



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

FOURTH SECTION

**CASE OF KÖNIG v. SLOVAKIA**

*(Application no. 39753/98)*

JUDGMENT

(20 January 2004)

STRASBOURG

**FINAL**

*20/04/2004*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of König v. Slovakia,**

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 2 December 2003 and on 16 December 2003,

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

**PROCEDURE**

1. The case originated in an application (no. 39753/98) against the Slovak 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 a Slovakian national, Mr Erich König ("the applicant"), on 19 May 1997.

2. The applicant, who had been granted legal aid, was represented by Mr M. Kuzma, a lawyer practising in Košice. The Slovakian Government ("the Government") were represented by their Agent, Mr P. Vršanský, succeeded by Mr P. Kresák in that function as from 1 April 2003.

3. The applicant alleged, in particular, that the domestic authorities had failed to decide on his application for release from detention on remand lodged on 24 February 1997.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 13 May 2003, the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1970. He is serving a sentence in the Ilava prison.

9. On 17 October 1995 the applicant was apprehended by the police as he was suspected of having murdered a taxi driver. Criminal proceedings were brought and the applicant was detained on remand in that context.

10. The main hearing before the Košice Regional Court was held on 24 February 1997. In his final speech the applicant requested, *inter alia*, that he should be released from detention. On the same day the Košice Regional Court convicted the applicant of murder and of the unauthorised carrying of a weapon and sentenced him to twelve and a half years' imprisonment. Neither the judgment nor the minutes mentioned the applicant's request for release. In terms of domestic law the applicant continued being detained on remand until the final effect of the judgment leading to his conviction.

11. On 25 April and on 14 June 1997 the applicant appealed against the Regional Court's judgment.

12. In a letter dated 12 May 1997 the applicant informed the presiding judge of the Košice Regional Court that he maintained his request for release from detention on remand of 24 February 1997.

13. On 2 July 1997 the Supreme Court dismissed the appeal. The judgment convicting the applicant became final on the same day.

14. On 29 October 1997 and on 25 March 1998 respectively the president of the Košice Regional Court and the Ministry of Justice admitted, in reply to the applicant's complaint, that no decision had been taken on his application for release lodged at the hearing before the Regional Court on 24 February 1997.

### II. RELEVANT DOMESTIC LAW

#### **Code of Criminal Procedure**

15. Article 72(2) provides that an accused person has the right to file an application for release from detention on remand at any time. Such an application has to be decided upon without delay. Where such an application was dismissed, the accused can renew it fourteen days after the relevant decision has become final unless the application is based on different reasons.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

16. The applicant complained that the Slovakian authorities had failed to decide on his application for release of 24 February 1997. He relied on Article 5 § 4 of the Convention which provides:

“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.”

17. The Government maintained that the applicant had made his request for release on 24 February 1997, that is on the same day when the first instance court convicted him of an offence and sentenced him to a prison term. The Supreme Court later dismissed the applicant’s appeal against the judgment. In the Government’s view, as from 24 February 1997, the applicant’s detention was to be regarded as falling under Article 5 § 1 (a) of the Convention, that is “the lawful detention ... after conviction by a competent court”, despite the fact that at that time he continued being detained on remand in terms of domestic law. They considered that the guarantees of Article 5 § 4 did not, in general, extend to persons who were lawfully deprived of liberty after conviction by a competent court. The Government concluded that Article 5 § 4 of the Convention was not applicable to the applicant’s case following the delivery of the Košice Regional Court’s judgment of 24 February 1997.

18. The applicant contended that he had filed his application for release prior to his conviction by the first instance court. In any event, after his conviction at first instance he continued being detained on remand. Until the final effect of his conviction the applicant was entitled, under Article 72(2) of the Code of Criminal Procedure, to file an application for release at any time and to have such an application decided upon without delay. The applicant concluded that Article 5 § 4 was applicable in his case and that the failure to decide on his request for release resulted in a violation of that provision.

19. The Court recalls that, while the *habeas corpus* guarantees laid down in paragraph 4 of Article 5 extend to all cases of deprivation of liberty provided for in the first paragraph of Article 5, the content of the obligation imposed on the Contracting States by Article 5 § 4 will not necessarily be the same in all circumstances and as regards every category of deprivation of liberty (see *X. v. the United Kingdom*, judgment of 5 November 1981, Series A no. 46, p. 22, § 52). In particular, where a national court, after convicting a person of a criminal offence, imposes a fixed sentence of imprisonment for the purposes of punishment, the supervision required by

Article 5 § 4 is incorporated in that court decision (see *Waite v. the United Kingdom*, no. 53236/99, § 56, 10 December 2002).

20. In the present case the Košice Regional Court convicted the applicant of two offences and sentenced him to a fixed term of imprisonment. However, the Regional Court did not, and this was not contested between the parties, rule on the request for release which the applicant had made prior to the delivery of the judgment. In the absence of any decision on that request the applicant continued to be held in detention on remand, technically, by virtue of a decision which had been taken on a different occasion prior to the delivery of the Regional Court's judgment.

21. In these circumstances, it cannot be held that the control required by Article 5 § 4 was incorporated in the Košice Regional Court's judgment from the moment of its delivery on 24 February 1997. Such control took effect only on 2 July 1997 when the Supreme Court dismissed the applicant's appeal and the Regional Court's judgment thus became final. Moreover, the president of the Košice Regional Court and the Ministry of Justice admitted that no decision had been taken on the applicant's request for release of 24 February 1997.

22. As the delay of more than four months between the delivery of the judgment of 24 February 1997 and its final effect as a result of the Supreme Court's decision of 2 July 1997 cannot be regarded as compatible with the requirement of speediness laid down in Article 5 § 4 of the Convention, the Court cannot but conclude that there has been a violation of that provision.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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.”

24. The applicant first argued that his conviction had been arbitrary and suggested that a reconstruction of the offence should be arranged for and further evidence taken so that he could prove his innocence.

25. The Court notes that it has no power to take the action in accordance with the applicant's request which, in any event, has no bearing on the scope of the case as determined by the admissibility decision of 13 May 2003.

26. The applicant also sought compensation for damage and the reimbursement of costs and expenses.

### **A. Damage**

27. The applicant claimed 1,000,000 euros (EUR) as compensation for non-pecuniary damage. He argued that, as a result of the criminal proceedings leading to his conviction and the violation of his rights in the context of those proceedings, his honour and reputation were considerably damaged.

28. The Government considered that there was no casual link between the damages claimed and the alleged violation of Article 5 § 4 of the Convention.

29. The Court notes that it has found a procedural breach of Article 5 § 4 above and that there has been no finding of substantive unlawfulness. In regard of the particular circumstances of the case, the Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

### **B. Costs and expenses**

30. The applicant who received EUR 355 in legal aid from the Council of Europe in connection with the presentation of his case sought, in addition, EUR 228. That sum corresponded to additional fees and expenses of his lawyer.

31. The Government maintained that the sum claimed was unsubstantiated as the applicant had failed to submit any document in its support.

32. Making its assessment on an equitable basis, the Court awards the applicant EUR 200 in addition to the sum already granted in legal aid by the Council of Europe.

### **C. Default interest**

33. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## **FOR THESE REASONS, THE COURT**

1. *Holds* by 6 votes to 1 that there has been a violation of Article 5 § 4 of the Convention;

2. *Holds* unanimously that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
3. *Holds* by 6 votes to 1
  - (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, EUR 200 (two hundred euros) in respect of costs and expenses in addition to the EUR 355 (three hundred and fifty-five euros) received by way of legal aid from the Council of Europe, the above amount to be converted into Slovakian korunas at the rate applicable at the date of settlement, plus any tax that may be chargeable;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 January 2004 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Borrego Borrego is annexed to this judgment.

N.B.  
M.O'B.

## DISSENTING OPINION OF JUDGE BORREGO BORREGO

(Translation)

The applicant had been detained on remand for sixteen months on suspicion of murder. At the hearing in the trial court, exercising his right to address the court last, he concluded his submissions by requesting, *inter alia*, to be released. On the same day the Košice Regional Court gave judgment, sentencing the applicant to twelve and a half years' imprisonment.

The majority of the Chamber considered that "the Košice Regional Court did not, and this was not contested between the parties, rule on the request for release which the applicant had made prior to the delivery of the judgment", and that "[i]n the absence of any decision on that request, the applicant continued to be held in detention on remand, technically, by virtue of a decision which had been taken on a different occasion prior to the delivery of the Regional Court's judgment". The majority concluded "in these circumstances" (see paragraphs 21 and 22 of the judgment) that there had been a violation of Article 5 § 4 of the Convention.

I regret that I am unable to agree with the reasoning of the majority of the Chamber.

In my opinion, the judgment in which the applicant was sentenced to twelve and a half years' imprisonment, delivered on the same day as the hearing, was an appropriate response to the applicant's request for release, which he made, among others, at the end of his submissions in accordance with his right to address the court last.

In contrast to substantive human rights such as the right to liberty, procedure and related technical matters have the character of a tool. To hold in the instant case that the Regional Court's judgment was not a technical response to the applicant's request is, in my opinion, to overlook the fact that a tool comes into being for a particular purpose and cannot become the purpose itself. Detaching the procedure and related technical matters from legal reality is contrary to the nature of a procedural tool and inevitably complicates the courts' everyday tasks for no good reason.

That is why I consider that there was no violation of Article 5 § 4 of the Convention in the instant case.