CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF TÁM v. SLOVAKIA

(Application no. 50213/99)

JUDGMENT

STRASBOURG

22 June 2004

FINAL

10/11/2004

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 Tám 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 1 June 2004,

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

PROCEDURE

1. The case originated in an application (no. 50213/99) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovakian national, Mr Karol Tám ("the applicant"), on 17 May 1999.

2. The applicant, who had been granted legal aid, was represented by Mr M. Benedik, a lawyer practising in Bratislava. 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 his deprivation of liberty had been unlawful and that the courts had failed to determine this issue.

4. The application was allocated to the former 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 1 July 2003, the Court declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1943 and lives in Bratislava.

9. On 11 August 1993 the applicant consulted a doctor to whom he complained of health problems due to the fact that his neighbour had tried to poison him. The doctor sent the applicant to the hospital in Ružinov in an ambulance. The accompanying document established by the doctor indicated that the applicant suffered from paranoid schizophrenia. In it the doctor requested that the applicant be treated as an in-patient. According to the applicant, he stayed in the central reception unit of the hospital in Ružinov for about ten minutes and during this time two injections were administered to him. Subsequently the applicant was brought against his will to the mental hospital in Pezinok. The chief physician of that hospital ordered that the applicant be released on 26 August 1993.

10. On 19 August 1993 the Bratislava-vidiek District Court gave a decision in which it found that the applicant was held in a mental hospital lawfully. The reasons for this decision read as follows:

> "The psychiatric hospital in Pezinok admitted Karol Tám, as an ill person, without his consent. The court took evidence with a view to assessing whether the grounds for his admission were lawful and concluded that the person concerned has suffered from a mental illness requiring treatment in a mental hospital."

11. The District Court's decision of 19 August 1993 was served on the applicant on 20 September 1996. On 1 October 1996 the applicant appealed and claimed that he had been taken to the mental hospital unlawfully.

12. On 30 April 1998 the Bratislava Regional Court quashed the District Court's decision of 19 August 1993. The Regional Court found that the first instance court had failed to establish the relevant facts and had committed errors of both a legal and procedural nature. In particular, the District Court had not taken formal decisions to bring proceedings concerning the lawfulness of the applicant's examination in a mental hospital and to appoint a guardian for the applicant as required by Article 191b §§ 1 and 2 of the Code of Civil Procedure. Furthermore, the District Court had not heard the applicant and the doctor treating him with a view to establishing whether the applicant's deprivation of liberty had been justified. The case was sent back to the District Court for a new adjudication.

13. In a letter dated 21 January 1999 a judge of the Bratislava III District Court (which had taken over the cases pending before the former Bratislava-vidiek District Court) informed the applicant that the case would not be proceeded with as proceedings concerning the lawfulness of his placement in a mental hospital had never been formally brought.

14. On 26 February 1999 the Bratislava Regional Court instructed the District Court to deliver a decision on the case.

15. On 6 July 1999 the Bratislava III District Court discontinued the proceedings. The decision stated that the applicant had been released on 26 August 1993 and, therefore, the reasons for proceeding further with the case had fallen away. The applicant appealed on 9 August 1999. He claimed that his deprivation of liberty had been unlawful and that he had not been informed that a guardian had been appointed to represent him.

16. On 31 May 2000 the Bratislava Regional Court upheld the District Court's decision of 6 July 1999.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

17. At the relevant time the following constitutional provisions were in force.

18. Pursuant to Article 11, international instruments on human rights and fundamental freedoms ratified by the Slovak Republic and promulgated in accordance with the statutory requirements take precedence over national laws where such international instruments guarantee a broader scope of fundamental rights and freedoms.

19. Article 144(1) provides that judges are independent and bound only by law.

20. Under paragraph 2 of Article 144, judges are bound also by international instruments where the Constitution or law so provide.

B. The Code of Civil Procedure

21. The following relevant provisions of the Code of Civil Procedure were in force at the time when the applicant was deprived of liberty.

22. Article 191a (1) provided that medical institutions should inform a court, within twenty-four hours, that a person had been placed in their premises against his or her will.

23. Pursuant to Article 191b (1), the court in the district of which the medical institution was located should start proceedings, of its own initiative, with a view to establishing whether such a person's deprivation of liberty was justified.

24. Paragraph 2 of Article 191b provided that the court should appoint a guardian for the person concerned unless he or she had a representative.

25. Under paragraph 3 of Article 191b, the court should hear the person concerned as well as the doctor treating him or her with a view to establishing whether the placement in the medical institution was lawful.

26. Paragraph 4 of Article 191b required that the court decide, within seven days after a person was brought to a medical institution against his or her will, whether such a measure was lawful.

27. Pursuant to Article 191c (1), such a decision was to be served, *inter alia*, on the person concerned unless the doctor indicated that that person was not able to understand its contents.

C. The Civil Code

28. According to Article 11, any natural person has the right to protection of his or her personality, in particular of his or her life and health, civil and human dignity, privacy, name and personal characteristics.

29. Pursuant to Article 13 (1), any natural person has the right to request that an unjustified infringement of his or her personal rights should be stopped and the consequences of such infringement eliminated, and to obtain appropriate satisfaction.

30. Article 13 (2) provides that in cases when the satisfaction obtained under Article 13 (1) is insufficient, in particular because a person's dignity and position in society has been considerably diminished, the injured person is entitled to compensation for non-pecuniary damage. According to paragraph 3 of Article 13, when determining the amount of such compensation the courts should take into account the seriousness of the prejudice suffered by the person concerned and also the circumstances under which the violation of that person's rights occurred.

D. The State Liability Act of 1969

31. Section 1 (1) of Act No. 58/1969 on the liability of the State for damage caused by a State organ's decision or by its erroneous official action (*Zákon o zodpovednosti za škodu spôsobenú rozhodnutím orgánu štátu alebo jeho nesprávnym úradným postupom* – "the State Liability Act") provides that the State is liable for damage caused by unlawful decisions delivered by a public authority in the context of, *inter alia*, civil proceedings.

32. Section 18 (1) renders the State liable for damage caused in the context of carrying out functions vested in public authorities which results from erroneous official actions of persons entrusted with the exercise of these functions. A claim for compensation can be granted when the plaintiff shows that he or she suffered damage as a result of an erroneous action of a public authority, quantifies its amount, and shows that there is a causal link between the damage and the erroneous action in question.

E. Regulation No. 32/1965

33. Regulation No. 32/1965 governs compensation for damage caused to a person's health. Section 2 provides for compensation for pain resulting from damage to a person's health, subsequent medical treatment and the elimination of the effects of damage to health. The amount of the compensation is to be determined in accordance with the principles and rates attached to the regulation.

34. Under paragraph 2 of Section 2, compensation for pain is not payable in cases of simple psychic reactions affecting a person's health which are of a passing character or for short-term changes in a person's health which do not require medical treatment or which cannot be established in an objective manner.

F. Act No. 514/2003

35. Act no. 514/2003 on Liability for Damage Caused in the Context of Exercise of Public Authority (*Zákon o zodpovednosti za škodu spôsobenú pri výkone verejnej moci a zmene niektorých zákonov*) was adopted on 28 October 2003. It will become operative on 1 July 2004 and will replace, as from that date, the State Liability Act of 1969.

36. The explanatory report to Act No. 514/2003 provides that the purpose of the Act is to render the mechanism of compensation for damage caused by public authorities more effective and thus to reduce the number of cases in which persons are obliged to seek redress before the European Court of Human Rights.

37. Section 17 of the Act provides for compensation for pecuniary damage including lost profit and, where appropriate, also for compensation for damage of a non-pecuniary nature.

G. Domestic courts' practice

38. Under the domestic courts' practice, the State Liability Act of 1969 does not allow for compensation for non-pecuniary damage unless it is related to deterioration in a person's health (for further details see *Havala v. Slovakia* (dec.), no. 47804/99, 13 September 2001).

39. In proceedings no. 4C 109/97 before the Šaľa District Court the plaintiff claimed, from the Ministry of Justice, compensation for non-pecuniary damage on the ground that he had been acquitted following the re-opening of proceedings leading to his conviction of an offence. In its judgment of 29 October 1998 the District Court established, on the basis of the plaintiff's submissions, that his claim was based on Article 11 et seq. of the Civil Code which provides for protection of a person's good name and reputation as well as of other personal rights. The District Court dismissed

the action on the ground that the plaintiff should have claimed compensation under the State Liability Act of 1969.

40. In decision no. 8 Co 109/99 of 23 March 2000 the Nitra Regional Court quashed the above Šaľa District Court's judgment. The appellate court found that the subject-matter of the proceedings and the legal basis for the plaintiff's claim remained unclear. The decision stated, *inter alia*, that the first instance court had not explained why the plaintiff should have first sought redress under the State Liability Act. The first instance court was instructed to have the action completed by the plaintiff, to take any evidence which may be necessary and to deliver a new decision with reasons on the case. Reference was made also to Article 11 of the Constitution and to Article 3 of Protocol No. 7.

41. In decision no. 27 C 31/00-120 of 6 March 2002 the Bratislava III District Court partially granted an action where a judge claimed protection of his personal rights. The plaintiff argued, *inter alia*, that the Minister of Justice had obliged him to submit a declaration concerning his property without any justification and that he had been revoked from the post of President of a district court for his failure to submit such declaration. On 24 June 2003 the appellate court confirmed the conclusion that the plaintiff's right to protection of his personal rights had been violated.

42. In judgment no. 7C 818/96-81 of 11 May 2000 the Žiar nad Hronom District Court granted compensation of 500,000 Slovakian korunas to a person whose son had been killed. The court noted that the defendant had been convicted of a murder by a criminal court and that his action grossly interfered with the personal rights of the plaintiff.

43. On 30 September 2003 the Banská Bystrica District Court delivered judgment no. 14C 112/02-229. The plaintiffs, a married couple, alleged to have suffered damage of both pecuniary and non-pecuniary nature in the context of criminal proceedings against them in which they had been discharged. One of the plaintiffs, who had been dismissed from the police and detained on remand in the context of the criminal proceedings, also claimed compensation for lost income.

In the above judgment the District Court ordered the Ministry of Justice to compensate for the lost income of the plaintiff concerned and also to compensate for the expenses which the plaintiffs had incurred in the context of the criminal proceedings. The decision to grant compensation for pecuniary damage was based on the relevant provisions of the State Liability Act of 1969.

The District Court further granted the plaintiffs, with reference to Article 11 et seq. of the Civil Code, 7 and 5 million Slovak korunas respectively in compensation for damage of non-pecuniary nature. The relevant part of its judgment reads as follows:

"The right to protection of one's personal rights is an individual right of any natural person. When granting protection to that right it is irrelevant whether an unjustified interference was the result of a fault and whether or not it was caused deliberately. It is not even required that an unjustified interference should produce any particular consequences. It suffices that an unjustified interference was capable of affecting or violating one's personal rights. The fact that plaintiff A cannot exercise the profession and hold the job which he held prior to his accusation and that the clientele of plaintiff B [who is an advocate] shrank considerably during the criminal proceedings as well as the fact that the plaintiffs were forced to move to another apartment because of deteriorated relations with their neighbours clearly show that there has been such an interference [with their personal rights]. That interference is causally linked to prosecution of the plaintiffs and to the criminal proceedings held against them. There is no doubt that such interference is objectively capable of causing damage. As regards both plaintiffs, it affected their professional life, their position in the society, family life and their relations with neighbours... The interference with the plaintiffs' [personal rights] is directly linked to the criminal proceedings [against them]...

It follows from the above that there has been an interference with the plaintiffs' personal rights which, in substance, still persists and that it is related to the criminal proceedings against the plaintiffs. The criminal proceedings were carried out by the Slovak Republic through its competent authorities. The defendant is therefore obliged to compensate for damage of a non-pecuniary nature.

... compensation for damage of a non-pecuniary nature has the character of a satisfaction. The purpose of compensation granted in the form of a sum of money is to "purify" the affected person in the eyes of other persons in all spheres of life where harm was caused... The amount of compensation granted should therefore be adequate to the interference and its circumstances... It is beyond any doubt that the plaintiffs were publicly known in the district of Považská Bystrica (in view of their professional positions) and that their reputation was affected in all spheres of life. The case was taken up by the media whereby their esteem in professional life was diminished over the whole country. The amount of compensation must therefore not only be adequate to provide satisfaction to the plaintiffs, but its amount should also ensure that the plaintiffs regain their esteem and dignity in the eyes of the public."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

44. The Government maintained, as they did at the admissibility stage, that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. They argued that it was open to the applicant to obtain redress as regards the alleged violation of his Convention rights by means of an action for compensation under the State Liability Act of 1969. In particular, the applicant could have requested that Article 5 § 5 of the Convention be applied by the domestic courts with reference to

Articles 11 and 144(2) of the Constitution and claimed compensation also for non-pecuniary damage.

45. The Government further argued that the applicant could have also sought redress by means of an action for protection of his personal rights under Article 11 et seq. of the Civil Code. In support of their argument they invoked the domestic courts' practice (see paragraphs 41-43 above).

46. The applicant disagreed and maintained that, at the time of introduction of his application, there existed no practice of domestic courts in similar cases showing that he had reasonable prospects of obtaining effective redress as claimed by the Government.

47. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in theory as well as in practice, failing which they will lack the requisite accessibility and effectiveness (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52; *Akdivar and Others v. Turkey,* judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67; *Şarli v. Turkey*, no. 24490/94, § 59, 22 May 2001).

48. The Court recalls that it has previously addressed the question of the effectiveness of the remedy under the State Liability Act of 1969 (see *Kučera v. Slovakia* (dec.), no. 48666/99, 4 November 2003 and the admissibility decision on the present case of 1 July 2003). It did not find it established that the possibility of obtaining appropriate redress in similar cases by means of that remedy was sufficiently certain in practice and offered reasonable prospects of success as required by the relevant case-law. It noted, in particular, that compensation for damage of a non-pecuniary nature was excluded with the exception of cases where damage to a person's health was caused. It finds no reasons for reaching a different conclusion in the present instance.

49. As to the Government's argument that the applicant could have requested, with reference to Articles 11 and 144(2) of the Constitution, that the domestic courts apply Article 5 § 5 of the Convention and compensate him also for damage of a non-pecuniary nature, the Court notes that the subject-matter of proceedings under the State Liability Act of 1969 is compensation for damage caused by an erroneous official action or, as the case may be, an unlawful decision which is quashed by the competent authority. There is no indication that in such proceedings the domestic courts are likely to entertain complaints about breaches of substantive provisions of the Convention. In any event, in the light of the documents before it the Court is not satisfied that the possibility of obtaining redress in respect of the alleged breaches of Article 5 §§ 1 and 4 of the Convention as contended by the Government was sufficiently certain in practice and

offered reasonable prospects of success as required by the relevant case-law (see also, *mutatis mutandis*, *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports* 1997-VII, p. 2625, §§ 53 and 60).

50. In addition, the Court notes that the State Liability Act of 1969 will be replaced, as from 1 July 2004, by Act No. 514/2003. The latter, unlike the State Liability Act of 1969, explicitly provides for compensation for non-pecuniary damage.

51. In view of the above considerations the Court finds that the applicant was not required to use the remedy under the State Liability Act of 1969 in order to comply with the requirements of Article 35 § 1 of the Convention.

52. As regards the possibility of obtaining compensation for damage of a non-pecuniary nature in the context of proceedings for protection of one's personal rights under Article 11 et seq. of the Civil Code, such remedy is limited to cases where there has been an unjustified interference with one's personal rights within the meaning of Article 11 of the Civil Code, and where the satisfaction obtained under Article 13(1) is insufficient, in particular because a person's dignity and position in society has been considerably diminished. Thus the purpose of the remedy under Article 11 of the Civil Code is not to provide redress for an alleged violation of Article 5 §§ 1 or 4 as such, but to examine, as the case might be, whether any misconduct was objectively capable of interfering with one's personal rights. An award of compensation for damage of a non-pecuniary nature in proceedings under Article 11 et seq. of the Civil Code is made subject to conditions and invokes considerations which are distinct from the question whether or not a person's rights under Article 5 of the Convention have been violated. In particular, it has not been shown that a person's suffering and distress occasioned by a violation of Article 5 are taken into consideration, these being criteria established by the Court's case-law when it rules under Rule 41 of the Convention on the question of just satisfaction in respect of non-pecuniary damage.

53. Furthermore, the information available does not show that at the relevant time it was the practice of domestic courts to grant remedy under Article 11 et seq. of the Civil Code in situations similar to that of the applicant. The Court notes that the judgment of the Banská Bystrica District Court of 30 September 2003 (see paragraph 43 above) was delivered several years after the application had been filed. In that judgment, which apparently has not yet become final, the first instance court granted the plaintiffs compensation for damage of a non-pecuniary nature occasioned by criminal proceedings in which they were finally discharged. The reasoning of the relevant part of that judgment does not specifically refer to the detention of one of the plaintiffs nor does it examine whether or not that detention was unlawful or otherwise contrary to Article 5 of the Convention. The Court is therefore similarly not satisfied that this remedy

was sufficiently certain in practice and offered reasonable prospect of success in respect of the complaints which the applicant makes.

54. It follows that the Government's preliminary objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

55. The applicant complained that his deprivation of liberty had been unlawful. He relied on Article 5 § 1 of the Convention the relevant part of which reads as follows:

> "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: ...
>
> (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; ..."

56. The Government admitted that the Bratislava–vidiek District Court had not acted in accordance with the relevant provisions of the Code of Civil Procedure in that it had not decided formally to bring proceedings and to appoint a guardian for the applicant and that it had not heard the applicant or the doctor who had treated him. The Government therefore accepted that Article 5 § 1 of the Convention had been violated.

57. The Court recalls that in order to comply with Article 5 § 1 of the Convention, the detention in issue must take place "in accordance with a procedure prescribed by law" and be "lawful". The Convention here refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law (see, amongst many authorities, *Winterwerp v. the Netherlands,* judgment of 24 October 1979, Series A no. 33, pp. 17-18, 19-20, §§ 39 and 45; *Bizzotto v. Greece,* judgment of 15 November 1996, *Reports* 1996-V, p. 1738, § 31, and *Aerts v. Belgium*, judgment of 30 July 1998, *Reports* 1998-V, p. 1961, § 46).

58. In the present case the Bratislava Regional Court, in its decision of 30 April 1998, found that the former Bratislava-vidiek District Court had not taken formal decisions to bring proceedings concerning the lawfulness of the applicant's examination in a mental hospital and to appoint a guardian to him as required by Article 191b §§ 1 and 2 of the Code of Civil Procedure, and that it had not heard the applicant and the doctor treating him with a view to establishing whether the applicant's deprivation of liberty had been justified, as required by paragraph 3 of Article 191b of the Code of Civil Procedure. These shortcomings have also been acknowledged by the Government.

59. In addition, paragraph 4 of Article 191b, as in force at the relevant time, required that the court decide within seven days after the applicant had been brought to a medical institution whether such a measure was lawful.

The applicant was brought to a mental hospital on 11 August 1993 and the Bratislava-vidiek District Court decided on this issue on 19 August 1993, that is after the expiry of the above time-limit. In these circumstances, the applicant's deprivation of liberty cannot be said to have been "in accordance with a procedure prescribed by law" and "lawful".

60. There has accordingly been a violation of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

61. The applicant also complained that he was not able to have the lawfulness of his detention reviewed by a court. 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."

62. The Government contended, with reference to short duration of the applicant's deprivation of liberty, that there had been no violation of Article 5 § 4 of the Convention.

63. The applicant argued that, as a result of the belated service on him of the Bratislava-vidiek District Court's decision of 19 August 1993 he had been unable to challenge effectively the lawfulness of his deprivation of liberty and to seek his release. In any event, the overall length of the proceedings concerning the lawfulness of his detention was excessive and incompatible with the reasonable time requirement laid down in Article 6 § 1 of the Convention.

64. The Court first notes that the scope of the case has been determined by its decision on the admissibility of the case. It therefore cannot entertain the complaint whether or not the reasonable time requirement of Article 6 § 1 has been complied with.

65. Under Article 5 § 4, an arrested or detained person is entitled to bring proceedings for the review by a court of the procedural and substantive conditions which are essential for the "lawfulness" of his or her deprivation of liberty. The intervention of such a body will satisfy Article 5 § 4, only on condition that the procedure followed has a judicial character and gives to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question. In order to determine whether a proceeding provides adequate guarantees, regard must be had to the particular nature of the circumstances in which such proceeding takes place (see, among other authorities, *Winterwerp*, cited above, § 57; *Trzaska v. Poland*, no. 25792/94, § 74; *Jėčius v. Lithuania*, no. 34578/97, § 100, ECHR 2000-IX and *D.N. v. Switzerland* [GC], no. 27154/95, § 41, ECHR

2001-III). Article 5 § 4, in guaranteeing to persons arrested or detained a right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (*Musial v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II).

66. Thus Article 5 § 4 requires in the first place an independent legal mechanism by which the detained person can have the lawfulness of the detention reviewed by a judge. The legal mechanism contained in Article 191b of the Code of Civil Procedure under which a court shall review such an issue of its own initiative upon a notification by a mental hospital in which a persons is detained constitutes an important safeguard against arbitrary decision.

67. In the present case the Bratislava-vidiek District Court made several procedural mistakes when examining the lawfulness of the applicant's detention. In particular, it failed to give a decision formally appointing a guardian for the applicant as required by Article 191b § 2 of the Code of Civil Procedure, and it did not hear the applicant and the doctor treating him with a view to establishing whether the applicant's deprivation of liberty had been justified. The proceedings leading to the decision of the Bratislava-vidiek District Court of 19 August 1993 did not, therefore, provide guarantees appropriate to the form of the deprivation of liberty in the applicant's case.

68. The Court has noted that it was open to the applicant to seek a review of the decision of 19 August 1993 by a higher court. However, that decision was served on the applicant on 20 September 1996, that is more than three years after its delivery, and in the subsequent proceedings following the applicant's appeal the courts refused to examine the lawfulness of his detention on the ground that the applicant had been released on 26 August 1993 and that the reasons for further proceeding with the case had therefore fallen away.

69. In these circumstances, and irrespective of the duration of the applicant's deprivation of liberty, the review in the context of the proceedings applied cannot be said to have provided adequate guarantees to the applicant. There has therefore been a violation of Article 5 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 500,000 Slovakian korunas in compensation for non-pecuniary damage. He explained that he had suffered distress in that he had been unlawfully placed in a mental hospital where he had to witness several shocking scenes and that he had been held in a cell with barred windows together with a mentally sick person.

72. The Government contended that the sum claimed by the applicant was excessive.

73. The Court finds that the applicant has certainly suffered non-pecuniary damage, which is not sufficiently compensated by the finding of a violation. Making its own assessment on an equitable basis, the Court awards the applicant 2,500 euros in compensation for non-pecuniary damage.

B. Default interest

74. 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 UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

4. *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, EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, 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;

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

Done in English, and notified in writing on 22 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President