



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

THIRD SECTION

CASE OF YEGOROV v. SLOVAKIA

(Application no. 27112/11)

JUDGMENT

STRASBOURG

2 June 2015

FINAL

02/09/2015

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

In the case of Yegorov v. Slovakia,

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

Josep Casadevall, *President*,

Luis López Guerra,

Ján Šikuta,

Kristina Pardalos,

Johannes Silvis,

Valeriu Grițco,

Branko Lubarda, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 12 May 2015,

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

PROCEDURE

1. The case originated in an application (no. 27112/11) 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 Ukrainian national, Mr Volodymyr Yegorov (“the applicant”), on 25 March 2011.

2. The applicant was represented by Kubicová, Benkóczki, Baláž-advokáti, s.r.o., a law firm with its registered office 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 he had been denied the requisite procedural guarantees in his interlocutory appeal (*sťažnosť*) against a remand order of 16 July 2010 and that his detention under a remand order of 29 July 2011 had been arbitrary and excessively long.

4. On 11 September 2013 the complaints under Article 5 §§ 1 (c), 3 and 4 concerning the bringing of the applicant before the Bratislava I District Court on 16 June 2010, his arrest on 27 July 2011, his remand on 16 July 2010 and 29 July 2011 and the proceedings in respect of his interlocutory appeal against the remand of 29 July 2011 were communicated to the Government.

5. At the same time, the Government of Ukraine were informed of the case and invited to exercise their right of intervention, to which invitation they have not responded (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1962 and habitually resides in Krivoj Rog (Ukraine).

A. Background

7. From 25 June 2002 until 19 September 2013 the applicant was continuously deprived of his liberty in Slovakia, mainly within the scope of detention pending trial on various charges pursued against him, partly in parallel and partly consecutively. His overall deprivation of liberty included the following periods.

8. From 25 June 2002 until 19 May 2005 he was remanded pending trial on several charges, which included what would later be classified as the charge of conceiving, setting up and supporting a criminal and terrorist group (see paragraphs 11 and 35 below). On the latter date the prosecution on that charge was removed to be dealt with in a separate set of proceedings.

9. The applicant's pre-trial detention in the subsequent period would later be set off against a four-year prison sentence imposed on him for the offence of attempting to legalise the proceeds of a criminal activity. He was released from detention in connection with that offence on 13 July 2010.

10. Immediately after his release from the last-mentioned detention, the applicant's liberty was again restricted and it later resulted in his being remanded pending trial on the charge of murder, of which he was ultimately acquitted on 27 July 2011. In consequence, he was released from detention on that very day.

11. Following his release on 27 July 2011, the applicant was immediately re-arrested on the same day, and later remanded pending trial on the charge of conceiving, setting up and supporting a criminal and terrorist group (see paragraphs 8 above and 35 below). This term of detention ended with the applicant's release on 22 February 2012.

12. Upon his release on 22 February 2012, the applicant was immediately re-arrested on the same day, and was later remanded pending trial on another charge of murder. This term of detention ended with the applicant's release on 17 September 2013.

13. Upon his last-mentioned release, the applicant was immediately transferred to the detention centre for foreigners (*záchytný tábor*) in Medveďov, where he was detained until his expulsion to Ukraine on 19 September 2013.

B. Arrest and detention under the order of 16 July 2010

14. The applicant's prosecution on the first charge of murder (see paragraph 10 above) commenced in 2007 while he was still deprived of his liberty within the scope of detention pending trial on the charge of attempting to legalise the proceeds of a criminal activity (see paragraph 9 above).

15. On 6 June 2010 an investigator informed the public prosecution service ("PPS") that if the applicant's conviction and sentence for attempting to legalise the proceeds of a criminal activity were to be upheld on appeal – an appeal which was about to be heard – the applicant would be eligible for release because the four-year term of his sentence would soon be fully covered by the term of his detention. It would therefore be advisable to consider lodging an application for the applicant to be detained pending trial on the murder charge, which the PPS subsequently did.

16. Immediately after the applicant's release from detention in connection with the charge of attempting to legalise the proceeds of a criminal activity, on 13 July 2010, he was taken to the Border and Foreigners Police Department in Bratislava, where a decision was taken ordering his administrative expulsion, a ban from re-entering Slovakia for five years, and detention pending the enforcement of the expulsion order (*zaistenie*). The applicant was then taken to the detention centre in Medveďov to await implementation of the expulsion order.

17. In the course of the murder trial, a public session (*verejné zasadnutie*) was scheduled to take place before the Bratislava I District Court (*Okresný súd*) on 23 July 2010 with a view to examining questions concerning the detention of the applicant. However, in view of the circumstances described in the foregoing paragraph, on 15 July 2010 the public session was cancelled and the applicant was summoned for questioning the following day.

18. On the morning of 16 July 2010 the applicant was seized in the detention centre in Medveďov by police officers who then brought him to the District Court for the questioning that had been ordered.

19. Later in the day of 16 July 2010, the applicant was brought before a Chamber of the District Court for the questioning, immediately after which the District Court ordered a private session (*neverejné zasadnutie*) with a view to making a decision concerning the applicant's detention.

20. Following the private session of 16 July 2010, on the same day, the District Court remanded the applicant in detention pending trial on the murder charge.

21. Immediately following the pronouncement of the detention order, on 16 July 2010, which was a Friday, the applicant stated on the record that he wished to lodge an interlocutory appeal and that he would submit the reasons for his appeal upon receiving the written version of the detention

order with reasons. The appeal and its reasons were to be submitted to the court of appeal via the first-instance court, that is to say the District Court.

22. On 19 July 2010, which was a Monday, the applicant submitted the reasons for his appeal in writing in the Russian language, stating that he would submit further reasons when the written version of the remand order was served on him. It appears that the applicant's submission of 19 July 2010 was received at the District Court on 21 July 2010.

23. On the last-mentioned date, that is to say on 21 July 2010, the written version of the detention order was served on the applicant in the Slovak language and, on the same day, the District Court transmitted the case file to the Bratislava Regional Court (*Krajský súd*) for determination of the applicant's interlocutory appeal.

24. On 26 July 2010, which again was a Monday, the applicant sent a further written submission in the Russian language, adding reasons to his appeal. It appears that this submission was received at the District Court on 28 July 2010.

25. However, on that day, that is to say on 28 July 2010, the Regional Court determined the applicant's interlocutory appeal by dismissing it as unfounded. The Regional Court observed at the outset that the applicant had not submitted any reasons for his appeal either orally or in writing.

26. On 25 August 2010 the applicant lodged a complaint with the Constitutional Court (*Ústavný súd*) under Article 127 of the Constitution (Constitutional law no. 460/1992 Coll., as amended).

Relying *inter alia* on Article 5 § 1 of the Convention, he contended that (i) his arrest and bringing before the District Court had been unlawful; (ii) the remand decision had been arbitrary; and (iii) the Regional Court had failed to take account of the reasons for his interlocutory appeal submitted on 19 and 26 July 2010.

27. On 7 December 2010 the Constitutional Court declared the applicant's complaint inadmissible as being manifestly ill-founded.

It acknowledged that any tribunal ruling on matters concerning detention on remand was under a duty to examine carefully all submissions made by the person remanded, but pointed out that the applicant's submissions of 19 and 26 July 2010 had not been available to the Regional Court when it examined his interlocutory appeal. In addition, matters concerning detention on remand generally require swift determination and courts of appeal were obliged to determine interlocutory appeals in such matters within five working days of the date when the appeal was referred to them for determination. Furthermore, in contrast to case no. II. ÚS 108/08 (see paragraph 50 below), the applicant had been heard at first instance. And lastly, he had been represented by a lawyer, but the latter had taken no steps to ensure the effective assertion of his rights.

Thus, in the circumstances, the decision to dismiss the applicant's interlocutory appeal without examining the reasons for it could not be considered arbitrary.

The Constitutional Court's decision was served on the applicant on 3 February 2011.

C. Detention under the order of 29 July 2011

1. Arrest and remand

28. At around 3.20 p.m. on 27 July 2011, following his acquittal of the first murder charge and release from detention in connection therewith earlier that day, the applicant was re-arrested. At 5 p.m. that day he was served with a document dated 18 June 2003 charging him with the offence of conceiving, setting up and supporting a criminal and terrorist group (see paragraphs 8 and 11 above).

29. On 28 July 2011 the PPS applied for an order for the applicant's detention pending trial, referring to charges of (i) 14 December 2001 for fraud; (ii) 8 June 2002 for legalising the proceeds of criminal activities; (iii) 18 June 2003 for conceiving, setting up and supporting a criminal and terrorist group; and (iv) 3 July 2003 on another count of legalising the proceeds of a criminal activity.

30. On 29 July 2011 a pre-trial judge at the Specialised Criminal Court (*Špecializovaný trestný súd*) remanded the applicant pending trial. As regards the specific trial in question, he identified it by reference to the charge of conceiving, setting up and supporting a criminal and terrorist group and the relevant provisions of the Criminal Code (Law no. 140/1961 Coll., as amended).

The judge observed that the applicant was a non-national and that, prior to his initial arrest, for more than a year he had not been living at his registered permanent residence, but rather at his girlfriend's address. However, he had not been registered as living there. Furthermore, the applicant had often been travelling abroad.

Accordingly, the judge held that there was no guarantee that, if left at liberty, the applicant would actually continue to live at his girlfriend's, as he had submitted he would do.

The judge also observed that the charges brought against the applicant in the other trials concerned various offences allegedly committed at various times and that even the bringing of these charges had not prevented him from allegedly committing the murder of which he stood accused in one of those trials.

In addition, the applicant had already been convicted with final effect of attempting to legalise the proceeds of a criminal activity (see paragraph

9 above). Therefore, his declaration that he had sufficient means to live on was not a sufficient guarantee that he would not continue offending.

The judge concluded that there was a need to detain the applicant under Article 71 § 1 (a) and (c) of the Code of Criminal Procedure (Law no. 301/2005 Coll., as amended) in order to prevent his fleeing and continuing to engage in criminal activities.

31. The applicant lodged an interlocutory appeal (i) arguing that his arrest had been unlawful because he had not been informed of the reasons for it; (ii) contesting the charge and the reasons for detaining him; (iii) complaining that he had already been deprived of liberty for more than 9 years; and (iv) complaining that his case demonstrated a pattern of arbitrarily remanding and re-remanding him consecutively on various charges.

32. On 8 August 2011 the Supreme Court (*Najvyšší súd*) dismissed the applicant's interlocutory appeal, finding that all formal and substantive requirements for detaining the applicant had been met and that all the applicable time-limits had been observed.

2. *Constitutional complaint*

33. On 19 September 2011 the applicant lodged a fresh complaint with the Constitutional Court.

Relying mainly on Article 5 §§ 1 and 3 of the Convention, he complained that, on his arrest, he had not been informed of the reasons for it; that the courts had ignored his argument concerning the unlawfulness of his arrest; that his detention was in general arbitrary; and, more concretely, that his case demonstrated a pattern of arbitrarily remanding and re-remanding him consecutively on various charges.

On the last-mentioned count, he contended in particular that (i) he had been facing the charges pursued against him in the present trial for eight years; (ii) he had been constantly detained for all those eight years; (iii) throughout that period the authorities had had a sufficient time to pursue the case against him properly; (iv) his previous accumulated detention had to be seen as one matter; and (v) there were no adequate grounds for its continuation.

34. On 18 October 2011 the Constitutional Court declared the complaint inadmissible. It held at the outset that it had no jurisdiction to examine any alleged violations in so far as they concerned the first-instance court because, in line with the principle of subsidiarity, such examination lay within the jurisdiction of the court of appeal.

The Constitutional Court found that the report concerning the applicant's arrest contained references to the charges on which he had been arrested and had been signed by the applicant. There could therefore be no doubt as to his having been informed of the reasons for his arrest.

Similarly, it was apparent from the Supreme Court's decision that it had taken note of the applicant's arguments regarding the lawfulness of his arrest. The fact that the Supreme Court had not given a specific answer on that point was not contrary to the applicant's rights because it had examined the arguments by implication when dealing with the overall lawfulness of the applicant's detention.

As to the remainder of the applicant's complaint, the Constitutional Court acknowledged that the applicant's detention had by then lasted more than nine years in total. However, in terms of the Constitutional Court's decision, it was necessary to take into account the fact that the contested decision was neither a decision to dismiss his request for release nor a decision to extend his detention. Having taken into account the nature of the contested decision and the reasons behind it, and considering the length of the applicant's detention *in concreto* in the case at hand – that is to say only since 27 July 2011 – the Constitutional Court came to the conclusion that, at the given time, the length of the applicant's detention had not yet reached a point of being unconstitutional.

The decision was served on the applicant on 22 November 2011.

3. Release

35. The applicant's release on 22 February 2012 (see paragraph 10 above) had been ordered by the Supreme Court on that very day. In its decision, it observed that at the initial stage of the proceedings (see paragraph 8 above), the applicant had been prosecuted for and detained pending trial on various charges, which had then been removed to be dealt with in a separate set of proceedings on 19 May 2005 and that, in the subsequent period, he had been remanded pending trial partly on the same charges. In this connection, it referred in the following terms to the Constitutional Court's judgment (*nález*) in unrelated case no. II. US 55/98:

“... the removal of one of several prosecuted offences to a separate set of proceedings is not, as such, contrary to the constitutional guarantees of personal liberty of the person facing the charges. Such a course of action on the part of the prosecuting authorities would, however, conflict [with those constitutional guarantees] ... if there were no well-founded reasons for it or if it manifestly served to obtain an extension of the detention beyond the statutory timescale of its duration, or if it otherwise entailed as a consequence the arbitrary keeping of a person in detention.”

36. As regards the present case, the Supreme Court went on to observe:

“In the case at hand it is not disputed that there are well-founded reasons for continuing the detention of [the applicant] However, on the other hand, it must be observed that in the given case doubts may not be completely dispelled that the keeping of the applicant ... in detention for ten years might appear to be an arbitrary and above all self-serving deprivation of liberty in order to obtain his conviction for serious offences, especially since he has been portrayed as the leader of an illegal mafia-type grouping.

Thus, if the duration of the above-mentioned [initial] detention is added to the period of the applicant's detention after 27 July 2011[1] (almost seven months), it becomes apparent that the maximum permissible duration of his detention for [two of the charges] has already been exceeded. At the same time, it must be observed that [the applicant] is being prosecuted for four offences which may not be detached from one another because it is one criminal matter for which he is detained."

37. The Supreme Court went on to observe that the applicant's detention after 27 July 2011 resulted from his prosecution for the same offences

"for which he had already been detained from 25 July 2002 at least until 19 May 2005, when that matter had been removed to be dealt with in a separate set of proceedings. Within that period and in that matter, [the applicant] was detained for two years and 329 days ... [He] is at present detained in the same matter, which is still at pre-trial stage, (the [statutory maximum duration]) of such detention having been significantly exceeded.

However, at the same time, the [statutory maximum duration] of the whole detention has also been exceeded."

38. Moreover, in the closing part of its decision, the Supreme Court observed that:

"The status of the examined matter is even more complicated, however: after the removal to a separate set of proceedings of a part of [the charges against the applicant], no decision has been identified as having regulated the scope of the applicant's detention. From later decisions it may be understood that the applicant's detention was linked to his prosecution for the offence classified as murder, which had earlier been a part of the previously joined proceedings. This status must be accepted as reality; if the detention of [the applicant] were linked to his prosecution for the offences which now form the subject-matter of the present proceedings, the maximum duration of [his detention] would have run out substantially earlier."

D. Other constitutional judgments

39. In a judgment of 19 April 2011 (case no. II. US 93/11), the Constitutional Court found a violation of the "speediness" requirement under Article 5 § 4 of the Convention in the procedure for the review of the lawfulness of the applicant's detention in the first murder trial. However, his just satisfaction claim was rejected on the ground that he had failed to substantiate it.

40. On 22 August 2012 (case no. I. US 281/2012), the Constitutional Court found a violation of the applicant's Article 5 rights in the context of the dismissal of his request for release from detention pending trial on the charge of conceiving, setting up and supporting a criminal and terrorist group. The grounds were essentially the same as those established by the Supreme Court in its decision of 22 February 2012 (see paragraphs 35 *et seq.* above).

41. In a judgment of 5 June 2013 (case no. I. US 47/2013), the Constitutional Court found a violation of the applicant's Article 5 rights in the context of the dismissal of his request for release from detention pending

trial on the second murder charge (see paragraph 12 above). It observed that he had been remanded in detention pending trial on that charge as well as on the previous charge immediately after having been released from the previous detention, which had amounted to a recurring pattern. It was noteworthy that the alleged murder had taken place in 1999, although the applicant had not been charged with it until 2012, despite having been detained as early as 2002.

The applicant had been prosecuted for various offences both in parallel and consecutively. The respective statutory provisions concerning the maximum duration of detention could not be interpreted as authorising detention pending trial for the maximum period in relation to each individual charge. Otherwise, as had occurred in the applicant's case, a person could be detained for the maximum permissible period repeatedly for consecutively levelled charges *ad infinitum*, which was not justified by any public interest.

The Constitutional Court nevertheless dismissed the applicant's just satisfaction claim considering that, "in view of the circumstances of the case", an award was "neither expedient nor appropriate" (*účelné ani vhodné*).

The written version of the Constitutional Court's judgment was served on the Trnava Regional Court on 11 September 2013. It was against that court that the complaint was directed and, following the Constitutional Court's judgment, it eventually ordered the applicant's release on 17 September 2013 (see paragraph 12 above).

42. The Constitutional Court also found a violation of the applicant's Article 5 rights in the context of his detention pending trial on the second murder charge – not only on the same grounds as those mentioned above but also on others – in three further judgments of 6 and 7 March 2014 (case nos. IV. US 494/13, IV. US 495/13 and IV. US 561/13).

However, noting that the applicant had been released in the meantime, it also cited and endorsed its previous position that it was "neither expedient nor appropriate" to award him any just satisfaction.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure

1. Statutory basis

43. Matters concerning detention on remand are in principle to be resolved in the procedural form of a decision (*uznesenie*) (Article 162). Such decisions may as a general rule be challenged by way of an interlocutory appeal (Articles 83 § 1 and 185).

44. Unless otherwise provided, interlocutory appeals must be lodged with the body which has issued the challenged decision within three days of the notification (*oznamovanie*) of that decision (Article 187).

45. Decisions of a court must be notified to those who are affected by them and those who have initiated them, as well as to the PPS. The notification may take place via pronouncement (*vyhlásenie*) in the presence of those concerned or via service of a written version of them (Article 179 § 1).

46. Decisions taken at public hearings (*verejné pojednávanie*), public sessions, and private sessions must be communicated via pronouncement (Article 177).

47. Save for exceptions specified in the statute, decisions must be produced in written form (Article 178).

48. The body which has issued the decision that is challenged by way of an interlocutory appeal may itself allow the appeal, provided that third party rights are not affected. Otherwise, upon expiry of the period for appeal, that body must refer the appeal to that appellate body (Article 190).

49. If the interlocutory appeal is directed against a decision remanding a person in detention pending trial, the appellate body must determine it in a private session within five working days of the transmission of the appeal to the appellate body (Article 192 § 3).

2. Constitutional Court's practice

50. In a judgment of 16 October 2008 in unrelated case no. II. ÚS 108/08, the Constitutional Court ruled on a complaint submitted by a non-national, in which he alleged various procedural irregularities in an application by the PPS for an extension of the term of his pre-trial detention.

The Constitutional Court found multiple violations of the complainant's rights under Article 5 § 4 of the Convention on the grounds that (i) the ordinary courts had failed to provide him with interpreting services and translations of the relevant documents into a language he understood; (ii) the ordinary courts had failed to examine his lawyer's observations in reply to the PPS's application; (iii) the court of appeal had upheld the first instance decision before the complainant's own interlocutory appeal had reached it, even though that appeal had been lodged within the applicable time-limit; and (iv) the ordinary courts had failed to hear the complainant in person.

The Constitutional Court observed, *inter alia*, that the first instance court had effectively prevented the complainant from submitting observations in reply to the PPS's application because it had ruled on that application on the last day of the period previously allotted to the complainant for the submission of such observations but before such observations were received.

In addition, relying on its previous judgment in case no. US 46/05, the Constitutional Court pointed out that a person detained on remand must have the right to advance arguments against his or her continued detention and that this right would be without any real meaning if the authorities determining the detention were under no duty effectively to examine such arguments.

B. State Liability Act

1. Statutory basis

51. The State Liability Act (Law no. 514/2003 Coll. - “the SL Act”) was enacted on 28 October 2003 and became operative on 1 July 2004. In so far as relevant, it provides for the liability of the State as regards damage which has been caused by unlawful arrest, detention (*zadržanie*) or some other deprivation of liberty (section 3(1)(b)), by decisions concerning remand in custody (*väzba*) (section 3(1)(c)) and by wrongful official action (section 3(1)(d)).

52. Pursuant to section 7 of the SL Act, in cases where a decision on arrest, detention or any other deprivation of liberty has been quashed as unlawful, or where there has been wrongful official action in that context, the person thereby affected is entitled to compensation for the damage sustained.

53. 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)).

54. However, no such right arises when the person concerned has given cause for his or her remand in custody (section 8(6)(a)).

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

“1. The State shall be 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.”

56. 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.”

57. By virtue of an amendment which entered into force on 1 January 2013 (Law no. 412/2012 Coll.), the maximum amount of compensation in respect of non-pecuniary damage under the SL Act may not be higher than the indemnity payable to victims of violent crimes under special legislation. Under the later legislation, the indemnity payable in the event of death resulting from a violent criminal offence presently amounts to 17,600 euros (EUR) (section 5(1) of Law no. 215/2006 Coll., as amended, in conjunction with section 2(2) of Law no. 663/2007 Coll., as amended, and Governmental Decree no. 321/2013 Col.).

2. Ordinary courts' practice

58. In a judgment (*rozsudok*) 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 SL 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 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 such claim.

59. In a judgment of 17 September 2009 in unrelated case no. 14C 81/09, the Banská Bystrica District Court awarded compensation in respect of the costs of defence, lost earnings and non-pecuniary damage due to criminal prosecution and detention pending trial on a charge of which the claimant had ultimately been acquitted.

60. In a decision (*uznesenie*) of 26 June 2013 concerning unrelated appeal no. 4Co 383/12, the Bratislava Regional Court held that a claimant is entitled to compensation in respect of detention pending trial on a charge of which he or she has been acquitted, even though such detention was imposed in order to prevent the claimant from perverting the course of justice.

3. Further relevant material

61. Further elements of relevant domestic law and practice are summarised in the Court's judgment in the case of *Horváth v. Slovakia* (no. 5515/09, §§ 35 *et seq.*, 27 November 2012).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

62. With reference to the remand decisions of 16 July 2010 and 29 July 2011, the applicant complained that (i) his arrest and detention pending trial on the first charge of murder and the charge of conceiving, setting up and supporting a criminal and terrorist group had been unlawful and arbitrary and (ii) his interlocutory appeal against the detention order of 16 July 2010 had not been properly examined, in violation of his rights under Article 5 §§ 1 (c), 3 and 4 of the Convention, which in so far as relevant read:

“1. Everyone has the right to liberty and the security of the 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;

...

3. 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 made conditional upon guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to institute 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. *Parties' arguments*

63. In reply, the Government noted that in its judgment of 5 June 2013 the Constitutional Court had found a violation of the applicant's Article 5 rights and that he had been released in the meantime. They considered that, as a consequence, he had lost his status as a “victim” within the meaning of Article 34 of the Convention.

64. Alternatively, and in any event, the Government objected that the applicant had failed to satisfy the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention by asserting his rights under sections 7 and 8(5) of the SL Act and Article 127 of the Constitution.

65. As regards the remedies under the SL Act, the Government referred to the Court's judgment in the case of *Osváthová v. Slovakia* (no. 15684/05,

21 December 2010) and decisions in *Martikán v. Slovakia* and *Loyka v. Slovakia* ((dec.), nos. 21056/08 and 16502/09, 9 October 2012).

66. With regard to the constitutional remedy, they pointed out that the applicant had failed to raise before the Constitutional Court his argument that his detention under the order of 29 July 2011 had erroneously been treated as initial detention instead of repeated detention, the latter being subject to stricter statutory regulation. Neither had the applicant advanced that argument in his interlocutory appeal against the remand order of 27 July 2011.

67. In so far as the applicant had argued that his arrest on the charge of conceiving, setting up and supporting a criminal and terrorist group and his subsequent remand pending trial on that charge had been unlawful because he had not been informed of the reasons for his arrest and that the courts had failed to give an adequate answer to his complaint to that effect, the Government pointed out that these arguments had been considered and dismissed by the Constitutional Court in its decision of 18 October 2011 (see paragraph 34 above). Referring to the reasoning behind that decision, the Government expressed the view that the relevant part of the application was manifestly ill-founded.

68. The applicant disagreed and reiterated his complaints. In addition, he submitted that – despite several findings by the Constitutional Court of a violation of his rights – he had never been awarded any compensation and that it had taken 104 days from the Constitutional Court’s judgment of 5 June 2013 until it had been effectively implemented by his release on 17 September 2013 (see paragraph 40 above). In his view he had therefore not lost his victim status in respect of the violations alleged.

69. Moreover, he submitted that, under an amendment in force since 1 January 2013 – that is to say after the alleged violations had taken place – any possibility of obtaining redress in respect of non-pecuniary damage under the SL Act was limited to the amount available under a special statute as compensation to victims of violent crimes (see paragraph 57 above).

70. In a further reply, the Government pointed out that the written version of the Constitutional Court’s judgment of 5 June 2013 had not been served on the court with jurisdiction to order the applicant’s release until 11 September 2013 and that that court had in fact ordered his release without undue delay on 17 September 2013.

The Government also reiterated their non-exhaustion plea and, in addition, referred to the judgment of 17 August 2009 whereby the claimant had been awarded compensation by an ordinary court in respect of a violation of his rights previously found by the Constitutional Court (see paragraph 60 above).

71. Lastly, they pointed out that in so far as the applicant had been denied just satisfaction by the Constitutional Court in case no. III. US 93/11,

the reason had been that he had failed to substantiate his claim (see paragraph 40 above).

2. Court's assessment

(a) Victim status

72. As regards the Government's plea under Article 34 of the Convention, 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).

73. In the present case, the Government's argument rests on the fact that, in its judgment of 5 June 2013, the Constitutional Court found a violation of the applicant's Article 5 rights – essentially on account of the pattern of recurring arrests and re-arrests on various charges resulting in the applicant's protracted detention – and the fact that, following that judgment, the applicant was actually released from detention on 17 September 2013.

74. In that respect, as a matter of principle, the Court is unconvinced that the release of an individual from detention pending trial itself constitutes just satisfaction in respect of a violation of that individual's rights under Article 5 of the Convention, especially when the underlying detention appears to manifest elements of unlawfulness and arbitrariness (see *Loyka*, cited above, § 47).

75. In addition, the Court notes that the Constitutional Court's judgment of 5 June 2013 was given in the context of the applicant's detention pending trial on a charge different from that resulting in the detention pending trial of which he now complains before the Court, and that that constitutional judgment was delivered after the detention now complained of before the Court had ended with his release on 22 February 2012.

76. Moreover, and more importantly, the Court observes that the applicant's just satisfaction claim was dismissed by the judgment of 5 June 2013, as were his other just satisfaction claims in other constitutional judgments finding a violation of his Article 5 rights.

77. In these circumstances, the Court finds that the applicant was not afforded redress depriving him of his victim status and that, consequently, the Government's plea must be dismissed.

(b) Exhaustion of domestic remedies under the SL Act

78. The Court notes that the Government have raised an objection of non-exhaustion of domestic remedies under both the SL Act and the

Constitution. It will first examine the objection in so far as it relies on the SL Act.

79. As to the SL Act, the Court notes that three different types of remedy under that Act appear to be of relevance to the circumstances of the present case, namely claims in respect of detention (i) imposed pursuant to a decision that has been quashed as being unlawful (sections 3(1)(b) and 7 of the SL Act – “the first remedy”); (ii) imposed pursuant to wrongful official action (sections 3(1)(b) and (d), 7 and 9 of the SL Act – “the second remedy”); and (iii) of a person who is later acquitted (sections 3(1)(c) and 8(5)(b) of the SL Act – “the third remedy”).

80. With reference to these remedies, and in the particular circumstances of the present case, the Court distinguishes three different positions, specifically the positions in respect of the applicant’s complaints concerning (i) the alleged unlawfulness, arbitrariness and length of his arrest and detention under the order of 16 July 2010; (ii) the alleged lack of procedural guarantees in the proceedings on his interlocutory appeal against that order; and (iii) the alleged unlawfulness, arbitrariness and length of his detention under the order of 29 July 2011.

The Court will examine in turn the exhaustion of domestic remedies under the SL Act in respect of each of these complaints.

(i) Alleged unlawfulness, arbitrariness and length of detention under the order of 16 July 2010

81. As regards the complaints under Article 5 §§ 1 (c) and 3 of the Convention concerning the alleged unlawfulness, arbitrariness and length of the applicant’s arrest and detention pending trial on the first murder charge, the Court observes that the applicant was eventually acquitted of that charge with final effect on 27 July 2011 (see paragraph 10 above).

82. The Court further observes that the third remedy specifically provides for compensation to a person who was detained pending trial on a charge of which he or she was later acquitted and that under section 17 of the SL Act that right in principle concerns actual damage (*damnum emergens*), lost profit (*lucrum cessans*), and non-pecuniary damage.

83. Moreover, with reference to the relevant domestic practice, the Court observes that there does not appear to be any doubt that compensation in respect of detention is due to a person who has been detained pending trial on a charge of which he or she is later acquitted.

84. In addition, the Court observes that a claim for compensation under the third remedy in connection with the applicant’s detention pending trial on the first murder charge would be based on the fact of his acquittal – which occurred subsequent to the Constitutional Court’s rejection of his complaint concerning that detention – and that it would rest on elements other than those assessed by the Constitutional Court. Therefore, in the Court’s view, the Constitutional Court’s rejection of the applicant’s

complaint does not appear to be prejudicial to the assessment of his possible compensation claim under the third remedy.

85. From that perspective, the Court notes in particular that in an action for damages under the third remedy, the applicant would not have had to prove that his detention was contrary to substantive or procedural law or arbitrary. At the same time, the Court does not find it decisive that the matters needing to be established in an action for damages under the third remedy are different from those that have to be examined under Article 5 §§ 1 (c) and 3 of the Convention, because the compensation due to the applicant by way of such an action would in principle be linked to the fact, scope and mode of deprivation of his liberty (see *Osváthová*, cited above, § 93 and, *mutatis mutandis*, *N.C. v. Italy* [GC], no. 24952/94, §§ 55-57, ECHR 2002-X).

86. Moreover, in so far as the argument has been substantiated, the Court is not convinced that the statutory limitation on the maximum amount of compensation in respect of non-pecuniary damage under the SL Act should constitute a ground for considering the remedy under that Act *a priori* ineffective in terms of Article 35 § 1 of the Convention. In that respect, the Court also notes that any ordinary court's ruling on a claim under the third remedy could in turn be challenged by a fresh complaint before the Constitutional Court.

87. The Court concludes that in the circumstances of the present case, the remedy advanced by the Government in respect of the applicant's complaints under Article 5 §§ 1 (c) and 3 of the Convention with respect to his detention pending trial on the first murder charge – which was designed specifically for situations such as that experienced by the applicant – was available to the applicant both in theory and in practice with reasonable prospects of success and was accordingly one to be used for the purposes of Article 35 § 1 of the Convention. By not having used it, the applicant has failed to exhaust the domestic remedies.

It follows that the relevant part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention.

(ii) Alleged lack of procedural guarantees in interlocutory appeal against detention order of 16 July 2010

88. As regards the applicant's compliance with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention in relation to his complaint under Article 5 § 4 of the Convention concerning the alleged lack of procedural guarantees in the proceedings on the interlocutory appeal against the detention order of 16 July 2010, the Court notes that two types of remedy are possible under the SL Act.

89. To begin with – as in the case of the complaint concerning the alleged unlawfulness, arbitrariness and length of the detention imposed by the order of 16 July 2010 – there is the third remedy, which seeks to obtain

compensation for damage caused by detention pending trial on a charge of which the claimant is later acquitted. In contrast to that scenario, however, there is no statutory or jurisprudential indication that such a claim would ensure that an applicant is awarded compensation for an alleged lack of proceedings compatible with the requirements of Article 5 § 4 of the Convention. The known domestic case-law appears rather to suggest that compensation under that heading is awarded in respect of the fact of being detained rather than the fact of not having a procedure available during such detention to permit the lawfulness of that detention to be examined. The Court therefore concludes that, in so far as substantiated, the scope of the third remedy does not extend to the violation of Article 5 § 4 of the Convention alleged in the present case.

90. Then there is the second remedy, which concerns compensation in respect of damage caused by detention imposed pursuant to wrongful official action. The Court points out that it examined this remedy extensively from the point of view of the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention in situations similar to that obtaining in the present case, furthermore that that analysis specifically included the judgment of 17 August 2009 again relied on by the Government in the instant case (see paragraphs 60 and 72), and also that the Court concluded that the respective applicants were not required to resort to it for the purposes of that Article (see *Osváthová*, cited above, §§ 56-63 and, *mutatis mutandis*, *Horváth*, cited above, §§ 67-79). It has found no reasons for reaching a different conclusion in the present case.

91. In addition, in so far as the Government have now sought to rely on the Court's decisions in *Martikán* and *Loyka*, the Court notes that these decisions concerned complaints under no more than Article 5 § 5 of the Convention and involved no analysis of those applicants' compliance with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention with regard to the underlying violation of Article 5 § 4 of the Convention (see *Martikán* (cited above, § 40) and *Loyka* (cited above, § 39)).

92. It follows that, as regards the relevant part of the application, the Government's non-exhaustion plea made in reliance on the SL Act must be dismissed.

(iii) Alleged arbitrariness and excessive length of applicant's detention under the order of 29 July 2011

93. As to the applicant's complaint under Article 5 §§ 1 (c) and 3 of the Convention that, in the trial on the charge of conceiving, setting up and supporting a criminal and terrorist group, he had been arbitrarily detained in a recurring pattern of arrests and re-arrests and that, as a consequence, his detention had been too long, the Court observes that it clearly falls outside the scope of the third remedy.

94. As none of the relevant detention-related decisions in the context of the applicant's trial on that charge has been quashed as unlawful, the first remedy would clearly not appear to be applicable either.

95. As to the second remedy, however, the Court considers that its conclusion and the reasons for it as referred to above apply accordingly.

96. In particular, the Court notes that on 18 October 2011 the Constitutional Court rejected the applicant's complaint as manifestly ill-founded. It is true that it later found a violation of the applicant's Article 5 rights in the context of a different trial on the basis of a similar complaint. However, the Constitutional Court has consistently held that, in that respect, it was "neither expedient nor appropriate" to award the applicant any just satisfaction (see paragraphs 33, 39 and 40 above).

97. In these circumstances, the Court has not found any elements supporting a conclusion that, regarding a potential claim for damages under the SL Act, 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.

98. It follows that the Government's non-exhaustion plea with regard to the relevant part of the application must be dismissed.

(c) The complaints of the alleged unlawfulness of applicant's detention under the order of 29 July 2011

99. The applicant also complained that his detention pending trial on the charge of conceiving, setting up and supporting a criminal and terrorist group had been unlawful because (i) the courts had failed to appreciate that his detention on this charge following the order of 29 July 2011 was a repeated detention, as opposed to an initial detention, and (ii) he had not been informed of the reasons for his arrest in respect of which the courts had failed to give an adequate answer.

100. The Court agrees with the Government's argument (see paragraph 66 above) that the applicant did not raise his complaint concerning the legal classification of his detention under the order of 29 July 2011 either before the ordinary courts or in his constitutional complaint of 19 September 2011 (see paragraph 33 above) and has thereby failed to meet the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention.

101. The Court likewise agrees with the Government's argument (see paragraph 67 above) that the applicant's complaint about not having been properly informed about the reasons for his arrest appears to have been adequately examined and dismissed by the Constitutional Court in its decision of 18 October 2011 for reasons that appear well-founded.

102. In particular, the Court observes that in that decision the Constitutional Court found that the report of the applicant's arrest contained references to the charges on which he had been arrested, so that there could not have been any doubt as to his having been informed of the reasons for

his arrest, and that the Supreme Court had examined and dismissed the applicant's arguments on that point by implication.

103. In these circumstances, the Court finds the complaint manifestly ill-founded.

104. It follows that the above complaints of the alleged unlawfulness of the applicant's detention under the order of 29 July 2011 must be rejected under Article 35 §§ 1, 3 (a) and 4 of the Convention.

(d) Admissible part of application

105. The Court notes that the complaints of the alleged (i) lack of procedural guarantees in the interlocutory appeal against the detention order of 16 July 2010 and (ii) arbitrariness and excessive length of the applicant's detention under the order of 29 July 2011 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Procedural guarantees in interlocutory appeal against detention order of 16 July 2010

(a) Parties' arguments

106. The applicant complained under Article 5 § 4 of the Convention that his interlocutory appeal against the detention order of 16 July 2010 had been dismissed without any consideration of the reasons he had submitted in support of it in writing.

107. In reply, the Government referred to the Constitutional Court's decision of 7 December 2010 and submitted, in particular, that – at the time of its decision – the court of appeal had not been aware either of the existence of those written reasons or of the applicant's intention to submit any. Moreover, should the court of appeal have had a duty actively to enquire into the existence of any possible submission on the part of the applicant, it would by definition not have been possible for it to have determined the appeal within the period of five working days prescribed under the relevant legislation.

108. The applicant disagreed and reiterated his complaint, to which he added that there had been delays calling for an explanation in the transmission from the first instance court to the court of appeal of the written grounds for his interlocutory appeal and that the detention order of 16 July 2010 had been served on him in the Slovak language and not in his native language.

(b) The Court's assessment

109. 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 due 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 laid down in Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of 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 raising an effective challenge to the lawfulness of his detention.

It may also be essential that the individual concerned not only has the opportunity to be heard in person but also has 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).

110. Turning to the facts of the present case, the Court observes that the applicant was remanded on 16 July 2010 in the course of a private session at which he was present, and that the remand order had the procedural form of a decision. It may be presumed that that decision was communicated to the applicant by means of its pronouncement, which was to be followed by the production and service on him of a written version thereof. At the same time, it is to be noted that under the applicable statute, the applicant had three days following communication of the decision in which to appeal against it and that any such appeal was to be filed with the first instance court.

111. On the facts, following pronouncement of the decision on 16 July 2010, the applicant immediately stated on the record that he wished to appeal (see paragraph 21 above), having under the above-mentioned statutory time-limit in any event no less than until 19 July 2010 for appealing.

On 19 July 2010 the applicant submitted the reasons for his appeal in writing in the Russian language and this submission was received by the District Court on 21 July 2010 (see paragraph 22 above).

On the day last mentioned, the District Court transmitted the case-file to the court of appeal for a decision on what it considered being the applicant's

appeal. However, as can be seen from the court of appeal's decision, the applicant's written submission of 19 July 2010 containing his actual reasons for that appeal was not examined by that court, presumably on the ground that it had not been transmitted to it from the first instance (see paragraph 25 above).

112. Moreover, it is to be noted that both in his oral submission of 16 July 2010 and in his written submission of 19 July 2010 the applicant indicated that he would submit (further) reasons when the written version of the remand order was served on him.

The service of that order on the applicant took place in the Slovak language on 21 July 2010 and on 26 July 2010 he made a further written submission in the Russian language, which reached the first instance court on 28 July 2010.

However, as can again be seen from the decision of the court of appeal, the applicant's submission of 26 July 2010 containing his further reasons for appealing was likewise not subject to appellate examination (see paragraphs 24 and 25 above).

113. The Court is aware that it is open to question whether the applicant's submission of 26 July 2010 was made within the statutory three-day time-limit for appealing against his remand decision and whether language considerations may be accepted as having played a role in answering this question. However, irrespective of that and as a matter of principle, it finds it reasonable to await the service of a written version of a decision to be appealed against in order to be able to formulate one's appeal properly (see *Černák v. Slovakia*, no. 36997/08, § 82, 17 December 2013).

114. In addition, and more importantly, the Court observes that there does not appear to be any doubt that the applicant's submission of 19 July 2010 was indeed made in due time.

115. Nevertheless, neither that nor any other submission made by the applicant containing the actual reasons underlying his appeal was examined by the court of appeal. From that perspective, the Court finds the present case rather clearly akin to that examined by the Constitutional Court in its judgment of 16 October 2008 (see paragraph 50 above), which found a violation of the complainant's rights under Article 5 § 4 of the Convention.

116. In so far as the Government argued that the Constitutional Court's case no. II. ÚS 108/08 should be distinguished from the present case on account of the present applicant's having been heard at first instance, the Court does not find this distinction of crucial importance.

117. In particular, the Court observes that it has neither been argued by the Government nor otherwise established that, upon pronouncement of the remand order of 16 July 2010, the applicant was provided with specific reasons for his arrest. Moreover, and in any event, the statute provided the

applicant with a three-day time-limit for submitting his appeal, of which he availed himself. However, his submissions were completely disregarded by the domestic courts.

118. The Court acknowledges that, as a matter of principle, decisions concerning the deprivation of liberty are subject to short and strict time frames, which in itself appears to be well in keeping with the spirit of the Convention.

This being so, it notes that the application of the existing time frame in the present case led to a situation where the applicant's interlocutory appeal against the remand order of 16 July 2010 was dismissed without his reasons for that appeal having actually been examined.

The Government have sought to justify this situation by arguing that the court of appeal could not have taken the written reasons for the applicant's appeal into account because it had had no knowledge of them (see paragraph 107 112 above).

In that regard, the Court finds it to be incumbent upon the national authorities to devise and apply means effectively to secure the rights and freedoms under the Convention to everyone within their jurisdiction irrespective of what is the applicable procedural framework.

119. On the facts of the present case, it is obvious that the application of the existing time frame reduced, without any acceptable justification, the applicant's interlocutory appeal against the remand decision of 16 July 2010 to a merely formal remedy.

120. The foregoing considerations are sufficient to enable the Court to conclude that the proceedings the applicant brought against that decision with a view to having the lawfulness of his detention determined have fallen short of the requirements of Article 5 § 4 of the Convention.

There has accordingly been a violation of that provision.

2. Detention under the order of 29 July 2011

(a) Parties' arguments

121. The applicant complained under Article 5 §§ 1 (c) and 3 of the Convention that his detention under the remand order of 29 July 2011 had been arbitrary and too long in that (i) it had followed an arbitrary pattern of releases and immediate re-remanding on various charges, (ii) he had been detained for more than 9 years, in the past partly on the same charges as under the order of 29 July 2011, and (iii) his remand under that order had lacked justification on any concrete grounds.

122. The Government considered that the pattern of remanding and re-remanding the applicant and the length of his detention had not been unlawful *per se*. However, referring to the findings of the Constitutional Court in its judgment of 5 June 2013, they conceded that the relevant part of the application was not manifestly ill-founded.

(b) The Court's assessment

123. The Court reiterates that any detention must be lawful. The words “in accordance with a procedure prescribed by law” essentially refer to domestic law and lay down an obligation to comply with its substantive and procedural provisions, but also require that any measure depriving the individual of his or her liberty must be compatible with the purpose of Article 5, namely to protect the individual from arbitrariness (see *Wereda v. Poland*, no. 54727/08, § 38, 26 November 2013, with further references).

124. As to Article 5 § 3 of the Convention in particular, the Court recalls that the general principles regarding the right “to trial within a reasonable time or to release pending trial”, as guaranteed by Article 5 § 3 of the Convention, were stated in a number of its previous judgments (see, among many other authorities, *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-X, with further references).

125. Turning to the facts of the present case, the Court observes that the applicant was detained in Slovakia under various regimes from 25 June 2002 until 19 September 2013, that is to say for more than eleven years. At the same time, the Court observes that the applicant's detention was mainly criminal-law related and most of the time pending trial on one of the numerous charges pursued against him in Slovakia in parallel or one after another.

126. In its decision of 22 February 2012, the Supreme Court acknowledged that the applicant's detention following the order of 29 July 2011 in fact stemmed from prosecution for the same offences for which he had already been detained from 25 July 2002 at least until 19 May 2005 (see paragraphs 35 *et seq.* above).

127. Thus, if the period of the applicant's detention were to be viewed from a purely mathematical point of view, at the time of his remand he had already been detained pending trial on the same charges for two years and nearly ten months and – despite the passage of a significant amount of time – at the moment of his re-arrest on the same charges, the proceedings were still pending at their pre-trial stage.

128. However, the Court considers that the present case essentially revolves around other considerations, stemming primarily from the Supreme Court's judgment cited above and the Constitutional Court's judgment of 5 June 2013.

129. In particular, as regards the Supreme Court, the Court notes its findings that doubts could not be completely dispelled that the keeping of the applicant in detention for ten years might appear to be an arbitrary and self-serving deprivation of liberty and that there were serious flaws in the procedure linked to the absence of any specific decision regulating the applicant's detention following the removal to a separate set of proceedings of a part of the original charges against him.

130. As regards the Constitutional Court, the Court notes its findings that the applicant had been prosecuted for various offences both in parallel and consecutively, that the relevant statutory limits on the maximum duration of detention could not be interpreted as authorising detention pending trial for the maximum period in relation to each individual charge; and that doing otherwise, as had occurred in the applicant's case, would mean that a person could be detained for the maximum permissible period repeatedly for consecutively levelled charges *ad infinitum*, which was not justified by any public interest.

131. The Court notes that these elements, which led the Constitutional Court repeatedly to find a violation of the applicant's Article 5 rights with respect to the subsequent round of his detention, are equally applicable to his detention under the order of 29 July 2011.

132. In view of these findings and the Government's admission, the Court cannot but find that the applicant's detention under the order of 29 July 2011 was arbitrary.

There has accordingly been a violation of Article 5 §§ 1 (c) and 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

133. 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

134. The applicant claimed 100,000 euros (EUR) in respect of pecuniary damage and EUR 150,000 in respect of non-pecuniary damage.

As regards the former claim, he submitted in particular that during the excessively long period of his detention he had been prevented from running his business, that documents relevant to the substantiation of his claim had been lost or destroyed, that it had accordingly not been possible to quantify the amount of damage with any precision, and that he had therefore formulated his claim in terms of an appropriate lump sum.

135. The Government contested both claims, the former for being unsubstantiated and the latter for being overstated. Moreover, and in any event, they argued that the applicant could seek compensation for his alleged pecuniary damage by way of an action under the SL Act.

136. In so far as the Government referred to the possibility of seeking compensation under the SL Act, the Court reiterates that it has previously held that if a victim who has already exhausted the domestic remedies in

vain before complaining to the Convention institutions of a violation of his or her rights were obliged to do so for a second time before being able to obtain just satisfaction from the Court, the total length of the procedure instituted by the Convention would scarcely reflect the principle of the effective protection of human rights. Such a requirement would result in a situation incompatible with the aim and object of the Convention (see, for example, *Ferenčíková v. Slovakia*, no. 39912/09, § 74, 25 September 2012, with further references). Consequently, the Court is not prevented from making an award in this respect.

137. However, the Court observes that the applicant's claim in respect of pecuniary damage has not been substantiated by any evidence and must therefore be rejected. Nevertheless, ruling on an equitable basis, the Court awards the applicant EUR 26,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Default interest

138. 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* admissible the complaints concerning the alleged lack of the requisite procedural guarantees in the applicant's interlocutory appeal against the order for his detention of 16 July 2010 and the alleged arbitrariness and excessive length of his detention under the order of 29 July 2011;
2. *Declares* the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 5 §§ 1 (c) and 3 of the Convention;
4. *Holds* that there has been a 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, EUR 26,000 (twenty six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 2 June 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Josep Casadevall
President