



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

THIRD SECTION

CASE OF WINKLER v. SLOVAKIA

(Application no. 25416/07)

JUDGMENT

STRASBOURG

17 July 2012

FINAL

17/10/2012

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

In the case of Winkler v. Slovakia,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Alvina Gyulumyan,

Egbert Myjer,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 26 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 25416/07) 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 Róbert Winkler (“the applicant”), on 6 June 2007.

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

3. The applicant alleged that he had been unlawfully deprived of his liberty and that the Constitutional Court had failed to provide appropriate redress to him.

4. On 26 August 2010 the application was communicated 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 1977 and lives in Žilina.

6. On 26 November 2004 the Považská Bystrica District Court remanded the applicant in custody in connection with criminal proceedings in which he was accused of several offences.

7. On 20 May 2005 a public prosecutor indicted the applicant before the Považská Bystrica District Court.

8. On 10 August 2005 the applicant requested that he be released from detention. He argued that his detention under the decision of 26 November 2004 had expired on 25 May 2005 and that no decision had been taken to extend it.

9. The District Court dismissed the applicant's request on 23 August 2005. On 12 September 2005 the Trenčín Regional Court dismissed the applicant's complaint against that decision.

10. On 14 November 2005 the applicant lodged a constitutional complaint alleging a breach of Article 5 § 1 of the Convention.

11. On 15 November 2005 the District Court convicted the applicant of two offences and sentenced him to two years' imprisonment. The judgment became final on the same day.

12. On 6 December 2006 the Constitutional Court found that the Regional Court, by its decision of 12 September 2005, had breached the applicant's rights under Article 5 § 1 of the Convention. In particular, his detention had been unlawful between 26 May 2005 and 15 November 2005, as the District Court had not delivered a decision extending the applicant's detention.

13. The Constitutional Court quashed the Regional Court's decision, awarded the equivalent of 1,970 euros (at that time) in compensation to the applicant and ordered the Regional Court to reimburse the costs of the applicant's legal representation in the constitutional proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. For a recapitulation of the relevant domestic law and practice see *Bruncko v. Slovakia*, no. 33937/06, §§ 15-31, 3 November 2011; *Kormoš v. Slovakia*, no. 46092/06, §§ 19-36, 8 November 2011; *Kováčik v. Slovakia*, no. 50903/06, §§ 15-33, 29 November 2011; or *Žúbor v. Slovakia*, no. 7711/06, §§ 17-35, 6 December 2011.

THE LAW

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

15. The applicant complained that his deprivation of liberty had been unlawful from 26 May 2005 to 15 November 2005. He alleged a breach of Article 5 § 1 of the Convention, the relevant part of which reads as follows:

“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;

...”

16. The Government contested that argument.

A. Admissibility

17. The Government argued that the applicant’s complaint was manifestly ill-founded, as the guarantees of Article 5 § 1 had been complied with. In any event, given the redress which the applicant had obtained in the proceedings before the Constitutional Court, he could no longer be considered a “victim” within the meaning of Article 34 of the Convention.

18. The applicant disagreed with the Government’s arguments.

19. Given that the Government disagreed with the Constitutional Court’s conclusion as to the alleged breach of Article 5 § 1, the Court considers that their objection concerning the applicant’s status as a victim is closely linked and should be joined to the merits of the complaint.

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

B. Merits

21. The applicant maintained that his detention from 26 May 2005 to 15 November 2005 had been unlawful, as indicated in the Constitutional Court’s judgment.

22. The Government argued that the applicant’s detention during the relevant period had been reviewed by the court dealing with the indictment. It had been in accordance with the law as interpreted and applied by the criminal courts.

23. In the applicant’s and several other cases the Constitutional Court had taken a new approach, in that it had declared the existing interpretation and application of the Code of Criminal Procedure contrary to Article 5 § 1 of the Convention. That had amounted to an interpretation of the guarantees under Article 5 § 1 which was broader than that which the Court gave to that provision under its case-law. In particular, the Government argued that while Article 5 § 1 required a legal basis in the domestic legal order for detention to be lawful, it did not follow from the Court’s case-law that

lawful detention of a person should exclusively be based on an explicit judicial order.

24. The Court recapitulated the relevant case-law and determined complaints under Article 5 § 1 raising the same issue as that of the present application in the cases of *Bruncko* (§§ 46-59), *Kormoš* (§§ 57-69), *Kováčik* (§§ 48-61) and *Žúbor* (§§ 47-59), all cited in paragraph 14 above.

25. In those four cases the Court found a breach of Article 5 § 1. It concurred with the Constitutional Court's view, according to which: (i) domestic law did not list indictment as a ground for continued detention of an accused; and (ii) the practice of extending the statutory grounds for restricting a person's liberty by the broad interpretation of several provisions of the Code of Criminal Procedure was impermissible. The Court found such conclusions to be in line with its case-law. It held, in particular, that the purpose of Article 5, namely to protect individuals from arbitrary deprivation of liberty, is served in an appropriate manner where there is mandatory formal judicial review, that notion requiring a decision which gives reasons for a person's detention after his or her case has been submitted to the trial court and, as the case may be, the detention order issued at the pre-trial stage has expired.

26. The factual background and legal position in the present case do not differ in a relevant manner from the cases of *Bruncko*, *Kormoš*, *Kováčik* and *Žúbor* cited above. No reason has been therefore established for reaching a different conclusion on the point in issue in the present case.

27. The foregoing considerations are sufficient to enable the Court to conclude, in line with the Constitutional Court's judgment, that the applicant's detention from 26 May 2005 to 15 November 2005 fell short of the requirement of lawfulness within the meaning of Article 5 § 1.

28. It remains to be examined whether the applicant can still claim to be a victim in that respect.

29. The Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive the applicant of his or her status as a "victim", within the meaning of Article 34 of the Convention, unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention claimed (see *Rosselet-Christ v. Slovakia*, no. 25329/05, § 49, 26 October 2010, with further references).

30. Since the Constitutional Court explicitly acknowledged a breach of the applicant's right under Article 5 § 1 not to be unlawfully deprived of his liberty, the only issue which arises in that respect in the present case is whether the redress afforded to him can be considered as appropriate.

31. In its judgment the Constitutional Court granted the applicant the equivalent of EUR 1,970 in compensation. The Court considers that sum, albeit not negligible, as not sufficient to provide the applicant with

appropriate redress in the circumstances (see also *Kormoš*, cited above, §§ 73-76, and *Žúbor*, cited above, §§ 64-66).

32. The applicant can thus still claim to be a “victim” of a breach of his rights within the meaning of Article 34 of the Convention, and the Government’s objection in this respect must be dismissed.

33. There has accordingly been a violation of Article 5 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed 163,646 euros (EUR) in respect of non-pecuniary damage.

36. The Government considered that claim excessive.

37. Noting that he obtained partial redress at the domestic level, the Court awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

38. The applicant submitted no claim for costs and expenses. There is therefore no call for any award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins* to the merits the question of whether the applicant retained victim status;
2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention and dismisses the Government's preliminary objection as regards the victim status of the applicant;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Gyulumyan, Myjer and López Guerra is annexed to this judgment.

J.C.M.
S.Q.

JOINT CONCURRING OPINION OF JUDGES
GYULUMYAN, MYJER AND LÓPEZ GUERRA

In the cases of *Kormoš v. Slovakia* (judgment of 8 November 2011) and *Žúbor v. Slovakia* (judgment of 6 December 2011) – both referred to in the present judgment – we voted for no violation.

In our joint dissenting opinions we expressed our point of view as follows: “(...) In our opinion the level of just satisfaction was not manifestly inadequate or unreasonable in the particular circumstances of the case. That the acceptable amount at the national level may be lower than the compensation usually awarded by the Court in similar cases has to do with the fact that there is a clear difference between a final resolution of the matter at the national level by the appropriate authority – through the express acknowledgment that a violation has taken place and the awarding of appropriate and sufficient redress – and the situation in which it is the Court which must decide on the issue in the absence of any acknowledgment of a violation by the State.” (With further reference to paragraph 139 of the Grand Chamber judgment of 29 March 2006 in the case of *Cocchiarella v. Italy* (no. 64886/01, ECHR 2006 V).)

The Government of the Slovak Republic asked for those two cases to be referred to the Grand Chamber. The Panel of the Grand Chamber dismissed the requests on 8 March 2012.

The facts of the present case resemble the facts in the *Kormoš* and *Žúbor* cases. In view of the fact that the approach of the majority in *Kormoš* and *Žúbor* holds, we felt it proper to follow that precedent in the present case. We therefore voted for a violation.