



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

THIRD SECTION

CASE OF ČERNÁK v. SLOVAKIA

(Application no. 36997/08)

JUDGMENT

STRASBOURG

17 December 2013

FINAL

14/04/2014

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

In the case of Černák v. Slovakia,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Kristina Pardalos,

Johannes Silvis,

Valeriu Grițco, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 26 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 36997/08) 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 Mikuláš Černák (“the applicant”), on 22 July 2008.

2. The applicant was represented by Mr Ľ. Samuel and Mr J. Gereg, lawyers practising in Banská Bystrica.

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

3. The applicant alleged, in particular, that his pre-trial detention under an order issued on 2 February 2007 had been in breach of the rule of speciality under the European Convention on Extradition 1957 (“the ECE”) and, as such, had been unlawful within the meaning of Article 5 § 1 (c) of the Convention. He also complained that proceedings in respect of his interlocutory appeal against that order and in respect of an application by the Public Prosecution Service (“the PPS”) lodged on 6 July 2007 for the extension of his detention had fallen short of the procedural guarantees of Article 5 § 4 of the Convention.

4. On 24 May 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and is currently serving a life sentence in Ilava prison.

A. Background

1. Original trial

6. By way of a series of judgments in 2000, 2001 and 2002, the applicant was acquitted of kidnapping and murder and found guilty of extortion, tax fraud and customs fraud, for which he was sentenced to eight and a half years' imprisonment (see *Černák v. Slovakia* (dec.), no. 67431/01, 1 March 2005).

7. He served this sentence until November 2002, when he was released on parole. On an unspecified later date, he left Slovakia for the Czech Republic.

8. In 2003 a warrant was issued in Slovakia for his arrest for the purpose of returning him to prison to carry out the remainder of his sentence imposed in 2000, 2001 and 2002 (see paragraph 6 above); he was arrested in the Czech Republic on that warrant and extradited to Slovakia upon a decision of the Minister of Justice of the Czech Republic of 18 September 2003.

9. He then served the remainder of his previously imposed sentence until it ended on 26 October 2006.

10. Prior to that date, however, he had been remanded in custody pending trial on new charges, which led to a new trial and conviction. The details are summarised below.

2. Murder trials

(a) Charges

11. On 22 December 2005, 15 February, 4 April and 25 October 2006, and 21 February 2007 respectively, the applicant was charged with seven counts of murder and conspiracy to murder, which were all alleged to have taken place before his extradition to Slovakia in 2003 (see paragraph 8 above).

12. The proceedings on all these charges were joined on 26 February 2007, but the proceedings in respect of one of the counts of murder were eventually separated on 10 June 2007.

(b) Initial pre-trial detention

13. Meanwhile, on 24 October 2006 the Banská Bystrica District Court (*Okresný súd*) had remanded the applicant in custody pending trial on the charge of 15 February 2006. The detention was to commence as soon as he completed his sentence (see paragraph 9 above).

Following an interlocutory appeal (*sťažnosť*) by the applicant, the detention order was upheld by the Banská Bystrica Regional Court (*Krajský súd*) on 15 November 2006.

14. The applicant was detained until 1 February 2007 when he was released by the Banská Bystrica Regional Court, pursuant to its decision of the same day to uphold a release order previously issued by the Banská Bystrica District Court on 21 December 2006.

15. In ordering his release, the courts held that the charge of 15 February 2006 was in breach of the rule of speciality under Article 14 of the ECE with respect to his extradition in 2003, as was his detention on that charge.

The courts also held that, consequently, the charge against him and any procedural action performed in the framework of the proceedings against him on that charge were legally flawed.

Nevertheless, it was not justified to terminate his prosecution on that charge because nothing prevented its continuation subject to additional consent being given by the Czech Republic.

(c) Consent by the Czech Republic to the applicant's prosecution in Slovakia

16. Meanwhile, on 22 December 2006 the Prešov District Court in Slovakia had issued a European arrest warrant ("EAW") in respect of the applicant on the basis of the charge of 25 October 2006.

17. On 19 and 26 January 2007 respectively, two courts in the Czech Republic, the Prague City Court (*Městský soud*) and, following an appeal by the applicant, the Prague High Court (*Vrchní soud*), gave their consent for applicant's trial to take place in Slovakia pursuant to the EAW of 22 December 2006. In the proceedings before the Czech courts, the applicant was not present in person, but he was represented by a lawyer.

18. On 31 January 2007 another lawyer appointed by the applicant presented herself without invitation at the Prešov District Court, seeking a copy of the EAW of 22 December 2006, and was provided with it.

19. On 2 March 2007 the Prešov District Court issued another EAW in respect of the applicant and the remaining murder charges, that is to say those of 22 December 2005, 15 February and 4 April 2006 and 21 February 2007 (see paragraph 11 above).

20. On 19 April and 2 May 2007 respectively, the Prague City Court and, following an appeal by the applicant, the Prague High Court, gave their consent for his trial to take place in Slovakia pursuant to the EAW of 2 March 2007.

B. Impugned pre-trial detention

1. Renewal of pre-trial detention

21. Meanwhile, immediately on his release on 1 February 2007 (see paragraph 14 above), the applicant was taken back into custody on the charge of 25 October 2006.

22. According to a note in the case file of the Prešov District Court (the remand court), from 7.30 a.m. on 2 February 2007 a clerk of that court, on the instruction of a judge, had been trying to contact the applicant's two defence counsel, whose chambers were some 350 and 200 kilometres away from the seat of the court, with a view to summoning them for a *habeas corpus* hearing to be held at 1 p.m. that day.

One of the counsel was reached by phone at 8.40 a.m. and said that in view of the distance and weather conditions, he would be unable to attend the hearing in time. He would collect the other counsel on his way. Written summons were sent to both lawyers by fax at around 9.00 a.m.

23. The *habeas corpus* hearing started at 1 p.m. as scheduled. The applicant complained several times that he felt unwell. Emergency medical services were called twice, and on one of those occasion he was taken to hospital and checked over, with the conclusion that he was fit to appear in court.

24. On his return from hospital at around 2.45 p.m., the hearing resumed in the presence of his counsel, who had arrived in the meantime.

25. The counsel were provided with a copy of the PPS's application for the EAW of 22 December 2006 (see paragraph 16 above). In addition, the hearing was adjourned for twenty minutes so they could inspect the case file and, subsequently, before it resumed again at 3.40 p.m., consult with the applicant.

26. The applicant denied the charge. His counsel invoked the rule of speciality with respect to his extradition from the Czech Republic in 2003 and objected that the applicant had never been heard in the extradition proceedings as to whether or not he wished to rely on the rule.

27. The PPS aimed at having the applicant remanded in custody on three different grounds, namely that he might abscond, interfere with the course of justice and reoffend.

28. At 5.10 p.m. the hearing was concluded by the District Court, which remanded the applicant in custody on the ground that he might abscond. The transcript of the hearing indicated, without giving any details, that the detention order was "pronounced together with the reasoning [behind it] and instructions as to an available remedy".

29. At the conclusion of the hearing the applicant, his counsel and the PPS indicated orally that they wished to appeal.

30. In the written version of the detention order of 2 February 2007, the District Court observed that there was a strong suspicion against the applicant, that the offence he was suspected of was one of the gravest, and

that he was potentially facing a heavy penalty. There was consequently the risk that in order to avoid punishment, he would leave Slovakia, just as he had done after his conditional release.

The District Court also observed that the EAW of 22 December 2006 did not envisage detaining him on the other grounds pursued by the PPS. Accordingly, the relevant part of the PPS's request called for no separate decision.

31. The PPS subsequently provided the grounds of their appeal in writing, reiterating their request that the applicant also be detained on the grounds that he might interfere with the course of justice and reoffend.

32. The defence, on their part, waited for a written version of the detention order of 2 February 2007 to be served on them so that they could contest it properly.

33. On 7 February 2007 the applicant offered a written pledge that, if left at liberty, he would live in accordance with the law and make himself available for the purposes of his prosecution. It was received at the District Court on 15 February 2007.

34. Meanwhile, however, on 12 February 2007 the Prešov Regional Court had dismissed the appeal by the defence in a private session (*neverejné zasadnutie*) without hearing the applicant or his counsel.

The decision was taken prior to the service of the detention order on the defence and, therefore, in the absence of their grounds for appeal.

35. In the same decision, the Regional Court allowed the PPS's appeal inasmuch as they were seeking an extension of the applicant's detention on the grounds that he might reoffend. The court referred, *inter alia*, to his previous conviction for violent offences and the further charges of 22 December 2005 and 4 April 2006.

36. The written version of the detention order of 2 February 2007 was eventually served on the defence on 12 February 2007, after the Regional Court had dismissed their appeal as mentioned above.

2. Extension of pre-trial detention

37. On 6 July 2007 the PPS requested that the applicant's detention be extended by six months until 1 February 2008. They argued that the investigation had been extensive and demanding and that there remained a number of investigative steps to be taken. Moreover, additional time was necessary for the applicant and his co-accused to familiarise themselves with the contents of the case file before an indictment could be filed.

38. A copy of the PPS's request was served on the applicant on 9 July 2007.

39. The following day, 10 July 2007, the Prešov District Court held a private session in which it allowed the PPS's request without hearing the applicant.

The decision relied on the EAWs of 22 December 2005 and 2 March 2007 and the ensuing consent by the Czech Republic. The court found that

the grounds for detaining the applicant persisted, as established at the time of his remand in custody, and observed that the joinder of all the charges against him on 26 February 2007 had given rise to a complex trial to which adequate time should be afforded. The decision was served on the applicant on 16 July 2007.

40. On 18 July 2007, the applicant made a written submission containing an interlocutory appeal against the decision of 10 July 2007. It was sent by post and received by the District Court on 20 July 2007. In his appeal, he referred to the rule of speciality and argued that his detention was warranted and unlawful.

41. By another submission dated 23 July 2007, the applicant requested that he be heard in person. That submission was also sent by post and appears to have been received by the Prešov Regional Court on 26 July 2007.

42. However, meanwhile, on 25 July 2007 the Regional Court had dismissed the applicant's interlocutory appeal. It observed, among other things, that the PPS's request for an extension of his detention had been served on him on 9 July 2007, that the defence had made no written submission in respect of it, that his interlocutory appeal did not contain any information calling for a public hearing, and that he had not expressly requested to be questioned orally.

As to the substance, the Regional Court concurred with the District Court and observed that all statutory conditions for extending the term of the applicant's detention had been met.

3. Constitutional complaint

43. On 5 April 2007 the applicant lodged a complaint with the Constitutional Court (*Ústavný súd*) under Article 127 of the Constitution, alleging a violation of his rights under Article 5 §§ 1 (c), 3 and 4 of the Convention.

44. He argued, in particular, that the renewal of his detention was linked to charges for offences that were alleged to have taken place prior to his extradition from the Czech Republic in 2003, that the Czech Republic had not at the relevant time effectively consented to his prosecution on those charges, and that, consequently, there had been a breach of the rule of speciality under Article 14 of the ECE.

45. He also contested that the subsequent EAWs had been issued and the ensuing extradition procedure had been carried out in secret, without his knowledge, and without any opportunity for him to comment.

46. Furthermore, he contended that he had not been served with a copy of the detention order of 2 February 2007 or the PPS's interlocutory appeal against it in sufficient time for him to be able to consider and contest them (see paragraphs 31 and 36 above).

47. On 2 August 2007 he amended his constitutional complaint, alleging a violation of his rights under Article 5 § 4 of the Convention. He claimed

that the decision to extend his renewed detention had been taken without him being present or heard, and that it lacked adequate reasoning.

48. On 29 November 2007 the Constitutional Court declared the complaint inadmissible. It established, *inter alia*, that (i) the renewal of the applicant's detention had been prompted by an application by the PPS; (ii) a copy of this application had not been served on the defence; (iii) the detention order of 2 February 2007 had been served on the applicant's counsel on 12 February 2007, the same day his interlocutory appeal against that detention order had been dismissed; (iv) neither the application for the EAWs nor for the applicant's extradition from the Czech Republic had been communicated to the defence; (v) there was no legal requirement to serve an application for an EAW, detention order, or foreign consent to prosecution on the person concerned; (vi) neither was there any time-limit for serving a copy of the PPS's reasoning on that person; (vii) the applicant and his three counsels had been heard by a judge on 2 February 2007; and (viii) the defence had been given the opportunity and had exercised their right to inspect the contents of the case file.

49. The Constitutional Court concluded that the ordinary courts had examined the case properly and had given adequate reasoning in their decisions, free from constitutionally relevant arbitrariness. No position was taken as to the rule of speciality.

50. The Constitutional Court's decision was served on the applicant's lawyer on 24 January 2008.

4. *Indictment and subsequent detention*

51. On 13 February 2008 the applicant had been indicted to stand trial on the remaining six counts of murder and conspiracy to murder.

52. Prior to and following that date a number of decisions were taken extending his term of pre-trial detention and confirming it. In challenging these decisions, the applicant relied, *inter alia*, on the rule of speciality as mentioned above. In particular, on 18 December 2008, the applicant put forward this argument in a fresh complaint to the Constitutional Court.

53. On 14 October 2009 the Constitutional Court declared the complaint inadmissible, observing that the applicant had or must have already known of the unlawfulness alleged in that complaint when he had lodged his previous constitutional complaint, on 5 April 2007, which had been declared inadmissible on 29 November 2007.

However, the complaint under the Constitutional Court's examination had not been lodged until 18 December 2008, after the expiry of the statutory two-month time-limit. It was therefore belated.

Lastly, observing that the applicant's trial was ongoing, the Constitutional Court held that it was still open to him to assert his rights before the ordinary courts.

The decision was served on the applicant's lawyer on 9 November 2009.

C. Conviction and related constitutional complaint

54. On 10 November 2009 the applicant was found guilty and sentenced to life imprisonment. He appealed against his conviction, but his appeal was dismissed on 22 September 2010. He also lodged a constitutional complaint, but it was declared inadmissible on 3 May 2011.

55. As to the applicant's contentions in respect of the speciality rule, the Constitutional Court found, *inter alia*, that his prosecution in Slovakia after his extradition from the Czech Republic in 2003 for offences that had taken place before the extradition had been allowed by virtue of additional consent being given by the Czech Republic.

56. In so far as any procedural measures had been taken prior to this additional consent being given, the Constitutional Court found that they had all subsequently been repeated, a factual finding contested by the applicant. Nevertheless, it concluded that any such procedural measures had thereby become lawful.

57. The Constitutional Court also found that, in the circumstances of the present case, the use of an EAW with a view to obtaining the additional consent of the Czech Republic for the applicants' prosecution in Slovakia was not contrary to the object and purpose of the applicable rules, despite the applicant being detained in Slovakia at that time.

58. Moreover, the Constitutional Court found that, as the Czech Republic had subsequently consented to the applicant's prosecution in Slovakia, there was no need to deal with his objection that he had not been heard in the extradition proceedings.

In sum, it held that there had been no breach of the speciality rule under Article 14 of the ECE.

II. RELEVANT DOMESTIC LAW

A. Criminal Procedure Code (Law no. 301/2005 Coll., as amended)

59. Under Article 9 § 1 (b), criminal prosecution is not permissible if it is subject to consent which has not been given by the competent authority.

60. Under Article 72 § 2, proceedings and decisions concerning detention may only be taken in respect of a person against whom charges have been brought.

61. The speciality rule is embodied in Article 496, which provides that an extradited person is not to be proceeded against for any offences committed prior to his or her surrender other than that for which he or she was extradited (paragraph 1) unless, *inter alia*, the surrendering State waives the rule or grants additional consent to that person's prosecution (paragraph 2 (c)).

62. The speciality rule however does not prevent the Slovakian authorities from taking measures with a view to interrupting the statute of limitations (Article 496 § 3).

B. European arrest warrant Act

63. At the relevant time, the EAW was governed by the EAW Act 2004 (Law no. 403/2004 Coll., as amended). It entered into force on 1 August 2004 and remained in force until 31 August 2010. It was replaced by the EAW Act 2010 (Law no. 154/2010 Coll.) with effect from 1 September 2010.

64. The EAW Act governs, *inter alia*, the procedure to be followed by the Slovakian authorities in connection with the extradition of persons within Member States of the European Union (EU) (section 1(1)).

65. Its section 3(1)(a) excludes application of the ECE by the Slovakian authorities in relation to other EU Member States unless and to the extent that it simplifies or facilitates the proceedings under that Act (subsection 2).

66. The speciality rule is laid down in section 12 along similar lines as in the Criminal Procedure Code (see paragraph 61 above).

III. RELEVANT EUROPEAN TEXTS

A. European Convention on Extradition

67. The principle of specialty is dealt with in Article 14, the relevant part of which reads as follows:

“1. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases:

a. when the Party which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Convention;

b. when that person, having had an opportunity to leave the territory of the Party to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.

2. The requesting Party may, however, take any measures necessary to remove the person from its territory, or any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time.

...”

68. Following its ratification by the former Czech and Slovak Federal Republic (Notice of Federal Ministry of Foreign Affairs no. 549/1992 Coll.), the ECE entered into force in respect of Slovakia on 1 January 1993.

B. Framework Decision of the Council of the EU on the EAW and the surrender procedure between Member States

69. The relevant provisions of the Framework Decision of 13 June 2002 (2002/584/JHA) (OJ L 190, 18 July 2002, p. 1–20) are to be found in its Articles 27 and 31 providing that, subject to the exceptions defined therein, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered and that, under the conditions defined therein, the Framework Decision replaces the relevant provisions of the ECE in in relations between the Member States.

THE LAW

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

70. The applicant complained that the proceedings in respect of (i) his interlocutory appeal against the detention order of 2 February 2007 and (ii) the extension of his detention following the PPS's application of 6 July 2007 had not been in compliance with the guarantees of Article 5 § 4 of the Convention, which reads as follows:

“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

71. 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

1. The parties' arguments

72. The applicant contended that (i) when remanded on 2 February 2007 he had not been served with a copy of either the PPS's application for the EAW of 22 December 2005, Slovakia's request for the Czech Republic

to give its additional consent for his prosecution in Slovakia, or the PPS's application for the detention order of 2 February 2007 and their written grounds for appealing against it; (ii) the detention order of 2 February 2007 had only been served on him after his interlocutory appeal against that order had been dismissed; and (iii) the decisions on his interlocutory appeal against the detention order of 2 February 2007 and on the extension of his detention had been taken without him being heard.

73. In response, the Government submitted that the applicant's remand in custody on 2 February 2007 had been instigated by the EAW of 22 December 2006 and not by an application by the PPS for a detention order. No copy of such an application could accordingly have been served on the applicant.

74. Furthermore, the Government emphasised that the applicant and his counsel had been heard on 2 February 2007 and that at that time they had been allowed to consult the case file. The applicant's counsel had also been allowed to consult with him and, although there had been no legal requirement, a copy of the PPS's application for the EAW of 22 December 2006 had been served on them. Moreover, three days before, a copy of the EAW had been obtained by another of the applicant's lawyers.

75. As to the contents of the detention order and the PPS's interlocutory appeal against it, the Government submitted that the applicant had to have known about them because the order and the reasoning behind it had been pronounced at the conclusion of the remand hearing and because, in their interlocutory appeal, the PPS had introduced no facts or arguments other than those already presented at that hearing. Nevertheless, the applicant had failed to substantiate his interlocutory appeal against the detention order with any written reasoning.

76. The Government further submitted that in the circumstances, there had been no legal requirement or practical need for the applicant to be reheard in connection with the PPS's application for the extension of his detention, that he had duly participated in the extradition proceedings through the intermediary of a lawyer and, in sum, that his possibilities of having the lawfulness of his detention decided had been in compliance with the requirements of Article 5 § 4 of the Convention.

77. The applicant rejoined emphasising that his counsel had had their chambers several hundred kilometres away from the seat of the remand court, which had logistic and other practical implications when, for example, they had been summoned for the remand hearing four hours before it was scheduled to take place and when a decision in respect of the PPS's application for the extension of his detention had been taken a day after a copy of that application had been served on him.

Moreover, the applicant pointed out that the transcript of the remand hearing contained no reasoning for the remand order, and that when the Prešov Regional Court determined the appeals against it, it must have been

clear from the contents of the case file that a written version of the order had not been served on him.

2. The Court's assessment

78. The Court reiterates that Article 5 § 4 of the Convention entitles arrested or detained persons to a review of the procedural and substantive conditions which are essential for the “lawfulness”, in Convention terms, of the deprivation of their liberty. This means that the competent court has to examine not only compliance with the procedural requirements of domestic law, but also the reasonableness of the suspicion underpinning the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention.

The requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances. Although it is not always necessary for an Article 5 § 4 procedure to be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question. Thus, the proceedings must be adversarial and must always ensure “equality of arms” between the parties. Equality of arms is not ensured if the defending party is denied access to those documents which are essential in order to raise an effective challenge to the lawfulness of his detention. It may also be essential that the individual concerned should not only have the opportunity to be heard in person but that he should also have the effective assistance of his lawyer (for a summary of the relevant principles, see *Lutsenko v. Ukraine*, no. 6492/11, §§ 95 and 96, 3 July 2012, with further references).

79. Turning to the facts of the present case, the Court notes an inconsistency between the Government's factual submission (see paragraph 73 above) and the factual finding of the Constitutional Court (see paragraph 48 above) as to what prompted the detention order of 2 February 2007 and, should it have been an application by the PPS, whether a copy of it was to be served on the applicant.

80. Be that as it may, the Court notes that the applicant's lawyers were summoned to the remand hearing only a few hours before that hearing, despite there being a considerable distance between their chambers and the court, and that at that hearing, they were served with a copy of the EAW and allowed to inspect the case file and to consult with the applicant for about twenty minutes. The Court is of the view that the time and facilities thus available to them for the preparation of the applicant's case were considerably limited.

81. Moreover, the Court observes that on 7 February 2007 the applicant offered a written pledge that, if left at liberty, he would live in accordance with the law and make himself available for the purposes of his prosecution (see paragraph 33 above). While it appears that this submission had not

reached the District Court before the Regional Court determined the appeals, it would appear that no decision was ever taken in that regard. Nevertheless, in view of this personal submission, the complexity of the issues in relation to the rule of speciality, and the fact that with the exception of the detention order of 2 February 2007 all of the contested decisions were taken in private, that is to say without the presence of the applicant or his lawyer, the Court considers that it would have been advisable that the applicant's subsequent interlocutory appeal against the order for the extension of his detention be heard orally (see *Michalko v. Slovakia*, no. 35377/05, §§ 160 and 161, 21 December 2010).

82. The Court observes further that according to the transcript of the remand hearing of 2 February 2007, the detention order was pronounced "together with the reasoning [behind it] and instructions as to an available remedy" (see paragraph 28 above). However, the transcript contained no such reasoning and it is only natural that the applicant would await service of the written version of the detention order, as is the normal course of action, so as to be able to contest it properly. As neither the detention order nor the PPS's written interlocutory appeal were served on the applicant before the determination of his orally announced appeal, a meaningful exercise of his right of appeal in as complex a case as his was thereby practically reduced to a merely formal remedy.

83. Furthermore, as has been noted above, none of the domestic courts in dealing with the applicant's challenges to the detention and extension orders took any stance as to the crucial argument concerning the lawfulness of his detention under the speciality rule.

84. The combination of the above mentioned elements is sufficient for the Court to conclude that in relation to his interlocutory appeals against the detention order of 2 February 2007 and extension order of 10 July 2007, the applicant has been denied proceedings for the review of the lawfulness of his detention within the meaning of Article 5 § 4 of the Convention.

There has accordingly been a violation of that provision.

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

85. The applicant complained that his remand in custody following the detention order of 2 February 2007 had been unlawful, as it had been in breach of the speciality rule under Article 14 of the ECE and in violation of Article 5 § 1 (c) of the Convention, the relevant part of which reads as follows:

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

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...”

86. In reply, the Government relied on an exception form to the rule of speciality under Article 14 § 2 of the ECE allowing for the taking of any measures necessary to prevent any legal effects of the lapse of time which, in the Government’s view, included the bringing of charges.

87. The Government further submitted that, since 1 May 2004, Slovakia had been a member of the EU and, as such, was subject to the Framework Decision of 13 June 2002, which excluded application of the ECE in relations between EU Member States. They considered that the request for additional consent of the Czech Republic for the applicant’s prosecution and detention on the charge of 25 October 2006 was in compliance with the applicable rules, which had all been complied with as eventually recognised by the Constitutional Court in its decision of 3 May 2011 (see paragraphs 54-58 above), and that the bringing of the charge prior to the Czech Republic giving its additional consent could not entail a violation of the rule of speciality.

88. In addition, the Government emphasised that the detention order of 2 February 2007 had not been issued until after the Czech Republic had given its additional consent in January 2007.

89. The applicant rejoined submitting that the commencement of the criminal proceedings and the bringing of the charge of 25 October 2006 prior to the Czech Republic giving its additional consent had been unlawful. Further instances of unlawfulness consisted of him (i) being served with a copy of the EAW at the remand hearing of 2 July 2007 as opposed to in the extradition proceedings, despite him always having been detained in Slovakia and thus at the authorities’ disposal for the duration of those proceedings; (ii) not having been heard in the extradition proceedings, contrary to the requirements of the ECE, CCP and EAW Act 2004; and (iii) not having been afforded adequate time to prepare for the remand hearing of 2 February 2007, in particular to consult with his lawyers.

90. Moreover, the applicant pointed out that criminal prosecutions for murder were not subject to a statutory limitation period which is why, in his view, the Government’s argument relying on the exception to the rule of speciality under Article 14 § 2 of the ECE was groundless.

91. In a further rejoinder, the Government added that under the applicable rules there had been no need for hearing the applicant in the extradition proceedings and that a copy of the relevant EAW had been obtained by the applicant’s lawyer from the case file on 31 January 2007 (see paragraph 18 above), that is to say prior to the remand hearing, and it had also been served on his lawyers during the remand hearing, although there were no specific legal rules requiring such service.

92. In view of the finding of a violation of the applicant's rights under Article 5 § 4 of the Convention (see paragraph 84 above), the Court declares the complaint admissible, but finds that there is no need to examine separately its merits under Article 5 § 1 of the Convention.

III. REMAINING ALLEGED VIOLATIONS OF THE CONVENTION

93. Relying on Article 6 § 1 of the Convention, the applicant made an identical complaint to his complaint under Article 5 § 1 of the Convention concerning the lawfulness of his detention following the detention order of 2 February 2007.

In addition, in his observations in reply to those of the Government, the applicant also invoked Article 5 § 1 (a) and Article 14 of the Convention, without further specification.

94. However, 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 protected under the provisions invoked.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

97. The Government contested the claim as being overstated.

98. Taking into account all the circumstances, the Court considers that the finding of a violation of the applicant's rights (see paragraph 84 above) in itself constitutes sufficient just satisfaction in respect of his non-pecuniary damage.

B. Costs and expenses

99. The applicant did not submit a claim under this head.

FOR THESE REASONS, THE COURT

1. *Declares* by a majority the complaints under Article 5 §§ 1 (c) and 4 of the Convention admissible;
2. *Declares* unanimously the remainder of the application inadmissible;
3. *Holds* by five votes to two that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds* by five votes to two that there is no need to examine separately the merits of the complaint under Article 5 § 1 (c) of the Convention;
5. *Holds* by five votes to two that the finding of a violation constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage.

Done in English, and notified in writing on 17 December 2013, 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 Silvis and López Guerra is annexed to this judgment.

J.C.M.
S.Q.

DISSENTING OPINION OF JUDGE SILVIS JOINED BY JUDGE LÓPEZ GUERRA

1. The applicant absconded from Slovakia to the Czech Republic when released on parole after having served part of an eight-and-a-half-year prison sentence. At the request of the authorities he was then extradited back to Slovakia in 2003 to serve the rest of his sentence. Legally speaking, he came back a bit stronger than he left, benefiting from the so-called “rule of speciality”, a rule rooted in extradition law and which flows from inter-State respect for each other’s sovereignty. Thus, the protection a person normally enjoys in a State ceases only in respect of the ground for extradition. The prosecution on criminal charges and detention of the extradited person on account of facts prior to the extradition are subject to the consent of the extraditing State, unless the rule of speciality is waived, which is not the case here.

2. Slovakia needed the consent of the Czech Republic to indict and detain the applicant on account of facts prior to and other than the grounds for his extradition. That “rule of speciality” remained applicable between the Czech Republic and Slovakia after the replacement of extradition treaty law by the system under Articles 27 and 28 of Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States of the European Union. With regard to one of the seven murders with which the applicant was charged in Slovakia in 2006, in so far as is relevant here in the light of the rule of speciality, the Slovakian judicial authorities considered it necessary to obtain the prior consent of the Czech Republic to hold the applicant in pre-trial detention in the course of the proceedings.

3. In the proceedings following the issuing of a European arrest warrant the Slovakian authorities obtained the consent of the Czech Republic before February 2007 to proceed on the relevant murder charge. On 2 February 2007, that is, after consent had been given irrevocably, the detention of the applicant on suspicion of murder was ordered. The applicant was present during the habeas corpus proceedings on 2 February 2007, and after some delay so were his lawyers. Before his lawyers arrived, the applicant had claimed that he felt unwell; he was given medical assistance and was taken to hospital. According to the facts in paragraphs 24 and 25, the hearing resumed at 2.45 p.m. after the hospital visit of the applicant, and on the arrival of the lawyers the session was reopened and then adjourned until 3.40 p.m. for the purposes of preparing the defence. The lawyers were given the opportunity to inspect the file for twenty minutes and then to consult with the applicant. Paragraph 80 of the judgment differs somewhat from the facts as stated in paragraphs 24 and 25, suggesting that the total time for the preparation of the defence from the adjournment until 3.40 p.m. was twenty minutes. The time actually taken during the interval for preparation of the defence and consultation of the applicant is not known exactly. But even if

it was restricted to twenty minutes as is suggested, that would not necessarily be deficient at this stage. In cases concerning the review of pre-trial detention the preparation of the defence is very often limited. Decisions concerning such detention have to be taken speedily. The time and facilities needed for such proceedings are not comparable with those needed for criminal proceedings concerning the merits of a charge. According to the judgment in *Lutsenko v. Ukraine* (no. 6492/11, 3 July 2012), referred to by the Court, the essential conditions concerning the review of detention are: compliance with the procedural requirements of domestic law, the reasonableness of the suspicion underpinning the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention. Instead of focusing on these essentials the Court concludes in the present case that the provision made for the applicant's state of health, and the time and facilities for the preparation of his defence, were inadequate. However, the applicant was heard by the domestic court, he had medical assistance when he claimed to need it and he had the assistance of lawyers who had access to the file. All the conditions mentioned in *Lutsenko* were met; later on this was justifiably considered by the Constitutional Court as appropriate to the circumstances of the case.

4. Perhaps the majority is guided by the wisdom that a reputedly dangerous person is more at risk than others of becoming victim of an unduly restrictive interpretation of his rights. It is indeed important to be aware of such risks. However, I cannot follow the majority in their view that the facts as established in this case, including the domestic rules of criminal procedure, merit the conclusion that the applicant's rights under Article 5 § 4 of the Convention were violated. It is hard to agree with any of the paragraphs leading to the finding of a violation of Article 5 § 4. The opportunity for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Kampanis v. Greece*, 13 July 1995, § 47, Series A no. 318-B). However, the essential distinction between a right to be heard on appeal and not being heard on appeal is missed and therefore no subsequent analysis is carried out in this respect. Furthermore, the inconsistency which the majority observes in paragraph 79 is not properly substantiated, nor is its possible relevance explained, assuming it was rightly found to exist. The fact that paragraph 80 starts with the words "Be that as it may" seems to acknowledge this. Paragraph 81 then omits the explanation given by the Government in their written submissions in relation to all the points mentioned. The Court states that it "would have been advisable that ... the applicant ... be heard orally". Such advice could have been given by his lawyers and could have been indicated by the defence in due time during the domestic proceedings, in accordance with domestic law. In the presence of the applicant and his lawyers the reason for the detention order of 2 February 2007 was given orally by the court, namely, as mentioned in paragraph 28, "on the ground that he might

abscond”. However, in paragraph 82 it is stated in the context of reasoned grounds for detention that “the transcript contained no such reasoning”, as if the defence could not have been aware of the ground that had been indicated to them orally. Furthermore, it is hard to see on what grounds the Court considers itself to be in a position to state that it would be “natural that the applicant would await ... the written version of the detention order, as is the normal course of action”. There is no mention in the facts part of the case of any such practice forming part of established standards in Slovakia. Paragraph 83 relies heavily on the supposition that the domestic courts should have replied to the “crucial argument concerning the lawfulness of his detention under the speciality rule”. It is rather amazing that the Court does not indicate why that should have been done in these proceedings; likewise, no consideration is given here to the Constitutional Court’s reasoning in this respect (see, for a summary in the facts part, paragraphs 54 to 58, more extensively presented in the Government’s submissions of 21 September 2012, paragraph 28).

5. The reasoning of the majority of the Court in which the elements are presented which, in combination, lead the Court to find a violation of Article 5 § 4 is, in my view, not convincing in view of the above. The correct assessment of what the applicant could and should have done in order to be heard in the appeal proceedings is not explained; the domestic procedural significance of a written pledge is not set in a comprehensible context, although the file contains the necessary elements. But think about it. In a situation where the applicant was charged with several murders and had absconded earlier, a written pledge that he would behave properly if set at liberty – a pledge which was not made in the proper manner in a request to be heard on a matter in appeal proceedings, as could have been done – is given considerable procedural significance by our Court, a significance which the domestic judicial authorities supposedly denied without justification. The judgment again fails to clearly reflect domestic law as it is presented in the submissions of the Government; had it done so, it would have been harder to find a violation. I am inclined to think that the assessment of the review under Article 5 § 4 is hazardous because the Court assumes a level of insight into domestic law and practice which could only follow a close examination. Interpreting domestic law in relation to practice, estimating legitimate expectations and understanding procedural tactics in their true significance is not an exercise that is easy to perform at a distance. Is that the task of our Court? I would not argue that a violation could not be found in this case. But the application and its reasoning, and the facts as stated by the Court, do not convince me at all. Nor do I feel that the material would justify further examination from the standpoint of serious human rights issues. The fact that the finding of a violation under Article 5 § 4 is considered to constitute sufficient compensation for the applicant seems to reflect the relative importance which the Court itself attaches to it in the

specific circumstances of the case. That ultimately makes it less difficult to live with.

6. There is another matter to address. After the dismay the Court expressed about the domestic courts' failure to respond to the applicant's "crucial argument concerning the lawfulness of his detention under the speciality rule", it would have been interesting to find an explanation for such a critical observation by the Court. The complaint under Article 5 § 1 offered an even better opportunity to do so. Surprisingly, in view of the finding of a violation under Article 5 § 4, the Court declares the complaint concerning Article 5 § 1 admissible but then finds no reason to investigate this complaint. Here, I think the Court is too hesitant to assume its guiding role.

7. The correct interpretation of Articles 27 and 28 of Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States of the European Union is the exclusive domain of the Court of Justice of the European Union. In a number of judgments (C-168/13, PPU, Judgment, 30/05/2013 (*F*); C-396/11, Judgment, 29/01/2013 (*Radu*); C-192/12 PPU, Judgment, 28/06/2012 (*West*)), the Court of Justice of the European Union reiterated that the purpose of the Framework Decision, as is apparent in particular from Article 1(1) and (2) and recitals 5 and 7 of the preamble, is to replace the multilateral system of extradition between Member States with a system of surrender between judicial authorities of convicted or suspected persons for the purpose of enforcing judgments or of conducting prosecutions, that system of surrender being based on the principle of mutual recognition (see Case C-396/11 *Radu* [2013] ECR I-0000, paragraph 33, and Case C-399/11 *Melloni* [2013] ECR I-0000, paragraph 36). The Framework Decision thus seeks, by the establishment of a new simplified and more effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the objective set for the European Union to become an area of freedom, security and justice, founded on the high level of confidence which should exist between the Member States (see *Radu*, paragraph 34, and *Melloni*, paragraph 37).

8. The applicant had not waived his rights under the speciality rule and neither Slovakia nor the Czech Republic supposed that the applicant had done so. In paragraph 38 of the *Radu* judgment, cited above, it is stated by the Court of Justice of the European Union that the fact that a European arrest warrant has been issued for the purposes of conducting a criminal prosecution, without the requested person having been heard by the issuing judicial authorities, does not feature among the grounds for non-execution of such a warrant as provided for by the provisions of Framework Decision 2002/584.

9. It can furthermore be observed that the applicant was represented by a lawyer in the Czech Republic during the proceedings following the issuing of the EAW. The applicant was subsequently heard by the domestic court in Slovakia in the presence of his lawyers concerning the detention order of 2 February 2007, and arguments relating to the rule of speciality were presented there by the defence. I see no convincing reason, from the perspective of Article 5 § 1 of the Convention, which is the vital concern of our Court here, why these arguments would be considered valid and in need of a more detailed answer beyond considering that after consent had been given the rule of speciality was not relevant anymore for the subsequent lawfulness of the applicant's detention. Therefore, I believe that the complaint concerning Article 5 § 1, as this complaint is understood by the Court, should have been declared manifestly ill-founded.