



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

FIFTH SECTION

CASE OF SPIŠÁK v. THE CZECH REPUBLIC

(Application no. 13968/22)

JUDGMENT

Art. 14 (+ Art 5) • Discrimination • Review of lawfulness of detention • Pre-trial detention of a juvenile prosecuted for serious offence subject to an automatic judicial review every six months and not every three months as adult persons prosecuted for the same category of offences • Age-based difference in treatment contrary to aim pursued by juvenile detention regime and underlying intention of domestic rules to provide more favourable treatment for juveniles • Lack of objective and reasonable justification for less favourable periodicity of automatic judicial control of detention

Prepared by the Registry. Does not bind the Court.

STRASBOURG

20 June 2024

FINAL

20/09/2024

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

In the case of Spišák v. the Czech Republic,

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

Mattias Guyomar, *President*,
Lado Chanturia,
Carlo Ranzoni,
María Elósegui,
Kateřina Šimáčková,
Mykola Gnatovskyy,
Stephane Pisani, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 13968/22) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Czech national, Mr Pavel Spišák (“the applicant”), on 10 March 2022;

the decisions to give notice to the Czech Government (“the Government”) of the complaints concerning Article 5 §§ 1 and 4 and Article 14 of the Convention;

the parties’ observations and their additional observations;

Having deliberated in private on 28 May 2024,

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

INTRODUCTION

1. The case concerns, above all, the applicant’s complaint that, as a juvenile, he was discriminated against on the basis of his age since, unlike adult persons prosecuted for the same category of offences, his pre-trial detention was not subject to an automatic judicial review every three months (Article 14 of the Convention in conjunction with Article 5).

THE FACTS

2. The applicant was born in 2003 and lives in Všehrdy. He was represented by Mr V. Tokarský, a lawyer practising in Prague.

3. The Government were represented by their Agent, Mr P. Konůpka, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. THE APPLICANT’S DETENTION

5. On 20 November 2020, the applicant, who was then 17 years old, was arrested on suspicion of, *inter alia*, robbery and grievous bodily harm.

6. On 21 November 2020, a prosecution was brought against the applicant as a juvenile on several serious charges, which was extended on 17 December 2020 to include, in particular, attempted murder. The applicant had already been given a suspended sentence for another offence and was on probation.

7. On 23 November 2020, the Prague 4 District Court decided, after hearing the applicant, to remand him in detention, with effect from 20 November 2020, to prevent him from interfering with the course of justice and from re-offending under Article 67(b) and (c) of the Code of Criminal Procedure (hereinafter “the CCP”) and section 46(1) of the Juvenile Justice Act (hereinafter “the JJA”). He was advised of his right under Article 71a of the CCP to apply for release at any moment after the decision remanding him in detention became final.

The applicant filed a complaint against that decision, which was rejected on 23 December 2020 by the Prague Municipal Court.

8. On 16 February 2021, the prosecutor notified the remand prison that from 20 February 2021 the maximum length of the detention justifiable by Article 67(b) of the CCP would be reached and that from then on the applicant would remain in detention only on the ground of Article 67(c) of the CCP (risk of re-offending).

9. On 24 March 2021 the applicant filed an application for release, claiming, *inter alia*, that he should have been released because no decision to keep him in detention had been taken by 23 March 2021, when the three-month time-limit set by Article 72 § 1 of the CCP for the automatic periodic review of his detention had expired.

The prosecutor declined to release the applicant and transmitted the application to the court on 31 March 2021.

10. On 15 April 2021 the Prague-East District Court dismissed that application following a detention hearing, without specifying any alternative measure instead of detention. It stated that it was not possible to apply Article 72 § 1 of the CCP on the periodic review of detention to juveniles because the JJA, as *lex specialis*, contained a special provision (namely section 47(1)) on the maximum duration of the detention of a juvenile, setting a limit which in the applicant’s case was six months and which had not yet expired. The District Court also held that the grounds for the detention of the applicant under Article 67(c) of the CCP still applied as there was a well-founded risk that the applicant would re-offend if released.

11. On 19 April 2021 the applicant filed a complaint against this decision. The complaint did not substantiate any grounds on which the decision was challenged.

12. On 11 May 2021 the Prague Regional Court dismissed the applicant’s complaint, finding that the District Court had taken account of all the relevant circumstances and that there was indeed a well-founded concern that the applicant would resume his criminal activities if released.

13. On 22 April 2021 the applicant was indicted by the Regional Court.

14. On 26 April 2021 the Regional Court asked for an extension of the applicant's detention for another six months, pursuant to section 47(1) of the JJA.

On 28 April 2021 the Prague High Court extended the applicant's detention to 20 November 2021. It held that as the applicant was being prosecuted for several violent offences classified as "particularly serious" within the meaning of section 47(1) of the JJA, there was a well-founded risk of him reoffending, and that the investigation was extensive and there had been no apparent delays.

15. The applicant challenged that decision by a complaint, arguing that the courts' interpretation of the effect of the interplay between section 47(1) of the JJA and Article 72 § 1 of the CCP was contrary to the Constitution since it contravened the purpose of the special legislation designed for juveniles and offered them less protection than adult detainees.

16. On 2 June 2021 the Supreme Court dismissed that complaint, finding that the conditions for extending the applicant's detention had been met. It considered redundant to examine the applicant's arguments relating to the automatic judicial review of the detention provided by Article 72 § 1 of the CCP.

17. Meanwhile, on 19 May 2021, the Regional Court had approved a plea bargain, following which the applicant started serving an 18-month prison sentence on 21 May 2021. The period of his pre-trial detention, that is to say from 20 November 2020 to 20 May 2021, was set off against his sentence.

18. Following a constitutional appeal by the applicant, the decisions of the Prague District Court of 23 November 2020 and the Prague Municipal Court of 23 December 2020 (see paragraph 7 above) were quashed by the Constitutional Court on 20 July 2021 (no. IV. ÚS 677/21), by which time the applicant was no longer in pre-trial detention. The Constitutional Court held that the court that took the decision ordering the applicant's detention had not had the necessary territorial jurisdiction (as it was not the court local to the applicant's place of residence).

19. On 2 November 2021 the Constitutional Court (no. IV. ÚS 1853/21) dismissed a constitutional appeal in which the applicant had challenged the decisions of 15 April and 11 May 2021 dismissing his application for release, as well as the decisions of 28 April and 2 June 2021 concerning the extension of his detention.

Concerning the decision of 15 April 2021, the Constitutional Court observed that, contrary to the principle of subsidiarity in its material dimension, the applicant had challenged the decision only by an incomplete complaint which he had not supplemented. The Regional Court could therefore not be blamed for having failed to adequately consider complaints which had not been submitted to it in an appropriate manner, and this part of the constitutional appeal had to be declared manifestly ill-founded. Moreover,

although the initial decision to remand the applicant in detention had been quashed because the judge had not had jurisdiction to make the order (see paragraph 18 above), the subsequent decision of the Prague-East District Court of 15 April 2021 did not have that shortcoming. Lastly, regarding the decisions on the extension of the applicant's detention, the Constitutional Court was of the view that they had not had any effect since the applicant's detention had ended on 20 May 2021 (six months after he had been placed in detention).

II. COMPENSATION PROCEEDINGS

20. In January 2022 the applicant filed a claim under the State Liability Act for compensation for his detention between 20 November 2020 and 20 May 2021, which, in his view, had been unlawful following the judgment of the Constitutional Court of 20 July 2021 (see paragraph 18 above).

21. On 26 September 2023 the Prague 2 District Court granted the applicant's claim for compensation for pecuniary damage. However, it dismissed his claim for compensation for non-pecuniary damage, holding that the applicant had been compensated for that in another manner since the whole period of his detention had been set off against his criminal sentence (see paragraph 17 above).

The applicant's appeal of 10 November 2023 has not yet been decided.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CODE OF CRIMINAL PROCEDURE

22. The relevant domestic law on the grounds for remanding in detention and claiming compensation where the detention is unlawful are set out in *Smatana v. the Czech Republic*, (no. 18642/04, §§ 49-76, 27 September 2007).

23. Under Article 71, the criminal authorities must examine at every stage of the proceedings whether the grounds for the detention continue to exist or whether it can be replaced by an alternative measure.

24. Under Article 71(a), a person who has been charged with an offence and remanded in detention has the right to apply for release from detention at any time after the detention decision becomes final. A decision must be given on any such application without undue delay. If the application is dismissed, the person concerned may, unless he or she is relying on different grounds, resubmit the application only after 30 days have elapsed from when the last decision concerning his detention or application for release has become final.

25. Under Article 72 § 1, during the pre-trial stage, no later than every three months after a detention decision has become final, the judge must decide, on application by the public prosecutor, whether the person is to

remain in detention or be released. Failing that, the person must be released immediately.

Under Article 72 §§ 3 and 4, at the trial stage the court takes the decision on its own motion.

26. Under Article 72a § 1 (c) and (d), when a person is prosecuted for a particularly serious offence, the total period of his or her detention may not exceed three years, or four years if the offence is punishable by a prison sentence of over twenty years or by a life sentence.

27. Under Article 72b, when a person convicted of a particularly serious offence is sentenced to an immediate prison term, the period between the pronouncement of the judgment and the order to execute the sentence (or a decision quashing that judgment) is not included in the calculation of the total duration of the detention.

28. Article 147 § 1 provides that when it rules on a complaint, the superior court reviews the correctness of all the operative provisions of a decision which an applicant may challenge by a complaint, as well as the proceedings leading to that decision.

II. LAW NO. 218/2003 ON THE RESPONSIBILITY OF JUVENILES FOR UNLAWFUL ACTS AND ON JUVENILE JUSTICE (“THE JUVENILE JUSTICE ACT”)

29. Section 1(2) of the Juvenile Justice Act states that the purpose of the law is to ensure that measures imposed against children under the age of 15 and juveniles who have committed an unlawful act will be effectively to help them to refrain from committing other unlawful acts and to find a place in society matching their abilities and intellectual development so that they are able, to the extent of their abilities and capacity, to redress the damage caused by the unlawful act.

30. Section 1(3) states that the general provisions of the Code of Criminal Procedure apply unless the Act provides otherwise.

31. Under section 2(1)(c), a juvenile is a person who has reached his or her fifteenth birthday but has not reached his or her eighteenth birthday at the time of the commission of the unlawful act.

32. Section 3, which sets out the basic principles of the law, provides, *inter alia*, that measures imposed under this Act shall take into account the personal qualities of the individual on whom they are imposed, including the age, intellectual and moral maturity, and health of that individual, as well as his or her personal, family and social circumstances, and shall be proportionate to the nature and gravity of the act committed. Furthermore, proceedings under this Act must be conducted with regard to the age, health and intellectual and moral maturity of the person concerned, so that threats to his or her future development are as limited as possible and that the acts in issue, their causes and the circumstances that led to them are established.

The explanatory memorandum specifies in this respect that all measures, procedures and means provided for by the Act must be used with the aim of re-establishing disrupted social ties, integrating the juveniles into the broader social environment and preventing criminality. The rationale for the Act lies in need to treat juveniles on an individual basis in criminal proceedings because of their age; each case has to be dealt with on a separate basis, taking account of all the circumstances of the act in issue, including the personal qualities and the health of the juvenile, as well as the needs of the victim and the interests of the social environment around them, and with the aim of repairing disrupted social and legal ties. Regard must be had to the needs of juveniles who commit unlawful acts not only for supervision and guidance on living in compliance with law but also for counselling and assistance appropriate to their level of development and degree of maturity.

33. Under section 47(1), juveniles may not be remanded in detention for periods exceeding two months or, in the case of prosecution for a particularly serious offence, six months. At the end of that period, the detention may, in exceptional cases, be extended by up to two months and, in the case of a particularly serious offence, by up to six months, if the prosecution could not prepare its case within the initial period because of the complexity of the case or for other serious reasons, and where releasing the juvenile could jeopardise or substantially obstruct the purpose of the prosecution. An extension may be made only once before the court trial and once during it.

34. Section 47(2) and (3) provide that decisions on extending detention before trial must be made by a district juvenile court judge, on application by the public prosecutor. Decisions to extend detention during trial must be made by a judge of a court superior to the court hearing the case.

35. Under section 48, the criminal authorities are obliged to examine at every stage of the proceedings whether there are still grounds for the detention; if the grounds cease to exist, the juvenile must be released immediately. If any of the grounds for the detention of a juvenile are found, the prosecuting authorities are obliged to examine whether the juvenile's continued detention can be replaced by an alternative measure (which should lead to the juvenile's release without undue delay).

III. RELEVANT DOMESTIC PRACTICE

36. In its decision no. 8 Tvo 42/2004 of 2 September 2004 the Supreme Court stated that section 47 of the JJA is a special provision (*lex specialis*) setting the conditions under which a juvenile's detention may be extended beyond the basic period. The general provisions (*lex generalis*) of the CCP on keeping a person who has been charged with a crime in detention therefore do not apply.

37. It follows from several decisions of the Supreme Court (for example no. 8 Tvo 35/2013 of 6 November 2013, no. 8 Tvo 18/2017 of 12 September

2017 and no. 8 Tvo 15/2019 of 31 July 2019) that Article 72 § 1 of the CCP applies to adult detainees whereas in juvenile proceedings review of the grounds for detention is regulated by the special provisions of sections 47 and 48 of the JJA.

38. In its decision no. 8 Tz 25/2015 of 20 July 2016 the Supreme Court held that, given that proceedings on complaints under Article 147 § 1 of the CCP are governed by a revision principle, it is not necessary for a complaint to specify grounds since the appropriate authority must review all the operative provisions of the decision being challenged from all conceivable points of view, whether or not they have been raised in the complaint, as well as the entire proceedings which preceded the decision.

39. In its judgment no. II. ÚS 663/05 of 16 March 2006, the Constitutional Court considered that the fact that the provisions making the periodic review of detention compulsory are, in the case of particularly serious offences, formally more severe under the JJA (which allows extension after six months) than under the CCP (which provides for a review after three months) was to be viewed in the light of, in particular, the principle of proportionality. Under that principle, a restriction of individual liberty is justified only by requirements of the public interest which outweigh the requirement of respect for individual liberty. In the JJA this is formally ensured on the one hand through the obligation of all authorities to examine, at every stage of the proceedings, whether the grounds for detention continue to exist and on the other hand through the right of juveniles to apply for release from detention. These provisions should be considered together with that concerning the maximum period of detention, after which the juvenile must either be released or his or her detention must be extended by a court. In the Constitutional Court's view, it was illusory to consider that, because of the three-month periodic review, the detention of adults who were being prosecuted for particularly serious offences would necessarily be shorter and more lenient than the detention of juveniles prosecuted for similar offences.

40. In its judgment no. I. ÚS 3326/13 of 15 January 2014, the Constitutional Court observed that the purpose of a detention hearing includes allowing judges to see the detainee and enabling the detainee to complain, in person, about the conditions of his or her detention. This constitutes a fundamental guarantee against ill-treatment.

IV. RECOMMENDATION CM/REC(2008)11 ON THE EUROPEAN RULES FOR JUVENILE OFFENDERS SUBJECTED TO SANCTIONS OR MEASURES

41. The recommendation, adopted by the Committee of Ministers of the Council of Europe on 5 November 2008, provides, *inter alia*, as follows:

“Part I – Basic principles, scope and definitions

...

2. The sanctions or measures that may be imposed on juveniles, as well as the manner of their implementation, shall be specified by law and based on the principles of social integration and education and of the prevention of re-offending.

...

5. The imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualisation) as ascertained when necessary by psychological, psychiatric or social inquiry reports.

...

10. Deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention.

...

13. Any justice system dealing with juveniles shall ensure their effective participation in the proceedings concerning the imposition as well as the implementation of sanctions or measures. Juveniles shall not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 READ IN CONJUNCTION WITH ARTICLE 5 OF THE CONVENTION

42. The applicant alleged a violation of Articles 5, 6 and 14 of the Convention. Relying on Article 5 § 1, he submitted that the extension of his detention by another six months after 20 May 2021 was unlawful since the order for his detention had obviously been invalid, as followed from the Constitutional Court’s judgment of 20 July 2021. Under Article 5 § 4, he complained that his detention should have been automatically reviewed three months after 23 December 2020, as provided by Article 72 § 1 of the CCP, and that in the absence of such a review he should have been released by 23 March 2021. Under Article 6 § 1, the applicant complained mainly about the refusal of the Constitutional Court to review the decisions of 15 April and 11 May 2021, arguing that he could not be blamed for not having set out the reasoning for his complaint against the first of those decisions since the law did not provide for such a requirement, all the more so since his arguments had been known to the courts. Lastly, he claimed that in the enjoyment of the right to liberty under Article 5 he had been the victim of discrimination because of his age and that this was in violation of Article 14 since the interpretation adopted by the courts as to the periodic review of the detention was less favourable to him as a juvenile and did not respect the purpose of the special legislation designed for juveniles.

43. The Court considers that the main question raised by the present case is whether the domestic courts' finding that, under the relevant domestic law, the applicant, as a juvenile, was not entitled to the automatic periodic judicial review of detention, guaranteed by the CCP to adult detainees, constituted a difference in treatment amounting to discrimination on account of age. It will thus consider the case solely under Article 14 of the Convention read in conjunction with its Article 5.

Those provisions read as follows:

Article 5

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

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

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

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

A. Admissibility

1. *The parties' submissions*

(a) The Government

44. The Government objected to the admissibility of the application on the grounds of non-exhaustion of domestic remedies. Firstly they maintained that the applicant could have applied for release, which would have secured him a judicial review of his detention, at any moment after the decision on his detention had become final, that is to say including before 23 March 2021. Moreover, when he finally filed an application for release, on 24 March 2021, he did not substantiate his subsequent complaint against the dismissal of that application (see paragraph 11 above). The Constitutional Court then found that it did not have jurisdiction to deal with the applicant's complaints concerning, *inter alia*, discrimination since the applicant had not first brought them in the Regional Court (see paragraph 19 above).

45. The Government secondly pointed out that the applicant is currently seeking compensation for the entire period of his detention (see paragraph 20 above) and that those proceedings are pending on appeal (see paragraph 21 above). They considered such an action for damages to be an effective and adequate remedy in the present case where the Constitutional Court found - after the applicant's detention had already ended - that the decision of 23 November 2020 ordering the applicant's detention had been unlawful. Moreover, the applicant had already been compensated in another manner since the whole period of his detention had been set off against his criminal sentence.

(b) The applicant

46. Admitting that he had inadvertently omitted to state reasons for his complaint against the decision of 15 April 2021, the applicant maintained, however, that his arguments had been known to the courts since he had formulated them in his application for release from which the proceedings at issue had originated (see paragraph 9 above), as well as at the hearing of 15 April 2021. Given the principle enshrined in Article 147 § 1 of the CCP (see paragraph 28 above), the Regional Court and, later, the Constitutional Court should have examined those arguments even if they had not been set out in the above complaint.

47. The applicant further argued that the action for damages was not an effective remedy for the violation of his rights, firstly because the right to claim compensation after the event and the right to have a court assess the lawfulness of the (ongoing) detention were two distinct rights, and the action for damages was effective rather in relation to a breach of the requirement of speediness under Article 5 § 4 (he referred to *Krejčíř v. the Czech Republic*, nos. 39298/04 and 8723/05, § 124, 26 March 2009, and *Knebl v. the Czech*

Republic, no. 20157/05, §§ 104-105, 28 October 2010). Moreover, the action for damages which he had brought was based on the violation of his right of access to a lawful judge (acknowledged by the Constitutional Court in its judgment of 20 July 2021), not on the violation of rights that he relied on in his application to the Court, which stemmed from the decision on his continued detention that had not been declared unlawful or quashed at the domestic level. Lastly, the applicant objected that the setting-off of the period of his detention against the criminal sentence could in no way be regarded as an adequate compensation; it could only have an impact on the extent of the harm he had suffered (he referred to *Smatana*, cited above, § 93). Besides, under Article 92 § 1 of the Criminal Code, such a set-off was an inevitable consequence of the conviction of an offender who had been held in detention, whether that detention was unlawful or not.

2. *The Court's assessment*

48. The Court reiterates that the obligation under Article 35 § 1 of the Convention to exhaust domestic remedies requires applicants to make normal use of remedies that relate to the breaches alleged and which at the same time are available and sufficient. To be effective, a remedy must be capable of remedying directly the disputed state of affairs and must offer reasonable prospects of success (for a summary of the relevant principles see, among many other authorities, *Gherghina v. Romania* (dec.) [GC], no. 42219/07, §§ 83-89, 9 July 2015).

49. As to the Government's first argument (see paragraph 44 above), the Court observes that the question of whether the applicant should have benefited – as an adult detainee would have – from an automatic judicial review, without being obliged to trigger it by an application for release, is at the core of the complaints under consideration. In any event, the applicant effectively lodged an application for release on 24 March 2021, arguing that his detention should have been automatically reviewed by 23 March 2021 (that is within the three-month time-limit set by the CCP). The fact that he did not include this argument in his subsequent complaint against the dismissal of that application cannot be allowed to count against him, since the revision principle enshrined in domestic law does not require that such a complaint include reasons (see paragraphs 28 and 38 above). Moreover, the Court shares the applicant's view that as he had relied on that argument in his application for release, and the District Court had responded to it in its decision of 15 April 2021, nothing had prevented the Regional Court from examining it.

It follows that the Government's objection as to the exhaustion of domestic remedies must be rejected.

50. With respect to the applicant's action for damages (currently pending before an appeal court), the Court notes that it followed the Constitutional Court's judgment of 20 July 2021 quashing the decision ordering the

applicant's detention because it had not been made by a court of competent jurisdiction. Having regard to the scope of that judgment, which does not in any way acknowledge a violation of Article 14 of the Convention, read in conjunction with Article 5 of the Convention, the Court concludes that the subsequent action for damages does not enable the applicant to ventilate the Convention complaint that he is seeking to have decided by this Court in the domestic courts. In this Court he relies on the fact that, unlike in the case of adult detainees, his continued detention had not been reviewed within the three-month time limit set by Article 72 § 1 of the CCP and asserts that he should therefore have been released by 23 March 2021. In this respect, the only effective remedy appears to have been an application for release, which had been duly made by the applicant and on which a criminal court had been called to assess the lawfulness of the applicant's detention and, if appropriate, to order his release.

51. The Court observes, furthermore, that while any compensation which the applicant could be awarded following his action for damages would undoubtedly constitute redress for the unlawful deprivation of his liberty, it would not constitute an acknowledgment of a breach of Article 14 of the Convention taken in conjunction with Article 5, which the applicant claims before the Court. The Court also notes that both the first-instance court and the Government maintained in this case that the applicant had already been compensated for any non-pecuniary damage caused by his detention since the whole period of his detention had been deducted from the prison term he had to serve. In this respect, the Court observes that, pursuant to the Criminal Code, that was an automatic consequence of the fact that the applicant had been sentenced to a term in prison and was in no way based, directly or in substance, on the violation of the Convention provisions referred to by the applicant (see, *mutatis mutandis*, *Pavletić v. Slovakia*, no. 39359/98, § 61, 22 June 2004). It therefore cannot deprive the applicant of his victim status within the meaning of Article 34 of the Convention (and *Smatana*, cited above, § 93).

52. The Government's remaining objections must therefore be dismissed.

53. The Court finds that the complaint under Article 14 in conjunction with Article 5 of the Convention 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. The parties' submissions

(a) The applicant

54. The applicant admitted that the Convention does not guarantee the right to a regular automatic review of the grounds for detention but contended

that since Article 72 § 1 of the CCP compelled the domestic criminal authorities to carry out such a review every three months (regardless of the seriousness of the offence the detainee was accused of), that became a condition for the lawfulness of the detention within the meaning of Article 5 § 4 of the Convention, which should be applied as a minimum framework and without discrimination. However, in the present case, the authorities had concluded that section 47(1) of the JJA precluded application of Article 72 § 1 of the CCP and that no automatic review was needed within the three-month period running from 23 December 2020; he had therefore been subjected to different treatment solely on account of his young age.

55. The applicant further argued that not only was his position comparable to that of adults placed in pre-trial detention, but he should have been in a preferential position since the JJA was supposed to provide juveniles with the highest possible standard of protection because of their increased vulnerability. Indeed, the special provisions of sections 46-51 of the JJA were designed to mitigate the CCP regulation applicable to adults, and all the legal provisions concerning detention had to be interpreted in a manner which was the most favourable to juveniles. The applicant therefore maintained that he should not, under any circumstances, have been treated less favourably than adult detainees in that the grounds for his detention would be automatically reviewed only at intervals twice as long as would be the case for adults.

56. The applicant contested the Government's argument (see paragraph 63 below) that the prosecutor's notification of 16 February 2021 amounted to a review of his detention, since the prosecutor had thereby only informed the detention facility that the maximum length of the detention justifiable by Article 67(b) of the CCP had been reached. The first court review of his detention had taken place after almost four months, and only on his own initiative (his application for release).

57. Contrary to the domestic authorities and the Government, the applicant was of the view that section 47(1) of the JJA was *lex specialis* in regard to Article 72a of the CCP which, likewise, set the maximum possible length of pre-trial detention, but not in regard to Article 72 § 1 of the CCP concerning the regular automatic review, irrespective of what applications the detainee might make. There had therefore been no legitimate reason not to apply Article 72 § 1 – which provided for increased protection – to the applicant's case, and neither the shorter upper limit to the length of time a juvenile could be detained nor the other procedural guarantees set out by the Government (see paragraphs 62 and 63 below) could constitute such a reason.

58. The applicant pointed out, furthermore, that the so-called additional safeguards put forward by the Government (see paragraph 63 *in fine* below) are not specific to juveniles since Articles 71 and 71(a) of the CCP offer the same guarantees to adults. Also, the periodic review of the grounds for detention in the case of adults is always done by a court.

59. Lastly, the applicant asserted that the detention of juveniles suspected – as he was – of having committed a particularly serious offence is ordered only in a few cases every year, which means that a three-month automatic review would not represent any burden on the domestic courts. For the same reason, detention for that reason was rarely subject to review by the highest courts and there was no settled practice, which made the legal position unpredictable. Indeed, the plenary of the Constitutional Court had never ruled on the constitutionality of the provisions in dispute in the present case, and no authoritative explanation had been provided as to why the first review of the detention of juveniles suspected of having committed a particularly serious offence should be carried out only after six months, while in the case of adult detainees suspected of such an offence it took place after three months.

(b) The Government

60. The Government acknowledged that Article 14 of the Convention taken in conjunction with Article 5 was applicable in the present case and that the applicant was in a situation analogous to that of adult detainees prosecuted for comparable offences. In their view, however, the disputed difference in treatment based on age was objectively justified, both *in abstracto* and *in concreto*.

61. Referring to the case of *Stott v. the United Kingdom* (no. 26104/19, § 105, 31 October 2023), in which the Court took into account the overall arrangements of sentencing regimes, without singling out particular provisions and without seeking to compare across the different groups, the Government argued that the Czech detention regimes for both juveniles and adults should be viewed and compared from a broad perspective and not only from the isolated point of view of the specific time-frame for judicial review.

62. In this connection the Government emphasised that, in several aspects and also overall, the juvenile detention regime is more favourable to detainees – and, consequently, stricter on the relevant State authorities – than the adult detention regime. Firstly, the maximum overall duration of the detention is considerably shorter for juveniles: whereas with respect to adults it is four years (see paragraph 26 above), under section 47 § 1 of the JJA juveniles can be detained for only up to six months, or – in case of particularly serious offences like those with which the applicant was charged – up to eighteen months. Secondly, while a decision to extend the detention of a juvenile could only be taken by a court and, furthermore, a court superior to the one conducting the criminal proceedings, the detention of an adult during pre-trial proceedings could be extended by a prosecutor and then by the trial court. Thirdly, for juveniles there is a wider range of alternatives to detention. And fourthly, while the period of juvenile detention is always set off against their prison sentence, Article 72b of the CCP provides for an exception from that rule for adults who have been convicted of a particularly serious offence.

63. As to the judicial review of the detention, the Government contended that the relevant law was clear and foreseeable and offered juveniles (as vulnerable persons) a higher standard of protection. They acknowledged that Article 72 § 1 of the CCP, which the highest domestic courts have confirmed through case-law (see paragraphs 36, 37 and 39) applies only to adults, provides for an automatic review every three months. They observed, however, that with regard to juveniles, section 47(1) of the JJA contains a special regulation under which a mandatory judicial review is carried out every two months, that is, at the end of the maximum period set for the detention of a juvenile, except in cases of particularly serious offences, where the review occurs every six months. Statistics show that many juveniles spend only two months or less in detention and that the average length of juvenile detention is 105 days, which makes a regular periodic review within three months rather pointless. Moreover, the juvenile detention regime is accompanied by additional procedural safeguards, since under section 48 of the JJA all criminal authorities are obliged to examine whether the grounds for the detention continue to exist at every stage of proceedings; also, Article 71a of the CCP gives juveniles the right to apply for release at any moment after the detention decision becomes final and under section 44(4) of the JJA a juvenile's lawyer may also do so against the juvenile's will.

64. The Government maintained that, in view of the above, the applicant's detention beyond 23 March 2021 was in accordance with a procedure prescribed by law. They underlined, moreover, that the applicant had not been left in detention for six months without any judicial review since his detention had been reviewed first on 16 February 2021 by the prosecutor (see paragraph 8 above) and then by the court, on his application for release, on 15 April 2021, that is, three months and twenty-three days after he had been remanded in detention. Such a review could have occurred earlier had the applicant (or his lawyer, who could do so even against the applicant's will) applied for release before 24 March 2021. Furthermore, the courts had adequately addressed the reasons for the applicant's detention and its extension, and the entire period of that detention had been set off against the applicant's prison sentence. In the Government's view, the authorities involved thus fulfilled the Court's requirements regarding the periodic review of detention and gave sufficient reasons for their decisions.

2. The Court's assessment

(a) General principles

65. The Court reiterates first that the pre-trial detention of minors should be used only as a measure of last resort and should be as short as possible (*Nart v. Turkey*, no. 20817/04, § 31, 6 May 2008).

66. In view of the above, the right to a judicial remedy in the case of a minor who has been deprived of his or her liberty, which was acknowledged

by the Court in the case of *Bouamar v. Belgium* (29 February 1988, §§ 60-64, Series A no. 129), is all the more important, and a periodic judicial review of the lawfulness of the detention is called for (see, *mutatis mutandis*, *Assenov and Others v. Bulgaria*, 28 October 1998, § 162, *Reports of Judgments and Decisions* 1998-VIII, and *D.L. v. Bulgaria*, no. 7472/14, § 89, 19 May 2016).

67. The scope of the obligation under Article 5 § 4 and the forms of judicial review satisfying the requirements of Article 5 § 4 may vary from one domain to another and will depend on the type of deprivation of liberty in issue (*Bouamar* cited above, § 60, and *Stanev v. Bulgaria* [GC], no. 36760/06, § 169, ECHR 2012). A system of automatic periodic review of the lawfulness of detention by a court may ensure compliance with the requirements of Article 5 § 4. Where such an automatic review of the lawfulness of detention has been instituted, such decisions must follow at “reasonable intervals” (see, among others, *Herczegfalvy v. Austria*, 24 September 1992, §§ 75 and 77, Series A no. 244, and *Blackstock v. the United Kingdom*, no. 59512/00, § 42, 21 June 2005). The rationale underlying the requirements of speediness and periodic judicial review at reasonable intervals within the meaning of Article 5 § 4 and the Court’s case-law is that a detainee should not run the risk of remaining in detention long after the time when his deprivation of liberty has become unjustified (see, for example, *Shishkov v. Bulgaria*, no. 38822/97, § 88, ECHR 2003-I (extracts), and *Abdulkhakov v. Russia*, no. 14743/11, § 209, 2 October 2012). Whether or not the intervals were “reasonable” should be assessed in the particular circumstances of each case (see *Lebedev v. Russia*, no. 4493/04, § 79, 25 October 2007, and *Abdulkhakov*, cited above, § 215). As regards pre-trial detention under Article 5 § 1 (c), the Court has stated that the nature of pre-trial detention calls for short intervals because there is an assumption in the Convention that such detention is to be of a strictly limited duration (see *Assenov and Others*, cited above, § 162).

68. Concerning Article 14 of the Convention, for an issue to arise under that provision it must be established that other persons in an analogous or relevantly similar situation enjoy more favourable treatment and that the distinction is discriminatory (see, *mutatis mutandis*, *Ünal Tekeli v. Turkey*, no. 29865/96, § 49, ECHR 2004-X, and *Andrle v. the Czech Republic*, no. 6268/08, § 47, 17 February 2011).

69. Furthermore, only differences in treatment based on an identifiable characteristic, or “status”, are capable of amounting to discrimination within the meaning of Article 14. The words “other status” have generally been given a wide meaning, and their interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent (see *Molla Sali v. Greece* [GC], no. 20452/14, § 134, 19 December 2018, and the authorities cited therein). The Court has previously accepted that “age” is also a concept covered by this provision (see *Schwizgebel v. Switzerland*,

no. 25762/07, § 85, ECHR 2010, and *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 62, 24 January 2017).

70. Once a difference in treatment has been demonstrated, the burden is on the Government to show that there was an objective and reasonable justification for it such that it did not engage Article 14. Justification is lacking where the different treatment does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality” between the means employed and the aim sought to be realised. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see *Molla Sali*, cited above, §§ 135-37).

(b) Application of the general principles to the facts of the case

71. The Court observes that it has not been disputed by the parties that the facts of the case fall within the ambit of Article 5, and that judicial review of continued detention is regulated differently in the Juvenile Justice Act as applied to, *inter alios*, juveniles aged between 15 and 18 years from the way it is regulated in the Code of Criminal Procedure, which applies to persons aged over 18 years. It reiterates that the prohibition of discrimination enshrined in Article 14 extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide (*Khamtokhu and Aksenchik*, cited above, § 58). Thus, although the judicial review of the lawfulness of the detention may take different forms, and while Article 5 § 4 applies, in principle, to the proceedings following the lodging of an objection against a decision extending a person’s detention (see *Altınok v. Turkey*, no. 31610/08, §§ 39-40, 29 November 2011, and *Ruşen Bayar v. Turkey*, no. 25253/08, § 63, 19 February 2019), where national legislation guarantees an automatic periodic review to one category of detainees, this falls within the ambit of Article 5 for the purposes of the applicability of Article 14 taken in conjunction with that provision (see also paragraph 74 below). Accordingly, the Court finds that Article 14 of the Convention taken in conjunction with Article 5 is applicable in the present case.

72. The applicant asserted that he had been treated less favourably than adult detainees prosecuted for similar or comparable crimes when it came to the intervals between the automatic periodic reviews of the lawfulness of his detention, in violation of Article 14 taken in conjunction with Article 5 of the Convention. The Government acknowledged that the applicant, who had been placed in pre-trial detention on suspicion of having committed a particularly serious offence, was in an analogous situation to an adult detainee prosecuted for a comparable offence. They contended, however, that he had instead had

more favourable treatment, in that the special regulation contained in the JJA provided, in general, a more favourable detention regime for juveniles.

73. The Court accepts that the applicant as a juvenile detainee was, for the purposes of his specific complaint, in an analogous situation to an adult detainee. It thus falls to the Court to examine whether the applicant has been treated less favourably, as he claims, than an adult being prosecuted for a particularly serious offence and, if so, whether there was a reasonable and objective justification for such a distinction.

74. It is not the Court's task to attempt to rule as to the maximum period of time between reviews which should automatically apply to a certain category of detainees (see *Abdulkhakov*, cited above, § 215) or to decide whether the interval of six months between automatic periodic reviews of the lawfulness of the detention of juveniles prosecuted for a particularly serious offence under section 47(1) of the JJA is compatible with the requirements of Article 5. The Court also considers that while that provision does not compel Contracting States to set up an automatic periodic review of a judicial character, if a State decides to set up such a system, it must do so in a manner compatible with Article 14. Therefore, given that the Czech legislation includes a system of mandatory review of the lawfulness of detention - within a specific time-limit - for adult detainees, the Court must examine whether the respondent State put forward an objective and reasonable justification for applying to juvenile detainees such as the applicant a time-limit which was twice as long.

75. The Government contended (see paragraph 61 above) that the detention regimes of juveniles and adults should be viewed and compared from a broad perspective and not merely from the isolated viewpoint of the specific time-frame of a judicial review. The Court's task is not, however, to review the relevant laws and practice *in abstracto*, but to determine whether the manner in which they affected the applicant gave rise to a violation of the Convention (see, *mutatis mutandis*, *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, § 138, 15 October 2020). Thus, the starting-point must be the applicant's specific situation.

76. It is not disputed in the present case that the applicant was prosecuted for a particularly serious offence and that, consequently, the initial period of his detention was limited to six months by section 47(1) of the JJA. This provision further provided for the extension of the applicant's detention, at the end of that initial period, by a further six months, once before the court trial and once during it (see paragraph 33 above). It follows that, unless the applicant had filed an application for release under Article 71(a) of the CCP, the first mandatory review of his continued detention would have occurred after six months. On the other hand, an adult detainee prosecuted for a particularly serious offence would have his continued detention automatically reviewed after three months under Article 72 § 1 of the CCP. It appears indeed from the domestic practice that the Czech courts consider sections 47 and 48

of the JJA to be a *lex specialis* which excludes application to juveniles of the general provisions of the CCP on keeping a charged person in detention, including Article 72 § 1 of the CCP (see paragraphs 10, 36-37 and 39 above). This particular aspect of the legislation therefore provided for less favourable treatment of the applicant as a juvenile since the grounds for his detention were reviewed, following his application for release, only three months and twenty-three days after he had been remanded in detention.

77. The Government maintained, nevertheless, that in other aspects and overall, the legal regime of juvenile detention was more favourable than the regime of adult detention (see paragraphs 62-63). The Court observes, indeed, that the maximum total duration of detention is considerably shorter for juveniles than for adults and that there is a wider choice of alternative measures in respect of juveniles. In the Court's view, those provisions aim at ensuring that the detention of juveniles, if it is unavoidable, is the shortest possible (see paragraphs 41 and 65 above) and that due regard is had to their presumed immaturity (see *Khamtokhu and Aksenchik*, cited above, § 80).

78. However, concerning the alleged additional procedural safeguards, namely the authorities' obligation to examine whether the grounds for detention still apply at every stage of the proceedings and the right to file an application for release, the Court observes that the same guarantees are offered to adult detainees under Articles 71 and 71a of the CCP. The Government's remaining arguments, such as those about setting off of the period of detention against a prison sentence, are unrelated to the periodicity of automatic judicial review of detention and the Court fails to see their relevance. Therefore, and recalling that criminal proceedings against minors must be handled with due regard to their age, the Court cannot accept the Government's position that the less favourable treatment at issue is justified by the fact that minors are treated more favourably in other aspects of criminal procedure.

79. The Court observes, furthermore, that sections 1(2) and 3 of the JJA (see paragraphs 29 and 32 above) specify that the purpose of that law is to provide for specific proceedings that take into account the age, health condition, intellectual and moral maturity of juveniles, in order to ensure, as far as possible, their future development, to help them to refrain from committing unlawful acts and to find their place in society. The Court is therefore satisfied that the legislation at issue takes into account the distinctive characteristics and the particular vulnerability of juveniles and accepts that the aim of treating them in that specific way is legitimate for the purposes of applying Article 14 in conjunction with Article 5. That means that any distinction in treatment between the applicant and adult detainees prosecuted for a particularly serious offence would only be justified if it actually achieved that legitimate aim.

80. However, in the light of the above considerations, the Court is of the view that the disputed difference in treatment between the applicant and adult

detainees (as defined in paragraph 76 *in fine* above) runs counter to the aim pursued by the juvenile detention regime and the underlying intention of the rules to provide more favourable treatment for juveniles. It further observes that the Government failed to convincingly explain how that difference in treatment was capable of being objectively and reasonably justified. The factors they highlighted were rather explanations of the relationship between *lex specialis* and *lex generalis* which had led to the difference in treatment complained of (see, for a similar line of reasoning, *Paraskeva Todorova v. Bulgaria*, no. 37193/07, § 45, 25 March 2010, and *Aleksandr Aleksandrov v. Russia*, no. 14431/06, § 29, 27 March 2018).

81. The Court does not overlook the Government's argument (see paragraph 64 above) that the applicant, who was legally represented, had filed an application for release, following which the grounds for his continued detention were reviewed on 15 April 2021, that is, three months and twenty-three days after he had been remanded in detention. It reiterates, however, that the issue before it concerns lack of justification for the less favourable periodicity of automatic judicial control of detention and not the right of the detainee to make applications for release. In the Court's view, the obvious rule that a detainee, regardless of age, has the right to seek judicial review of his or her detention, is unrelated to the issue under examination.

82. In the Court's view, this interpretation of the relevant Convention provisions, emphasising the protective nature of juvenile justice in detention proceedings, is supported by Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures, according to which juveniles may not have fewer legal rights and safeguards than adult offenders under the general rules of criminal procedure (see paragraph 41 above). Indeed, the particular vulnerability of minors requires additional protection of their rights; thus, the State authorities bear the onus of ensuring that the extension of the detention of a juvenile is made at short intervals and that the juvenile concerned appears regularly before a court, which may also be an important guarantee against ill-treatment (see paragraph 40 above).

83. In sum, since the Government have failed to put forward any convincing argument to justify the applicant's exclusion from the three-month automatic review of his detention, the Court concludes that this age-based difference in treatment amounted to a discriminatory treatment of the applicant.

84. There has accordingly been a violation of Article 14 taken in conjunction with Article 5 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant asserted that he had been kept in detention unlawfully and discriminated against on the basis of his age, which made him distrust the justice system and ultimately accept a plea bargain. Leaving the amount of the non-pecuniary damage to the Court’s discretion, he was of the view that the award should not be lower than 35,000 euros (EUR).

87. The Government considered that a finding of a violation would constitute sufficient just satisfaction and, alternatively, that the Court’s award should not exceed EUR 5,000.

88. The Court observes that its finding of violation in the present case is based on an unjustified difference in treatment in respect of the frequency of automatic judicial review of the detention and that it cannot speculate whether the applicant would have been released from the detention had there been no difference of treatment contrary to Article 14 of the Convention.

Ruling on an equitable basis and in view of the violation found, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

89. The applicant provided an agreement concluded with his lawyer and showing the lawyer’s hourly rate. According to that agreement the lawyer’s fees are to be paid after the applicant’s legal representation before the Court has ended and an invoice has been issued. The applicant claimed more than EUR 9,500 including VAT for the fees charged by his lawyer for 62.5 hours of legal work in respect of proceedings before the Court.

90. The Government observed that the applicant had failed to submit any bills or invoices, or any confirmation that he had in fact paid the sum sought.

91. 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. In the present case, the Court notes that the applicant has signed an agreement on the legal services, stipulating his lawyer’s hourly rate, and has thus entered into a contractual relationship with his legal representative who is entitled to recover relevant dues as per invoice which should be issued after the legal representation has ended.

Bearing that in mind, and with regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of

EUR 5,000 for the costs and expenses pertaining to the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 14 in conjunction with Article 5 admissible;
2. *Holds* that there has been a violation of Article 14 taken in conjunction with Article 5 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement]:
 - (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Registrar

Mattias Guyomar
President