



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

THIRD SECTION

CASE OF HORVÁTH v. SLOVAKIA

(Application no. 5515/09)

JUDGMENT

STRASBOURG

27 November 2012

FINAL

27/02/2013

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

In the case of Horváth v. Slovakia,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Corneliu Bîrsan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 6 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 5515/09) 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 Matej Horváth (“the applicant”), on 30 December 2008.

2. The applicant was represented by Advokátska kancelária Gabriel Orlík, s.r.o., a law firm with its seat in Topoľčianky.

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

4. The applicant complained, in particular, that there had not been a speedy determination of the lawfulness of his detention in the proceedings concerning his request for release of 11 January 2007.

5. On 14 April 2011 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

6. The applicant was born in 1983 and lives in Bratislava.

A. Criminal proceedings

7. On 28 April and 8 and 16 September 2005 the applicant was charged with attempted murder, robbery and fraud respectively.

8. On 15 December 2005 the applicant was indicted to stand trial in the Bratislava Regional Court (*Krajský súd*) on those charges.

9. On 26 January 2006 the Regional Court remitted the case to the Public Prosecution Service (“the PPS”) for the taking of further evidence, in particular in respect of the mental health of the key witness. That decision was upheld by the Supreme Court (*Najvyšší súd*) on 27 April 2006, following an interlocutory appeal by the PPS.

10. On 27 September 2006 the applicant was again indicted to stand trial on the charges mentioned above.

11. On 30 October 2006 the Bratislava District Court (*Okresný súd*) held a meeting with a view to making an initial assessment of the indictment (*predbežné prejednanie obžaloby*). At the conclusion of the meeting, the District Court ordered a hearing of the indictment (*hlavné pojednávanie*) for 6 December 2006.

12. In the course of the trial the applicant’s initial charges were re-qualified and, on 18 May 2007, the District Court found him guilty of a number of offences, including oppression, unlawful restriction of liberty and robbery, and sentenced him to nine years in prison. The judgment was, however, quashed on appeal and the case was remitted to the District Court for re-examination. The Court has not been informed of any further developments in the case, or of its outcome.

B. Detention prior to 11 January 2007

1. Remand

13. On 29 April 2005 the applicant was arrested and on 2 May 2005 he was remanded in detention pending trial on the murder charge. He was detained under Article 67 §§ 1 (c) and 2 of the Code of Criminal Procedure (“CCP”) (Law no. 141/1961 Coll., as applicable at the relevant time) as he was facing a charge carrying a penalty of imprisonment for eight years or more and there was a risk that he would continue offending. The applicant lodged an interlocutory appeal (*sťažnosť*) against the remand decision, which was declared inadmissible as belated on 16 June 2005.

2. First request for release

14. The applicant’s first request for release was dismissed by the District Court on 22 September 2005 and, following his interlocutory appeal, by the

Regional Court on 18 October 2005. The decisions were taken in private (*neverejné zasadnutie*).

3. Extension

15. Meanwhile, on 12 October 2005 the PPS had requested judicial authorisation for an extension of the applicant's detention until 29 April 2006. The request was acceded to by the District Court on 17 October and, following an interlocutory appeal by the applicant, by the Regional Court on 8 November 2005. The decisions were taken in private.

4. Detention following the remittal of the case to the PPS

16. On 26 January 2006, when the applicant's case was remitted to the PPS for the taking of further evidence (see paragraph 9 above), the Regional Court also ruled that the applicant should remain in detention. That decision was upheld by the Supreme Court on 27 April 2006 following an interlocutory appeal by the applicant. The decisions were taken in private.

5. Second request for release

17. On or around 2 or 4 October 2006, the applicant again requested release. The request was dismissed by the District Court on 16 October 2006 and, following an interlocutory appeal by the applicant, by the Regional Court on 23 November 2006. The decisions were taken in private.

6. Detention following the meeting of 30 October 2006

18. On 2 November 2006 the applicant lodged an application arguing that, at the preparatory meeting on 30 October 2006 (see paragraph 11 above), the District Court had failed to make a ruling concerning his continued detention.

19. On 6 November 2006 the relevant Chamber of the District Court ruled that the applicant's detention should continue; this was confirmed by a ruling on 27 November 2006 by which the President of the Chamber corrected what was termed a clerical error in the decision of 6 November 2006. The decisions were taken in private.

20. On 24 January 2007 the Regional Court dismissed interlocutory appeals by the applicant against both the decision of 6 November and that of 27 November 2006. The decisions were taken in private.

The Regional Court accepted the applicant's objection that mistakes had occurred on the part of the District Court in that it had failed to rule on his detention during the meeting of 30 October 2006 and in that it had made the ruling of 6 November 2006 with reference to the wrong provisions of the CCP.

However, those errors were merely technical in nature, had been remedied, and had resulted in no prejudice to the applicant.

At the same time, the Regional Court rejected a request by the applicant for release in return for a pledge under Article 80 § 1 (b) of the CCP that he would live in accordance with the law.

7. First constitutional complaint

21. On 30 July 2007 the applicant challenged the above-mentioned decisions in the Constitutional Court (*Ústavný súd*) by way of a complaint (*sťažnosť*) under Article 127 of the Constitution (Constitutional Law no. 460/1992 Coll., as amended).

On 27 September 2007 the complaint was declared inadmissible as having been lodged outside the statutory two-month time-limit.

C. Detention after 11 January 2007

1. Third request for release

22. On 11 January 2007 the applicant filed a third request for release, which was received at the District Court on 16 January 2007, and which he amended on 26 June 2007.

23. In its later observations in reply to the applicant's constitutional complaint (see paragraphs 26 et seq. below), the District Court submitted as follows:

“... no decision had been taken in respect of [the request for release], which was explained by the ... judge as being because he had considered [the request for release] to be a supplement to the [applicant's] interlocutory appeal against the decision of 6 November 2006” [see paragraph 19 above].

24. In the absence of any decision, on 21 August 2007 the applicant requested that his submissions of 11 January and 26 June 2007 be responded to. The request was lodged with the Regional Court, which transmitted it to the District Court, where it was received on 5 September 2007.

25. On 24 September 2007 the District Court held a public session (*verejné zasadnutie*) at which it ordered the applicant's immediate release, finding that his detention was no longer justified. The written version of the order refers to the applicant's “request for release”, the release to be “based on the Regional Court's decision [to quash the convicting judgment]” (see paragraph 12 above), without any further specification.

The order was implemented immediately.

2. Second constitutional complaint

26. The applicant lodged a new complaint under Article 127 of the Constitution. No copy of it has been submitted to the Court. However, from the summary of the complaint in the Constitutional Court's judgment (*nález*) (see below), the following can be established.

27. The complaint was received at the Constitutional Court on 22 August 2007. It was assessed to be a separate complaint from the complaint of 30 July 2007 (see paragraph 21 above). Upon an invitation by the Constitutional Court, the applicant's lawyer provided further and better particulars on 4 December 2007.

28. The applicant challenged the District Court's handling of his request for release of 11 January 2007, alleging a violation of his rights under Article 5 §§ 3 and 4 of the Convention, as well as the constitutional counterpart of the right to a hearing within a reasonable time under Article 6 § 1 of the Convention.

29. The applicant claimed the equivalent of approximately 6,600 euros (EUR) in compensation, citing "a particularly arbitrary and grave violation of [his] rights".

30. On 13 December 2007 the complaint was declared admissible.

31. In its observations in reply to the complaint, which were filed with the Constitutional Court on 26 May 2008, the District Court made the submission cited above (see paragraph 23).

32. On 17 June 2008 the Constitutional Court found a violation of the applicant's rights under Article 5 § 4 of the Convention. It observed, *inter alia*, that it was clear from the title and content of the applicant's submission of 11 January 2007 that it was a request for release and not a supplement to his interlocutory appeal against the decision of 6 November 2006. It had been the responsibility of the District Court to deal with it accordingly, with priority and adequate expeditiousness, which it had failed to do.

33. The Constitutional Court awarded the applicant the equivalent of approximately EUR 660, and the reimbursement of his legal costs, by way of just satisfaction. The amount of just satisfaction was determined "on an equitable basis" and with reference to Article 41 of the Convention, the "character of the violation found", the "length of the District Court's inactivity", and the fact that the applicant had been released in the meantime.

34. In so far as the applicant had invoked Article 5 § 3 of the Convention, the Constitutional Court observed that the case concerned matters of procedure falling within the ambit of Article 5 § 4 of the Convention, and not the former provision, taken in conjunction with Article 5 § 1 (c) of the Convention. Similarly, as no determination of the merits of the case was involved, the constitutional equivalent of Article 6 § 1 of the Convention was not applicable.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

35. The relevant part of Article 46 of the Constitution reads as follows:

“... ”

3. Everyone shall have the right to compensation for damage caused by an unlawful decision of a court, other State organ or an organ of public administration, or by wrongful official action.

4. The conditions and details ... shall be provided for by an Act of Parliament.”

36. Article 127 reads as follows:

“1. The Constitutional Court shall decide on 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 that 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 that 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 a person whose rights under paragraph 1 have been violated.

4. The liability for damage or other loss of the person who has violated the rights or freedoms as referred to in paragraph 1 shall not be affected by the Constitutional Court’s decision.”

B. Constitutional Court Act

37. The Constitutional Court Act (Law no. 38/1993 Coll., as amended) governs the organisation of the Constitutional Court, the procedure before it and the status of its judges.

An individual complaint under Article 127 of the Constitution is made subject to the rule of exhaustion of ordinary remedies, which is formulated in the relevant part of section 53(1) and (2) as follows:

“1. A[n] [individual] complaint is not admissible if the complainant has not exhausted legal remedies or other legal means which a statute effectively provides to

[the complainant] with a view to protecting [the complainant's] fundamental rights or freedoms, and which the complainant is entitled to use under special statute.

2. The Constitutional Court shall not declare a[n] [individual] complaint inadmissible even if the condition under paragraph 1 has not been fulfilled, if the complainant establishes that [the complainant] has not fulfilled this condition for reasons worthy of particular consideration.”

38. Under section 56(4), when dealing with individual complaints, in the event of a finding of a violation of a fundamental right or freedom:

“The Constitutional Court may also grant appropriate financial compensation to the person whose fundamental right or freedom has been violated.”

39. Section 56(6) provides that:

“If the Constitutional Court quashes a final and binding (*právoplatné*) decision, measure or act and remits the matter for further proceedings, [the authority] which issued the decision, decided on the measure or carried out the act is liable to examine and determine the matter anew. In such proceedings or procedure [it] shall be bound by the legal view of the Constitutional Court.”

C. Constitutional Court's report

40. In connection with four other individual applications under the Convention, the Constitutional Court produced a report dated 7 March 2011 concerning the existence of an enforceable right to compensation, as required by Article 5 § 5 of the Convention, in respect of detention in contravention of Article 5 §§ 1 to 4 of the Convention and the Constitutional Court's practice in awarding appropriate financial compensation.

The report and case-law references contained therein may be summarised as follows.

41. Awarding appropriate financial compensation under Article 127 § 3 of the Constitution is an optional remedy in respect of a violation by a public authority of fundamental rights and freedoms of individuals or legal entities which has been found by the Constitutional Court. The purpose of appropriate financial compensation is to complete the protection of the fundamental right violated in instances where it has been established that the violation occurred in such a way as to call for a level of protection greater than a mere finding of a violation or, as the case may be, order by the Constitutional Court that the case be dealt with by another authority instructed to avoid a similar violation of the fundamental right in question (cases nos. IV ÚS 410/04 and IV ÚS 139/08).

The question of an award of appropriate financial compensation arises in particular where it is not possible to remedy a violation of a right or freedom by way of quashing the impugned decision or measure or by restoring the status quo ante (case no. I ÚS 15/02).

The purpose of appropriate financial compensation is to reduce the loss felt as a result of the violation of the fundamental right, the Constitutional Court determining the award of compensation on an equitable basis and taking into account the circumstances of the individual cases concerned (*mutatis mutandis*, case no. III ÚS 424/08).

42. As regards the system of remedies in respect of detention in violation of Article 5 §§ 1 to 4 of the Convention, by virtue of Article 127 § 4, the liability of a person who has violated rights or freedoms as referred to in paragraph 1 of that Article for damage or other loss is not to be affected by the Constitutional Court's decision, including on appropriate financial compensation. This provision is of particular relevance in correlation with the right to compensation for damage (including non-pecuniary damage) caused by a public authority under the State Liability Act.

43. The provision of Article 127 § 3 of the Constitution, which allows for an award of appropriate financial compensation, is a special and autonomous remedy which is independent of the State Liability Act. It does not constitute a *lex specialis* and, therefore, an award or non-award of appropriate financial compensation under Article 127 of the Constitution does not preclude a claim for compensation for pecuniary or non-pecuniary damage under sections 7, 8 and 9 of the State Liability Act.

D. State Liability Act

44. The State Liability Act (Law no. 514/2003) was enacted on 28 October 2003 and became operative on 1 July 2004. It provides for the liability of the State for damage which has been caused by, *inter alia*, unlawful arrest, detention (*zadržanie*) or other deprivation of liberty (section 3(1)(b)); decisions concerning remand in custody (*väzba*) (section 3(1)(c)); and wrongful official action (section 3(1)(d)).

45. Pursuant to section 7, where a decision on arrest, detention or any other deprivation of liberty has been quashed as being unlawful, or where there has been wrongful official action in that context, the person affected by it is entitled to compensation for damage.

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

47. However, no such right arises when the person concerned has himself or herself given cause to be remanded in custody (section 8(6)(a)).

48. Section 9, which deals with compensation for damage caused by wrongful official action, provides:

“1. The State is liable for damage caused by wrongful official action. Wrongful official action includes a public authority’s failure to take action or issue a decision within the statutory time-limit, general inactivity in the exercise of public authority, unjustified delays in proceedings, or other unlawful interference with the rights and legally recognised interests of individuals and legal entities.

2. The right to compensation for damage caused by wrongful official action is vested in the person who sustained the damage.”

49. A claim for damages under the Act has first to be raised by the injured party with the authority liable for the damage in question with a view to its preliminary assessment (section 15(1)). Should that authority fail to satisfy the claim within six months of the day of its reception, the injured party is free to assert the claim in court (section 16(1)).

50. Section 17 defines the manner and extent of compensation for damage. It provides in its relevant part:

“1. Damage and lost profit shall be compensated for, unless special legislation provides otherwise.

2. In the event that the finding of a violation of a right alone is not adequate compensation in view of the loss caused by the unlawful official action or wrongful official conduct, monetary compensation shall also be awarded for non-pecuniary damage, if it is not possible to compensate for it otherwise.”

51. Under section 25(4), unless otherwise provided for by special legislation, disputes concerning matters regulated by the State Liability Act are to be decided upon by the courts.

E. Ordinary courts’ practice

52. In a judgment dated 16 March 2007 (in case no. 4C 258/2006), the Brezno District Court allowed an action for damages by two individuals against the State under the State Liability Act and ordered the defendant to pay the costs of their defence in connection with a criminal trial that had ended with their acquittal.

On 22 November 2007 the Banská Bystrica Regional Court upheld the judgment following an appeal by the defendant.

53. On 14 October 2009 the Bratislava Regional Court allowed an appeal (case no. 2Co 238/2008) in connection with an action by an individual against the State under the State Liability Act for damages, awarding him a sum of money in compensation for non-pecuniary damage caused by his remand in custody in the context of a criminal trial that had ended with his acquittal.

54. In a judgment dated 17 August 2009 (case no. 19C 47/2006), the Bratislava I District Court allowed an action for damages by an individual against the State under the State Liability Act and awarded the claimant a sum of money in compensation for non-pecuniary damage caused by

wrongful official action in connection with his detention pending a criminal trial.

The impugned wrongful official action concerned the extension of the claimant's detention pending trial.

The action was preceded by a Constitutional Court judgment given on 19 October 2005 (case no. I. ÚS 65/05) in which the Constitutional Court had found a violation of the claimant's rights under Article 5 §§ 3 and 4 in connection with the same facts. However, the Constitutional Court did not award the claimant damages as he had made no claim for damages.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

55. The applicant complained that his continued detention had been unlawful and arbitrary and that in the proceedings for review of the lawfulness of his detention he had not been heard orally; that the proceedings had not been speedy; and that his request for release of 11 January 2007 had not been determined at all. He relied on Article 5 §§ 3 and 4 of the Convention, which reads as follows:

“3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

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.”

A. Admissibility

1. Detention prior to 11 January 2007

56. The Government objected that this part of the application had been submitted out of time. The applicant disagreed and rejoined that he had first had to exhaust all domestic remedies, to which he added that he considered the two-month statutory period for bringing a constitutional complaint too short.

57. The Court observes that some aspects of the applicant's detention in the relevant period were challenged before the Constitutional Court, and

that the applicant's first constitutional complaint was rejected as belated on 27 September 2007 (see paragraph 21 above). This part of the application could thus first of all be rejected for the applicant's failure to exhaust domestic remedies as required under Article 35 § 1 of the Convention. For the sake of completeness the Court observes that, in so far as the application has been substantiated, the applicant's second constitutional complaint solely concerned his right under Article 5 § 4 of the Convention to have the lawfulness of his detention determined speedily, in connection with his request for release of 11 January 2007 (see below).

58. Moreover, and in any event, as the application was introduced on 30 December 2008 (see paragraph 1 above), the Court finds that the part relating to the applicant's detention and the related proceedings and decisions prior to 11 January 2007 was submitted outside the six-month time-limit under Article 35 § 1 of the Convention.

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

2. Article 5 § 3 and other aspects of Article 5 § 4 of the Convention than the right to have the lawfulness of the detention after 11 January 2007 decided speedily

60. The Government objected that in respect of this part of the application, the applicant had failed to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention in that he had not raised it before the Constitutional Court in accordance with the applicable procedural requirements.

61. The applicant disagreed and submitted, in particular, that he had in fact raised the issue of the lack of an oral hearing in respect of his detention at the domestic level.

62. The Court observes at the outset that the scope of its examination of this part of the application is limited to the applicant's detention and any procedures and decisions in respect of it after 11 January 2007. The Court further observes that no copy of the applicant's second constitutional complaint or the amendment to it has been submitted to it. The Court's assessment of the content of the second constitutional complaint is therefore based on the summary of the complaint in the Constitutional Court's judgment of 17 June 2008 (see paragraphs 26 to 29 above), from which it is apparent that the object of the complaint was the expeditiousness of the District Court's handling of the applicant's request for release, or lack of it, or the fact that it had never been determined.

In other words, although in his second constitutional complaint the applicant formally invoked Article 5 §§ 3 and 4, there is no indication that, in substance, he actually challenged his continued deprivation of liberty or the alleged lack of an oral hearing in the determination of his request for release of 11 January 2007. In so far as the applicant submitted that he had

actually raised the issue of the alleged lack of an oral hearing at the domestic level, his submission has not been supported by any evidence, especially any evidence showing that he did in fact do so in the standardised and prescribed form containing a summary of his second constitutional complaint (see *Obluk v. Slovakia*, no. 69484/01, § 48, 20 June 2006).

It follows that this part of the application must in any event be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

3. Right under Article 5 § 4 of the Convention to have the lawfulness of detention decided speedily, as regards the applicant's request for release of 11 January 2007

(a) The parties' arguments

63. The Government raised two objections.

First, they relied on the Constitutional Court's judgment of 17 June 2008 (see paragraphs 32 et seq. above), which had found a violation of the applicant's right and awarded him just satisfaction on that account. They pointed out that the amount of just satisfaction awarded had been determined "on an equitable basis" and with reference to criteria compatible with the Convention (see paragraph 33 above). They also submitted that the amount of just satisfaction awarded in the present case was consistent with the amount accepted by the Court in the case of *Michalák v. Slovakia* (no. 30157/03, §§ 149-157, 8 February 2011). The Government concluded that, as a result, the applicant had lost his "victim" status within the meaning of Article 34 of the Convention in respect of the alleged violation of his rights under Article 5 § 4 of the Convention.

64. In reply to the Government's first objection, the applicant disagreed and contended, in particular, that the amount of just satisfaction awarded by the Constitutional Court was disproportionately low in view of the length of the period during which the District Court had failed to deal with his request for release, and the "particularly grave" violation of his rights.

65. Second, the Government submitted that, moreover, and in any event, the applicant had failed to comply with the requirement of Article 35 § 1 of the Convention to exhaust domestic remedies, since he had failed to claim damages under the State Liability Act. In that regard, the Government relied on the Constitutional Court's report (see paragraphs 40 et seq. above) and the judgment of the Bratislava I District Court of 17 August 2009 (see paragraph 54 above).

66. In reply to the Government's second objection, the applicant disagreed, considering, in particular, that there was no indication in the case-law of the Court that an action for compensation under the State Liability Act was a remedy to be exhausted for the purposes of Article 35 § 1 of the Convention in respect of complaints such as his. He further

submitted that not even the Constitutional Court had required him to exhaust that remedy. Finally, the applicant contended that, in any event, the remedy in question was ineffective. In support of that argument he submitted that a claim under the State Liability Act had first to be raised with the authority concerned, which could take as long as six months to examine it (see paragraph 49 above) and then, as the case may be, had to be brought to and examined by the courts, and it was the courts themselves that had violated his rights by failing to respect time-limits.

(b) The Court's assessment

67. The Court will first examine the Government's objection of non-exhaustion of domestic remedies. In this connection, the Court observes that it has recently examined and dismissed similar objections in the following cases against Slovakia: *Kormoš* (no. 46092/06, 8 November 2011), *Karlin* (no. 41238/05, 28 June 2011), *Aydemir* (no. 44153/06, 8 February 2011), *Michalko* (no. 35377/05, 21 December 2010), *Osváthová* (no. 15684/05, 21 December 2010), and *Štetiar and Šutek* (nos. 20271/06 and 17517/07, 23 November 2010).

68. In that respect, the Court refers to its case-law concerning exhaustion of domestic remedies, as recently summarised in *Koky and Others v. Slovakia* (no. 13624/03, § 169, 12 June 2012, with further references).

69. The Court also 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 *Karlin*, cited above, § 85; *Michalák v. Slovakia*, no. 30157/03, § 103, 8 February 2011; *Osváthová*, cited above, § 56; *Štetiar and Šutek*, cited above, § 69; and *Adamski v. Poland* (dec.), no. 6973/04, 27 January 2009, with further references).

70. In the present case, the applicant submitted to the Constitutional Court under Article 127 of the Constitution the same complaint as he now makes in proceedings under the Convention.

71. In this context it is to be noted 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 *Karlin*, cited above, § 71; *Michalko*, cited above, § 134; *Osváthová*, cited above, § 59; and *Štetiar and Šutek*, cited above, § 119).

72. It is further to be observed that the Constitutional Court is the supreme authority in Slovakia in charge of protection of fundamental rights and freedoms (see *Kormoš*, cited above, § 47, and *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).

73. The Constitutional Court examined the applicant's complaint on the merits and found a violation of his rights under Article 5 § 4 of the Convention.

74. As regards the functional relationship between the remedy the applicant used and that now advocated by the Government, it is to be noted first of all that the Constitutional Court is to entertain an individual complaint only if the matter does not fall within the jurisdiction of a different court (Article 127 § 1 of the Constitution) and after exhaustion of the remedies envisaged under section 53(1) and (2) of the Constitutional Court Act (see paragraphs 36 and 37 above, as well as *Kormoš*, cited above, § 47, and *Borovský v. Slovakia*, no. 24528/02, § 27, 2 June 2009).

75. From that perspective, the Court finds it noteworthy that the Constitutional Court examined the merits of the applicant's complaint under Article 127 of the Constitution without requiring him first to have used the remedy under the State Liability Act now advanced by the Government.

76. At this juncture the Court reiterates that it is first of all for the national authorities to devise means and methods of examining individual complaints so as to render the protection of the individual rights effective. Nevertheless, it remains the Court's task to satisfy itself in each individual case whether the protection of the applicant's rights afforded by the national authorities is comparable to that which the Court can provide under the Convention. It therefore remains for the Court to ascertain whether there was anything more for the applicant to do in order to satisfy the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention (see *Koky and Others v. Slovakia*, no. 13624/03, §§ 178-9, 12 June 2012; *Michalák*, cited above, §§ 176-7; *Gál v. Slovakia*, no. 45426/06, §§ 65-6, 30 November 2010; and, *mutatis mutandis*, *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005).

77. For that matter, to the extent that the Government argued that the applicant should have sought compensation under the State Liability Act on the basis of the Constitutional Court's judgment, the Court notes that the Constitutional Court, after finding a breach of Article 5 § 4, also decided on the applicant's claims for just satisfaction. In that respect the present case is different from that on which the Government relied (see paragraph 54 above), in which the Constitutional Court had been unable to award the claimant just satisfaction as he had made no claim to that end. Moreover, and in any event, the judgment of the ordinary court now relied on by the Government was subsequent to the facts of the present case and any persuasive value it may have is relative in view of the fact that it appears to be a one-off finding originating from a lower court, and there is no indication whether it has been tested on appeal, or if so with what result (see

Kormoš, cited above, § 48 and *Osváthová*, cited above, § 61). There is accordingly no jurisprudential support for the Government's argument.

78. Furthermore, the Court also notes that this remedy was only compensatory in nature and that, in particular, it was not aimed at or capable of redressing the applicant's situation in its essence, that is to say, bringing about an end to his continued deprivation of liberty and rectifying the alleged shortcomings in the proceedings (see *Aydemir*, cited above, §§ 47-8 and *Michalko*, cited above, §§ 87-8, with further references).

79. Finally, the Court has not found any elements supporting a conclusion that, as regards damages, there was any realistic prospect that in the present applicant's case an ordinary court would have arrived at conclusions differing from those of the Constitutional Court (see, *mutatis mutandis*, *Kormoš*, cited above, § 49; *Aydemir*, cited above, § 52; *Michalko*, cited above, § 9; *Osváthová*, cited above, § 62; and *Štetiar and Šutek*, cited above, § 75).

80. The Government's objection relating to the applicant's failure to exhaust domestic remedies must therefore be dismissed.

81. The Court further considers that the Government's objection concerning the applicant's status as a "victim" is closely linked to and should be joined to the merits of the complaint.

82. Furthermore, the Court considers that this part of the application raises serious questions of fact and law which are of such complexity that their determination should depend on an examination on the merits. It cannot, therefore, be considered manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. The Parties' arguments

83. The applicant contended that the determination of his request for release of 11 January 2007 had fallen short of the requirements of Article 5 § 4 of the Convention, in particular as regards its "speediness".

84. Referring to the Constitutional Court's judgment of 17 June 2008, the Government conceded that the complaint was not manifestly ill-founded.

2. The Court's assessment

85. The Court reiterates that Article 5 § 4, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their right, following the institution of

such proceedings, to a speedy judicial decision concerning the lawfulness of the detention and ordering its termination if it proves unlawful. In order to determine whether the requirement that a decision be given “speedily” has been complied with, it is necessary to effect an overall assessment where the proceedings were conducted at more than one level of jurisdiction. The question whether the right to a speedy decision has been respected must – as is the case for the “reasonable time” stipulation in Articles 5 § 3 and 6 § 1 of the Convention – be determined in the light of the circumstances of each case, including the complexity of the proceedings, the conduct of the domestic authorities, the conduct of the applicant and what was at stake for the latter (for a recapitulation of the applicable principles, see *Mooren v. Germany* [GC], no. 11364/03, § 106, ECHR 2009–...).

86. In the present case the applicant lodged his request for release on 11 January 2007. While it is not entirely clear whether it was this request that resulted in the applicant’s release pursuant to the District Court’s decision of 24 September 2007 (see paragraph 25 above), it is undisputed that the applicant was in fact released on the last-mentioned date. The determination of his request thus in any event took more than eight months, during which time his request was examined at a single level of jurisdiction, without counting any possible further period for delivering and serving the written version of the release order on him (see, for example, *Cabala v. Slovakia*, no. 8607/02, § 68, 6 September 2007, and *Singh v. the Czech Republic*, no. 60538/00, § 74, 25 January 2005).

87. The Court has found no elements supporting a conclusion that the applicant’s detention case was of any particular complexity or that the applicant contributed to the length of the impugned period in any way. Quite the contrary, it would appear that the applicant proactively pursued his request for release and a decision in respect of it.

88. As to the conduct of the authorities, the Court finds it striking that despite a reminder dated 26 June 2007, the District Court did not appear to have any intention to determine the request. Its explanation that the request had not been processed because it had been considered to be a supplement to the applicant’s interlocutory appeal against the decision of 6 November 2006 was rejected by the Constitutional Court (see paragraphs 23 and 32 above), and the Court cannot but concur with that assessment. In the Court’s view it is also of relevance that, as acknowledged by the Regional Court, the decision of 6 November 2006 and the procedure in respect of it was itself flawed (see paragraphs 20 above), and that by the time of the applicant’s reminder of 26 June 2007 his interlocutory appeal against the decision of 6 November 2006 had long been decided upon.

89. Regard being had to the Court’s case-law on the subject (see the summary in *Štetiar and Šutek* (cited above, § 131); *Gál* (cited above, § 69); *Michalko* (cited above, § 171); and *Osváthová* (cited above, § 77), the

finding of the Constitutional Court (see paragraph 32 above), and the Government's admission (see paragraph 84 above), the foregoing considerations are sufficient to enable the Court to conclude that the applicant's request for release of 11 January 2007 was not determined "speedily".

3. *The victim status of the applicant*

90. In view of the above conclusion, which concurs with that of the Constitutional Court on the applicant's case, it remains to be examined whether the applicant can still claim to be a victim.

91. The Court reiterates that a decision or measure favourable to the 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 (see *Rosselet-Christ v. Slovakia*, no. 25329/05, § 49, 26 October 2010, with further references).

92. Since the Constitutional Court expressly acknowledged a breach of the applicant's right under Article 5 § 4, the only issue which arises in that regard in the present case is whether the redress afforded to him can be considered appropriate.

93. When determining such an issue the Court will have regard to its own practice in similar cases. This does not imply that in a situation where the domestic authorities awarded a sum to the applicant with a view to redressing the breach found, such sum must correspond to the Court's award. The issue must be determined in the light of all relevant circumstances, including the nature of the breach and the way and speediness with which it was established by the domestic authorities, whose responsibility it is in the first place to ensure respect for rights and freedoms guaranteed by the Convention. The level of just satisfaction granted at national level must nevertheless not be manifestly inadequate in the particular circumstances of the case (see also *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-V; *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-213, ECHR 2006-V; or *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007, and *Kormoš*, cited above, § 73).

94. In its judgment of 17 June 2008, the Constitutional Court awarded the applicant the equivalent of some EUR 660, and the reimbursement of his legal costs, by way of just satisfaction. In determining the compensation, it referred to Article 41 of the Convention and the "equitable basis" principle. In particular, it took into account the "character of the violation found", "the length of the District Court's inactivity", and the fact that the applicant had been released in the meantime.

95. Without passing any judgment as to whether the applicant's release could in the particular context be accepted as a relevant criterion, the Court

finds that the sum awarded as just satisfaction was not sufficient to provide the applicant with appropriate redress in the circumstances (for comparison see, for example, *Kadem v. Malta*, no. 55263/00, 9 January 2003; *Rapacciuolo v. Italy*, no. 76024/01, 19 May 2005; *Vejmola v. the Czech Republic*, no. 57246/00, 25 October 2005; and – more recently - *Rahmani and Dineva v. Bulgaria*, no. 20116/08, 10 May 2012; *Shakurov v. Russia*, no. 55822/10, 5 June 2012; *Abidov v. Russia*, no. 52805/10, 12 June 2012; and *Alikhonov v. Russia*, no. 35692/11, 31 July 2012).

In reaching this conclusion the Court has had regard, *inter alia*, to the attitude of the District Court, which appears to border on a denial of the applicant's right to proceedings for the review of the lawfulness of his detention. This, coupled with the purely written nature of the proceedings, distinguishes the present case from those where merely the question of the "speediness" of such a review is at stake and no more (see, for example, *Wakil v. Slovakia* (dec.) [Committee], no. 50929/08, 29 May 2012).

96. The applicant can thus still claim to be a "victim" within the meaning of Article 34 of the Convention of a breach of his rights under Article 5 § 4 of the Convention, and the Government's objection in this regard must be dismissed.

There has accordingly been a violation of Article 5 § 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. 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

98. The applicant claimed EUR 1,930.88 in respect of pecuniary damage, consisting of earnings lost due to his allegedly arbitrary detention and costs he was expecting to be required to pay in respect of his detention, and EUR 30,000 in respect of non-pecuniary damage.

99. The Government contested both claims, the former in substance and the latter as to its amount, which they considered excessive.

100. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 4,200, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

101. The applicant also claimed EUR 3,308.20 for legal costs and related expenses in connection with the proceedings before the Court, EUR 55 for translation expenses, and EUR 8.70 for postal expenses.

102. The Government accepted that the applicant must have incurred certain costs and expenses. They contended, however, that the claim was overstated and, in addition, not presented in accordance with the applicable rules.

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

104. In the instant case, the Court observes that the applicant has not substantiated his claim with any relevant supporting documents establishing that he was under an obligation to pay the costs of legal services and administrative expenses, or that they have actually been paid. Accordingly, the Court does not award any sum under this head (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 133-134, ECHR 2004-XI).

C. Default interest

105. 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* the Government's objection under Article 34 of the Convention to the merits of the complaint under Article 5 § 4 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 of 11 January 2007 and *rejects* it;
2. *Declares* the complaint under Article 5 § 4 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 of 11 January 2007 admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,200 (four thousand two hundred 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 27 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President