant's pre-trial detention until 26 June 2006. In so far as the Supreme Court had expressed itself in the reasoning of its decision on the applicant's detention beyond that date, such pronouncements were no more than obiter dicta and had no binding legal force.

157. Moreover, as the Government submitted, it should be taken into account that those pronouncements were made shortly after the new CCP had entered into force on 1 January 2006. At that time, there was no established practice regarding the application of the relevant provisions and there were differing judicial views. However, in its decision of 26 June 2006, the Supreme Court had ruled specifically on the period of the applicant's pre-trial detention after that date and supported its view with detailed and comprehensive reasoning, as well as by reference to a previous judgment of the Constitutional Court in an unrelated but similar case. The correctness of the Supreme Court's decision of 26 June 2006 had been upheld by the Constitutional Court in its decision of 4 October 2006. It had eventually also been confirmed by the Supreme Court in its standpoint of 8 December 2006 as to the harmonisation of case-law (see paragraph 95 above and *Martikán v. Slovakia* (cited above)).

158. Lastly, the Government relied on the Court's decision in *Martikán* (cited above) and considered that an identical conclusion should be reached in the present case.

159. In reply, the applicant disagreed and reiterated his arguments. He submitted in particular that the question of his detention beyond 26 June 2006 had been *res judicata* by force of the Supreme Court's decision of 23 March 2006 and that the offences of which he had stood accused were mere "crimes" and not "extremely serious crimes" within the meaning of the new CC and the new CCP. Pre-conviction detention on charges of crimes under the new CCP could at most last thirty-six months.

160. The Court reiterates that it has already examined the issue of temporal application of the rules concerning the maximum permitted duration of pre-trial detention under the old CCP and the new CCP in its decision in the case of *Martikán* (cited above). In that decision, the Court

accepted that proceedings where the bill of indictment had been filed prior to 1 January 2006, when the new CCP had entered into force, continued to be governed by the old CCP. This included the provisions of the old CCP concerning pre-trial detention and its maximum duration. The pre-trial detention of Mr Martikán, which was in compliance with these rules, was not found to be contrary to his rights under Articles 5 and 14 of the Convention.

161. In the present case, on 26 June 2006, the Supreme Court ruled and explained in detail why the applicant's case was one of those to which the old CCP continued to apply. It supported its views by, among others, a reference to a previous decision of the Constitutional Court of 17 May 2006, in which it upheld an even earlier decision of the Supreme Court of 5 April 2006 interpreting and applying the relevant law in a manner consistent with the decision of 26 June 2006 (see paragraph 60 above).

The Supreme Court's view was eventually upheld in substance by the Constitutional Court in its decision in the present case of 4 October 2006.

The Supreme Court's position in the applicant's case was ultimately confirmed in the Supreme Court's own harmonising standpoint of 8 December 2006 (see paragraphs 95 above and *Martikán v. Slovakia* (cited above)).

162. In so far as the applicant cites the legal effects of *res judicata* in connection with the Supreme Court decision of 23 March 2006, the Court observes first of all that the applicant's detention at that time fell in a period of transition between the old CCP, which had been adopted more than forty years ago when the former Czechoslovakia was governed by a socialist regime, and the new CCP, which entered into force on 1 January 2006. Such a substantial change in criminal law inevitably obliged the legislature to include provisions in the new CCP with a view to ensuring a smooth transition without excessive interference with criminal proceedings pending at the moment of its entry into force (see *Martikán v. Slovakia* (cited above)).

163. In situations like the present one, when Contracting States introduce new systems of comprehensive legislation which replace previous and outdated ones, it is sometimes necessary to use cut-off points that apply to large groups of people and which may to a certain extent appear arbitrary. The choice of a cut-off date in similar cases must be considered as falling within the wide margin of appreciation afforded to a State when reforming its legal system (see, *mutatis mutandis*, *Twizell v. the United Kingdom*, no. 25379/02, § 24, 20 May 2008 and *Martikán v. Slovakia* (cited above)).

164. The Court further observes that the binding legal effect of the decision of 23 March 2006 was defined in its operative part, which concerned exclusively the period of the applicant's pre-trial detention until 26 June 2006 with no mention of any subsequent period.

The Supreme Court's pronouncements in the reasoning of the decision of 23 March 2006 in respect of the period after 26 June 2006 need to be viewed in the context of the initial debate on newly enacted legislation, the actual content of which was defined in subsequent case-law, including the decision of the Supreme Court of 5 April 2006, the decision of the Constitutional Court of 17 May 2006 and the harmonising standpoint of the Supreme Court of 8 December 2006.

165. In this context, the Court does not attach particular importance to the fact that, in the initial period after the entry into force of the new CCP, two different benches of the Supreme Court interpreted the relevant provisions in a differing manner (see *Martikán v. Slovakia* (cited above)).

As follows from the above-mentioned recapitulation, the decision of 26 June 2006 in the applicant's case was in temporal agreement and in full substantive conformity with the case-law as it developed and was reaffirmed after the decision of 23 March 2006.

166. In view of these considerations the Court has found no reasons in the present case to depart from its conclusions reached in the case of *Martikán* (cited above). The time-limits under the new CCP accordingly did not apply to the applicant's pre-trial detention.

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

3. Complaint concerning the maximum duration of detention under the old CCP

167. The applicant argued under Article 5 § 1 (c) of the Convention that after 1 March 2007 his pre-trial detention had exceeded the maximum duration of five years under the old CCP, counting from his arrest in Croatia on 1 March 2002.

168. The Court observes first of all that the applicant was convicted at first instance by the Special Court on 10 January 2007. After that date, his detention no longer fell within the ambit of Article 5 § 1 (c) of the Convention. However, in any event, there is no indication that, after having exhausted the other available remedies, the applicant raised the argument now made before the Court in a complaint to the Constitutional Court under Article 127 of the Constitution. In this connection, it is noted specifically that in his constitutional complaint (see paragraph 61 above), which was rejected by the Constitutional Court on 4 October 2006 (see paragraph 63 above), the applicant challenged exclusively what he considered a breach of the applicable time-limit under the new CCP.

It follows that the remainder of the complaints made in reliance on Article 5 § 1 (c) of the Convention must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

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

169. The applicant also complained that the length of his pre-trial detention had been excessive, contrary to Article 5 § 3 of the Convention, which reads as follows:

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

170. The Government objected that the applicant had not properly exhausted remedies before the Constitutional Court, in that in his constitutional complaint (see paragraph 52 above), he had only contested the existence of the reasons for his continued pre-trial detention but not its actual duration.

171. In reply, referring to his argument that there was no point in resorting to remedies at the domestic level (see paragraph 104 above), the applicant disagreed and contended that the domestic courts had failed to consider the taking of less stringent measures in lieu of deprivation of liberty.

172. The Court reiterates that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see *Panchenko v. Russia*, no. 45100/98, § 91, 8 February 2005; *Labita v. Italy* [GC], no. 26772/95, §§ 145 and 147, ECHR 2000-IV; and *Wemhoff v. Germany*, 27 June 1968, § 9, Series A no. 7).

The applicant was received in the requesting State and remanded there in custody pending trial on 26 June 2002 and convicted at first instance on 10 January 2007. The applicant's detention for the purposes of Article 5 § 3 of the Convention therefore lasted four years, six months and sixteen days.

However, before being able to examine the length of the applicant's pre-trial detention in its entirety, the Court must determine whether, on this point, the applicant has exhausted domestic remedies as required under Article 35 § 1 of the Convention.

173. For that matter, the Court observes that in his constitutional complaint against the decision of the Supreme Court of 20 December 2004, represented by a lawyer, the applicant relied, *inter alia*, on Article 17 §§ 2 and 5 of the Constitution, which are considered as guaranteeing rights equivalent to those guaranteed under Article 5 § 3 of the Convention (see paragraph 66 above). However, in substance, the applicant appears to have been contesting the reasons for his detention rather than its duration and other elements which are relevant in that context such as, for example, the diligence of the prosecuting authorities.

174. The Court also observes that proceedings before the Constitutional Court are characterised by certain degree of formalism (see, for example, *STARVYS, s.r.o. v. Slovakia* (dec.), no. 38966/03, 30 November 2010, with further references) which is demonstrated *inter alia* by the fact that legal representation before the Constitutional Court is mandatory (see, for example, *Lóška v. Slovakia* (dec.), no. 19408/03, 14 September 2010).

175. The Court considers that, in these circumstances, there are doubts as to whether the applicant can be considered as having properly exhausted the remedy before the Constitutional Court at the given time. However, even assuming that he did, for reasons explained below the Court considers that the relevant part of the application is in any event inadmissible.

176. The Court considers that it is necessary first of all to examine the Constitutional Court's decision of 23 August 2005 with reference to the Convention case-law concerning length of pre-trial detention under Article 5 § 3 of the Convention.

177. To that end, the Court notes that the applicant was remanded in custody in Slovakia pending his trial on 26 June 2002 and that the Constitutional Court determined matters concerning his continuing detention on 23 August 2005, that is to say at a moment when it had lasted three years, one month and twenty-eight days.

178. In so far as the applicant argues that the term of his detention in Croatia should be counted together with the term of his detention in Slovakia, the Court observes that the applicant was detained in Croatia pending his extradition to Slovakia. His detention in Croatia therefore fell within the ambit of Article 5 § 1 (f) of the Convention. However, the guarantees of Article 5 § 3 of the Convention apply only in respect of detention within the purview of Article 5 § 1 (c) of the Convention.

179. It follows that the guarantees of Article 5 § 3 of the Convention did not apply *ratione materiae* to the applicant's detention in Croatia (see, for example, *McDonald and Others v. Slovakia* (dec.), no. 72812/01, 16 November 2004).

180. Nevertheless, in assessing the reasonableness of the period of the applicant's pre-trial detention in Slovakia at the time of the Constitutional Court's assessment, the Court will take into account that, pending his extradition to Slovakia, the applicant had been detained in the Republic of Croatia since 1 February 2002, that is to say for four months and twenty-three days.

181. The Court also reiterates that whether a period of detention is reasonable must be assessed in each case individually according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110

et seq., ECHR 2000-XI, and *Kučera v. Slovakia*, no. 48666/99, § 94, ECHR 2007 IX).

182. The responsibility falls in the first place on the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the arguments for or against the existence of the above mentioned demand of public interest justifying a departure from the rule in Article 5 and must set them out in their decisions on applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts cited by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, for example, *Weinsztal v. Poland*, no. 43748/98, § 50, 30 May 2006, and *McKay v. the United Kingdom* [GC], no. 543/03, § 43, ECHR 2006-X).

183. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of continued detention, but with the lapse of time this no longer suffices and the Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings (see, among other authorities, *Letellier v. France*, 26 June 1991, § 35, Series A no. 207, and *Yağcı and Sargın v. Turkey*, 8 June 1995, § 50, Series A no. 319-A). In this connection, the Court reiterates that the burden of proof in these matters should not be reversed by making it incumbent on the detained person to demonstrate the existence of reasons warranting his release (see *Ilijkov v. Bulgaria*, no. 33977/96, § 85, 26 July 2001).

184. In justifying the applicant’s continued detention, the Constitutional Court endorsed the Supreme Court’ findings made in reliance on the wide-ranging criminal activity of which the applicant stood accused, and a large amount of evidence which had to be obtained and assessed, including statements from a very large number of witnesses.

185. To that end the Court notes that the applicant in the present case was accused and eventually convicted of massive structured corporate fraud involving more than 150,000 aggrieved parties and vast financial damage.

186. The Court also notes that the investigation of this matter produced a case file almost 60,000 pages long, which included extensive documentary evidence concerning corporate structures and contractual arrangements of the companies involved; this had to be obtained in Slovakia and from various other countries.

187. It is true that on 20 December 2004 the Supreme Court ruled that the victims were not allowed to take part in the proceedings actively as third parties claiming damages. This however does not mean that they were

thereby deprived of all of their procedural rights and thus completely excluded from the proceedings (see paragraph 19 above).

188. As to the existence of a risk that the applicant would abscond, the Court further notes the domestic courts' finding that, when leaving Slovakia, the applicant had known that criminal proceedings concerning his activities might commence shortly; that he had not been staying at his habitual residence in Slovakia; that his whereabouts in Croatia had been unknown even to his family; that the applicant was facing a heavy penalty; that he had been in possession of four passports; and that his financial situation would allow him to settle in any country.

189. The Court finds these considerations "relevant" and "sufficient". It therefore remains to be seen whether the national authorities displayed "special diligence" in the conduct of the proceedings.

190. In that respect, the Court accepts that in an investigation of a magnitude such as in the present case circumstances may come about by natural development which require the repetition of procedural steps and the taking of new procedural steps such as, for example, repeated questioning of the same individuals in the light of newly established information. In so far as the applicant has made a complaint to that effect, however, the Court notes that it is general and largely unspecified. Furthermore, in so far as the application is substantiated, the Court has found no indication of procedural inactivity or inadequate procedural activity on the part of the authorities. To the contrary, the Court observes that the findings of the Supreme Court in its decision of 30 May 2007 (see paragraph 38 above) and of the Constitutional Court in its decision of 6 March 2008 (see paragraph 35 above), were to the effect that the defence strategy had been marked by attempts to obstruct the proceedings and that it had been responsible for the length of the proceedings and of the applicant's pre-trial detention.

191. Finally, the Court observes that the applicant's argument in the proceedings before the Court that the domestic courts had failed to consider the taking of less stringent measures in lieu of deprivation of liberty does not appear to have been raised in his complaints to the Constitutional Court.

192. In view of all the circumstances, the Court considers that, at the time when the applicant's pre-trial detention had lasted three years, one month and twenty-eight days, the Constitutional Court's assessment was acceptable (see, for example, *W. v. Switzerland*, 26 January 1993, Series A no. 254-A, *Chraidi v. Germany*, no. 65655/01, ECHR 2006-XII and *Pecheur v. Luxembourg*, no. 16308/02, 11 December 2007).

193. The Court further observes that, after the Constitutional Court's diction of 23 August 2005, the applicant's detention for the purposes of Article 5 § 3 of the Convention lasted further one year, four months and eighteen days.

194. The Court observes that a deprivation of liberty is a continuing situation the seriousness of which aggravates with the passage of time.

From that perspective, the Court considers that the additional period of the applicant's pre-trial detention was of a particular importance having regard to the advanced stage of his detention.

195. In view of its conclusion at paragraph 192 above and the above considerations, the Court finds that, should the applicant's pre-trial detention in this additional period have reached a point when its duration was no longer compatible with Article 5 § 3 of the Convention, it was for the applicant to challenge it before the ordinary courts and, ultimately, before the Constitutional Court so as to allow the latter to examine the length of the applicant's pre-trial detention in its entirety (see, *mutatis mutandis*, *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007). By not having done so, the applicant has failed to exhaust domestic remedies.

In this connection, it is noted specifically that in his constitutional complaint (see paragraph 61 above), which was rejected by the Constitutional Court on 4 October 2006 (see paragraph 63 above), the applicant had challenged exclusively the lawfulness of his pre-trial detention on the ground of what he considered to be a breach of the applicable time-limit under the new CCP. In particular, he did not contest the justification of his continued detention as such and neither did he challenge its length.

It follows that this complaint must be rejected under Article 35 §§ 1, 3 and 4 of the Convention.

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

196. The applicant complained:

- (i) that decisions on his pre-trial detention and in particular those concerning its extension had been taken in private and in his absence;
- (ii) that Judge D., who had been involved in deciding on his pre-trial detention, was biased, because she had requested an unlawful extension of his detention beyond 26 June 2006; and
- (iii) that the proceedings in respect of his request for release of 7 June 2005 were not "speedy".

197. The applicant relied on Article 5 § 4 of the Convention, which provides that:

"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."

198. As to the fact that the decision of 26 June 2006 had been taken in private session, in the absence of the applicant, the Government objected that the applicant had failed effectively to exhaust domestic remedies, as required by Article 35 § 1 of the Convention. They pointed out that,

although the applicant had raised this issue with the Constitutional Court in substance, he had only relied on Article 6 § 1 of the Convention, which was not the appropriate provision in this context. Being bound under the law by the scope of the applicant's constitutional complaint, in its decision of 4 October 2006 the Constitutional Court had been prevented from dealing with this matter. The Government further emphasised that it was important for the applicant to be heard in person rather than at a public hearing. In that connection, they pointed out that before the decision of 26 June 2006 the applicant had been given, and had made full use of, the opportunity of addressing the court orally. They concluded that the requirements of Article 5 § 4 of the Convention had thereby been complied with.

199. In reply, the applicant disagreed and submitted that the decision of 26 June 2006 should have been taken in public session. However, the Supreme Court had failed to ensure the observance of the appropriate time-limits and had decided to resolve the situation unlawfully and to the applicant's detriment by deciding on it in private session.

200. The Court observes first of all that, to the extent that the impugned proceedings ended more than six months before the application was lodged on 12 February 2007, irrespective of any other possible reasons for the relevant part of the application to be declared inadmissible, it has been submitted too late.

201. The proceedings which remain open for the Court to review are therefore only those which gave rise to the decisions of 26 June 2006 and 22 February 2007. The former were initiated by Judge D. of the Special Court, and ended with the decision of 26 June 2006 given by the Supreme Court.

202. The Court observes that Judge D. was not involved in that decision and that there appears to be no reason to doubt the impartiality of the Supreme Court. For this reason alone, the relevant part of the application is manifestly ill-founded.

203. It remains to be seen whether the taking of the decision of 26 June 2006 in private session, without the applicant but after having heard him in person, was compatible with the requirements of Article 5 § 4 of the Convention. In this connection, for reasons of judicial economy, the Court finds it unnecessary to rule separately on the Government's objection of non-exhaustion of domestic remedies, as, in any event, the complaint is inadmissible on the following grounds.

204. 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).

205. A court examining an appeal against detention must provide guarantees of the existence of a judicial procedure. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see, among many other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 162, Reports 1998-VIII). The opportunity for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Kampanis v. Greece*, 13 July 1995, § 47, Series A no. 318-B).

206. Though requiring a hearing for the review of the lawfulness of pre-trial detention, Article 5 § 4 does not as a general rule require such a hearing to be public. However, the Court would not exclude the possibility that a public hearing may be required in certain circumstances (see *Reinprecht v. Austria*, no. 67175/01, § 41, ECHR 2005 XII).

207. Although it is not always necessary for a procedure under Article 5 § 4 to 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*, cited above, § 31).

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

209. In the present case, on 7 June 2006, the Special Court applied in writing for authorisation of an extension of the applicant's pre-trial detention. The applicant, assisted by his lawyers, had, and used, the opportunity to submit written observations in reply. Thereafter, on 26 June 2006, the Supreme Court heard the applicant in person. The applicant was assisted at that time by a team of four lawyers. In so far as the complaint has been substantiated, the Court has found no particular circumstances requiring that questioning to have been conducted in public. The complaint is accordingly manifestly ill-founded.

210. In so far as the applicant's complaint under Article 5 § 4 of the Convention concerns the proceedings that resulted in the decision of 22 February 2007, there is no indication that the applicant exhausted domestic remedies, as required under Article 35 § 1 of the Convention, by raising any complaints in respect of those proceedings before the Constitutional Court.

211. It follows that the relevant part of the application must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

212. Lastly, the applicant complained that the penalty imposed on him was contrary to Article 7 § 1 of the Convention, which provides as follows:

“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.”

213. The Government pointed out that at the time of the commission of the offences of which the applicant had been found guilty the old CC had applied and the applicant’s sentence was within the penalty scale under that code. They also submitted that, for the same offence, the new CC allowed for an even heavier penalty.

214. In reply, the applicant disagreed and reiterated his complaint.

215. The Court observes first of all that it is open to question whether the applicant could and should, for the purposes of Article 35 § 1 of the Convention, have raised this complaint at the domestic level by way of an appeal on points of law under Article 371 of the new CCP and, thereafter, as the case may be, by way of a constitutional complaint. It finds, however, that it is not necessary to answer this question and the complaint is in any event inadmissible for the following reasons.

216. The applicant was found guilty of an offence under Article 250 §§ 1 and 5 of the old CC. These provisions allowed for a penalty of imprisonment within the range of five to twelve years. Under the new CC, the offence in question would fall within the purview of Article 221 §§ 1 and 4, which allowed for a penalty of imprisonment in the range of ten to fifteen years. The applicant was jailed for eleven and a half years.

217. In these circumstances the Court discerns no issue under Article 7 of the Convention (see recapitulation of the relevant principles in *Scoppola v. Italy* (no. 2) [GC], no. 10249/03, § 92-09, ECHR 2009 ...).

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaint under Article 6 § 1 of the Convention concerning the alleged lack of an independent tribunal established by law;
2. *Declares* inadmissible the remainder of the application;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President