



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

THIRD SECTION

CASE OF KARLIN v. SLOVAKIA

(Application no. 41238/05)

JUDGMENT

STRASBOURG

28 June 2011

FINAL

28/09/2011

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

In the case of Karlin v. Slovakia,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Mihai Poalelungi, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 41238/05) 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 Gabriel Karlin (“the applicant”), on 14 October 2005.

2. The applicant was represented by Mr J. Havlát, a lawyer practising in Bratislava. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged, in particular, that the proceedings on his request for release from pre-trial detention had not been “speedy”, contrary to Article 5 § 4 of the Convention, and that he had not had an enforceable right to compensation in that respect, contrary to Article 5 § 5 of the Convention. The applicant also alleged that the investigative measures adopted and implemented in the proceedings against him and the underlying legal regime were incompatible with his rights under Article 8 of the Convention.

4. On 19 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 1946 and lives in Veľký Krtíš. At the time of the events complained of, the applicant was a Member of the National Council of the Slovak Republic (the Parliament).

A. Criminal proceedings

6. Prior to the commencement of any criminal proceedings against a specific person in the present case, on 23 July 2003, a single judge of the Bratislava Regional Court (*Krajský súd*) issued a warrant authorising monitoring of the applicant's telephone communications. The details are described at paragraph 37 below.

7. On 6 August 2003 a long-time friend of the applicant, A., filed a criminal complaint against the applicant.

In the complaint, A. submitted (i) that his company had been successful in public procurement for construction works for a municipality and (ii) that he had subsequently been approached by the applicant with a request that he pay a percentage of the price of the contracted works to a person within the municipal administration so as to ensure that the contract could be concluded with final effect.

8. Following the complaint of 6 August 2003, on the same day, a criminal investigation was commenced into suspected abuse of official powers and receipt of bribes (Articles 158 and 160(a) of the Criminal Code) by an unknown third person in connection with the events described above.

9. On 7 August 2003 the Prosecutor General ruled that the investigation should be supervised by the Nitra Regional Prosecutor.

10. On 25 November 2003 the applicant, A. and a third person met in the offices of a political party. After A. had left, the premises were raided and searched by the police. The applicant's briefcase was retained and the equivalent of 12,000 euros (EUR) in cash was found inside.

11. The applicant was detained as a suspect (for details see below) and, on 27 November 2003, he was charged with accepting bribes.

12. On completion of the pre-trial stage of the proceedings, on 1 March 2004, the applicant consulted the case file. The consultation revealed that investigative measures had been ordered and applied in his case as mentioned at paragraph 6 above and described in detail at paragraphs 37 to 43 below.

13. On 5 April 2004 the Regional Prosecutor indicted the applicant to stand trial in the Banská Bystrica District Court (*Okresný súd*).

14. On 9 May 2005 the applicant was convicted at first instance but the judgment was quashed on appeal on 23 February 2006.

15. On 28 September 2009 the District Court acquitted the applicant and on 29 April 2010 the Banská Bystrica Regional Court dismissed an appeal by the public prosecution service. The acquittal thereby became final and binding (*právoplatné*).

16. The courts concluded that it was not proven that the actions of which the applicant stood accused had taken place.

B. Placement in custody, request for release and related constitutional complaint

17. After the police raid at 2.50 p.m. on 25 November 2003, the applicant was detained as a suspect.

18. On 27 November 2003 the Regional Prosecutor requested that the applicant be remanded in custody pending trial on the charge referred to in paragraph 11 above. On the same day Parliament gave its consent to the applicant's prosecution and detention.

19. At 9.30 a.m. on 28 November 2003 the applicant was brought before a single judge of the Nitra District Court to be heard in connection with the prosecutor's request.

20. At 11 a.m. on 28 November 2003 the District Court judge remanded the applicant in custody pending trial.

Observing that the applicant and his co-accused were known regionally and nationally, and that further evidence had to be taken from four witnesses, the District Court found that it was necessary to detain the applicant under Article 67 § 1 (b) of the 1961 CCP to prevent him from colluding with his co-accused and from interfering with the course of justice.

21. Immediately after being remanded in custody on 28 November 2003, the applicant orally lodged an interlocutory appeal (*sťažnosť*). He submitted the grounds for his appeal in writing on 4 December 2003.

The applicant argued, *inter alia*, that the Nitra District Court, which had ordered his detention, could not be considered an independent tribunal established by law because its territorial jurisdiction had been unilaterally established by the Prosecutor General when determining which prosecutor was to supervise the investigation. According to the rules on territorial jurisdiction of courts in the pre-trial phase of proceedings, the courts in the judicial district of which the acting prosecutor had his or her seat had jurisdiction. Had it not been for the decision of the Prosecutor General, the investigation would have been supervised by the Banská Bystrica District Prosecutor and, consequently, the case would have fallen within the territorial jurisdiction of the Banská Bystrica District Court.

22. The appeal was dismissed by the Nitra Regional Court on 11 December 2003 in private session (*neverejné zasadnutie*). As to the territorial jurisdiction of the courts in matters concerning the applicant's pre-trial detention, the Regional Court noted that it had followed the rules in Article 26 of the 1961 CCP. These rules provided unequivocally that jurisdiction in the pre-trial phase of the proceedings lay with the courts in the judicial district in which the acting prosecutor had his or her seat. Moreover, the prosecution service had had no influence on the assignment of the applicant's case to a specific judge at the District Court and to a chamber at the Regional Court, both of which steps had occurred in full compliance with the applicable rules.

23. The Regional Court considered that all the formal and substantive requirements for detaining the applicant pending trial had been met, and observed in particular that the applicant had been detained with a suitcase containing the equivalent of EUR 12,000 in cash and that fundamental differences between his version of events and that of some witnesses had to be clarified by means of a confrontation (*konfrontácia*).

24. Under domestic law, the order for the applicant's detention became final and binding on the day on which the Regional Court dismissed his appeal, namely on 11 December 2003.

25. The decision of the Regional Court was served on the applicant and his lawyer on 21 and 27 January 2004 respectively.

26. On 19 January 2004 the applicant requested release with or without bail and offered a pledge under Article 73 § 1 (b) of the 1961 CCP that, if released, he would live in accordance with the law.

27. By law, the request fell to be determined first by the Regional Prosecutor, who dismissed it and, on 19 January 2004, transmitted it *ex officio* to the District Court for judicial determination.

28. On 6 February 2004 the District Court dismissed the request. The District Court observed that the applicant was still facing prosecution on the charge mentioned above (see paragraph 11). The investigator had continuously been taking procedural steps but there were still a number of witnesses to be examined and a number of steps to be taken in respect of A. and of the persons charged. If the applicant was released, it was likely that he would seek to influence witnesses and his co-accused, which would frustrate examination of the case in a public hearing. The decision was served on the applicant's lawyer on 12 February 2004.

29. On 16 February 2004 the applicant challenged the decision of 6 February 2004 by way of an interlocutory appeal.

30. On 4 March 2004, in private session, the Regional Court granted the appeal and ordered the applicant's immediate release.

The Regional Court acknowledged that there still was a well-founded suspicion against the applicant. However, in view of the progress of the investigation, there was no longer any tangible ground to fear that the

applicant would interfere with the course of justice. On the same day the applicant was released.

31. The decision of 4 March 2004 was served on the applicant's lawyer on 9 March 2004.

32. On 26 March and 18 May 2004 respectively the applicant lodged and amended a complaint under Article 127 of the Constitution to the Constitutional Court (*Ústavný súd*).

He argued that his pre-trial detention had been unlawful and arbitrary, that it had not been ordered by an independent tribunal established by law, that the decisions lacked adequate reasoning and that the proceedings for the review of the lawfulness of his pre-trial detention had lasted too long.

33. On 9 March 2005 the Constitutional Court declared the complaint inadmissible.

34. So far as the applicant's placement in remand was concerned, the Constitutional Court observed that the detention order against the applicant had become final and binding on 11 December 2003 and that the final decision had been served on the applicant on 21 January 2004. As the applicant had lodged his constitutional complaint on 26 March 2004, it failed to comply with the statutory two-month time-limit for bringing a constitutional complaint in respect of either of the above-mentioned dates.

35. In so far as the proceedings and decisions on the applicant's request for release were concerned, the Constitutional Court found that the applicant was no longer a victim of a violation of any of his substantive rights, in that his request had been granted and had resulted in the applicant's release. The complaint about the length of the proceedings on the applicant's request for release was found to be manifestly ill-founded.

36. The decision of the Constitutional Court was served on the applicant on 14 April 2005.

C. Investigative measures and related constitutional complaint

37. The warrant of 23 July 2003 (see paragraph 6 above) was issued under section 4 of the Protection of Privacy from Unauthorised Use of Technical Means of Secret Surveillance Act (Law no. 166/2003 Coll. - "the Privacy Protection Act"). It was issued at the request of the criminal police and valid for a period until 23 October 2003.

38. On 21 August 2003 a single judge of the Nitra Regional Court issued a warrant for A. to be involved in the investigation as an agent under Article 88(b) §§ 1 and 5 of the 1961 CCP.

The warrant was issued at the request of the Nitra Regional Prosecutor. It was initially valid until 21 November 2003 but was on that day extended until 14 February 2004.

39. On 20 September 2003 a single judge of the Nitra Regional Court issued a warrant under Article 88(e) §§ 1, 2 and 4 of the 1961 CCP authorising covert audio and video recordings of A.'s meetings with the suspects.

The warrant was valid for a period until 21 November 2003 but was extended on 20 November 2003 until 14 February 2004. It was issued at the request of the Nitra Regional Prosecutor.

40. On 13 November 2003 a single judge of the Nitra Regional Court issued a warrant under Article 88 §§ 1 and 2 of the 1961 CCP for monitoring of the applicant's telephone communications.

The warrant was valid for a period from 14 November 2003 until 14 February 2004. It was issued at the request of the Nitra Regional Prosecutor.

41. The warrants of 23 July and 13 November 2003 were executed by tapping the applicant's mobile phone. Transcripts of the calls were included in the case file.

42. The warrants of 21 August and 21 November 2003 were executed in that A. acted as an agent and subsequently testified in court as a witness.

43. The warrants of 20 September and 20 November 2003 were executed in that meetings between the applicant and A. on 21 and 25 November 2004 were audio and video recorded.

44. Audio recordings that were a part of the case file were played in court at a hearing on 27 January 2005, from which the public was excluded.

45. On 3 May 2004 the applicant lodged a complaint with the Constitutional Court, contesting these investigative measures and their legislative framework. He argued in particular that the Privacy Protection Act did not define adequately the target persons and offences and did not contain sufficient safeguards against abuse. He raised similar arguments in respect of the measures under the 1961 CCP. In addition, the applicant argued that the judges who had authorised those measures could not be considered a tribunal established by law as their territorial jurisdiction had been set up by a unilateral action of the public prosecution service. Lastly, the applicant submitted that nothing was known to him to justify such measures.

46. On 16 March 2005 the Constitutional Court declared the complaint inadmissible. It observed that the impugned measures had been carried out on the authority of the ordinary courts and that it was for them, as courts with full jurisdiction, and not for the Constitutional Court, to review the legality of these measures and of the evidence obtained thereby (if any).

The decision was served on the applicant on 4 May 2005.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure

47. At the relevant time and until 31 December 2005, criminal procedure in Slovakia was governed by the 1961 CCP.

With effect from 1 January 2006, the 1961 CCP was replaced by the Code of Criminal Procedure of 2005 (Law no. 301/2005 Coll.) (“the 2005 CCP”).

48. Article 26 of the 1961 CCP governed the territorial and functional competence of courts at the pre-trial stage of criminal proceedings. Under paragraph 1 of that Article, procedural actions at the pre-trial stage of the proceedings fell within the competence of the court in the judicial district of which the acting prosecutor had his or her seat.

49. Eavesdropping and recording of telephone communications, the use of an agent and covert audio and video recordings were governed by Articles 88, 88b and 88e of the 1961 CCP respectively.

50. Decisions (*uznesenie*) concerning persons detained pending trial were to be announced to them and their lawyers (Article 137 § 2 of the 1961 CCP). Decisions concerning detention pending trial were in principle subject to interlocutory appeal (Article 74 § 1 of the 1961 CCP), which in principle had no suspensive effect (Article 74 § 2 of the 1961 CCP).

An interlocutory appeal against a decision concerning detention pending trial was subject to a time-limit of three days of the day when the impugned decision was announced to the detained or the lawyer, whichever took place later (Article 143 of the 1961 CCP). In principle, there was no specific time-limit for a decision on the appeal.

B. Privacy Protection Act

51. The Act entered into force on 21 May 2003. It replaced previous regulation, embodied, *inter alia*, in sections 35, 36(2), 37 and 38 of the Police Act (see *Kvasnica v. Slovakia*, no. 72094/01, § 42, 9 June 2009).

52. The Act governs the use of technical means of secret surveillance (“TMSS”) without the prior consent of the person concerned. It does not extend to the use of such means in the context of criminal proceedings, which is governed by the CCP (section 1).

53. Section 2 defines TMSS as electro-technical, radio-technical, photo-technical, optical, mechanical, chemical and other technical means and devices or sets of such means and devices that are used in a covert way, *inter alia*, for eavesdropping and recording telecommunication activities (subsection 1).

The authorities entitled to use such means comprise the police corps, the Slovak Intelligence Service, the Military Intelligence Service, the railway police, the prison and justice guards corps and the Customs Administration) (subsection 2).

The devices used must be secured against tampering. The staff involved in using the devices must undergo a lie-detector test at intervals fixed by the head of the authority concerned (subsection 6).

54. Section 3 allows for use of TMSS only where it is necessary in a democratic society in order to ensure the safety or defence of the State, prevention or investigation of crime or to protect the rights and freedoms of others. The information thus obtained cannot be used for a purpose other than one of those enumerated above.

55. Pursuant to section 4, TMSS can only be used subject to prior approval by a judge within whose jurisdiction the case falls. Their use should be limited to the period which is strictly necessary and should not exceed six months unless the judge grants an extension. The judge involved is obliged to examine on a continuing basis whether the reasons for the use of such devices persist. Should TMSS be used in places that are not accessible to the public, the relevant judge is to determine whether the approval extends to their use in such places.

56. A request for judicial approval for the use of TMSS must be made in writing and must specify the type of TMSS, the place and time of its use and the person to be targeted. It also must specify the reasons and contain information concerning previous unsuccessful or substantially impeded detection and documentation of the activities to be monitored (section 4(3)).

57. In exceptional cases, specified in section 5, the police may use TMSS without the prior consent of a judge. In such cases, the judge must be notified within one hour after the use of the devices has started and a request for authorisation of such use must be submitted within 6 hours. In the event of dismissal of the request or if no judicial approval is granted within twelve hours of such interference, the data obtained must immediately be destroyed and the judge must be informed of the destruction immediately.

58. Under section 6, the agency involved is obliged to examine on a continuing basis whether the reasons for the use of TMSS persist. Should they cease, the use of TMSS has to be discontinued immediately and the relevant judge must be informed immediately. The agency involved has a duty to keep a record of warrants issued and requests denied.

59. Sections 7 and 8 govern the use and disposal of data obtained and the liability of the State in the event of failure by the authorities concerned to comply with the law. Information obtained under the Act cannot be transmitted to anyone other than the bodies before which it may be used as evidence in official proceedings. Should information have been obtained through the use of TMSS in contravention of the Act, it cannot be used as evidence in any proceedings before any body and must be destroyed in the

presence of the relevant judge within twenty-four hours. Recordings made under the Act that prove to be of no value must also be immediately destroyed in the presence of the judge.

Unlawful use of TMSS under the Act gives rise to State liability for “wrongful official action” under the State Liability Act, individual criminal liability of the persons who have breached the law and to a claim for protection of personal integrity under Articles 11 et seq. of the Civil Code.

60. Pursuant to section 9 Parliament shall examine at its plenary meeting, twice a year, a report by a parliamentary committee set up for the purpose of supervising the use of information technology devices. The report must indicate any unlawful use of TMSS. The report may be made available to the media. The authorities entitled to use TMSS must make available to the above committee all relevant information within ten working days of a request by the committee.

C. Police Act

61. The Police Act (Law no. 171/1993 Coll., as amended) governs the organisation and powers of the police.

Section 2 (1) defines the tasks of the police. These include, *inter alia*, working (a) to protect fundamental rights and freedoms, life, health, personal safety and property, and (b) to detect criminal offences and to identify culprits.

62. Under section 36, the police are entitled to use TMSS when discharging their tasks, *inter alia*, for the purpose of detecting certain types of criminal offences, which include accepting and offering bribes and indirect corruption, and in establishing culprits and searching for them.

The preceding provision however does not apply to contacts between an accused person and his or her defence counsel.

63. Sections 69 et seq. deal with police information systems and databases. The police are entitled to set up and operate information systems and databases containing information about persons and facts which are relevant for their work (section 69 (1)). The police have a duty to protect the data stored in such systems from disclosure, abuse, damage and destruction (section 69 (2)). If data are no longer needed, they must be destroyed or stored in such a manner that they are not accessible to anyone except a court (section 69 (3)).

64. Under section 69c everyone has a right of access to personal data about himself or herself that has been processed by the police. Upon a written request, the latter is to provide such data within 30 days and to destroy or correct without delay and free of charge any such data that is untruthful.

D. State Liability Act and practice of the ordinary courts

65. The relevant statutory provisions and judicial practice are summarised in *Michalák v. Slovakia* (no. 30157/03, § 92, 8 February 2011); *Michalko v. Slovakia* (no. 35377/05, §§ 48 to 64, 21 December 2010); *Osváthová v. Slovakia* (no. 15684/05, §§ 37 to 46, 21 December 2010); *Pavletić v. Slovakia* (no. 39359/98, §§ 50 to 52, 22 June 2004), and *Havala v. Slovakia* ((dec.), no. 47804/99, 13 September 2001).

E. Code of Civil Procedure

66. Article 250v provides for an action in court by anyone whose rights or legally recognised interests have been curtailed by an unlawful interference, other than a decision, where such interference is directly aimed or directly executed against such a person by a public body, if the interference persists or if there is a risk that it will recur. The action is admissible upon exhaustion of ordinary remedies and can be aimed at obtaining a judicial order for termination of the interference and restoration of the state of affairs prior to the interference.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 4 AND 5 OF THE CONVENTION

67. The applicant complained that the proceedings for review of the lawfulness of his pre-trial detention had taken too long and that he effectively had no enforceable right to compensation.

The applicant relied on Article 5 §§ 4 and 5 of the Convention, which provide:

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

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

A. Admissibility

1. “Speediness” of the proceedings in respect of the applicant’s interlocutory appeal against detention and enforceable right to compensation in that respect

68. The applicant complained that his interlocutory appeal against detention had not been determined “speedily” and that he did not have an enforceable right to compensation in that respect.

69. The Government objected that the applicant had failed to comply with the requirement of Article 35 § 1 of the Convention to exhaust domestic remedies, in that he had failed to assert his claim before the Constitutional Court within the applicable time-limit and to claim compensation from the State under the State Liability Act.

In the Government’s submission, in view of the existence of these remedies, the complaint of an alleged lack of an enforceable right to compensation was manifestly ill-founded.

70. In reply, the applicant argued that he had submitted his constitutional complaint in time and that the State Liability Act was inapplicable in the circumstances of his case.

71. The Court reiterates at the outset that a complaint under Article 127 of the Constitution is normally considered to be one of the remedies that an applicant is required to exhaust for the purposes of Article 35 § 1 of the Convention in respect of individual complaints under Article 5 § 4 (see *Štetiar and Šutek v. Slovakia*, nos. 20271/06 and 17517/07, § 119, 23 November 2010; *Michalko v. Slovakia*, cited above, § 134; and *Osváthová v. Slovakia*, cited above, § 59).

72. The Court observes that a remedy before the Constitutional Court was in fact the very course of action chosen by the applicant in the present case.

The applicant’s constitutional complaint was however rejected on account of his failure to observe the applicable time-limit. Accordingly, it has to be ascertained first whether, in the circumstances, the applicant can be considered as having properly exhausted the remedy he has chosen.

73. To that end, the Court reiterates that in order to exhaust domestic remedies as required by Article 35 § 1 of the Convention, applicants should use the remedies available in compliance with the formal requirements and time-limits laid down in domestic law, as interpreted and applied by the domestic courts (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV).

74. The Court further observes that a complaint under Article 127 of the Constitution is subject to a two-month time-limit and that, pursuant to section 53(3) of the Constitutional Court Act, that time-limit starts to run on the date on which the decision in question has become final and binding or

when the measure in question has been notified or notice of other interference with the complainant's interests has been given (see *Michalko v. Slovakia*, cited above, § 46).

75. As regards decisions concerning detention, a question arises as to whether the decisive moment is the date of service of such decisions on the detainee or on his or her lawyer. The Court reiterates that it has already examined this question in its judgment in *Michalko* (cited above, §§ 136 to 139). In that judgment, in the light of existing judicial practice, the Court accepted that the decisive moment was the date of service of the decision on the detainee.

76. The Court has found no reason to reach a different conclusion in the present case. It notes in particular that there had been at least two inadmissibility decisions by the Constitutional Court before the applicant lodged and amended his constitutional complaint on 26 March and 18 May 2004; in those decisions the Constitutional Court had explained in legal terms and congruently decided that the decisive date was the date of service of the impugned decision on the detainee (see *Michalko v. Slovakia*, cited above, § 66).

77. Observing that the applicant was at all times represented by a lawyer, Court considers that he could and should have known about the existing practice and that the risk inherent in using the remedy at the time in question was for the applicant to assume (see *Michalko v. Slovakia*, cited above, § 139).

78. The decision on the applicant's interlocutory appeal against detention was served on him 21 January 2004. He lodged his constitutional complaint on 26 March 2004. On 9 March 2005 the Constitutional Court declared the relevant part of the complaint inadmissible as belated.

In view of the above considerations, the Court concludes that the applicant has failed to exhaust properly the remedy that he opted for. It is therefore unnecessary to examine separately whether he was or was not required to seek redress under the State Liability Act.

79. It follows that the applicant's complaint under Article 5 § 4 of the Convention in respect of the alleged lack of "speediness" of the proceedings on his interlocutory appeal against detention is inadmissible for non-exhaustion of domestic remedies and that his complaint under Article 5 § 5 of the Convention concerning an alleged lack of an enforceable right to compensation in that respect is manifestly ill-founded.

The relevant part of the application must accordingly be rejected under Article 35 §§ 1, 3 and 4 of the Convention.

2. “Speediness” of the proceedings in respect of the applicant’s request for release and enforceable right to compensation in that respect

80. The applicant complained that his request for release had not been determined “speedily” and that he did not have an enforceable right to compensation in that respect.

81. The Government objected that the applicant had failed to comply with the requirement under Article 35 § 1 of the Convention to exhaust domestic remedies in that he had failed to claim compensation under the State Liability Act.

In particular, relying on the Court’s judgment in *N.C. v. Italy* ([GC], no. 24952/94, ECHR 2002 X), the Government claimed that, as the applicant had eventually been acquitted, he could by law have claimed damages in respect of his pre-trial detention without having to establish any actual unlawfulness or arbitrariness.

82. The Government also submitted that, in view of the possibility for the applicant to claim compensation under the State Liability Act, the applicant’s complaint concerning the alleged lack of an enforceable right to compensation was manifestly ill-founded.

83. In reply, the applicant disagreed and considered that there were no solid grounds supporting the Government’s contention that he could have obtained compensation under the State Liability Act in respect of the lack of “speediness” of the proceedings in question.

In particular, the applicant emphasised that even the Constitutional Court had examined his case without requiring him, under the rule of exhaustion of ordinary remedies, to exhaust first the remedy now advanced by the Government.

84. The Court reiterates that it has recently examined a similar objection by the Government in the case of *Osváthová v. Slovakia* (cited above, §§ 59 to 64).

85. As in *Osváthová v. Slovakia*, the Court reiterates that where there is a choice of remedies, the exhaustion requirement must be applied to reflect the practical realities of the applicant’s position, so as to ensure the effective protection of the rights and freedoms guaranteed by the Convention. Moreover, an applicant who has used a remedy which is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *Adamski v. Poland* (dec.), no. 6973/04, 27 January 2009, with further references).

86. In the present case, in respect of his complaint that the proceedings in his request for release had not been “speedy”, the applicant had sought protection of his fundamental rights before the Constitutional Court under Article 127 of the Constitution.

87. The Constitutional Court, as the supreme authority for the protection of human rights and fundamental freedoms in Slovakia, had jurisdiction

to examine the applicant's complaint and to afford him redress if appropriate (see, *mutatis mutandis*, *Lawyer Partners A.S. v. Slovakia*, nos. 54252/07, 3274/08, 3377/08, 3505/08, 3526/08, 3741/08, 3786/08, 3807/08, 3824/08, 15055/08, 29548/08, 29551/08, 29552/08, 29555/08 and 29557/08, § 45, ECHR 2009-..., with further references).

88. The Court further notes that the course of action chosen by the applicant in this case is normally considered to be effective for the purposes of the domestic-remedies rule under Article 35 § 1 of the Convention. Moreover, the Constitutional Court entertained the applicant's complaint without requiring him first to exhaust the remedy now relied on by the Government.

In these circumstances, the Court cannot but find that the applicant's course of action as to the remedies used was reasonable and appropriate (see *Osváthová v. Slovakia*, cited above, § 59, and *Michalák v. Slovakia*, cited above, § 106).

89. Moreover, the Court notes that, in its decision of 9 March 2005, the Constitutional Court found the applicant's complaint about the alleged lack of "speediness" of the proceedings in issue manifestly ill-founded (see paragraph 35 above).

90. The Court also notes that an ordinary court, if called on to exercise jurisdiction in the present case under the State Liability Act in respect of alleged wrongful official action with regard to the applicant's complaint that the proceedings in question had not been "speedy", would have been confronted with the same question as the Constitutional Court when it ruled on the applicant's constitutional complaint.

The Court has not found any reason to conclude that there was any realistic prospect that an ordinary court would have arrived at conclusions contrary to those of the Constitutional Court (see *Štetiar and Šutek v. Slovakia*, cited above, § 75; *Osváthová v. Slovakia*, cited above, § 62; *Michalko v. Slovakia*, cited above, § 95, and *Aydemir v. Slovakia*, no. 44153/06, § 52, 8 February 2011).

91. Accordingly, the applicant was not required to have recourse to the remedy referred to by the Government. The Government's objections to the admissibility of the present complaint, both under paragraphs 4 and 5 of Article 5 of the Convention, must therefore be rejected.

92. 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.

B. Merits

1. “Speediness” of the proceedings in respect of the applicant’s request for release

93. The Government considered that the time taken by the District Court and the Regional Court to determine the applicant’s request and his interlocutory appeal against the dismissal of his request were acceptable.

The Government also pointed out that, irrespective of when the final decision was served on the applicant, he had effectively learned of it on the day that the decision had been taken, since he had been released on that very day.

94. In reply, the applicant disagreed and pointed out that it had taken forty-five days for his request to be resolved and for the final decision with reasons to be served on him.

95. The Court has recently summarised its case-law relevant to the issue at hand in its judgment against Slovakia in the cases of *Štetiar and Šutek* (cited above, § 128), *Gál* (cited above, § 62), *Michalko* (cited above, § 167) and *Osváthová* (cited above, § 69).

96. In the present case the applicant lodged his request for release with the prosecution service on 19 January 2004. On the same day the prosecution service dismissed it and transmitted it to the District Court for judicial determination. The District Court ruled on the matter on 6 February 2004 and the written version of the decision was served on the applicant’s lawyer on 12 February 2004.

The applicant lodged an interlocutory appeal on 16 February 2004. The appeal was granted on 4 March 2004 by the Regional Court in private session and the applicant was released on that very day.

The written version of the decision with reasons was served on the applicant on 9 March 2004.

97. The Court reiterates that, according to its case-law, the period under consideration for the purposes of Article 5 § 4 of the Convention begins with the lodging of the application with the domestic authorities and, in the absence of a public pronouncement of the decision, ends on the day the decision is communicated to the applicant or to his representative (see, *mutatis mutandis*, *Koendjibiharie v. the Netherlands*, 25 October 1990, Series A no. 185-B, § 28; *Singh v. the Czech Republic*, no. 60538/00, § 74, 25 January 2005; and *Cabala v. Slovakia*, no. 8607/02, § 68, 6 September 2007).

98. The applicant requested that the lawfulness of his detention be decided by lodging a request for release on 19 January 2004. The decision to release him was taken forty-four days later, on 4 March 2004.

99. The Court observes that the decision of 4 March 2004 was not pronounced publicly and that it was served on the applicant through the

intermediary of his lawyer at a later point, on 9 March 2004. It recognises that a detained person has a legitimate interest in learning the detailed reasons for the termination of his or her detention (see *Osváthová v. Slovakia*, cited above, § 73).

However, in circumstances such as those obtaining in the present case, the Court finds it more appropriate to examine the specific delays imputable to those involved rather than make an abstract finding as to when the period under consideration ended.

The proceedings under examination lasted at least forty-four days, in which period the applicant's request for release was judicially examined at two levels.

100. The Court has found nothing to justify a conclusion that the case in respect of the applicant's detention was of any particular complexity and that the length of the proceedings in his request for release was in any way imputable to the applicant.

101. As to the conduct of the authorities, however, the Court notes that it took the District Court eighteen days from 19 January to 6 February 2004 to decide on the applicant's request and further six days to have its decision served on the applicant on 12 February 2004.

The Court further notes that it took the Regional Court seventeen days, from 16 February 2004 to 4 March 2004, to determine the applicant's interlocutory appeal and a further five days to have the decision served on the applicant.

102. The period imputable to the courts therefore amounts at least to forty-one days.

103. Regard being had to the Court's case-law on the subject (see the summary in *Štetiar and Šutek v. Slovakia* (cited above, § 131); *Gál v. Slovakia* (cited above, § 69); *Michalko v. Slovakia* (cited above, § 171, and *Osváthová v. Slovakia* (cited above, § 77)), the foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 5 § 4 of the Convention on account of the lack of a speedy determination of the applicant's request for release.

2. Alleged lack of enforceable right to compensation in respect of the lack of "speediness" of the proceedings on the applicant's request for release

104. The Court reiterates that Article 5 § 5 of the Convention is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions (see *N.C. v. Italy*, cited above, § 49, and also *Pavletić v. Slovakia*, no. 39359/98, § 95, 22 June 2004).

105. In the present case the Court has found a violation of Article 5 § 4 of the Convention (see paragraph 103 above).

It must therefore establish whether or not the applicant had or now has an enforceable right to compensation for the breach of Article 5 § 4 of the Convention.

106. The Court observes first of all that the applicant's complaint under Article 127 of the Constitution in that regard was unsuccessful on the merits (see paragraph 35 above) (see *Boris Popov v. Russia*, no. 23284/04, § 84, 28 October 2010) and that the applicant was not required, for the purposes of Article 35 § 1, to test the other remedy advanced by the Government because of the lack of realistic prospects of success (see paragraph 90 above; see also *Sakık and Others v. Turkey*, cited above, § 59). At the same time, there is no support in the domestic legislation for making a compensation claim in a domestic court based on findings reached by the European Court.

107. The foregoing considerations are sufficient to enable the Court to conclude that neither before nor after a finding by the European Court has the applicant had an enforceable right to compensation for the violation of his rights under Article 5 § 4 of the Convention (see paragraph 103; see also *Brogan and Others v. the United Kingdom*, 29 November 1988, § 67, Series A no. 145-B; *Michalko v. Slovakia*, cited above, § 77; *Osváthová v. Slovakia*, cited above, § 84, and *Michalák v. Slovakia*, cited above, § 207).

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

108. The applicant complained of a violation of rights protected under Article 8 of the Convention, which – in so far as relevant – provides:

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

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

109. In his original application, without providing any further information or argumentation, the applicant simply alleged that the investigative measures in the proceedings against him and their implementation (see paragraphs 37 to 43 above) had violated his rights under Article 8 of the Convention.

110. In his observations of 4 November 2010, in reply to those of the Government, the applicant extended his complaint, and contended that the applicable legal regime for monitoring telephone communications, covert audio and video recordings and the use of an agent, namely the regulations under the Privacy Protection Act and the 1961 CCP, fell short of the safeguards required under the Convention.

111. The Court observes, firstly, that the applicant's initial complaint under Article 8 of the Convention, which concerned the specific measures applied against him, was wholly unsubstantiated and, as such, is manifestly ill-founded.

112. The Court further observes that, in so far as the applicant seeks by means of his submission of 4 November 2010 to challenge the legal regime on the monitoring of telephone communications, covert audio and video recordings and the use of police agents under the 1961 CCP, that Code was replaced by a new 2005 Code of Criminal Procedure that took effect from 1 January 2006. The relevant part of the application has therefore been introduced out of time.

113. The remainder of the applicant's Article 8 complaint concerns the legal regime on the monitoring of telephone communications under the Privacy Protection Act, a piece of legislation that is still in force. The Court observes however that, to the extent this complaint has been substantiated, it has no factual link to the alleged instances of actual interference with the applicant's Article 8 rights by the impugned investigative measures and goes beyond the scope of the original application. In these circumstances, the Court has found no need for examining the existing legislative framework *in abstracto* in the context of the present individual application under Article 34 of the Convention (for contrast and comparison, see *Klass and Others v. Germany*, 6 September 1978, Series A no. 28; *Malone v. the United Kingdom*, 2 August 1984, Series A no. 82; and *Weber and Saravia v. Germany* (dec.), no. 54934/00, ECHR 2006 XI).

114. It follows that the Article 8 complaint must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

III. REMAINING COMPLAINTS

115. The applicant alleged a violation of his rights under Article 5 §§ 1 (c), 3, 4 and 5 of the Convention, in that (i) his pre-trial detention had been unlawful, arbitrary and not decided upon by an independent tribunal established by law; (ii) the decisions in respect of his pre-trial detention lacked adequate reasoning; and (iii) he effectively had no enforceable right to compensation. He also alleged a violation of Article 13 of the Convention in connection with the Constitutional Court's decision of 9 and 16 March 2005 and a violation of Article 14 of the Convention in connection with the former decision by the Constitutional Court.

116. The Court observes first of all that this part of the application is largely unsubstantiated. Moreover, and in any event, for similar reasons to those set out above (see paragraphs 71 to 78), any complaints in relation to the applicant's placement in detention on remand must be rejected for non-exhaustion of domestic remedies.

117. In conclusion, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms identified by the applicant.

Therefore, in so far as domestic remedies have been exhausted, the reminder of the application is manifestly ill-founded. It must accordingly be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

119. The applicant claimed EUR 30,000 in respect of non-pecuniary damage.

120. The Government contested the claim as exaggerated.

121. The Court awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

122. The applicant claimed EUR 5,113.97 for legal costs before the Constitutional Court and the Court, submitting itemised invoices from his lawyer.

The applicant also claimed EUR 150 and EUR 50, respectively, for administrative and postal expenses incurred before the domestic courts and before the Court.

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

124. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

In the present case, regard being had to the violations found (see paragraphs 103 and 107 above), the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 850 to cover legal representation both at the national level and before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously admissible the complaints under Article 5 §§ 4 and 5 of the Convention concerning the alleged lack of a speedy determination of the lawfulness of the applicant's detention in the proceedings concerning his request for release and the alleged lack of an enforceable right to compensation in that respect;
2. *Declares* by a majority inadmissible the remainder of the application;
3. *Holds* unanimously that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds* unanimously that there has been a violation of Article 5 § 5 of the Convention;
5. *Holds* unanimously
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 850 (eight hundred fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at

a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 28 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President