



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

THIRD SECTION

CASE OF ČESKÝ v. THE CZECH REPUBLIC

(Application no. 33644/96)

JUDGMENT

STRASBOURG

6 June 2000

FINAL

04/10/2000

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.

In the case of ČESKÝ v. the Czech Republic,

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

MR J.-P. COSTA, *President*,

MR L. LOUCAIDES,

MR P. KŪRIS,

MRS F. TULKENS,

MR K. JUNGWIERT,

SIR Nicolas BRATZA,

MRS H.S. GREVE, *judges*,

and MRS S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 31 August 1999 and 16 May 2000,

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

PROCEDURE

1. The case originated in an application (no. 33644/96) against the Czech Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Libor Český, a Czech citizen (“the applicant”), on 23 November 1995.

2. The applicant was represented by Mr K. Fiala, a lawyer practising in Prague. The Government of the Czech Republic (“the Government”) were represented by their Agent, Mr E. Slavík, Ministry of Justice.

The application concerned the applicant’s detention on remand and the criminal proceedings brought against him.

3. On 14 January 1998 the Commission decided to communicate the application to the respondent Government. The Government’s written observations were submitted on 20 March 1998. The applicant replied on 5 May 1998.

4. On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol. The case was assigned to the Third Section.

5. On 31 August 1999 the Court declared admissible the applicant’s complaint under Article 5 § 3 of the Convention that there had been a breach of his right to trial within a reasonable time or to release pending trial. It declared inadmissible the remainder of the application concerning, *inter alia*, the alleged unreasonable length and unfairness of the criminal proceedings.

6. On the same day the Chamber decided that it was not necessary to hold a hearing.

7. On 22 December 1999, 31 October 1999, 11 and 16 February 2000 and 21 March 2000, the parties submitted their observations on the merits and just satisfaction.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. In 1987 the Prague Municipal Court (*městský soud*) (hereinafter “the Municipal Court”) convicted the applicant of robbery and sentenced him to six and a half years’ imprisonment. On 4 April 1990 he was released and placed on probation for three years. At the beginning of October 1990 the former Czechoslovak authorities investigated a case about two missing persons. On 16 October 1990 a certain Mr B. was heard in connection with this investigation and stated that he, the applicant and another person had decided to rob these people at the apartment of one of them. Mr B. did not know how the two persons had been killed but he saw their bodies being removed from the apartment, and stated that the applicant and his accomplice had removed them.

1. Proceedings leading to the High Court’s decision of 16 January 1995

9. On 18 October 1990 the Prague Municipal Prosecutor (*městský prokurátor*) was requested by the investigator (*vyšetřovatel*) to authorise the applicant’s arrest. Agreement was given. On 19 October 1990 the Prague 1 police investigator charged the applicant with complicity in robbery under Article 9(2) and Article 234(1) and (3) of the Criminal Code. On 22 October 1990 the Municipal Court ordered the applicant’s arrest and detention. At the same time, a lawyer was appointed to represent the applicant.

10. On 12 January 1991 the applicant was arrested in Italy where he was working as a waiter. On 6 December 1991 he was released. On 2 December 1992 the Rome Court of Cassation upheld an extradition warrant. On 6 February 1993 the applicant was arrested, pursuant to the extradition warrant, and on 18 February 1993 he was extradited.

11. On 19 February 1993 a judge at the Municipal Court (*soudce městského soudu*), ordered the applicant’s detention on remand under Article 67(a)-(c) of the Code of Criminal Procedure with backdated effect from 6 February 1993. The court held that on 15 October 1990 the applicant had left the country although he had known that he was sought by the

police. He had not returned and had not informed the competent authorities about his stay abroad. He had illegally obtained a passport with the likely intention of travelling to the United States. The court further noted that the applicant was being prosecuted for a robbery committed while on conditional release in connection with a sentence for a similar offence. This reasonably gave rise to the risk that he would re-offend. The court also found that the applicant could influence witnesses: during his stay in Italy, he had intervened in the investigation procedure and had advised potential witnesses. Moreover, the investigator did not hear the applicant, and it could not be excluded that he would influence his co-accused who were not detained on remand.

12. The applicant complained about his detention on remand to the High Court (*Vrchní soud*). He contended, in particular, that there was no reason to fear that he would abscond or influence witnesses, that he had his permanent residence in the Czech Republic where his family was living and that, in Italy, he had stayed at a known address and had appeared in court during the extradition proceedings. He also submitted that the majority of the witnesses had been heard. He further disputed the Municipal Court's argument that his previous conviction justified the fear that he would re-offend.

13. On 29 March 1993 the High Court dismissed the applicant's complaint as unsubstantiated and found that his detention was legal and justified. It upheld the reasons given by the Municipal Court.

14. Following the request of 29 March 1993 by the Prague Municipal Prosecutor (*městský státní zástupce*) (hereinafter "the Prosecutor"), on 5 April 1993 the Municipal Court extended the applicant's detention on remand until 6 June 1993. The court held that the detention was still necessary within the meaning of Article 67 (a)-(c) of the Code of Criminal Procedure. It stressed that the court awaited the results of the expert reports, the confrontation of the applicant with his co-accused and the completion of other steps in the investigation.

15. On 14 April 1993 the Municipal Court decided that, according to Article 71(7) of the Code of Criminal Procedure, the time spent in detention pending extradition, i.e. from 6 to 18 February 1993, would not be counted as part of the length of the applicant's detention on remand. Accordingly, the applicant's detention on remand started on 18 February 1993 when he was extradited to the Czech Republic.

16. On 2 June 1993 the Municipal Court, upon the Prosecutor's request, extended the applicant's detention on remand until 6 July 1993.

17. On 2 July 1993 the Prosecutor indicted the applicant, pursuant Article 234(1) and (3) of the Criminal Code, for robbery before the Municipal Court. He requested the Municipal Court, *inter alia*, to hear 62 witnesses and to consider further evidence taken during the investigation. At

the same time, he requested the court to remand the applicant in custody under Article 67(a)-(c) of the Code of Criminal Procedure.

18. On 20 July 1993 the applicant lodged a request for release claiming that there was no concrete reason for him to remain in custody and that the previous conclusions drawn by the Municipal Court were incomplete or insufficiently justified. On 10 November 1993 the Municipal Court dismissed the request, considering that the reasons for the applicant's detention on remand, as set out in the earlier decisions, were still relevant. It emphasised that the fear that the applicant would influence witnesses was justified by the existing contradictions between the statements given by the applicant and one of his two co-accused, who was not held in detention on remand.

19. On 17 November 1993 the applicant appealed against this decision, disputing the reasons for his detention on remand and claiming *inter alia* that four months had elapsed between the introduction of his request for release and the decision of the Municipal Court.

20. The trial before the Municipal Court was held on 13 December 1993, but was adjourned until 29 December 1993 and 28 February 1994, respectively, because one of the defendants and the victims were absent. The hearing on 28 February 1994 was held by a differently constituted chamber which had to recommence the assessment of the evidence.

21. On 3 March 1994 the Municipal Court dismissed the applicant's further request for release, stating that there was still a risk that the applicant would abscond and considered, therefore, that the applicant's detention was necessary within the meaning of Article 67(a) of the Code of Criminal Procedure.

22. On 10 March 1994 the applicant's lawyer requested a hearing of further witnesses and the appointment of a medical expert.

23. The trial resumed on 11 April 1994 but was then adjourned until 6 June 1994 because of the absence of some witnesses and the need to repeat the evaluation of numerous elements of evidence. Moreover, the applicant and his co-accused requested the examination of further evidence.

24. On 15 April 1994 the Municipal Court rejected the applicant's third request for release submitted on 8 April 1994. The court found that there was still a risk that the applicant would abscond. It referred to the fact that in Italy, when the applicant had become aware that criminal proceedings had been brought against him, he had not informed the Czech authorities of his whereabouts. On 11 May 1994 the applicant appealed against this decision submitting that, when he had become aware that criminal proceedings had been initiated against him, Czech television had portrayed him as a killer, contrary to the presumption of innocence. This had convinced him not to return to the Czech Republic.

25. On 10 June 1994 the Municipal Court convicted the applicant of robbery and sentenced him to 15 years' imprisonment, and the confiscation

of his car as well as a sum of CZK 4,372,000. The court found it established that in October 1990 the applicant and his two co-accused had killed two persons and stolen CZK 8,750,000.

26. On 16 January 1995 the High Court quashed the judgment and remitted the case to the Prosecutor for further investigations. The court considered that the Municipal Court had not established all the relevant facts of the applicant's case with sufficient certainty.

2. Proceedings leading to the High Court's decision of 17 February 1997

27. On 26 January 1995 the Supreme Court (*Nejvyšší soud*), at the High Court's request of 17 January 1995, extended the applicant's detention on remand until 30 June 1995 because of the complexity of the investigation. The court recalled that, shortly after the crime, the applicant had absconded to Italy. It further recalled that in the past the applicant had committed a similar offence. It therefore considered his detention necessary, within the meaning of Article 67(a)-(c) of the Code of Criminal Proceedings.

28. On 4 April 1995 the Prague 10 District Court (*obvodní soud*) dismissed the applicant's fourth request for release of 8 March 1995, finding that there was a risk of absconding, repetition of offences of the same nature and influencing witnesses. The court recalled that the case had been remitted to the Municipal Prosecutor who would necessarily hear further witnesses whom the applicant could influence, thereby frustrating the investigation of the facts which were of importance for the conduct of the proceedings. The applicant appealed against this decision. He submitted that the Municipal Court had previously stated that there no longer existed specific grounds to believe that he would influence the witnesses or that he would re-offend. He also maintained that the necessity to hear further witnesses could not in itself justify the court's anxiety that he would influence them and frustrate the criminal proceedings.

29. On 14 April 1995 the investigator ordered a medical examination of the applicant's mental health and appointed two experts for that purpose.

30. On 3 May 1995 the Municipal Court dismissed the applicant's appeal against the decision of the Prague 10 District Court of 4 April 1995. It found that there was still a suspicion that the applicant had committed the offence with which he had been charged. It held that the Municipal Court's previous finding that there had been no reason for the applicant's detention under Article 67(a) and (c) of the Code of Criminal Procedure related to that particular stage of the criminal proceedings. However, the situation with regard to the evidence had changed, as the High Court had quashed the judgment of the first instance court and had sent the case back to the investigating authorities. Moreover, the fear that the applicant would influence the witnesses was justified by the fact that one of his co-accused (Mr B.) had modified his statement and the court would call a new witness,

whose identity was known to the applicant, and whose statement could be necessary for consideration of his guilt.

31. On 14 June 1995 the Supreme Court, upon the Prosecutor General's (*Nejvyšší státní zástupce*) request, extended the applicant's detention on remand until 30 November 1995, upholding the reasons given for the previous extension.

32. On 18 August 1995 the applicant lodged a constitutional appeal against this decision. He complained under Articles 5 § 3 and 6 § 1 of the Convention about delays in the proceedings and the unreasonable length of his detention on remand. The Constitutional Court apparently rejected the appeal as having been lodged outside the 60 day time-limit, pursuant to the Constitutional Court Act no. 182/1993.

33. On 21 November 1995 the High Court, at the Prosecutor General's request, extended the applicant's detention on remand until 31 March 1996, pursuant to Article 71(3) of the Code of Criminal Procedure, on the ground that it was necessary to examine further evidence, confirming that all the reasons for detention under Article 67(a)-(c) of the Code of Criminal Procedure continued to apply. The court stated that the investigating authorities had not yet been provided with a report by the Czech Commercial Bank or with a statement of a witness in France, taken by French judicial authorities. It further held that the applicant, being a dangerous offender who had already been convicted and sentenced to a heavy prison sentence, could, in case of his release, jeopardise the criminal proceedings. On 20 December 1995 the Supreme Court confirmed this extension.

34. On 16 January 1996 the applicant lodged a second constitutional appeal against the decisions of the High Court on 21 November 1995 and of the Supreme Court on 20 December 1995. He complained in particular that he had been detained for more than two years and that the courts had not dealt with the case fairly when extending his detention on remand. He invoked Article 8 §§ 1, 2 and 5 (personal liberty), Article 36 § 1 (fair trial) and Article 40 §§ 2 and 4 (presumption of innocence) of the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*) (hereinafter "the Charter").

35. On 26 March 1996 the High Court extended the applicant's detention on remand until 30 June 1996, pursuant to Article 71(3) of the Code of Criminal Procedure, on the ground that the reasons for his detention within the meaning of Article 67(a) and (c) of the Code of Criminal Procedure continued to exist. The court considered *inter alia* that, given the legal qualification of the applicant's offence, he was likely to be sentenced to a lengthy prison sentence. It also recalled that the applicant had already been convicted in the past and, if released, could frustrate the purpose of the present criminal proceedings. It noted that the applicant had frustrated the investigation when he had been in Italy. Even if he had stayed at a known

address, he had not been at the disposal of the Czech authorities and his absence had therefore impeded the proceedings.

36. On 4 April 1996 the applicant appealed, disputing the findings of the High Court and claiming, *inter alia*, that there were no relevant facts justifying his continued detention on remand. On 2 May 1996 the Supreme Court upheld this extension.

37. On 14 May 1996 the applicant introduced a third constitutional appeal against the aforesaid decisions of the High Court and the Supreme Court. He alleged violations of his constitutional rights, in that the reasons for his detention invoked by the courts were not sufficient and relevant. The applicant also alleged that the decisions in question were not based on the real facts of his case. He complained that the detention had lasted unreasonably long. The applicant further pointed out that his previous constitutional appeal had still not been decided by the Constitutional Court.

38. On 31 May 1996 the Prosecutor informed the applicant about the re-assessment of his criminal offence and his new indictment for murder, pursuant to Article 219(1), (2)(a) and (h) of the Criminal Code.

39. On 3 June 1996 the Prosecutor formally indicted the applicant before the Municipal Court.

40. On 5 June 1996 the President of the Municipal Court submitted a request to the High Court for a further extension of the applicant's detention on remand until 18 February 1997, pursuant to Article 67(a) and (c) of the Code of Criminal Procedure. She stated that the criminal proceedings were at the stage of an indictment, that the chamber dealing with the case would be overburdened until November 1996 and that the case was very complex.

41. On 18 June 1996 the High Court granted the request and extended the applicant's detention on remand until 18 February 1997. The court referred to its decision of 26 March 1996, upheld by the Supreme Court on 2 May 1996, by which the applicant's detention had been previously extended, recalling that the investigation was very complex and that there was still a risk that the applicant would abscond and re-offend. The court considered that there were no delays in the investigation.

42. On 24 June 1996 the applicant appealed against this decision to the Supreme Court, which dismissed his appeal on 11 July 1996. The court noted that the offence with which the applicant had been charged was punishable by a lengthy prison sentence, and that the applicant's release would frustrate or hinder the purpose of the criminal proceedings. It recalled that the applicant had absconded from the Czech Republic to Italy, where he had lived illegally. It therefore considered his detention necessary, within the meaning of Article 67(a) of the Code of Criminal Procedure. The court further recalled that the applicant had been convicted in the past and concluded that he could re-offend. It therefore held that the applicant's detention was also necessary, pursuant to Article 67(c) of the Code of Criminal Procedure. The court added that it lacked jurisdiction to deal with

the applicant's complaint about the delays in the proceedings, which fell within the sole competence of the President of the Municipal Court.

43. On 30 July 1996 the applicant made a fourth constitutional appeal, this time against the last extension of his detention on remand.

44. On 26 August 1996 the re-trial started before the Municipal Court and it was adjourned on 29 August 1996 until 18 November 1996 because certain witnesses did not appear and the applicant and his co-accused had suggested producing further evidence. Before the adjournment, the applicant requested to be released from custody.

45. On 28 August 1996 the Constitutional Court dismissed the applicant's second constitutional appeal as manifestly ill-founded. It noted that the decisions extending the applicant's detention had always been taken in accordance with the law, and that it was clear from the evidence available that the decisions concerned had always been given on the basis of the facts as they had been established at the relevant period. The court further held that it lacked jurisdiction to review the reasons for which the ordinary courts had considered the applicant's detention on remand necessary.

46. On 3 September 1996 the Municipal Court dismissed the applicant's request for release of 29 August 1996, considering that his detention was still necessary within the meaning of Article 67(a) and (c) of the Code of Criminal Procedure. The court referred to the applicant's previous conviction and his avoidance of the criminal prosecution abroad. It also noted that neither the applicant nor his co-accused had given evidence before the court.

47. On 1 November 1996 the High Court rejected the applicant's appeal against this decision. It noted that there was still a danger that he would abscond and re-offend. The court noted that the decision of the Municipal Court could have been formulated more precisely, but this did not make it unlawful. It recalled that the applicant had been charged, on the basis of the guilty plea of his co-accused, with an offence punishable by a heavy prison sentence, and that the circumstances in which he had left the Czech Republic and stayed successively in Germany and Italy unambiguously proved that he had not been looking for a job but had been trying to avoid the criminal prosecution. The court also recalled that the applicant had entrusted more than CZK 4,000,000 to an acquaintance, bought a car using another person's identity card, obtained a false passport and tried to get details about the criminal procedure. It further noted that the character of the criminal offence with which the applicant had been charged justified the fear that he would re-offend, and recalled that the offence was committed during the applicant's probationary period.

48. On 18 November 1996 the trial was resumed before the Municipal Court. It was adjourned on 21 November 1996 until 9 December 1996 because certain witnesses did not appear.

49. On 9 December 1996 the Municipal Court dismissed the applicant's complaint of bias against the President of the chamber dealing with his case.

50. On 17 December 1996 the Municipal Court convicted the applicant of robbery under Article 234(1) and (3) of the Criminal Code and sentenced him as a very dangerous recidivist, pursuant Article 41(1) of the Criminal Code, to 13 years' imprisonment and the confiscation of his car.

51. On the same day, the court rejected the applicant's further request for release. It found that, with reference to the previous decisions concerning the latter's detention, there was still the risk of his absconding and re-offending.

52. On 15 January 1997 the applicant completed his appeal against the decision of the Municipal Court of 9 December 1996, by which his complaint of bias against the President of the chamber had been dismissed.

53. On 3 February 1997 the High Court rejected the applicant's appeal against the Municipal Court's decision of 17 December 1996, by which his further request for release had been dismissed. The court stated that, having regard to the applicant's personality and his criminal record, it could not be excluded that, if released, he would abscond and avoid prosecution. It also stated that the applicant's prosecution for the offence committed during his probationary period justified the fear that he would re-offend.

54. On 10 February 1997 the High Court dismissed the applicant's appeal against the Municipal Court's decision of 9 December 1996.

55. On 17 February 1997 the High Court quashed the judgment of the Municipal Court of 17 December 1996 and remitted the case to that court for a new consideration of the case and a decision on the merits. The court considered that the Municipal Court had not properly assessed the evidence produced, had not established all the relevant facts of the applicant's case and had based its judgment on evidence which had not been before it. The High Court determined what evidence it would be necessary to consider.

56. On 18 February 1997 the applicant was released because of the expiration of the four year maximum permissible period for detention on remand, pursuant to Article 71(4) of the Code of Criminal Procedure.

3. Proceedings leading to the High Court's decision of 1 October 1997

57. On 8 July 1997 the Municipal Court convicted the applicant of robbery and sentenced him to 13 years' imprisonment and the confiscation of his car. On 1 October 1997 the High Court quashed this judgment and sent the case back to the Municipal Court ordering that the case should be heard by a different chamber of the Municipal Court. It found, *inter alia*, that the Municipal Court had not respected the High Court's decision of 17 February 1997 and had practically copied its previous judgment.

*4. Proceedings leading to the High Court's decision
18 September 1998*

58. On 21 January 1998 the third re-trial before a new chamber of the Municipal Court was held. It was adjourned until 3 March 1998.

59. By judgment of 11 March 1998 the Municipal Court convicted the applicant of robbery and sentenced him to 13 years' imprisonment and the confiscation of his car. On 18 September 1998 the High Court quashed this judgment and sent the case back to the Prague Municipal Court.

*5. Proceedings leading to the Municipal Court's judgment of
20 January 2000*

60. On 20 January 2000 the Municipal Court delivered its fifth judgment convicting the applicant of robbery and sentencing him to 12 years' imprisonment. The applicant's appeal is still pending before the appellate court.

II. RELEVANT DOMESTIC LAW

61. Until 31 December 1993, the relevant provisions of the Code of Criminal Procedure read as follows:

Article 67

“An accused person may be remanded in custody only if there exist specific grounds to believe that he or she

a) will abscond in order to avoid prosecution or punishment, in particular if his or her identity cannot be immediately established, if he or she has no permanent residence or if he or she is under the threat of a heavy penalty;

b) will try to influence the witnesses or co-accused or otherwise frustrate the investigation into the facts which are of importance for the conduct of the proceedings,
or

c) will carry on the criminal activity for which he or she is prosecuted, will complete an offence attempted by him or her or will commit an offence which he or she was preparing or threatened to commit.”

62. Article 68 provides that only an accused person may be remanded in custody. The relevant decision shall be issued by a court or, at the pre-trial stage, by a judge upon a proposal lodged by the public prosecutor, and it must be justified by the particular circumstances of the case.

63. Under Article 72(2), an accused person is entitled to request his or her release at any time. Decisions on such requests are to be delivered without delay. In case of dismissal, a request for release may be re-

introduced after fourteen days, when the dismissal becomes binding, unless it is based on different reasons.

64. As of 1 January 1994 the Code of Criminal Procedure was revised, its Article 67 continuing in effect, except for a slight modification to paragraph (b), as follows:

“An accused person may be remanded in custody only if there exist specific grounds to believe that he ...

b) will try to influence the witnesses or co-accused *who have not yet been heard by the court* or otherwise frustrate the investigation into the facts which are of importance for the criminal proceedings,”

65. Pursuant to Article 71(1), the competent authorities shall give priority to cases involving a person’s detention on remand and shall deal with them as speedily as possible.

66. Article 71(3) provides that a person’s detention on remand shall not exceed two years. If, because of the complexity of the matter or for other serious reasons, it is not possible to complete the criminal proceedings within this period, and if the release of the accused person would jeopardise or substantially complicate achieving the aim of the proceedings, the High Court may extend the detention for the necessary period.

67. Under Article 71(4), a person’s detention on remand shall not exceed three years. In cases of particularly serious offences, within the meaning of Article 41(2) of the Criminal Code, the maximum permissible period of a person’s detention on remand is four years.

FINAL SUBMISSIONS TO THE COURT

68. The Government asked the Court to find that the facts of the case disclose no breach of the Convention.

69. The applicant requested the Court to find a violation of Article 5 § 3 of the Convention and to make an award of just satisfaction under Article 41.

AS TO THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 § 3 OF THE CONVENTION

70. The applicant maintained that his detention on remand had been unreasonably long and that he should have been released pending the trial.

He relied on Article 5 § 3 of the Convention which provides, so far as relevant, as follows:

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

Right to trial within a reasonable time

1. Period to be taken into consideration

71. The Court may examine under Article 5 § 3 the length of the applicant's detention between 6 February 1993 and 10 June 1994, i.e. from the moment when he was arrested in Italy, in respect of the criminal proceedings brought against him in the Czech Republic, until the delivery of the first Municipal Court's judgment. It may also examine the applicant's detention on remand between 16 January 1995 and 17 December 1996, i.e. from the moment when the High Court quashed the first judgment delivered by the Municipal Court until the latter delivered its second judgment, and between 17 and 18 February 1997, i.e. from the moment when the High Court quashed the second judgment given by the Prague Municipal Court until the applicant's release (see the *B. v. Austria* judgment of 28 March 1990, Series A no. 175, pp. 15-16, § 39). Accordingly, the detention to be taken into consideration lasted three years, three months and seven days.

2. Reasonableness of the length of detention

72. The applicant contended that the national authorities had failed to establish any sufficient grounds reasonably permitting a suspicion of his having committed an offence.

73. The Government maintained that the reasons invoked in the relevant decisions were sufficient and that the detention did not exceed the maximum period permissible under Czech law.

74. The Court recalls that the reasonableness of the length of the detention must be assessed in each case according to its special features. Continued detention may be justified in a given case only if there are clear indications of a genuine public interest which, notwithstanding the presumption of innocence, outweigh the right to liberty.

75. It falls in the first place to the national judicial authorities to examine the circumstances for or against the existence of such an imperative interest, and to set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions, and of the facts established by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention.

76. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices: the Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see, for example, the Assenov v. Bulgaria judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3300, § 154, and the I.A. v. France judgment of 23 September 1998, *Reports* 1998-VII, p. 2978, § 102).

77. The Court notes that the applicant was charged with complicity in a robbery during which two persons were killed. The national investigation authorities heard a certain Mr B. who had stated that he, the applicant and another person had decided to rob these people at the apartment of one of them. In these circumstances, the Court considers that there existed a reasonable suspicion that the applicant had committed an offence.

78. As to the grounds for continued detention, the domestic courts relied on the complexity of the investigation, the danger that the proceedings would be obstructed if the applicant were released due to the risk of his absconding, influencing witnesses and repeating offences of the same nature.

79. As regards the risk of the applicant’s absconding, the Czech courts noted, in particular, that the applicant had left the country although he had known that criminal proceedings had been initiated against him and that he was sought by the police. He had not returned to the Czech Republic and had not informed the competent authorities about his stay abroad. The circumstances in which he had left the country and stayed successively in Germany and Italy, unambiguously proved that he had not been looking for a job but had been trying to avoid the criminal prosecution. Moreover, the applicant had entrusted more than CZK 4,000,000 to an acquaintance, bought a car using another person’s identity card, obtained a false passport and tried to get details about the criminal proceedings. The national courts also noted that, given the legal qualification of the applicant’s offence, he was likely to be sentenced to a lengthy prison sentence. In the Court’s view, this reasoning is “sufficient” and “relevant” and it outweighs the arguments put forward by the applicant based on his claim to have left the country to find a job, and his permanent residence in the Czech Republic where he was living with his family.

80. Having reached this conclusion, the Court does not consider it necessary to examine the other grounds for the applicant’s detention invoked by the domestic courts.

81. As regards the conduct of the proceedings by the national authorities, the Court notes that almost four months elapsed between

remanding the applicant in custody and filing the indictment on 2 July 1993. The Government do not explain the length of this period.

82. Over five more months then elapsed between the filing of the indictment and the first trial hearing before the Municipal Court on 13 December 1993. Subsequently, the Municipal Court adjourned four other hearings because of the absence of certain participants to the proceedings and the request by the applicant and one of his co-accused to have further evidence examined. As a result, it delivered its first judgment after a period of six months.

83. The High Court subsequently quashed the judgment of 10 June 1994 on the ground that the Municipal Court had not established all the relevant facts of the applicant's case with sufficient certainty.

84. The Municipal Court delivered its second judgment after a delay of another twenty-three months. The length of this period does not appear, as such, to be excessive as the Municipal Court held and adjourned three main hearings for different procedural reasons, such as the non-appearance of certain witnesses, and requests by the applicant and his co-accused for the hearing of further witnesses and the production of further evidence. Moreover, the national authorities were faced with difficulties in obtaining evidence from the French judicial authorities, namely the statement of a witness living in France, and from the Czech Commercial Bank.

85. The Municipal Court delivered its second judgment on 17 December 1996. It was quashed by the High Court on 17 February 1997, i.e. two months later, on the grounds that the Municipal Court had not properly assessed the evidence produced, had not established all the relevant facts of the case, and had based its judgment on evidence which had not been before it. The High Court determined what evidence it would be necessary to consider. The next day the applicant was released as the maximum length of detention permitted by law expired.

86. Nevertheless, having regard to the circumstances of the case as a whole, the Court finds that "special diligence" was not displayed in the conduct of the proceedings.

87. Accordingly, there has been a violation of Article 5 § 3 of the Convention as a result of the length of the applicant's detention on remand.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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

89. The applicant originally claimed DEM 440,000 (CZK 8,052,000), which he subsequently reduced to DEM 286,000 (CZK 5,233,800), as compensation for the length of his detention on remand. This amount included compensation for the applicant's loss of earnings (CZK 324,000), calculated on the basis of average wages in the Czech Republic between 1993 and 1997, and compensation for his health, psychological and social injuries which, according to the applicant, could not be objectively assessed.

90. The Government opposed these claims, arguing that they were unjustified and unsubstantiated. They also maintained that the calculation of loss, on the basis of average salary, was not relevant in the present case.

91. The Court notes that the fifth judgment of the Municipal Court of 20 January 2000, by which the applicant was convicted of robbery and sentenced to 12 years' imprisonment, has not yet become final as the applicant's appeal against this judgment is still pending before the appellate court. It cannot, therefore, be said that the length of the applicant's detention pending trial was deducted from his sentence. In these circumstances, and even assuming that the applicant did not have permanent employment in the Czech Republic when he was arrested and detained on remand, the Court considers that there is a certain causal link between the violation of Article 5 § 3 of the Convention found and the sums claimed by the applicant to compensate for his loss of earnings. The Court awards the applicant, on an equitable basis, CZK 100,000 as compensation for pecuniary damage.

92. The Court further considers that the finding of a violation of Article 5 § 3 of the Convention constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage suffered by the applicant.

B. Costs and expenses

93. The applicant claimed payment of the costs and expenses he had incurred before the Czech courts (CZK 60,000) and the Court (CZK 6,000). He presented the relevant documents in this respect.

94. The Government made no comment on these claims.

95. The Court recalls that in order for costs and expenses to be recoverable under Article 41 of the Convention, it must be established that they were actually and necessarily incurred, and reasonable as to quantum (see, among other authorities, the *Nikolova v. Bulgaria* judgment of 25 March 1999, to be published in the Court's official reports, § 79).

96. The Court is satisfied that the applicant's claim is established and accordingly awards the applicant the total sum of CZK 66,000.

C. Default interest

97. According to the information available to the Court, the statutory rate of interest applicable in the Czech Republic at the date of adoption of the present judgment is 10% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) 100,000 (one hundred thousand) Czech crowns in respect of pecuniary damage,
 - (ii) 66,000 (sixty six thousand) Czech crowns for costs and expenses,
 - (b) that simple interest at an annual rate of 10% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 6 June 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. Dollé
Registrar

J.-P. Costa
President