



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

FIRST SECTION

CASE OF MASLÁK v. SLOVAKIA (No. 2)

(Applications nos. 38321/17 and 8 others)

JUDGMENT

Art 8 • Private and family life • Placement of detainee in high security unit while serving part of his prison sentence not in accordance with the law, in the light of inadequate legal protection against abuse • Prison authorities' discretion and failure to take into account relevant aspects of applicant's situation • Applicant largely excluded from decision-making process and provided only limited safeguards

STRASBOURG

31 March 2022

FINAL

30/06/2022

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

In the case of Maslák v. Slovakia (no. 2),

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

Péter Paczolay, *President*,
Krzysztof Wojtyczek,
Alena Poláčková,
Erik Wennerström,
Raffaele Sabato,
Lorraine Schembri Orland,
Davor Derenčinović, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the applications (nos. 38321/17, 82925/17, 156/18, 7426/18, 9755/18, 14907/18, 29635/18, 29636/18 and 35668/18) 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 Miroslav Maslák (“the applicant”), on various dates as specified in paragraphs 104 to 107 below;

the decision to give notice to the Government of the Slovak Republic (“the Government”) of the complaints under Articles 3, 6, 8 and 13 of the Convention concerning (i) the placement of the applicant in the high-security units of the prisons in which he had been serving a part of his term and the extensions of that placement, (ii) the conditions and severity of the regime in those units (including the limitations on his right to receive visits), (iii) the alleged lack of a judicial review of the placement in those units, its extensions and the limitations on the visiting rights, (iv) the alleged non-communication to the applicant of submissions by the prison authorities in the proceedings before the Constitutional Court and (v) the alleged lack of an effective remedy in that respect, and to declare inadmissible the remainder of the applications; the parties’ observations;

Having deliberated in private on 1 February and 8 March 2022,

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

INTRODUCTION

1. The present nine applications concern execution of a part of the applicant’s prison sentence in a special security prison regime and the legal framework governing it.

THE FACTS

2. The applicant was born in 1979 and has his registered residence in Pružina. He was represented by Mr R. Toman, a lawyer practising in Nové Zámky.

3. The Government were represented by their Agents, Ms M. Pirošíková, succeeded by Ms M. Bálintová.

4. Facts that are relevant for the assessment of the nine applications forming this case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND

5. The applicant has so far lodged forty applications under Article 34 of the Convention, against the Slovak Republic and the Czech Republic. They have mainly concerned multiple criminal proceedings against him in respect of various charges relating to actual or alleged violent offences with an organised-crime background.

6. The present nine applications concern the execution in Slovakia of a ten-year prison sentence imposed on him by the courts of the Czech Republic for extortion and other offences.

7. Following his arrest in the Czech Republic on 27 November 2012 and his extradition to Slovakia, the applicant was detained there under a medium-security regime (*stredný stupeň stráženia*) in three different detention facilities: Leopoldov Prison, Ilava Prison and Banská Bystrica-Kráľová (BBK) Prison. Within each of these facilities, he was placed in a high security unit (*oddiel s bezpečnostným režimom* – “HSU”) and this fact constitutes the specific focus of the present applications.

II. LEOPOLDOV PRISON

8. The applicant was detained in Leopoldov Prison from 22 May 2015 until 15 July 2016. He was originally placed in detention under a “group C” regime, but from 19 June 2015 onwards he was detained under an HSU regime.

A. Placement in an HSU and extending the period spent therein

9. Under the applicable law, embodied mainly in the Execution of Prison Sentences Act (Law no. 475/2005 Z. z. Coll, as amended – “the EPSA”) and the Execution of Prison Sentences Order (Decree of the Minister of Justice no. 368/2008 Coll., as amended – “the EPSO”), decisions on the placement of a prisoner in an HSU is entrusted to the governor of the prison in question; the governor and the Public Prosecution Service (“PPS”) must review the situation at least once every three months; and such decisions are to be taken on the basis of a proposal made by the prison’s educational officer (*pedagóg* – “PEO”) or the prison’s Service for Prevention and Security (*preventívno – bezpečnostná služba* – “SPS”), after the proposal has been discussed by a placement committee (*umiestňovacia komisia*).

10. In the present case, the applicant was placed in the HSU on preventive security-related grounds (*z preventívno-bezpečnostných dôvodov*). The decisions on his placement and its extensions were taken by the governor on 19 June, 11 September and 4 December 2015 and 26 February and 20 May 2016, respectively. Those decisions were reviewed by the PPS on 21 July and 24 November 2015 and 18 March and 6 July 2016, respectively.

11. The decision of 19 June 2015 followed a proposal made by the SPS, which was discussed by the placement committee on the same day.

12. In the proposal, the SPS noted that the applicant had been convicted of a serious offence and pointed out that in the Czech Republic he had been detained under a regime similar to an HSU regime, as he had been considered to be particularly dangerous to others, given his dominant personality and manipulative tendencies.

13. The minutes of the placement committee's discussion contain no details other than those relating to the composition of the committee and what can be understood as consent given to the SPS's proposal by each of its members.

14. The decision contains a reference to the applicable legal provisions, but no reasoning.

15. The subsequent proposals and decisions are phrased in identical terms; each routine review by the PPS (see paragraphs 9 and 10 above) was concluded with the finding that no irregularities had been established and that the decisions had been lawful, with no further grounds being referred to.

B. Challenges to the applicant's placement in the HSU

16. The applicant pursued his rights before the PPS, the Constitutional Court and the administrative-law judiciary. In so far as can be established, he contended that his placement in the HSU had been arbitrary in that it had been based on no specific reasoning. He furthermore asserted that a copy of the placement decision had only been provided to him after he had lodged a request under the legislation regarding free public access to information and that the suggestion that he was dangerous to others had been based on purely hypothetical elements but no actual evidence.

17. His claims were unsuccessful on the following grounds, with the final decisions being delivered by the Constitutional Court on 13 March 2018 (III. ÚS 94/2018) and the Trnava regional office of the PPS on 22 January 2019.

18. The PPS summarised the procedure leading to the applicant's placement in the HSU, as described above, disputing that there had been a lack of adequate reasoning or signs of arbitrariness or irregularity. While no specific answer was given to the applicant's other arguments, the PPS repeatedly asserted that the placement had been lawful.

19. Under the principle of subsidiarity, the Constitutional Court found having no direct jurisdiction in respect of any actions or omissions on the part of a prison's administration. Accordingly, jurisdiction in respect of the present case rested with the PPS. The Constitutional Court could consequently only review the way that the PPS had dealt with the applicant's complaints concerning the prison administration. In that regard, the requirements regarding the extent of the reasoning that had to be contained in the decisions issued by the PPS were not as strict as those in respect of judicial decisions. Citing extensively from the contested decisions of the PPS, the Constitutional Court concluded that they had given adequate answers to the applicant's arguments and had been based on the relevant law.

20. The administrative-law judiciary lacked jurisdiction to deal with the applicant's grievances, which fell within the jurisdiction of the PPS; they were accordingly transferred to the latter. This resulted in a new round of examination being undertaken by the PPS, which concluded that, with reference to the results of the previous routine examinations (see paragraphs 9 and 10 above), the applicant's placement in the HSU had been lawful and free from arbitrariness.

C. Conditions in the HSU

21. The general framework of the conditions is set out in the relevant provisions of the EPSA and the EPSO and in the internal prison rules (*ústavný poriadok* – "IPR").

22. In addition, individual aspects of the treatment of an inmate serving a prison term are defined in an individual rehabilitation programme (*program zaobchádzania* – "IRP").

1. Visits

23. As a general rule, visits in medium-security-level prisons (see paragraph 7 above) take place as open visits (*s priamym kontaktom*). However, for detainees held under a "group C" regime (see paragraph 8 above), the position changes and closed visits (*bez priameho kontaktu*) become the general rule. In Leopoldov Prison, the same general rule applies to inmates in the HSU (section 21 of the Leopoldov IPR). Exceptions to the general rules may be granted by the prison governor in justified cases.

24. In their submission on the facts, the Government stated that on 24 June and 20 November 2015 the applicant had received open visits from his mother.

25. The focus of the applicant's Convention complaints comprises requests lodged by him on 2 February and 26 April 2016 for open visits from his mother, brother and friends.

26. The governor reviewed those requests on 23 February and 3 June 2016, respectively, but in both cases permitted a closed visit from the

applicant's mother only. In so far as can be established, the decisions did not contain any specific reasoning and were recorded in the form of a short note made on the hard-copy versions of the respective requests. The applicant was informed of the decisions on 4 March and 7 June 2016, respectively.

27. The applicant challenged the decision of 23 February 2016 before the PPS and that of 3 June 2016 before the administrative-law judiciary. Not having been successful, he pursued his claims further (and again unsuccessfully) by lodging two separate constitutional complaints. He argued that under the relevant law he was entitled to open visits and that the aforementioned conversion of the general rule into closed visits lacked an adequate legal basis, in that it was based on no more than the Leopoldov Prison's IPR. Moreover, the decisions had lacked reasoning and they had not been served on him in writing (he had only been notified of them orally).

28. As regards the governor's decision of 23 February 2016, the final decision was delivered by the Constitutional Court on 31 August 2017 (I. ÚS 429/17). The authorities' reasoning may be summarised as follows.

The applicant had initially been classified for detention under a "group C" regime but had later been placed in the HSU. Under the applicable statute, the general rule for inmates placed in "group C" detention was that they could only receive closed visits. A decision not to allow an open visit thus necessitated no reasoning; reasoning was only required in respect of a decision to grant an exception to that general rule – that is to say only if an open visit was allowed. Such a decision lay within the exclusive authority of the prison governor, and in the applicant's case it was completely lawful.

In the light of the subsidiarity principle, the Constitutional Court had no power to review the governor's decision and could only examine the way in which that decision had been reviewed by the PPS. Observing those limits – and referring to material submitted in the constitutional proceedings by the respondent of the complaint (that is to say the prison administration) – the Constitutional Court identified no unlawfulness or lack of reasoning.

29. In respect of the governor's decision of 3 June 2016, the final decision was given by the Constitutional Court on 1 February 2018 (II. ÚS 86/2018). The conclusion and the reasons behind it may be summarised as follows.

The contested decision was not one that had been delivered by an administrative body within the area of public administration. It had been delivered in the course of the execution of a prison sentence. This procedure had roots in criminal law and constituted a continuation and an integral part of the criminal procedure. Its regulation fell within the same area of law, the purpose of which served a different purpose than that of administrative law. The administrative-law judiciary accordingly had no jurisdiction in the matter; under the relevant statutes (the EPSA and the PPS Act), such jurisdiction was entrusted to the PPS. The applicant's claims were thus transferred to the latter for determination.

30. Following the referral mentioned in the preceding paragraph, the applicant's complaints in respect of the decision of 3 June 2016 were examined and dismissed by the PPS and, ultimately, on 20 December 2017 also by the Constitutional Court (II. ÚS 730/2017). The reasons cited were essentially the same as those given in the decision of 23 February 2016 (see paragraph 28 above). Moreover, it was noted that the law laid down no requirements as to the form of the decision by the prison governor when ruling on a request lodged by an inmate for permission to receive visitors.

31. Lastly, the applicant's unsuccessful criminal complaints about the general conditions of his detention (as described at paragraph 35 below) included arguments regarding his right to receive visitors.

2. Other conditions

32. Individual aspects of the applicant's treatment were noted in his IRP, issued on 17 July 2015 and modified on 18 March 2016. Under this programme, his treatment was to be aimed at ensuring that he maintain prison security and accept generally binding norms; any free-time activities that the applicant wished to engage in were subject to the prior approval of the PEO.

The original IRP noted that sport (gym, table tennis and chess) was the applicant's main way of mitigating adverse effects of his imprisonment on his person. He had no interest in other activities mainly because he spent most of his free time studying legal material in connection with various proceedings against him. The IRP concluded by a recommendation that the applicant be supported as much as possible in undertaking physical exercise.

In contrast to that, the amended IRP contained no such recommendation and noted that the applicant was also involved in various complaint proceedings against the prison administration. He was to be motivated to use outside walks for sporting activities and to use bibliotherapy, art therapy and relaxation techniques in order to reduce inner tension.

33. As to the general conditions of his detention in the HSU in Leopoldov Prison, the applicant's submissions included the following assertions:

- until the modification of his IRP on 18 March 2016 he had been allowed to make use of the prison gym, but from that date onwards this had no longer been possible. A request lodged by the applicant to be allowed to use the gym again had been refused solely on the grounds that inmates in the HSU did not participate in the determination of their IRP and that their free-time activities were subject to the PEO's approval,

- the applicant's lack of exercise had resulted in a deterioration of back and knee injuries from which he had already been suffering,

- his normal daily regime had consisted of his having to spend twenty-three hours confined alone in his cell, with one hour allocated for a walk outside, during which he had sporadically seen (but not been allowed to interact with) other inmates,

- there had been no common room available for activities such as watching television with other inmates, and he had only been able to watch television alone in his cell,

- it had not been possible for him to engage in work that he considered appropriate for him; moreover, such work as had been available (sewing shoes) would not have provided him with the opportunity to interact with others, since he would have carried it out alone, in his own cell,

- he had not taken part in the psychotherapy and educational activities offered by the prison, since he had deemed them to be ineffective.

34. The Government for their part submitted, *inter alia*, that:

- inmates in a situation similar to that of the applicant had had the opportunity to be in regular contact with prison personnel such as the PEO, a social services officer, psychologist and a chaplain,

- until the amendment of his IRP in March 2016 he had been allowed to make use of a gym and he had occasionally played table tennis and chess,

- there was no evidence of any deterioration of his health as a result of his not being able to make use of the prison gym after March 2016,

- the applicant had been offered but had refused to engage in music therapy, art therapy, bibliotherapy and classes on relaxation techniques,

- he had been able to make use of a common room and thus have contact with other prisoners,

- the prison authorities had actively sought to assign the applicant work with other inmates, but he had first refused, and when finally given work in March 2016 he had damaged one of the products being manufactured, as a result of which it had been necessary to withdraw him from that work,

- the applicant had been allowed telephone communication with close persons six times a month (each time for twenty-five minutes) – above the minimum standard provided by the applicable law.

35. The applicant challenged the general conditions of his detention by means of lodging two criminal complaints, two interlocutory appeals with the PPS against the dismissal of those complaints, and two constitutional complaints. He challenged mainly (i) his not being allowed to make use of the gym, (ii) and the negative or belated decisions regarding his requests for permission to receive open visits and for additional telephone time with his close persons. Among other arguments, he contended that his treatment had been retaliation for his having lodged formal complaints about the prison administration. He argued that the actions of the prison administration in this regard had been contrary to Article 3 of the Convention and that the authorities had failed to conduct an effective investigation into the matter.

36. The applicant's criminal complaints were dismissed by the investigator who, on the basis of oral evidence given by the PEO and various written documents, found that neither the PEO nor any other employee of Leopoldov Prison had committed any offence.

37. The applicant's interlocutory appeals were dismissed, and his constitutional complaints were declared inadmissible as manifestly ill-founded (by a decision of 5 December 2017 (III. ÚS 740/17)) and lacking in the requisite form (by a letter of 23 February 2017 (Rvp 315/2017)). The gist of the reasons may be summarised as follows.

38. The Constitutional Court's review was limited in that its function was not to assess or review facts. It had accordingly no power to assess evidence and could only review legal conclusions reached by other authorities if they manifestly deviated from the object and purpose of the applicable law.

39. Within those parameters, the investigator had obtained and assessed ample evidence to support his conclusion that no elements of a crime had been established. This conclusion had been supported by congruent reasoning, and no failure on the part of the PPS had been established. There was no arguable claim of treatment contrary to Article 3 of the Convention, and nor was there any right to seek the criminal prosecution of third persons.

III. ILAVA PRISON

40. The applicant was detained in Ilava Prison from 15 July until 1 December 2016, his period of detention in its HSU beginning on 22 July.

A. The applicant's placement in the HSU and the extension of his period of detention therein

41. The decisions on the applicant's placement in an HSU and its extension were taken by the prison governor on 22 July and 21 October 2016, respectively, with the PPS's routine review on 4 November 2016.

42. Both the placement and its extension followed proposals by the SPS, citing the need to avert security risks indicated by the available information on the applicant's personality and his dominant and manipulative tendencies. The applicant followed the applicable rules and his behaviour was adequate, as long as there was no stressful situation. As in Leopoldov Prison, the minutes of the placement committee's discussion contain no details and, while referring to the applicable rules, the decisions contain no reasoning (see paragraphs 13 and 14 above).

The applicant requested (under the law on free public access to information) and obtained a copy of the decision of 22 July 2016, but it is unclear whether he has ever received a copy of that of 21 October 2016.

B. Challenges against the applicant's placement in the HSU

43. The applicant pursued his rights in relation to his placement in the HSU (and the extension of his period of detention therein) by bringing two administrative-law actions. In both actions he argued that he had been

excluded from the decision-making process and sought an order that the respective decisions be at least officially served on him. In the first action, he also sought a judicial review of the decision itself, advancing essentially the same arguments as those outlined in paragraph 16 above.

44. As was the case in regard to Leopoldov Prison, the administrative-law judiciary transferred the actions to the PPS, holding that they fell within the jurisdiction of the latter (see paragraph 20 above). In its decision of 6 June 2017, the Trenčín Regional Court added that it could nevertheless not be excluded that matters concerning prison conditions also fell within the jurisdiction of the ordinary courts.

The Regional Court also noted that the challenged decision on the extension of the applicant's placement in the HSU (22 October 2016) no longer effectively applied to him because, in the meantime (1 December 2016), he had already been transferred to BBK Prison, where a new placement decision had to be adopted (see paragraphs 55 *et seq.* below).

45. The applicant challenged before the Constitutional Court the decisions to transfer his actions to the PPS, arguing that the administrative tribunals had been bound to examine his arguments on the merits. However, citing extensively from the challenged decisions, the Constitutional Court concluded that they had been convincing, based on the law and duly reasoned (decisions of 1 August and 20 September 2017, nos. III. ÚS 507/17 and I. ÚS 468/17). In its decisions the Constitutional Court took no position regarding the suggestion that civil courts might also have jurisdiction in matters concerning prison conditions.

46. Following the transfer of the applicant's actions to the PPS, the latter made findings similar to those that it had made previously regarding his HSU detention in Leopoldov Prison (see paragraphs 18 and 20 above). Moreover, it noted that there was no legal provision specifying that a decision to place a person in an HSU should be formally served on the subject of that decision.

47. In addition to these efforts and results, the applicant also unsuccessfully complained of his placement in the HSU within the context of his criminal complaint about the conditions in the HSU (see paragraphs 51 *et seq.* below).

C. Conditions in the HSU

48. The applicant's IRP in Ilava Prison was issued on 11 August 2016 and focused on similar goals as those in the IRP issued in Leopoldov Prison (see paragraph 32 above). However, it was specified that they were to be pursued by directive means. Any free time activities were subject to the approval of the PEO; preference was to be given to reading appropriate material in an effort to correct what was referred to as the applicant's antisocial behaviour, correspondence, outside walks and watching television. In order to defuse

tension and promote his rehabilitation, the applicant was to be offered relaxation techniques by means of video and audio recordings.

49. As to the general conditions of his detention in the HSU in Ilava Prison, the applicant's submissions included assertions that:

- he had not been allowed to make use of the gym, the prison governor having refused his request to that effect on the grounds that using the gym was not a part of his IRP and that the PEO had not authorised it,
- he had not been allowed to receive open visits until one such visit by his mother and brother had been permitted, after he had started complaining of what he considered to be bullying by his PEO,
- he had been able to watch television for only one and a half to two hours a day in the common room but had not been allowed any social contact, given that he had only been allowed to spend time in the common room on his own,
- there had been one instance when his request for authorisation for him to be allowed to walk with another prisoner when exercising his right to take a walk outside had been refused arbitrarily and without any explanation.

50. In that respect, the Government submitted, *inter alia*, that:

- the applicant had been treated in accordance with his IRP and that the open visit by his mother and brother had been permitted to motivate him to pursue the IRP's goals,
- he had been allowed to make use of the common room, which had afforded him contact with other inmates,
- his request for authorisation of an outside walk with another inmate had been refused owing to the character of the latter and the undesirable influence that he had exercised on the applicant,
- he had not been assigned work in view of the results of his work in Leopoldov Prison (see paragraph 34 above).

51. In relation to the conditions of his HSU detention in Ilava Prison, the applicant pursued his rights by lodging (i) a criminal complaint, which was examined by the PPS by way of ensuring respect for lawfulness in places of detention (see paragraph 83 below), and (ii) a constitutional complaint. He argued that his placement and continued confinement in the HSU was arbitrary and that in view of the conditions of that detention he had been treated in a manner contrary to Article 3 of the Convention.

52. His complaints were unsuccessful, the final decision being delivered by the Constitutional Court on 16 October 2017 (III. ÚS 389/18). The reasons may be summarised as follows.

53. As the placement in the HSU did not constitute a disciplinary measure, it called for no more than brief reasoning. Permitting open visits lay entirely within the discretion of the prison governor. The conditions of the applicant's detention and his daily regime were in full conformity with law and his complaints in that respect had been duly examined by the prison governor.

54. The Constitutional Court found that the PPS had duly examined the applicant's claims and that, accordingly, its actions in that examination could not have violated his rights under Article 3 of the Convention.

IV. BANSKÁ BYSTRICA-KRÁĽOVÁ

55. On 1 and 6 December 2016, respectively, the applicant was transferred to BBK Prison and placed in its HSU. He was detained under the latter regime until it was lifted on 10 July 2018, when he was transferred to the general prison population within that prison. The applicant's detention in BBK Prison ended in October 2020, when he was released on parole.

A. Placement of the applicant in the HSU and the extension of his period of detention therein

56. The applicant's placement in the HSU on 6 December 2016 was not subject to any separate formal decision. It was extended by the prison governor on 20 January, 20 April, 18 July and 17 October 2017 and 16 January and 10 April 2018. These decisions followed proposals made by the SPS, which cited the crimes of which he had been convicted in the Czech Republic, other offences of which he stood accused in Slovakia, and preventive security-related grounds. The proposal was endorsed by the placement committee and accepted by the governor in the same manner as in the other prisons (see paragraphs 13, 14 and 42 above).

57. Before the Court, the Government submitted that, by way of a routine review, the PPS had examined the applicant's HSU detention in BBK Prison on 1 December 2016, 13 March, 5 June, 7 September and 1 December 2017, and 7 March and 15 June 2018, finding it each time lawful.

B. Challenges to the placement in the HSU

58. The applicant pursued his rights in relation to his placement in the HSU in BBK Prison by way of an administrative-law action, a complaint with the PPS and, ultimately, a complaint with the Constitutional Court. His principal argument was that his placement in the HSU on 6 December 2016 had been unlawful, given that it had lacked any formal decision.

59. His efforts were unsuccessful, the final decision being given by the Constitutional Court on 28 September 2017 (III. ÚS 598/17). The reasons may be summarised as follows.

60. As noted by the PPS, prior to the applicant's transfer to BBK Prison (on 1 December 2016), his placement in an HSU regime had been ordered by the governor of Ilava Prison (22 July 2016), and that order had been extended on 22 October 2016 (see paragraph 41 above). This extension had been valid by law for three months, that is to say until 22 January 2017. Thus, given the

circumstances, the applicant's placement in the HSU in BBK Prison on 6 December 2016 had still been covered by the preceding decisions and hence had not called for a new one.

61. Referring to "objective evidence about the applicant's behaviour in prison", which the Constitutional Court stated that it had "neither any reasons nor authority to doubt", his placement in the HSU was considered to have been lawful and free from any arbitrariness. However, the contents of the Constitutional Court's file, a copy of which has been made available to the Court, contain no sign of any submission made in reply to the applicant's constitutional complaint by its respondent (the prison administration).

62. The Constitutional Court found that the administrative-law judiciary lacked jurisdiction to examine the applicant's arguments. The proceedings in respect of his administrative-law action were accordingly terminated. The matter fell within the jurisdiction of the PPS. However, as the applicant himself had initiated proceedings before the latter, it was unnecessary to transfer his action to it (decision of the Banská Bystrica Regional Court of 31 July 2017).

C. Conditions in the HSU

1. Visits

63. The BBK Prison IPR provide that, as a general rule, visits to inmates in HSUs are closed. It is undisputed that on 30 April, 31 May and 28 June 2018 the applicant received such visits from his mother and brother.

64. The applicant asserted (that assertion is contested by the Government) that on 25 April and 16 July 2017 he had asked for permission to receive an open visit from a friend but those requests had been refused. He further submitted that the respective decisions had not been served on him and that the prison director had dismissed his requests for a copy of them under the law on free access to information on the grounds that information on execution of sentences was exempted from public access.

65. On 8 April 2018 the applicant requested permission to receive an open visit from his mother and brother. In response, only a closed visit was permitted, but it is unclear whether it actually took place.

66. In respect of the alleged refusal of his alleged requests of 25 April and 16 July 2017, the applicant brought two civil actions against BBK Prison administration and its governor, respectively, seeking protection of his rights of the defence, of access to information, to be presumed innocent and to the protection of his privacy (9C/45/2017 and 9C/50/2017). Both actions were discontinued on the grounds that the prison administration had no legal capacity to be sued and that the action against the prison governor fell outside the jurisdiction of the ordinary courts. On the latter point, the courts found that the action fell outside the parameters of any recognised form of action and did not concern a private-law matter that could be litigated before the

ordinary courts. In so far as can be established, the applicant appealed against the decision concerning the request of 25 April 2017 but no information has been made available to the Court about any further developments.

67. By means of a civil action against the administration of BBK Prison, the applicant also challenged the decision on his request of 8 April 2018 (see paragraph 65 above), arguing that it had breached his right not to be discriminated against. The action itself was discontinued, as he had failed to pay the relevant court fees (decision of the Banská Bystrica District Court of 25 July 2018, case no. 19C 42/18). However, the discontinuation of the proceedings had been preceded by the refusal of his request for an exemption from the duty to pay the court fee, in the examination of which the Constitutional Court had confirmed (paragraphs 21 and 22 of its decision of 6 March 2019 file no. I. ÚS 70/19) that its case-law in respect of the jurisdiction of the PPS in matters that the applicant had previously attempted to raise before the administrative judiciary applied, *mutatis mutandis*, to the subject matter of his civil action.

2. Other conditions

68. The applicant's IRP in BBK Prison has not been provided to the Court. However, the applicant submitted to the Court various prison material concerning the daily regime and any free time activities, which in his view (uncontested by the Government) indicated that no such activities had been available in the HSU regime in BBK Prison and that that regime had been similar in nature to solitary confinement.

69. As to the conditions of that detention (other than those concerning his receiving visits), the applicant asserted, *inter alia*, that:

- he had not been able to make use of the gym or to have his own exercising equipment in his cell,
- he had been allowed to telephone close persons only twice a month;
- no common room had been available;
- since approximately January 2018 he had been allowed to take walks outside, to which he had been entitled, in the company of other convicted inmates and to make use of a gym-like room referred to as a "multi-functional room" (*multifunkčná miestnosť*) three times a week, where he had also been able to meet and exchange with other convicted inmates.

70. In the Government's submission:

- the applicant had been allowed to make use of a common room where he had been able to interact with other inmates;
- the applicant had been able to make use of a computer with Internet access twice a week for up to thirty minutes each time;
- upon his joining the general prison population (see paragraph 55 above), the applicant had received monthly closed visits from his mother and brothers and had also been assigned work within the prison of a nature that afforded him the opportunity to interact with others.

71. The applicant sought to challenge the general conditions of his detention in the HSU of BBK Prison by adding his arguments in that respect to his civil action concerning the handling of his request of 25 April 2017 for permission to receive visitors. The outcome of that action is detailed in paragraph 66 above.

V. OTHER FACTS CITED BY THE GOVERNMENT

72. The applicant brought a civil action in the Banská Bystrica District Court (case no. 9C 1/18), seeking protection of his privacy and compensation from the administration of BBK Prison. In so far as can be established, the action is not directly related to the subject matter of the present case, and concerns allegations that he had been wrongfully denied access to postage stamps and certain documents and prevented from posting the latter.

On 25 May 2018 the District Court discontinued the proceedings. It held, *inter alia*, that the dispute was not of a private-law nature and, accordingly, fell outside the jurisdiction of general courts within the meaning of Article 3 of the Code of Civil Contentious Procedure (Law no. 160/2015 Coll., as amended – “CCCP”). The matter rather fell within the jurisdiction of the PPS under the EPSA and the PPS Act (sections 4(1)(b) and 18).

On 14 March 2019 the Banská Bystrica Regional Court allowed an appeal lodged by the applicant and remitted the action to the District Court for re-examination. In so far as relevant, it held that there could be instances where a course of action taken by a prison administration could be incompatible with the requirements of the EPSA and at the same time violate the claimant’s personal integrity within the meaning of Articles 11 *et seq.* of the Civil Code. In the case at hand the applicant’s assertions fell outside the remit of the PPS and within the jurisdiction of the general courts. It was thus incumbent upon the latter to examine whether there had been an unjustified interference with his personal integrity and, if so, who was responsible for that interference. The answer to those questions would determine who had standing to be sued in the case and whether the action was well-founded.

No information has been made available as to the further course and any outcome of the action.

73. The applicant has also brought a set of actions against all three prison facilities seeking protection of his right not to be discriminated against. These are pending before the District Courts in Trenčín (cases no. 19 C 16/2017 and 23C 40/2017) and Banská Bystrica (case no. 9C 44/2017). As far as could be established, the latter proceedings concern the applicant’s wish, while he was in in BBK Prison, to be allowed to purchase nutritional supplements.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTION

74. The “right to judicial and other legal protection” is laid down in Section (*Oddiel*) Seven of Part (*Hlava*) Two, dealing with “basic rights and freedoms”. The relevant part of Article 46 provides as follows:

“1. Everyone shall be able to assert his or her rights, in a procedure provided by an Act of Parliament, before an independent and impartial court of law and, in cases defined by an Act of Parliament, before another organ of the Slovak Republic ...

2. Any person asserting that his or her rights have been curtailed by a decision issued by a public administration body shall be able to have the lawfulness of that decision determined by a court, unless an Act of Parliament provides otherwise. However, a review of decisions concerning fundamental rights and freedoms must not be excluded from the jurisdiction of the courts.

...

4. Conditions and details ... shall be provided by an Act of Parliament.”

75. Article 127 reads as follows:

“1. The Constitutional Court shall decide on complaints by natural or legal persons alleging a violation of their fundamental rights or freedoms ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.

2. If the Constitutional Court finds a complaint [to be] justified, it shall deliver a decision stating that a person’s rights or freedoms, as set out in paragraph 1, have been breached by a final decision, specific measure or other act and shall quash that decision, measure or act. If the breach that has been found is the result of a failure to act, the Constitutional Court may order [the authority] that has breached the rights or freedoms to take the necessary action. At the same time it may remit the case to the authority concerned for further proceedings, order that authority to refrain from breaching the fundamental rights and freedoms ... or, where appropriate, order those who have breached the rights or freedoms set out in paragraph 1 to restore the situation to that existing prior to the breach.

3. In its decision on a complaint the Constitutional Court may award appropriate financial compensation to the person whose rights under paragraph 1 have been breached.”

76. Section One of Part Eight defines the status of the PPS as follows:

“Article 149

The [PPS] shall protect the rights and legally recognised interests of individuals, legal entities and the State.

Article 150

The [PPS] shall be headed by the Prosecutor General, who shall be appointed and recalled by the President of the Slovak Republic upon a proposal of the National Council of the Slovak Republic.

Article 151

Further details regarding the appointment, recall, powers and duties of members of the [PPS] as well as the organisation thereof shall be laid down by an Act of Parliament.”

77. As observed by the Constitutional Court in relation to the status of the PPS in the system of separation of powers in Slovakia, the PPS was a constitutional organ vested with State power different from that of the legislature, but having some attributes of executive power as well as judicial power. Accordingly, the PPS enjoyed a relatively autonomous position (decision of 24 October 2012, file no. PL. ÚS 4/12, and constitutional judgment of 7 May 2014, file no. PL. ÚS 105/11).

II. CODE OF CIVIL CONTENTIOUS PROCEDURE

78. The rules of judicial procedure in civil matters are embodied in the CCCP. These pertain both to actions for the protection of personal integrity and anti-discrimination actions. Recital 1 provides that civil courts have jurisdiction over disputes concerning the endangering or violation of individual rights, if such jurisdiction is not bestowed on a different body.

79. Article 3 defines the jurisdiction of the civil courts as follows:

“[Civil] [c]ourts examine and decide upon disputes and other matters of a private-law nature, if an Act of Parliament does not entrust such an examination and decision to other authorities.”

III. CODE ON JUDICIAL PROCEDURE IN ADMINISTRATIVE MATTERS

80. The procedure followed by the administrative-law judiciary is governed by the Code on Judicial Procedure in Administrative Matters (Law no. 162/2015 Coll, as amended – “the JPAM Code”). Article 18 § 1 provides that, if an administrative tribunal establishes that a matter submitted to it falls outside its jurisdiction, it shall terminate the proceedings and, provided that it is possible to identify a body having jurisdiction to examine that matter, it shall transfer the matter to that body.

IV. CIVIL CODE

81. The rules on the protection of personal integrity are embodied in the provisions of Articles 11 *et seq.* of the Civil Code (Law no. 40/1964 Coll., as amended). In so far as relevant, they provide as follows:

“Article 11

Every natural person shall have the right to the protection of his or her personal integrity – in particular his or her life and health, civil honour [*občianska česť*] and human dignity, and privacy ...

...

Article 13

1. Every natural person shall have the right, *inter alia*, to request an order restraining any unjustified interference with his or her personal integrity, an order cancelling out the effects of such interference and an award of appropriate compensation.

2. If the satisfaction afforded under paragraph 1 of this Article is insufficient, in particular because the injured party's dignity or social standing has been considerably diminished, the injured party shall also be entitled to financial compensation for non-pecuniary damage.

3. When determining the amount of compensation payable under paragraph 2 of this Article, the court shall take into account the seriousness of the harm suffered by the injured party and the circumstances in which the violation of his or her rights occurred."

V. ANTI-DISCRIMINATION ACTION

82. Anti-discrimination actions are governed by the Anti-discrimination Act (Law no. 365/2004 Coll., as amended), under which anyone is entitled to bring an action in a court of law asserting his or her right to equal treatment and protection from discrimination (section 9(1) and (2)). The action may seek that the defendant be ordered to refrain from unlawful behaviour, to rectify any unlawful state of affairs and to provide just satisfaction (section 9(2) and (3)).

VI. PUBLIC PROSECUTION SERVICE ACT

83. The Act governs the status and jurisdiction of the PPS and its members (section 1). The PPS has a duty, *inter alia*, to protect the rights and legally recognised interests of individuals (section 3(1)) by exercising supervision over respect for lawfulness in places where persons are kept in deprivation of their personal liberty (section 4(1)(b)). In discharging this duty in relation to institutions where prison terms are being served, the PPS must see to it that Acts of Parliament and other statutes are respected (section 18(1)(a)). For that purpose, the PPS is duty-bound to conduct inspections (section 18(3)(a)) and to quash or suspend the effects of any decision if it is contrary to an Act of Parliament or another statute (section 18(3)(c)).

84. Details concerning the exercise of supervision over respect for lawfulness in places where prison sentences are served are determined in an order of the Prosecutor General, issued on 12 May 2010 under the powers entrusted in him by section 10(1) of the PPS Act.

85. The PPS exercises its jurisdiction under the Act when an application is lodged seeking that it do so, which entails the taking of such measures as are necessary in order to rectify any established violations, provided that the taking of such measures does not fall within the exclusive jurisdiction of other bodies under another Act of Parliament (section 31(1)). The person lodging

the application is entitled to seek a review by a superior level of the PPS of the lawfulness of how his or her application has been handled (section 36(1)).

86. In handling such an application, the PPS is duty bound to examine all the circumstances that are decisive for an assessment of whether an Act of Parliament or other statute has been violated and whether any measures within the jurisdiction of the PPS are to be taken (section 36a(1)). If the application is well-founded, the PPS shall take such measures (section 36a(2)).

VII. EXECUTION OF PRISON SENTENCES ACT

87. In order to ensure the fulfilment of the purpose of an inmate's treatment, the PEO established the inmate's IRP (section 15).

88. Under section 24 (1), (3) and (4) convicted inmates are entitled once a month to receive a visit lasting two hours from close persons. Such a visit is called an "entitlement visit" (*nároková návšteva*), and an inmate is not required to lodge a request in order to obtain such a visit. In the interests of the fulfilment of the IRP or owing to family or other important reasons, the prison governor may permit additional visits from close persons or others. The convicted inmate has to lodge a separate request and obtain the approval of the prison governor in order to be able to receive such additional visits.

89. Moreover, inmates are entitled to: send and receive correspondence without limitation (section 25); receive a package once every three months containing personal items such as photographs, books, newspapers and other items approved by the prison governor (section 26); make phone calls to close persons at least two times a month lasting a maximum of twenty-five minutes each time and to their lawyer once a week lasting a maximum of twenty minutes (section 27); have and watch their own television in their own cell (section 34); take an outdoor walk in a designated area lasting at least one hour every day (section 34a); and subscribe to newspapers, order books and make use of the prison library (section 35).

90. Under section 36(1) of the EPSA, in order to assert and seek the protection of their rights and interests, convicted inmates are entitled to lodge requests, complaints and motions with national and international authorities.

91. Pursuant to section 81, an inmate may be placed in an HSU on preventive security-related grounds (subsection 2(a)). The decision is taken by the prison governor and must be notified to the PPS (subsection 3), who both must review the situation at least once every three months (subsection 5).

92. Section 96 provides that supervision over the respect for lawfulness in establishments where prison sentences are being served is to be carried out by the PPS under section 18 of the PPS Act (see paragraph 83 above).

93. Under section 97(1), oversight of the execution of prison sentences in penal institutions is carried out by (a) Parliament, (b) the Minister of Justice,

(c) the Director General of the Prison and Court Guard Service (“the PCGS”), and (d) other persons or authorities (if so provided by special legislation or an international convention). This is, however, without prejudice to the duty of the PCGS to carry out its own internal oversight (section 97(2)).

VIII. EXECUTION OF PRISON SENTENCES ORDER

94. Section 9 of the EPSO provides for different regimes under which a sentence may be served by specifying three different types of groups (A, B and C); it also allows for so-called “specialised units”, such as HSUs. It further provides that if an inmate is placed in one of the specialised units, the internal differentiation does not apply.

95. Sections 18 and 25 lay down the conditions for the classification and treatment of inmates held under a “group C” regime. They provide that a convicted inmate shall be assigned to a “group C” regime if, *inter alia*, a psychologist so recommends. They further provide that the treatment of an inmate held under a “group C” regime is to be focused on compliance with the prison’s regime and the creation of working habits; such work is to be carried out either at a workplace in the prison or at a guarded workplace outside the prison facility, and the inmate may, subject to the PEO’s agreement, participate in activities organised for the whole prison facility. Furthermore, an inmate held under a “group C” regime is, in principle, to be accommodated in a cell, and any visits are as a general rule to be take place in the closed format. Subject to the PEO’s approval, the inmate may participate in a limited number of free-time activities and must be informed of the content of his IRP, which is to be signed by him or her.

96. Under section 31(1), visits take place on the basis of a permission to be issued by the prison governor or another person under his or her authority subject to the conditions defined by law.

97. Section 89(2) and (4) lays down the material conditions of cells in the HSU and the treatment of the detainees. It stipulates that cells must be equipped with a radio and that convicted prisoners may be allowed to have their own television if they so desire. Cell equipment is to be attached to the floor or to a wall. Moreover, cells are to be locked at all times and prisoners’ treatment is to be focused on the elimination of negative behavioural manifestations (with emphasis to be placed on prison security and compliance with the regime). Work, if assigned, is to be carried out in the cell, as are any free-time activities that are subject to the PEO’s approval. Selected television programmes may only be watched in a common room, subject to the approval of the PEO. If inmates have their own television in their cells, this is to be equipped with a device enabling the authorities to control it.

98. Section 89(3) stipulates that decisions on the placement of an inmate in an HSU and its termination are to be taken by the prison governor, on the

basis of a proposal made by the PEO or the SPS, and after the proposal has been discussed by the placement committee.

99. Inmates in HSUs do not participate in the formulation of the IRP concerning them (section 89(4)).

100. The justification for the keeping of an inmate in an HSU is to be reviewed by the governor and the PPS on the basis of an appraisal of the inmate's behaviour, recommendation made by a mental-health specialist, and an assessment of security related risks (section 89(6)).

IX. RECOMMENDATION REC(2006)2 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE EUROPEAN PRISON RULES

101. The relevant part of the recommendation, as applicable at the given time, provides:

“24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

...

51.1 The security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.

...

51.4 Each prisoner shall then be held in security conditions appropriate to these levels of risk.

51.5 The level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment.

...

52.1 As soon as possible after admission, prisoners shall be assessed to determine whether they pose a safety risk to other prisoners, prison staff or other persons working in or visiting prison or whether they are likely to harm themselves.

...

53.1 Special high security or safety measures shall only be applied in exceptional circumstances. As a general rule, prisoners should only be subject to special high security or safety measures where their behaviour has shown them to pose such a threat to safety and security that the prison administration has no other choice. Any assignment to such conditions should be for as short a time as possible and should be subject to continuous review of the individual prisoner's behaviour.

53.2 There shall be clear procedures to be followed when such measures are to be applied to any prisoner.

53.3 The nature of any such measures, their duration and the grounds on which they may be applied shall be determined by national law.

53.4 The application of the measures in each case shall be approved by the competent authority for a specified period of time.

53.5 Any decision to extend the approved period of time shall be subject to a new approval by the competent authority.

...

70.1 Prisoners shall have ample opportunity to make requests or complaints, without censorship as to the substance, to the director of the prison or other authority within the prison system and to a judicial or other independent authority with reviewing and remedial power.

70.7 If a request or a complaint is rejected, reasons shall be provided to the prisoner without delay and, if the decision was made by the director or other authority within the prison system, the prisoner shall have the right to appeal to a judicial or other independent authority with reviewing and remedial power.

70.9 Prisoners shall not be exposed to any sanction, retaliation, intimidation, reprisals or other negative consequences as a result of having submitted a request or complaint.”

X. REPORT BY THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT) ON ITS VISIT TO SLOVAKIA FROM 19-28 MARCH 2018, 19 DECEMBER 2018, CPT/INF (2019) 20

102. The relevant part of the report provides:

“54. The legal grounds for placement in [an HSU] and the situation in the [HSU] at Leopoldov Prison remained by and large unchanged since the last visit. It is recalled that a sentenced prisoner shall be placed in an [HSU] if he/she constantly violates the internal order of the institution, refuses to fulfil his/her duties, endangers security, has escaped, attempted or planned an escape or if he/she is facing certain criminal charges. Further, a sentenced prisoner may also be placed in an [HSU] if he/she is sentenced for a very serious offence that he/she has committed as a member of an organised, criminal or terrorist group, or for preventive/security reasons.

55. Material conditions in the [HSU] of Leopoldov Prison were similar to those offered to life-sentenced prisoners (with most of the cells being paired to form “suites” as described in paragraph 43); they call for no particular comment.

56. That said, the CPT is concerned by the fact that the regime applied to prisoners accommodated in the [HSU] of Leopoldov Prison was still as impoverished as observed during the 2009 and 2013 visits, with an almost total absence of organised activities. Apart from one hour per day of access to the outdoor yard and an additional hour on some days in a small gym (both together with one other inmate), the prisoners concerned were remained confined alone to their cells for up to 22-23 hours on most days.

It is recalled that prisoners who present a particularly high security risk should, within the confines of their detention units, enjoy a relatively relaxed regime by way of compensation for their severe custodial situation. In particular, they should be able to meet their fellow prisoners in the unit and be granted a good deal of choice regarding their activities (thus fostering a sense of autonomy and personal responsibility). The prisoners concerned should be offered a tailored programme of purposeful out-of-cell

activities (education, sport, work with vocational value, etc.). Such programmes should be drawn up and reviewed on the basis of an individualised needs and risks assessment by a multi-disciplinary team, with the involvement of the inmates concerned.

The CPT reiterates its recommendation that the Slovak authorities review the regime applied to prisoners accommodated in the [HSU] of Leopoldov Prison and, where appropriate, in other prisons in the Slovak Republic, in the light of the above remarks.

57. In the CPT's view, every placement in an [HSU] should be surrounded by appropriate safeguards. It is thus regrettable that important procedural requirements for such placements were still not in place.

According to the documentation examined by the delegation, the prisoners concerned were not systematically heard, and in many cases the reasoning for the placement decisions was not substantiated in detail. In one case, the reason given for such placement was indeed merely the offence for which the inmate had been sentenced. The CPT wishes to stress once again that the imposition of a high-security regime should always be based on an individual risk and needs assessment and not be the automatic result of the sentence imposed.

On a positive note, prisoners have the right to appeal against the placement decision to the supervising prosecutor who has the power to reverse the decision. However, a number of the prisoners appeared to be unaware of this appeal possibility.

The CPT reiterates its recommendation that the Slovak authorities ensure that the above-mentioned procedural requirements are formally guaranteed and implemented in practice.

...

96. The CPT accepts that in certain cases it will be justified, for security-related reasons or to protect the legitimate interests of an investigation, to have visits take place in booths. However, "open" visiting arrangements should be the rule and "closed" ones the exception, for all legal categories of prisoner. Any decision to impose closed visits must always be well-founded and reasoned, and based on an individual assessment of the potential risk posed by the prisoner. Against this background, the practice described above applied to life-sentenced prisoners at Leopoldov Prison can have no reasonable justification and can only be seen as punitive.

The Committee reiterates its recommendation that all prisoners be allowed to receive visits without physical separation, except in individual cases where there may be a clear security concern."

THE LAW

I. JOINDER OF THE APPLICATIONS

103. The nine present applications concern the following issues.

104. Applications nos. 38321/17 and 14907/18 (introduced on 22 May 2017 and 19 March 2018, respectively) focus on the applicant's treatment and the conditions in the HSU in Leopoldov Prison, the alleged lack of any effective investigation of the matters identified in his criminal complaints of 10 and 29 June 2016, and the applicant's alleged lack of access to a court in that respect (Constitutional Court's file nos. Rvp 315/17, III. ÚS 740/17).

105. Applications nos. 82925/17 (introduced on 4 December 2017), 29635/18 and 29636/18 (both introduced on 8 June 2018) concern restrictions imposed on the applicant in Leopoldov Prison by decisions dated 23 February and 3 June 2016 issued by its governor, with regard to: recreational activities and receiving open visits; the way in which the authorities had handled his complaints; the applicant's alleged lack of access to a court and of an effective domestic remedy in that regard; and the applicant's alleged lack of any opportunity to comment on observations made by the prison administration in reply to his constitutional complaint of 19 May 2017 (Constitutional Court's file nos. I. ÚS 429/17, II. ÚS 730/17 and II. ÚS 86/18).

106. Applications nos. 7426/18, 35668/18 and 156/18 (introduced on 22 December 2017 and 31 January and 19 July 2018, respectively) concern (i) the decisions on the applicant's placement in the HSU in Leopoldov and Ilava Prisons of 19 June 2015 and 22 July 2016, (ii) the way in which – in respect of the 22 October 2016 extension of his placement in that unit in Ilava Prison – the PPS, the administrative tribunals and the Constitutional Court dealt with his complaints, (iii) the applicant's alleged ill-treatment in view of his continued detention in the HSU, and (iv) his alleged lack of access to a court and an effective domestic remedy in that regard (Constitutional Court's file nos. III. ÚS 94/18, I. ÚS 468/17, III. ÚS 507/17 and III. ÚS 389/18).

107. Application no. 9755/18 (introduced on 12 February 2018) concerns (i) the lack of any separate decision regarding the applicant's initial placement in the HSU in BBK Prison (and the applicant's treatment and conditions in that unit), (ii) the way in which the PPS and the Constitutional Court dealt with his complaints in that respect, and (iii) the applicant's alleged inability to comment on observations made by the prison administration in reply to his constitutional complaint of 2 July 2017 (Constitutional Court's file no. III. ÚS 598/17).

108. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. COMPLIANCE WITH THE REQUIREMENTS OF ARTICLE 35 § 1 OF THE CONVENTION

A. Parties' arguments

109. In so far as the applicant had complained under Articles 3 and 8 of the Convention of his placement in the HSU, the extension of his period of detention therein, and the conditions thereof (including limitations on his receiving visits), the Government pointed out that at the domestic level he had brought several civil actions that were still ongoing. These included an action in the Banská Bystrica District Court seeking the protection of his personal integrity (case no. 9C 1/18) (see paragraphs 72 above), which the Government considered to constitute an effective remedy for the purposes

of the Convention in respect of the situation in question. In their view, the relevant parts of his present applications were premature and thus inadmissible owing to the non-exhaustion of domestic remedies.

110. The applicant pointed out that the proceedings before the Banská Bystrica District Court (case no. 9C 1/18) were unrelated to the subject matter of his applications to the Court; he furthermore stated that any other civil-law remedies which he had resorted to at the domestic level had been filed merely by way of precaution, even though he did not really consider them to be effective for the purposes of the Convention.

111. The applicant referred to the general position taken by the judiciary that the protection of his rights as a sentenced prisoner fell within the remit of the PPS and ultimately of the Constitutional Court. None of the proceedings brought before these authorities had ever been terminated on the grounds that the matter in question fell within the jurisdiction of the ordinary courts. According to the applicant, in its decision of 6 March 2019 (I. ÚS 70/19) (see paragraph 67 above) the Constitutional Court confirmed that the position that the administrative-law judiciary had no jurisdiction in matters concerning prison conditions extended also to actions for the protection of personal integrity in civil courts. Their jurisdiction in relation to such actions gave them no power to quash decisions taken by the prison authorities. Moreover, and in any event, the length of such civil proceedings rendered them ineffective as a remedy in relation to the underlying problems, and there was no relevant case-law to show otherwise.

B. The Court's assessment

112. The Court notes that the Government's objection concerns the requirement of exhaustion of domestic remedies. On the facts of this case, the examination of the compliance with that requirement is linked to the aspect of compliance with the six-month period, which the Court must examine of its own motion (see *Ulemek v. Croatia*, no. 21613/16, § 78, 31 October 2019, with further references). In view of the interrelated nature of the two requirements, the Court will first examine that of exhaustion of domestic remedies and then that of compliance with the six-month rule.

1. Exhaustion of domestic remedies

113. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective

remedy under the domestic system available in respect of the alleged breach, whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights. Under Article 35 § 1 normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness, there being no obligation to have recourse to remedies that are inadequate or ineffective (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, Reports of Judgments and Decisions 1996 IV, with further references; and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

114. In that respect, the Court reiterates that the scope of the obligation under Article 13 depends on the nature of the aggrieved person's complaint under the Convention. With respect to complaints under Article 3 of inhuman or degrading conditions of detention, two types of relief are possible: improvement in these conditions and compensation for any damage sustained as a result of them. Therefore, for a person held in such conditions, a remedy capable of rapidly bringing the ongoing violation to an end is of the greatest value and, indeed, indispensable in view of the special importance attached to the right under Article 3. However, once the impugned situation has come to an end because the person has been released or placed in conditions that meet the requirements of Article 3, he or she should have an enforceable right to compensation for any breach that has already taken place. In other words, in this domain preventive and compensatory remedies have to be complementary to be considered effective (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 96-98 and 214, 10 January 2012).

115. The applicant's grievances in this case essentially have to do with the conditions of his detention and the treatment that he received while being held in it, both from the point of view of his material situation and the procedures and decisions taken by the prison administration in that respect. These matters are mainly governed by the provisions of the EPSA and the EPSO. The statutory rules provide a specific mechanism for the defence of prisoners' rights within the given context, embodied in sections 36(1) and 96 of the EPSA (see paragraphs 90 and 92 above), in conjunction with sections 4(1)(b) and 18(1) of the PPS Act (see paragraph 83 above). This mechanism consists of an application and a repeated application being lodged with the PPS, the decision of which is ultimately reviewable by the Constitutional Court under Article 127 of the Constitution (see paragraphs 75 and 85 above).

116. On the facts the applicant initially sought the protection of his rights before administrative tribunals, which – having concluded that they had no

jurisdiction in the matter – transferred the proceedings to the PPS, referring to the provisions mentioned above (see paragraphs 20 and 44 above). The applicant then unsuccessfully challenged before the Constitutional Court both the referral of his submissions to the PPS (see paragraph 45 above) and the outcome of the ensuing proceedings before the PPS (see paragraph 17 above).

117. The Court notes that the mechanism under the EPSA and PPS Act is preventive in nature, and so would be an examination of the applicant's claims by administrative tribunals. However, as the latter denied having jurisdiction, only the former is relevant in the present examination. It has not been questioned that this remedy has been properly exhausted by the applicant for the purposes of Article 35 § 1 of the Convention.

118. The Government's specific objection rather is that the applicant could and should have exhausted other remedies before the ordinary courts, in particular the action for the protection of personal integrity.

119. Historically, this type of action was primarily used in judicial practice in defamation actions; subsequently there was a gradual emergence of attempts to extend its scope without amending or replacing the existing statutory rules, simply by adopting a new creative interpretation in the light of the relevant international instruments (see *Kontrová v. Slovakia* (dec.), no. 7510/04, 13 June 2006). However, in so far as any such cases have been brought before the Court, and in so far as the effectiveness of that action as a remedy for the Convention purposes has been recognised, those cases differed from the present case generically, thematically and contextually (see *Babjak and Others v. Slovakia* (dec.), no. 73693/01, 30 March 2004; *Furdík v. Slovakia* (dec.), no. 42994/05, 2 December 2008; and *Baláž and Others v. Slovakia* (dec.) no. 9210/02, 28 November 2006).

120. Not having identified anything in the above-cited case-law to pre-determine its analysis of the effectiveness of that action and of any other civil law remedies referred to by the Government in this case, the Court will examine next how the matters complained of could at all fall within the jurisdiction of the ordinary courts, which by law extends to disputes and other matters of a private-law nature (see paragraphs 78 and 79 above).

121. In that regard, it is indicative that no referral to such jurisdiction has been made by the administrative tribunals involved in the applicant's proceedings, despite their duty under Article 18 § 1 of the JPAM Code, when finding a lack of own jurisdiction in a matter, to transfer it to the body that did have jurisdiction to examine it, if at all possible (see paragraph 80 above).

122. As to the question of how civil courts might interfere with the jurisdiction of other authorities established under special legislation (see, *mutatis mutandis*, *Haris v. Slovakia*, no. 14893/02, § 38, 6 September 2007; *Michalko v. Slovakia*, no. 35377/05, § 88, 21 December 2010; and *Aydemir v. Slovakia*, no. 44153/06, § 48, 8 February 2011, all with further references), the Court notes yet again the position established by the administrative tribunals and endorsed by the Constitutional Court (see paragraphs 29, 45

and 62 above) – namely that the execution of prison sentences constituted a continuation and an integral part of the penal procedure, the regulation of which fell within the same area of law. By extension, it fell outside the jurisdiction of the administrative tribunals and within the jurisdiction of the PPS. It is true that the Constitutional Court did not confirm it upon a detailed analysis, but its decision of 6 March 2019 (see paragraph 67 above) may be read as not excluding that, on the same basis, similar matters do not fall within the jurisdiction of the civil courts in the area of the protection of privacy.

123. As to the suggestion by the Trenčín Regional Court, sitting as an administrative tribunal, in its decision of 6 June 2017 that, although it was true that administrative tribunals had no jurisdiction in matters of prison conditions, it could not be excluded that such matters fell within the jurisdiction of the ordinary courts (see paragraph 44 above), it was very vague, received no endorsement in the subsequent proceedings before the Constitutional Court (see paragraph 45 above), and there is no indication that any such view had before or after developed any precedential value.

124. The Government also relied on the decision of the Banská Bystrica Regional Court of 14 March 2019 to the effect that certain measures taken by the prison administration in relation to the applicant did fall within the ambit of the action for the protection of personal integrity (see paragraph 72 above). In that regard, the Court notes first of all that the measures in question were unrelated to the subject matter of the present applications and that the decision in question postdates their introduction.

125. Moreover, and in any event, the Court discerns a factual distinction between the case examined by the Regional Court and the present case in that in its 2019 decision the Regional Court noted that the matter in issue fell outside the remit of the PPS and within the jurisdiction of the general courts (under Article 3 of the CCCP the former would exclude the latter). In contrast to that, the jurisdiction of the PPS in respect of the matters complained of in the present case has been uniformly accepted by all the authorities involved.

126. In view of the above, there is nothing to show that an action for the protection of the applicant's personal integrity constituted a remedy available to him in practice as well as in theory, given the circumstances at the relevant time. The fate of the applicant's own two civil actions before the Banská Bystrica District Court within that framework bear witness to this position (see paragraph 66 above). The same applies, *a fortiori*, to the bringing of an anti-discrimination action, which is conceptually designed for a different purpose, a purpose that is not being pursued by the present applications (see paragraph 82 above). As none of these remedies was available, it is inconsequential whether they were preventive or compensatory in nature.

The Government's objection as to exhaustion of domestic remedies is accordingly dismissed.

2. *Compliance with the six-month rule*

127. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant. In other words, when it is clear from the outset that the use of a remedy cannot be considered effective for an applicant's complaints, the use of that remedy cannot interrupt the running of the six-month time-limit. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the Court considers that it may be appropriate for the purposes of Article 35 § 1 to take as the start of the six-month period the date when the applicant first became or ought to have become aware of those circumstances (see, for example, *Ulemek*, cited above, §§ 79 and 80, with further references).

128. In the present case, it follows from the Court's examination of the exhaustion of domestic remedies that no compensatory remedies were available, that the remedy provided under the EPSA and the PPS Act was preventive, and that it was exhausted. This remedy was specifically provided for by legislation and it was in principle capable of redressing the applicant's situation by leading to the lifting of the HSU regime and modifying the applicant's individual conditions in it. Any shortcomings in its functioning are established on a global retrospective assessment and have got to do with the domestic authorities' practice (see paragraphs 167 and 168 below). Having been repeatedly referred to this remedy by the administrative tribunals as well as the Constitutional Court, and having brought his complaints before the Court in respect of all the prisons involved within six months of the final decisions in the process of exhaustion (*Ulemek*, cited above, § 92, with a further reference), his applications cannot be rejected for being belated.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

129. Invoking Articles 6, 8 and 13 of the Convention, the applicant complained that (i) his placement in the HSU (and the extension of the time that he had spent detained therein) had been unlawful and arbitrary, (ii) the limitations on his right to receive visits and his daily regime had also been unlawful and arbitrary, and (iii) he had been denied a judicial review and an effective remedy in that respect.

130. The Court considers that on the specific facts these complaints fall to be examined under Article 8 of the Convention, the relevant part of which provides as follows:

“1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

131. The Court finds that this part of the applications is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Parties' arguments

(a) Applicant

132. The applicant challenged the initial and continued imposition of the HSU on him, arguing that the domestic authorities' conclusion that he was dangerous, on which it rested, had been unsupported by evidence and based solely on formalistic and superficial grounds, such as his alleged dominant personality and manipulative tendencies.

133. In relation to the general conditions of his imprisonment in the HSU, the applicant pointed out the difference between that regime and the general prison regime. In particular, after his transfer to the general prison population, he had been free to: spend from six to ten hours a day with other convicted inmates (either at work or during joint walks); make use of a “multi-functional room” for one hour a day; have his own exercising equipment; and watch television without restrictions.

134. As to the right to receive visits, his being authorised to receive only closed visits had lacked any legal basis and legitimate aim, especially since (i) he had never been accused or punished while in prison of ill-discipline or any dangerous act, and (ii) there had been no judicial review.

(b) The Government

135. The Government submitted that the applicant's placement and continued detention in the HSU (including the conditions of his detention during that period) had not gone beyond what was necessary in a democratic society in the interests of public safety and for the prevention of disorder and crime, within the meaning of Article 8 § 2 of the Convention.

136. The specific matter of visiting rights had been governed by the applicable statutory rules and no restrictions had been imposed on the applicant's ability to receive closed visits from close persons. He had been repeatedly permitted also open visits from them to an extent beyond his legal

entitlement. The applicant's requests for visits from non-close persons had not been approved owing to those persons' respective criminal pasts.

2. *The Court's assessment*

137. The subject matter of this case comprises the fact that the applicant was obliged to serve part of his sentence under an HSU regime, and it will be examined in the light of how that regime was imposed on him and the parameters of that regime.

138. The Court reiterates that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention, save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the Convention (see *Hirst v. the United Kingdom* (no. 2) [GC], no. 74025/01, § 69, ECHR 2005-IX). While detention, like any other measure depriving a person of his or her liberty, entails various limitations on his or her rights and freedoms, that person does not forfeit his or her Convention rights merely because of his or her status as a detainee, including the rights guaranteed by Article 8 of the Convention; thus, restrictions on those rights must be justified in each case (see *Khoroshenko v. Russia* [GC], no. 41418/04, §§ 106 and 116-17, ECHR 2015, and the authorities cited therein).

139. It has not been disputed, and the Court notes, that Article 8 of the Convention is applicable to the facts of the present case (see *Messina v. Italy* (no. 2), no. 25498/94, §§ 61-62, ECHR 2000-X; *Van der Ven v. the Netherlands*, no. 50901/99, §§ 68-69, ECHR 2003-II; *Enea v. Italy* [GC], no. 74912/01, §§ 125-127, ECHR 2009; and *Piechowicz v. Poland*, no. 20071/07, § 207, 17 April 2012).

140. The applicant's complaints are aimed specifically at his detention in the HSU and the regime imposed on him there, which is in general stricter than ordinary detention in service of a prison sentence (see paragraphs 89, 95, 97 and 102 above). There may thus be no doubt that the applicant being required to serve part of his sentence under the HSU regime constituted an interference with his right to respect for his private and family life.

141. The subjecting of a detainee to a special high-security regime is not, by itself, in breach of Article 8 of the Convention; however, for it to be compatible with the requirements of that provision it must be applied "in accordance with the law", pursue one or more of the legitimate aims listed in paragraph 2 and, in addition, be justified as being "necessary in a democratic society" (see *Piechowicz*, cited above, § 212 with further references).

142. As to the requirement for the interference to be "in accordance with the law", according to the Court's settled case-law this does not merely require that it should have a basis in domestic law but also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with sufficient precision as to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the

circumstances, the consequences which a given action may entail. The law must be sufficiently clear in its terms as to give individuals an adequate indication as to the circumstances in which and the conditions under which public authorities are entitled to resort to the impugned measures. In addition, domestic law must afford a measure of legal protection against arbitrary interference by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, in order to give the individual adequate protection against arbitrary interference (see *Al-Nashif v. Bulgaria*, no. 50963/99, §119, 20 June 2002, and also, *mutatis mutandis*, *Zoltán Varga v. Slovakia*, nos. 58361/12 and 2 others, § 151, 20 July 2021).

143. As noted above, the imposition of the HSU regime on the applicant had by itself direct repercussions on the enjoyment of his right to respect for private and family life. The Court will accordingly first examine the legal basis for that imposition, both in terms of substantive law and the applicable procedures.

(a) Substantive basis and procedural framework

144. For the entire duration of the applicant's placement in the HSU, that placement was legally based on section 81(2)(a) of the EPSA – that is, on preventive security-related grounds, with the decision being entrusted to the governor of the prison in question under section 81(5) of the EPSA. In terms of procedure, the law further provides that a decision to impose an HSU regime may only be taken after a proposal to that effect is made by the PEO or the SPS, followed by a discussion of the matter by the prison's placement committee (section 89(3) of the EPSO), and that the initial decision must be reviewed at least once every three months (section 81(5) of the EPSA).

145. No issue with the accessibility of these provisions has been argued or otherwise established.

146. As to their precision, the Court notes a certain incoherence as to whether the imposition of the HSU regime in a prison to which an inmate has been transferred within the three-month time-limit for a periodic review of his or her placement under an HSU regime (calculated from the decision imposing or extending that regime in the previous detention facility) necessitates a fresh assessment, even before the expiry of that time-limit.

147. In particular, in connection with the applicant's transfer from Ilava Prison to BBK Prison, by a decision of 6 June 2017 the Trenčín Regional Court found that the earlier assessment in Ilava Prison had lost its validity once he had been transferred to BBK Prison (see paragraphs 44 above). By

contrast, the PPS took the position that the original Ilava Prison decision continued to apply for the statutory three-month period – irrespective of his transfer to BBK Prison (see paragraph 60 above).

148. Moreover, the Court notes that neither section 81(2)(a) of the EPSA nor any other legal provision appear to specify the nature of the preventive security-related grounds that might justify the imposition of the HSU regime. It would accordingly appear that its exact meaning has to be established on a case-by-case basis. The fact that the HSU regime may (but does not have to) be imposed on preventive security-related grounds suggests that its interpretation involves a certain level of discretion on the part of the prison administration. It must accordingly be established whether the scope of this discretion and the manner of its exercise were defined with sufficient clarity (having regard to the legitimate aim of the measure in question) as to give the individual adequate protection against arbitrary interference.

(b) Protection against arbitrary interference

149. In order to establish whether the applicant was accorded such protection, the Court will examine the reasons referred to by the domestic authorities in imposing the HSU regime on the applicant, in the light of his arguments, his ability to participate in the proceedings, and the parameters of any review procedures available to him.

(i) Reasons for imposing the HSU regime

150. The decision of the prison governor to impose and extend the HSU regime does not appear to have any prescribed form. Except for a reference to the applicable legal provisions, it did not indicate any specific reasons (paragraphs 14, 42 and 56 above). The reasons indicated in the SPS proposal for the initial decision in Leopoldov Prison were that the applicant had been convicted of a serious offence, that he had been detained under a similar regime in the Czech Republic and that he had been considered dangerous to others, given his dominant personality and manipulative tendencies (see paragraph 12 above). The proposal for the imposition of that regime in Ilava Prison repeated essentially the same reasons (see paragraph 42 above), while the proposal in respect of his HSU detention in BBK Prison also noted offences of which he stood accused in Slovakia. Although the proposals were discussed by the respective placement committees, there is no indication as to the content of their deliberations (see paragraphs 13, 42 and 56 above).

151. The subsequent proposals put forward for the governor's consideration, his decisions themselves, and records of any routine review of his decisions by the PPS were phrased in identical terms, each time concluded with a blanket finding that no irregularity had been established and that the decisions had been lawful (see paragraphs 15, 20, 46 and 57 above). Although the applicant complained that the respective decisions had lacked genuine

reasoning and had relied solely on hypothetical reasoning, his challenges were simply dismissed with no further reasons being provided (see paragraphs 18 and 46 above).

152. Accordingly, the actual reasons referred to by the authorities in the applicant's case were his previous conviction, his prosecution for offences allegedly previously committed, and his personality traits.

153. To the extent that, in respect of the applicant's constitutional complaint concerning his placement in the HSU in BBK Prison, the Constitutional Court relied on "objective evidence about the applicant's behaviour in prison", in the light of which it found the placement lawful and free from arbitrariness, the Court notes that this finding contained no reference at all to such evidence and that the Constitutional Court's respective case file contained no submissions from the prison administration to support it (see paragraph 61 above). In particular, neither on the occasion of the Constitutional Court's examination of the applicant's complaint nor on any other occasion was there any indication of any security-related incidents that could have justified the imposition of the HSU regime on the applicant.

154. Within this context, the Court is prepared to accept that, when an initial decision is taken on the placement of a prisoner in an HSU on preventive security-related grounds, it may by definition to some extent rest on assumptions based on previous events. However, in so far as such events should merely consist of the offence for which the inmate has been sentenced, reliance on them has been criticised by the CPT, which in its most recent report concerning Slovakia emphasised that the imposition of an HSU regime should always be based on an individual risk and needs assessment and not be the automatic result of the sentence imposed (see paragraph 57 of the report cited in paragraph 102 above).

155. Moreover, the Court finds that, as the execution of a prison sentence progresses, the existence and relevance of the preventive security-related grounds for imposing an HSU regime must be assessed in the light of the prison authorities' actual experience with the inmate in question. This is reflected in the national-law requirement that during any review of the justification for keeping an inmate in an HSU, an appraisal of the inmate's behaviour has to be taken into account (section 89(6) of the EPSO).

156. On the facts, but for the following exception, there is no indication that this criterion was considered. In particular, the SPS proposal for an extension of the applicant's HSU detention in Ilava noted that, as long as there was no stressful situation, he was well-behaved (see paragraph 42 above). In the absence of any sign of any incident, it is unclear how this observation can support the existence of any security-related risks. By a similar token, contrary to another statutory requirement, there is no indication that a recommendation by a mental-health specialist was taken into account.

157. In addition, a finding of preventive grounds for an HSU detention based on alleged offences of which an inmate has not been convicted by a final decision inherently runs counter the presumption of innocence.

158. The Court further notes that Rule 53.3 of the European Prison Rules (see paragraph 101 above) provides that the duration of security measures applied to individual prisoners must be determined by national law. Even assuming that domestic law in substance complies with this requirement (see paragraph 91 above), there is no sign that the duration of the applicant's HSU detention played any role in the authorities' assessment of his case following the initial decision.

(ii) *Participation in the proceedings*

159. The Court reiterates that although Article 8 contains no explicit procedural requirements, the applicant must be involved in the decision-making process, seen as a whole, to a degree sufficient to provide him with the requisite protection of his interests, as safeguarded by that Article (see *mutatis mutandis*, *Lazoriva v. Ukraine*, no. 6878/14, § 63, 17 April 2018).

160. The Court notes that the applicable law does not provide for any involvement on the part of the inmate in the decision-making on his or her placement in an HSU (and the extension of the period to be spent therein) and that the lack of such a safeguard was criticised in the most recent CPT report concerning Slovakia (see paragraph 57 of the report, cited in paragraph 102 above). Similarly, such a decision is not served on the person concerned (see paragraph 46 above). As a matter of fact, the applicant had to lodge several requests under the law on free public access to information before he was able to obtain a copy of some them (see paragraphs 16, 42 and 43 above).

(iii) *Review procedures*

161. The Court moreover reiterates that the concepts of lawfulness and the rule of law in a democratic society also require that measures affecting fundamental human rights be subject to some form of adversarial proceedings before an independent body that is competent to review the reasons for the decision and relevant evidence, if need be with appropriate procedural limitations (see *mutatis mutandis*, *Al-Nashif*, cited above §§ 121-23).

162. In so far as restrictions inherent in a particular prison regime fall within the sphere of personal rights and are thus civil in nature, they fall *ratione materiae* within the purview of Article 6 § 1 of the Convention, which guarantees, *inter alia*, the right of access to a court (see *Ganci v. Italy*, no. 41576/98, §§ 20-26, ECHR 2003-XI; *Musumeci v. Italy*, no. 33695/96, § 36, 11 January 2005; and *Enea*, cited above, § 107).

163. Furthermore, the Court finds that the procedural protection afforded to applicants in cases raising issues of conditions of detention correlates with the requirements for an effective remedy under Article 13, already referred to

in paragraphs 113 and 114 above. From that perspective, the Court reiterates that the authority referred to in Article 13 of the Convention in such cases does not need to be a judicial one. It has already found that remedies in respect of conditions of detention before an administrative authority can satisfy the requirements of this Article. However, the powers and procedural guarantees that an authority possesses are relevant in determining whether the remedy before it is effective (see *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 182, 27 January 2015, with further references).

164. For instance, where a preventive remedy with respect to conditions of detention before an administrative authority is at stake, for it to be effective, this authority must (a) be independent of the authorities in charge of the penitentiary system, (b) secure the inmates' effective participation in the examination of their grievances, (c) ensure the speedy and diligent handling of the inmates' complaints, (d) have at its disposal a wide range of legal tools for eradicating the problems that underlie these complaints, and (e) be capable of rendering binding and enforceable decisions. Any such remedy must also be capable of providing relief in reasonably short time-limits (*ibid.*, § 183, with further references).

165. In the *Neshkov and Others* judgment (cited above, § 183, with further references), the Court also noted that the effective remedy required by Article 13 was one where the domestic authority or court dealing with the case has to consider the substance of the Convention complaint. For instance, in cases where this complaint was under Article 8 of the Convention, it meant that the domestic authority had to examine, *inter alia*, whether the interference with the applicant's rights had been necessary in a democratic society for the attainment of a legitimate aim.

166. On the facts, the applicant's placement in an HSU was subject to routine and periodic review by the prison governor and the PPS and he had a specific opportunity to challenge it before the latter body and ultimately before the Constitutional Court.

167. Although the PPS has a special constitutional status in Slovakia (see paragraph 77 above) and it undoubtedly provided the applicant with various procedural guarantees, it focused its review on issues of lawfulness as a matter of compliance with the law in the strict sense of the word, while giving no answer to the applicant's specific arguments. Furthermore, the Court notes that the PPS has no power to afford any compensatory redress.

168. As for the Constitutional Court, it is not a court that examines questions of fact (see paragraph 38 above), and its jurisdiction is governed by the principle of subsidiarity (see paragraphs 19 and 28 above; see also *Engelhardt v. Slovakia*, no. 12085/16, §§ 24, 25 and 66, 31 August 2018). Accordingly, in respect of the facts of the present case, the Constitutional Court focused on how the PPS had reviewed the actions of the prison administration, not on the actions of the prison administration as such. This needs to be seen in connection with the Constitutional Court's findings (see

paragraph 19 and 53 above) that the requirements in respect of reasoning in decisions issued by the PPS within the context in question were less strict than those in respect of a judicial decision (in respect of the PPS no more than a brief reasoning was called for). The Constitutional Court accordingly reviews PPS decisions under a specific standard of reasoning and, even under that standard, it would only interfere with PPS decisions if their conclusions manifestly deviated from the object and purpose of the applicable law (see paragraphs 38 above). The subsidiarity of the Constitutional Court's jurisdiction also means that it has no power to afford any direct redress in relation to the actions of the prison administration as such.

169. In addition, as already established above (see paragraphs 116 and 126), it was not shown that the placement of the applicant under the HSU regime fell within the jurisdiction of any other body capable for providing him with redress compatible with the Convention requirements.

(iv) *General conditions of detention and the right to receive visits*

170. The above-noted observations apply *mutatis mutandis* to the issue of the general conditions of the applicant's detention in the HSU and to his right to receive visitors while he was detained under that regime. The Court nevertheless wishes to make the following observations and findings, which may be of relevance in the process of implementing the present judgment.

171. While individual aspects of the treatment of an inmate are defined in his or her IRP, as determined by the respective PEO, inmates in an HSU do not participate in designing their own IRP. The discretion afforded to the PEO in that respect therefore appears particularly broad. The same applies to associated matters such as, on the facts of this case, permitting the applicant to make use of a gym. In that respect, the Court finds that the inherent proximity between an inmate and his or her PEO bestows additional significance on the need for effective safeguards against abuse.

172. As to the right to receive visitors, the Court observes in particular that, in relation to the prison regime under examination in the instant case (medium-security), the law provides for a reversal in the format of visits to be received by a person detained in an HSU, compared to that enjoyed by the general prison population – namely making closed visits the rule and open visits the exception (see paragraphs 23 and 63 above). In consequence, there is no need to give any reasons for a decision not to allow an open visit, the decision resting within the exclusive power of the prison governor (see paragraph 28 above). Even though special visit arrangements are not, by themselves, in breach of Article 8, they constitute an interference with the rights protected by that provision and are accordingly to be examined with regard to the safeguards provided by it (see *Piechowicz*, cited above, §§ 212 and 220). As the reversed rule applicable in the applicant's case appears not to have been accompanied by any definition as to what constitutes a justified

case for the exceptional granting of an open visit, the governor's discretion in that respect cannot but be seen as particularly wide.

173. The Court also notes that, since the reversal of the position as to the form of visits allowed in an HSU in prisons of the given security level is regulated directly by statute, such a reversal takes place in each individual case automatically by the sheer fact of the HSU regime being imposed. However, there is no indication that a decision to impose the HSU regime itself takes this inherent consequence and its proportionality into account.

174. In relation to any safeguards against abuse, the Court also notes that a decision in relation to the right to receive visits has no prescribed form (see paragraphs 26 and 30 above). As there are no provisions specifying that it must be actually served on the inmate concerned, the applicant was again left with no other option but to seek access to the decisions on his requests under the general legislation on free public access to information; however, in his submission, in respect of some of those requests this legislation was found inapplicable (see paragraph 64 above).

(c) Conclusion

175. The Court takes into account the level of discretion bestowed on the prison authorities by the applicable substantive rules, the grounds relied on by them for the imposition of the HSU on the applicant, and the fact that they failed to take into account relevant aspects of his situation. Moreover, to a significant degree the applicant was excluded from the decision-making process and, in view of how the PPS and the Constitutional Court made use of their jurisdiction in the matter, any safeguards they provided the applicant with were limited. In sum, the domestic system did not afford the applicant the adequate legal protection against abuse to which he was entitled under the rule of law in a democratic society.

176. The applicant's serving of a part of his sentence under the HSU regime accordingly cannot be said to have been in accordance with the law for the purposes of paragraph 2 of Article 8 of the Convention. In the light of this conclusion, it is not necessary to determine whether the other requirements of that provision were complied with in the present case.

177. There has accordingly been a violation of the applicant's right under Article 8 of the Convention to respect for private and family life.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

178. The applicant complained that his detention under the HSU regime had amounted to treatment contrary to Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

179. The Government argued that the conditions of the applicant's HSU detention did not attain the minimum level of severity for the purposes of Article 3 of the Convention. The complaint under that provision was therefore incompatible *ratione materiae* with the provisions of the Convention.

180. The applicant disagreed and reiterated his complaint.

181. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

182. The Court also reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment in question, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

183. The Court has repeatedly stressed that within the context of deprivation of liberty, for Article 3 to come into play, the suffering involved must in any event go beyond that inevitable element of suffering connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with this provision the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

184. The Court has also found that in the examination of conditions of detention under Article 3 of the Convention account had to be taken of their cumulative effects, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the conditions in question has also to be considered (see, *Muršić v. Croatia* [GC], no. 7334/13, § 101, 20 October 2016, with further references).

185. As regards the specific matter of special prison regimes, such as detention in a high-security department, the Court has already held that such detention, be it on remand or following a criminal conviction, does not in itself raise an issue under Article 3 of the Convention (see *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 80-82 and 138, ECHR 2006-IX; *Csüllög v. Hungary*, no. 30042/08, §§ 13-16, 7 June 2011; *Piechowicz*, cited above, §§ 161 and 162, 17 April 2012; and *Rohde v. Denmark*, no. 69332/01, § 93, 21 July 2005).

186. Moreover, the Court reiterates that solitary confinement is not in itself in breach of Article 3. While extended removal from association with others is undesirable, whether such a measure falls within the ambit of Article 3 of the Convention depends on the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (see *Rohde*, cited above, § 93, and *Rzakhanov v. Azerbaijan*, no. 4242/07, § 64, 4 July 2013). A prohibition on contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment (see *Ramirez Sanchez*, cited above, § 123, and the cases cited therein). On the other hand, complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment that cannot be justified by the requirements of security or any other reason (*ibid.*, § 120).

187. First of all, the Court notes that, rather than being focused on his HSU detention regime as such, the core of the applicant's complaints appears to be concerned with specific aspects, such as the ability to make use of the gym and the manner of execution of his visiting rights. In other words, the applicant does not make any specific and substantiated complaints in relation to the HSU regime in terms of its material conditions (see, *mutatis mutandis*, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269), and neither does he complain of any specific particularly harsh treatment (see, for example, *Csüllög*, cited above, § 33; *Piechowicz*, cited above, §§ 174 and 175; *Savičs v. Latvia*, no. 17892/03, §§ 138 and 140, 27 November 2012).

188. The character of his allegations transposes particularly clearly in connection with the complaint concerning his contact with his family. In fact, neither before the domestic authorities nor before this Court has he complained about insufficient contact as such. In that regard, he has not even made use of all the visits he was entitled to by law and of those allowed to him by the respective prison's director above the statutory minimum. The applicant's complaint is thus solely and exclusively about not being allowed direct contact visits in a few specific instances, which in its context presents no issue under Article 3 of the Convention.

189. It is true that the applicant's HSU detention entailed a relatively high degree of isolation, in particular in the period between 18 March 2016 and January 2018 (that is to say one year and more than nine months). In so far as substantiated, in this period the only activities the applicant was able to engage in were open-air walks limited to one hour per day and the possibility to watch television, listen to the radio, read books, telephone close persons two times a month (Ilava and BBK Prisons) and six times a month (Leopoldov Prison) (see paragraphs 34, 68 and 89 above) and, until 1 December 2016, to engage solitarily in relaxation and similar stress-relief techniques (see paragraph 32 and 48 above).

190. However, and although this has not been pointed out by the parties, it has not escaped the Court's attention that, of any free time at the applicant's

disposal, a significant portion must have been dedicated to the extensive amount of litigation he was involved in (see also paragraphs 5 and 32 above).

191. Moreover, the applicant does not allege any specific repercussions on his psychological health (contrast *Razvyazkin v. Russia*, no. 13579/09, § 107, 3 July 2012) and, as to his assertion regarding a decline in physical health, the health records submitted by the applicant are inconclusive.

192. In sum, to the extent the applicant's Article 3 complaint has been substantiated, and irrespective of lacunae in the applicable legal framework and the reasons behind his HSU detention, there is no indication that the applicant was exposed to a treatment reaching the minimum level of severity required for the application *ratione materiae* of the guarantees of Article 3 of the Convention. Accordingly, the Government's objection must be upheld and the applicant's Article 3 complaint must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 THE CONVENTION

193. The applicant complained that in the proceedings before the Constitutional Court (file nos. I. ÚS 429/17 and III. ÚS 598/17 – see paragraphs 28 and 59 above) he had been denied a fair hearing, in breach of Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ...”

A. Admissibility

194. As regards proceedings no. III. ÚS 598/2017, the Government contested the complaint as unsubstantiated.

195. The applicant reiterated his allegation that the Constitutional Court had decided on the basis of “objective evidence about the applicant's behaviour in prison”, that no copy of any such evidence had been provided to him for comment, and that there had accordingly been a violation of the principle of adversarial proceedings.

196. The Court notes that the applicant's allegations have not been substantiated by any elements and that the contents of the Constitutional Court's case file in respect of proceedings no. III. ÚS 598/2017 contain no indication of any evidence on which the applicant did not have an opportunity to comment (see paragraph 61 above).

197. Given these circumstances, the complaint in relation to proceedings no. III. ÚS 598/2017 has not been made out. It is accordingly manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

198. As to constitutional proceedings no. I. ÚS 429/17, the Court notes that the complaint is not manifestly ill-founded within the meaning of

Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

199. The applicant argued that in the proceedings no. I. ÚS 429/17 the Leopoldov Prison administration had submitted to the Constitutional Court material that concerned the subject matter of his constitutional complaint, that this material had not been provided to him for comment, and that here had accordingly been a violation of the principle of adversarial trial.

200. The Government disagreed, contending that the material in question had contained nothing of impact on the Constitutional Court's decision.

201. The Court observes that the impugned proceedings concerned the applicant's complaints in respect of the prison director's decision rejecting his request for an open visit and its ensuing review by the PPS (see paragraph 28 above).

202. It also notes that the national review mechanism in relation to the underlying matters has been examined above under Article 8 of the Convention. In the light of the Court's conclusion of that examination and the reasons behind it (see in particular paragraphs 168 and 175 above), it finds that there is no need to examine the merits of the applicant's Article 6 complaint in relation to the same proceedings.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

203. 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

204. The applicant claimed 29,500 (euros) EUR in respect of non-pecuniary damage.

205. The Government found the amount to be manifestly overstated.

206. Noting that it has found a violation only of part of the applicant's complaints, the Court, ruling on an equitable basis, awards the applicant EUR 12,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

207. The applicant also claimed EUR 4,188 for the costs and expenses incurred before the Court. In support of that claim, he submitted invoices for

the amounts in question and bank statements showing that EUR 2,000 and EUR 888 had been used to cover, respectively, legal costs and translation costs.

208. The Government requested that the claim be decided in accordance with the Court's case-law.

209. 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 were actually and necessarily incurred and are reasonable as to quantum. Regard being had to the documents in its possession and the above criteria, the Court awards the applicant the sum of EUR 2,888 for the proceedings before the Court, plus any tax that may be chargeable to him.

C. Default interest

210. 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. *Decides* to join the applications;
2. *Declares* the complaints under Article 3 and under Article 6 § 1 of the Convention, in relation to the constitutional proceedings no. III. ÚS 598/2017, inadmissible and the remainder of the applications admissible;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds* that there is no need to examine the merits of the complaint under Article 6 in relation to constitutional proceedings no. I. ÚS 429/17;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 12,500 (twelve thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,888 (two thousand and eight hundred and eighty-eight 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 31 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Péter Paczolay
President