



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

THIRD SECTION

CASE OF PETROV v. SLOVAKIA

(Application no. 64195/10)

JUDGMENT

STRASBOURG

2 December 2014

FINAL

02/03/2015

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

In the case of Petrov v. Slovakia,

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

Josep Casadevall, *President*,

Luis López Guerra,

Ján Šikuta,

Dragoljub Popović,

Kristina Pardalos,

Johannes Silvis,

Valeriu Grițco, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 13 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 64195/10) 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 Peter Petrov (“the applicant”), on 7 December 2010.

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

3. The applicant alleged, in particular, that (i) he had been unlawfully deprived of his liberty; (ii) his application for release had not been granted; and (iii) the corresponding proceedings had been unfair.

4. On 21 February 2013 and 13 February 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1986 and lives in Bratislava.

A. Criminal proceedings against the applicant

6. On 5 February 2010 the applicant was accused of fraud. The alleged crime was considered particularly serious.

7. On 24 and 31 August 2010 the applicant examined the case file in the presence of his lawyer and accepted that plea bargaining negotiations should be started.

8. On 20 September 2010 a plea bargain agreement (*dohoda o vine a treste*) was concluded in the presence of the injured parties, which contained an admission of guilt by the applicant and details of the sentence to be imposed on him. It was submitted to the Nitra District Court for approval.

9. At a hearing held on 20 October 2010 the applicant replied in the negative to questions put to him by the judge in respect of the above-mentioned agreement. The court therefore refused to accept it and returned the case at its preliminary stage. Its decision was delivered to Nitra prison, where the applicant was being detained, on 8 November 2010.

10. On 3 November 2011 the Prosecutor General's Office dismissed a request by the applicant for certain public prosecutors to be excluded from the Nitra Regional Prosecutor's Office.

11. On 21 January 2011 the public prosecutor gave detailed instructions to the police as to what further investigations were to be carried out into the case.

B. Decisions on the applicant's detention

12. On 8 February 2010 the District Court remanded the applicant in custody with effect from 5 February 2010. His detention was considered necessary for the reasons set out in Article 71 § 1 (a) and (c) of the Code of Criminal Procedure, namely that there was a risk of him absconding and committing further offences.

13. On 10 April 2010 the applicant filed a request for release with the Regional Prosecutor's Office. It was transferred to the District Court on 28 April 2010, but dismissed on 20 May 2010. The applicant filed a complaint the same day.

14. The District Court transferred the file to the Nitra Regional Court on 6 August 2010, which dismissed the applicant's complaint on 18 August 2010. It returned the file to the District Court the following day. On 8 September 2010 the District Court dispatched the Regional Court's decision, which was deemed served on the applicant on 16 September and his counsel on 23 September 2010.

15. In the meantime, on 4 August 2010 the District Court extended the applicant's detention until 5 November 2010.

16. On 25 October 2010 it dismissed the applicant's second request for release, which he had filed on 19 August 2010 with the Regional Prosecutor's Office. On 19 November 2010 the Regional Court dismissed his complaint against that decision, which had been lodged on 25 October 2010. Its decision was served on him on 26 November 2010.

17. On 20 January 2011 the applicant again petitioned the Regional Prosecutor's Office for release. He argued that there were no relevant grounds for his continued detention. On 28 January 2011 the public prosecutor transferred his request to the District Court, which, after hearing him, dismissed it on 9 February 2011.

18. The District Court noted that the applicant had admitted his actions in preliminary proceedings. As he was suspected of committing the offence using a false identity, there was still a specific risk that he might abscond if released and thus hamper the further investigations into the case which had been ordered. The fact that he had a family and a permanent residence could not outweigh this consideration. Furthermore, the offence was punishable by a prison term of ten to fifteen years, and had been committed within a period of probation following an earlier conviction. The District Court found his continued detention justified for the purposes of Articles 71 §§ 1 (a) and (c) of the Code of Criminal Procedure.

19. At the hearing the applicant orally lodged a complaint and requested that the court dealing with it hear him in person. He submitted the reasons for his complaint in writing on 23 and 25 February 2011.

20. The applicant argued, in particular, that he had no reason to abscond. Prior to his detention he had lived with his partner, who had given birth to their child in the meantime. He had an income, as he was a partner in a limited liability company which was in operation. The argument that he had used a false identity was unsubstantiated and the fear he would continue committing offences unjustified. He requested that his complaint be examined at a public hearing, as he wished to point to specific facts and the reasons he had mentioned in his application for release. He further argued that the District Court judge had refused, on the grounds that he knew their content, to examine decisions he had wished to submit when being heard on 9 February 2011.

21. On 3 March 2011 the Regional Court dismissed the applicant's complaint after having examined it in camera. It confirmed the reasons the District Court had considered his continued detention necessary. Its decision stated, in particular, that there was still a risk of him absconding, as he had used a false identity to commit the offence and was under the threat of severe punishment. At the same time, his continued detention was justified by the fear he would continue the criminal activities for which he was prosecuted. The Regional Court considered his arguments about the unlawfulness of his continued detention irrelevant. His family and social situation could not affect the position in view of the nature of the offence, given that it had been committed within a period of probation following an earlier conviction, and he had previously been convicted of criminal offences committed deliberately. The decision stated that no facts had been established, for the purposes of Article 302 § 2 of the Code of Criminal Procedure, to justify hearing him in person.

22. On 12 May 2011 the District Court dismissed a fresh application by the applicant for release and extended his detention until 21 July 2011. On 17 May 2011 the Regional Court dismissed his complaint against that decision.

23. He was released from detention on 5 September 2011.

C. Proceedings before the Constitutional Court

1. Proceedings no. IV. ÚS 374/2010

24. In a complaint lodged on 27 September 2010, the applicant alleged a breach of Article 5 § 4 of the Convention, in that the ordinary courts had not decided his request for release of 10 April 2010 speedily.

25. On 7 October 2010 the Constitutional Court declared the complaint admissible to the extent that it concerned delays in the proceedings before the District Court. It noted that the Regional Court had only actually dealt with the case for thirteen days. There was therefore no appearance of a breach of Article 5 § 4 in respect of the proceedings before it.

26. In a judgment of 20 December 2010 the Constitutional Court found a breach of Article 5 § 4 of the Convention in respect of the proceedings before the District Court. The judgment stated that it had kept the file from 28 April to 6 August 2010, that is, for more than fourteen weeks. Another twenty days had lapsed before it sent the Regional Court's decision to the applicant. There was no justification for such a long time being spent on the applicant's request for release.

27. The Constitutional Court awarded 1,000 euros (EUR) to the applicant as just satisfaction and ordered the District Court to reimburse his costs.

2. Proceedings no. III. ÚS 265/2011

28. On 29 March 2011 the applicant complained that the Regional Court had breached his rights under Article 5 §§ 1, 3 and 4 of the Convention in the proceedings leading to its decision of 3 March 2011.

29. Firstly, he alleged that there had been no relevant reason for his further detention. In particular, reference to the offence of which he was suspected and the severity of its punishment did not in itself justify the deprivation of his liberty. He argued that he had not resisted arrest and had cooperated with the investigator; similarly, he had not tried to avoid the earlier criminal proceedings in which he had been given a conditional prison sentence. Furthermore, his partner, whom he had planned to marry, had given birth to a child in the meantime. Their daughter had serious health problems. No specific reasons had been put forward to justify the conclusion that there was a risk of him absconding or avoiding the pending criminal proceedings.

The applicant considered the argument that further investigations had to be carried out irrelevant, and concluded that the ordinary courts had not indicated any specific fact-based grounds for his continued detention.

Secondly, he complained that, despite an explicit request, the Regional Court had not heard him.

Lastly, he alleged that he had been detained without any relevant legal grounds from 5 to 8 November 2010.

30. On 14 June 2011 the Constitutional Court declared the complaint under Article 5 §§ 1 and 4 related to the alleged unlawfulness of the applicant's detention from 5 to 8 November 2010 admissible.

31. On the same day it rejected the remaining complaints as manifestly ill-founded for the following reasons. Since the Regional Court had also referred to and accepted the reasons for the District Court's justification of the applicant's detention, the relative scarceness of the reasons for its decision did not amount to a breach of his rights under Article 5 of the Convention. Since the District Court had heard him prior to deciding his request for release, neither the domestic law nor Article 5 § 4 required, in the circumstances, that the Regional Court also hear him in person when deciding his complaint. In particular, in his complaint he had not relied upon any new facts or arguments in respect of his request for release.

32. In its judgment on the merits of 13 September 2011 the Constitutional Court concluded that there had been a breach of Article 5 §§ 1 and 4 of the Convention, in that the applicant had been detained unlawfully during the period 5 to 8 November 2010 and the Regional Court had failed to duly address that issue. The decision acknowledged that following the applicant's refusal to confirm the plea bargain agreement before a judge and the return of the proceedings at the preliminary stage, a new seven-month detention period had started running in accordance with the relevant law. However, the earlier decision to extend his detention had expired on 5 November 2010, and the District Court's decision of 20 October 2010 had not been sent to Nitra prison, where the applicant was being held, until 8 November 2010. During that time the applicant had therefore been detained without a decision justifying the continued deprivation of his liberty.

33. The Constitutional Court dismissed the applicant's request for just satisfaction. It did not consider it necessary to order his release, as at the time of its decision his detention was covered by a decision of the ordinary court concerned. The Regional Court was ordered to reimburse his costs.

II. RELEVANT DOMESTIC LAW AND PRACTICE

34. Article 71 § 1 (a) and (c) of the Code of Criminal Procedure provide that an accused may only be remanded in custody if the established facts indicate that he or she has committed the act which is the subject of the

charge against him, the act has the characteristics of a criminal offence, there is reason to suspect the accused of that act, and his or her behaviour or other specific facts justify the conclusion that he or she will:

(a) abscond or hide with a view to avoiding the proceedings or punishment, in particular if his or her identity cannot be established immediately, he or she has no permanent place of residence, or there is a risk of severe punishment; or

(c) continue his or her criminal activities, complete an attempted offence, or carry out an offence which he or she prepared or threatened to commit.

35. Article 302 § 2 of the Code of Criminal Procedure provides that when a court decides on a person's detention, the public prosecutor, the accused and his or her counsel are entitled to attend. When a court decides a complaint about a decision on a person's detention, the presiding judge may allow those same persons to participate.

36. In accordance with the Supreme Court's practice (decision file no. 1 Toš 9/2006 of 8 February 2006), decisions relating to continued detention, modifying the reasons for an individual's detention, or requests for extension of or release from detention may be taken in camera only where (i) the request at issue indicates no facts requiring the accused person to be heard; or (ii) the accused did not explicitly ask to be heard and, at the same time, failed to indicate new relevant facts which were previously unknown to the court.

THE LAW

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

37. The applicant complained that he had been detained without any legal grounds between 5 and 8 November 2010. He relied upon Article 5 §§ 1 and 3 of the Convention. The Court considers it appropriate to address this complaint under Article 5 § 1, which in its relevant part reads as follows:

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

...

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

A. Admissibility

38. The Government considered that the applicant could no longer claim to be a victim of a breach of Article 5 § 1, as he had obtained appropriate redress from the Constitutional Court. In any event, he had not exhausted domestic remedies, as he could have claimed compensation under the State Liability Act 2003 with reference to the conclusion reached by the Constitutional Court.

39. The applicant disagreed.

40. In the present case, the Constitutional Court concluded that there had been a breach of Article 5 §§ 1 and 4 of the Convention, in that the applicant had been detained without any legal grounds during the period 5 to 8 November 2010. It dismissed the applicant's request for just satisfaction and considered it unnecessary to order his release, as at the time of its decision his detention was covered by a decision of the ordinary court concerned. The Regional Court was ordered to reimburse his costs (see paragraphs 32-33 above).

41. The Court considers that, in the absence of any just satisfaction award, the Constitutional Court's judgment did not provide the applicant with appropriate redress, in view of the importance of the right to liberty and security as enshrined in Article 5 § 1 (see *Kováčik v. Slovakia*, no. 50903/06, § 40, 29 November 2011; *Kormoš v. Slovakia*, no. 46092/06, §§ 73-76, 8 November 2011; and *Žúbor v. Slovakia*, no. 7711/06, §§ 64-66, 6 December 2011). He can thus still claim to be a "victim" within the meaning of Article 34 of the Convention, and the Government's objection in this respect must be dismissed.

42. As to the Government's argument that the applicant could have sought compensation under the State Liability Act 2003 on the basis of the Constitutional Court's judgment, the Court notes that that court, after finding a breach of Article 5 § 1, also took a stand on his claim for just satisfaction (see paragraph 33 above). It finds no reason to conclude that there was any realistic prospect in the present applicant's case that an ordinary court would have arrived at conclusions contrary to those of the Constitutional Court. The Government's objection relating to the applicant's failure to exhaust domestic remedies must therefore be dismissed (see *Kormoš*, cited above, §§ 48-49, with further references).

43. The Court notes that this part of the application 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

44. The applicant maintained that there had been a breach of Article 5 § 1 of the Convention, as his detention between 5 and 8 November 2010 had been unlawful.

45. The Government admitted that this part of the application was susceptible of raising an issue under the Convention.

46. The Court reiterates that where the “lawfulness” of detention is at issue, including the question whether “a procedure prescribed by law” has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Failure to comply with domestic law entails a breach of the Convention (see *Mooren v. Germany* [GC], no. 11364/03, §§ 72-81, 9 July 2009, with further references).

47. In the present case, the Constitutional Court acknowledged a breach of the applicant’s rights under Article 5 § 1, as there had been no legal grounds for his detention during the period from 5 to 8 November 2010 (see paragraph 32 above).

48. It would be justified for the Court to reach a different conclusion only if it was satisfied that the Constitutional Court had misinterpreted or misapplied the Convention provision or the Court’s jurisprudence under that provision or reached a conclusion which was manifestly unreasonable (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 174 *in fine*, ECHR 2009, and *Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08, §§ 51-53, 30 November 2010). However, the Government have not argued, and the information available does not indicate, that that was the case as regards the Constitutional Court’s finding of 13 September 2011. Furthermore, the Court notes that, despite its finding, the Constitutional Court did not consider it necessary to grant just satisfaction to the applicant or order his release.

49. The foregoing considerations are sufficient to enable the Court to conclude that the applicant’s detention between 5 and 8 November 2010 fell short of the requirement of lawfulness.

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

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

50. Relying on Article 5 §§ 1 and 3 of the Convention, the applicant complained, with reference to the proceedings leading to the Regional Court’s decision of 3 March 2011, that there had been no justification for his detention. The Court considers it appropriate to examine this complaint under Article 5 § 3 of the Convention, which reads as follows:

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

A. Admissibility

51. The Government considered that complaint to be manifestly ill-founded.

52. The Court considers, in the light of the parties’ submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It therefore concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring it inadmissible have been established.

B. Merits

53. The applicant maintained that the dismissal of his request for release in the proceedings at issue had been arbitrary. The courts had failed to convincingly explain why his continued detention was necessary.

54. The Government argued that in the proceedings leading to the Regional Court’s decision of 3 March 2011, the ordinary courts involved had given relevant and sufficient reasons for their decisions to dismiss the applicant’s request for release of 20 January 2011.

55. The Court reiterates that a person’s continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000 XI).

The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. A person charged with an offence must always be released pending trial unless the State can show that there are “relevant and sufficient” reasons to justify the continued detention. Moreover, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Pyatkov v. Russia*, no. 61767/08, §§ 106-107, 13 November, and *Piruzyan v. Armenia*, no. 33376/07, §§ 91-93, 26 June 2012, with further references).

56. In view of the requirement to exhaust domestic remedies laid down in Article 35 § 1 of the Convention, the Court is entitled to deal with this part of the application to the extent that the applicant had raised his arguments in the complaint the Constitutional Court decided on 14 June

2011 (see paragraph 29 above). In particular, in his constitutional complaint the applicant relied on the proceedings leading to the Regional Court's decision of 3 March 2011 and alleged that there had been no relevant reason for his further detention.

57. The Court notes that in its decision of 9 February 2011 the District Court considered it relevant that the applicant had confessed and was suspected of using a false identity to commit the offence. There was a risk of him absconding and thus jeopardising the criminal investigation which had been ordered. He risked severe punishment, and the offence of which he was accused had been committed while he was on probation for an earlier conviction (see paragraph 18 above).

58. In his complaint against that decision the applicant argued that (i) he had no reason to abscond, as he had lived with his partner prior to his detention and they had had a child in the meantime; (ii) he had a regular income; (iii) the argument that he had used a false identity was unsubstantiated; and (iv) nothing justified the fear that he would commit further offences (see paragraphs 19-20 above).

59. The Regional Court found no reason to depart from the District Court's conclusion. Its decision stated, in particular, that there was a risk of the applicant absconding, given that he had used a false identity to commit the offence of which he was accused and the threat of severe punishment. His continued detention was also justified by the fear that he would continue committing the offence for which he was prosecuted. Reliance by the applicant on his family and social situation could not affect the position in view of the nature of the offence, given that it had been committed within a period of probation, and he had previously been convicted of criminal offences committed deliberately (see paragraph 21 above).

Subsequently, the Constitutional Court found that the Regional Court's decision was not contrary to the applicant's rights under Article 5 of the Convention. It considered it relevant, in particular, that the Regional Court had also referred to the reasons for which the District Court had considered the applicant's detention justified (see paragraph 31 above).

60. Thus the domestic courts relied on the risk that the applicant might (i) abscond in view of the serious nature of the charge, and (ii) continue committing the offence for which he was prosecuted.

61. The Court notes that in the decisions at issue there was a general reference to the serious nature of the offence and its punishment. It cannot be considered sufficient justification of the alleged risk of the applicant absconding (see *Piruzyan*, cited above, § 99). As to the argument that he had allegedly used a false identity when committing the offence, the Court notes that no answer was given in the Regional Court's decision to the applicant's argument that such an allegation was unsubstantiated. It further notes that no specific reasons can be found in the decisions complained of to justify the fear that he would continue committing the offence for which he was prosecuted.

62. The Court considers that in the proceedings on the applicant's request for release of 20 January 2011 taken as a whole, the domestic courts failed to give relevant and sufficient reasons for the applicant's continued detention, which at the time of the Regional Court's decision had lasted nearly thirteen months.

63. There has therefore been a violation of Article 5 § 3 of the Convention.

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

64. The applicant further complained that his rights had been breached in the context of the examination of his applications for release. In particular, he alleged that the domestic authorities had failed to examine his applications for release of 10 April and 19 August 2010 with due diligence, the District Court had proceeded erroneously when extending his detention on 4 August 2010, and the Regional Court had failed to hear him prior to delivering its decision of 3 March 2011. He relied on 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

1. As regards the application for release of 10 April 2010

65. The Government referred to the Constitutional Court's judgment of 20 December 2010 and argued that the applicant had lost his standing as a victim within the meaning of Article 34 of the Convention.

66. The applicant maintained that the just satisfaction awarded by the Constitutional Court did not provide appropriate redress in view of the circumstances of the case.

67. The Court notes that on 20 December 2010 the Constitutional Court found a breach of Article 5 § 4 of the Convention, in that the District Court had failed to decide the applicant's request for release of 10 April 2010 speedily. It awarded EUR 1,000 to the applicant as just satisfaction and ordered the District Court to reimburse his costs (see paragraphs 26-27 above).

68. In view of the above acknowledgment of a breach of the applicant's rights, the redress provided by the Constitutional Court and having regard to the circumstances of the case and its practice in similar cases, the Court considers that the applicant can no longer claim to be a victim, within the meaning of Article 34 of the Convention, of a breach of his rights under Article 5 § 4 in respect of the duration of the examination of his application

for release of 10 April 2010 (see, *mutatis mutandis*, *Wakil v. Slovakia* (dec.), no. 50929/08, §§ 13 and 14, and contrast *Horváth v. Slovakia*, no. 5515/09, §§ 94-95, 27 November 2012, with further references).

69. It follows that the applicant's complaint in that regard is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. As regards the application for release of 19 August 2010 and the District Court's decision of 4 August 2010

70. The Court notes that the applicant failed to raise his complaints about the absence of a speedy review of his application for release of 19 August 2010 and the alleged shortcomings in the proceedings leading to the District Court's decision of 4 August 2010 before the Constitutional Court.

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

3. As regards the proceedings leading to the Regional Court's decision of 3 March 2011

71. The Government considered the complaint that the Regional Court had failed to hear the applicant prior to delivering its decision of 3 March 2011 manifestly ill-founded.

72. The applicant disagreed.

73. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring it inadmissible have been established.

B. Merits

74. The applicant argued that the Regional Court's failure to hear him prior to its decision of 3 March 2011 was contrary to Article 5 § 4. In particular, in his complaint he had raised arguments the examination of which had required his presence, such as the birth of his child and his financial situation. Furthermore, the District Court judge had not considered it necessary to obtain from him the judgments and decisions he had relied on in his application for release, and there was no evidence that he had used a false identity.

75. The Government disagreed, while relying on the reasons for which the Constitutional Court had rejected his complaint in that respect.

76. The Court reiterates that Article 5 § 4 entitles arrested or detained persons to bring proceedings for review by a court of the procedural and substantive conditions which are essential for the “lawfulness”, in the sense of Article 5 § 1, of the deprivation of their liberty. Although 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, an Article 5 § 4 procedure must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question. 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. Where domestic law provides for a system of appeal, the appellate body must also comply with Article 5 § 4 (see, for example, *Graužinis v. Lithuania*, no. 37975/97, §§ 3-32, 10 October 2000; *A. and Others v. the United Kingdom* [GC], cited above, § 203; and *Idalov v. Russia* [GC], no. 5826/03, § 161, 22 May 2012, with further references).

77. In the present case, the applicant was heard by the District Court prior to the decision on his application for release, but in the proceedings on his complaint against that court’s decision the Regional Court did not consider it necessary to hear him. The domestic law and practice (see paragraphs 35 and 36 above) allowed for such a way of proceeding unless the request at issue involved facts for the establishment of which it was required to hear the detainee. Subsequently, the Constitutional Court noted that in his complaint against the District Court’s decision the applicant had not relied upon any new facts or arguments in respect of his request for release. It concluded that it had not been required, in the circumstances, that the Regional Court also hear him in person when deciding his complaint (see paragraph 31 above).

78. In assessing the applicant’s complaint, the Court considers it relevant that (i) the District Court heard the applicant in the context of examination of his application for release; (ii) in his complaint against the District Court’s decision the applicant relied on similar arguments as those raised in his application for release; (iii) the time between the District Court’s decision and its review by the Regional Court, namely twenty-two days, was relatively short; (iv) the determination of the point at issue did not involve a modification of the basis for the applicant’s detention as established earlier; and (v) the Regional Court examined the complaint in the absence of both the applicant and the public prosecutor (contrast *Nešťák v. Slovakia*, no. 65559/01, §§ 81-83, 27 February 2007).

79. In view of the documents before it, and having regard to the above considerations, the Court finds that in the particular circumstances of the present case the Regional Court’s failure to hear the applicant was not contrary to the procedural guarantees inherent to Article 5 § 4 of the Convention.

There has therefore been no violation of that provision.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed 397,203.61 euros (EUR) in respect of pecuniary damage. That amount corresponded to the value of construction contracts he had been prevented from carrying out because of his detention. The applicant further claimed EUR 100,000 in respect of non-pecuniary damage.

82. The Government argued that there was no causal link between the alleged breaches of the applicant's Convention rights and the pecuniary damage he claimed to have sustained. In any event, the applicant could have sought compensation under the State Liability Act 2003. The claim in respect of non-pecuniary damage was, in the Government's view, excessive.

83. 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 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

84. The applicant also claimed EUR 16,718.21 for the costs and expenses incurred before the domestic authorities and EUR 1,370.44 for those incurred before the Court.

85. The Government considered the sum claim excessive and invited the Court to make an award in accordance with its practice.

86. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads.

C. Default interest

87. 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. *Declares* the complaints under Article 5 §§ 1, 3 and 4 (as regards the Nitra Regional Court's failure to hear the applicant prior to its decision of 3 March 2011) admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* that there has been no violation of Article 5 § 4 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 December 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Josep Casadevall
President