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

FOURTH SECTION

CASE OF PAVLÍK v. SLOVAKIA

(Application no. 74827/01)

JUDGMENT

STRASBOURG

30 January 2007

FINAL

30/04/2007

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 Pavlík v. Slovakia,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA,
Mrs P. HIRVELÄ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 9 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 74827/01) 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 Dušan Pavlík ("the applicant"), on 26 October 2000.

2. The applicant, who had been granted legal aid, was represented by Ms D. Šamudovská, a lawyer practising in Banská Bystrica. The Slovakian Government ("the Government") were represented by Mrs A. Poláčková, their Agent.

3. The applicant alleged that his detention on remand had been unlawful and arbitrary (Article 5 § 1 (c) of the Convention), that the criminal proceedings against him had been unfair and their length excessive (Article 6 § 1 of the Convention) and that he had been dismissed from service in the police in violation of his right to be presumed innocent (Article 6 § 2 of the Convention).

4. On 4 July 2005 the Court decided to communicate the complaints concerning the detention and the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Zvolen. He was a member of the Police Corps (*Policajný zbor*) of the Slovak Republic.

1. Factual background

6. On 10 March 1999 the applicant was charged (*obvinený*) with carrying out business activities without authorisation (Article 118 § 1 and 2 (a) of the Criminal Code (CC)), extortion (Article 235 § 1 of CC) and rape (Article 241 § 1 of CC). The charges were based on the suspicion that the applicant who was disqualified from carrying out business activities by law on account of his status as a police officer had arranged for a third person, Ms P., to run a restaurant on his behalf. He was further suspected of having threatened P. with violence in order to make her give him an amount of money and of having forced at gunpoint a waitress, Ms. M., to have intercourse with him. The blackmail charge was later extended as the applicant was also suspected of having made violent threats against M. in order to force her to be his girlfriend.

The applicant was detained, dismissed from the police and tried on the above charges. The details are set out below.

2. Dismissal from police and related constitutional complaint

7. On 12 April 1999 the Minister of the Interior issued an order (*personálny rozkaz*) dismissing the applicant from service in the police. The evidence available showed that the applicant had committed the acts of which he was charged. Such conduct grossly violated the service oath and, accordingly, was incompatible with service in the police. The applicant's administrative appeal (*rozklad*) was dismissed on 14 June 1999.

8. The applicant's subsequent numerous requests that the Ministry of the Interior review his dismissal in a special procedure outside the framework of ordinary appellate proceedings (*mimo odovlacieho konania*) and that the proceedings be reopened failed.

9. On 29 May 2002 the applicant challenged his dismissal by way of an administrative-law action in the Supreme Court (*Najvyšší súd*). It was declared inadmissible on 1 August 2002 on the ground that it clearly had been filed outside the statutory two-month time-limit, counted from the final administrative decision in the case which was the decision of 14 June 1999.

10. On 3 September 2002 the applicant challenged the dismissal order of 12 April 1999 in the Constitutional Court (*Ústavný súd*) under Article 127 of the Constitution. It was declared inadmissible on 24 September 2002 as

being belated. Moreover, and in any event, the review of the dismissal order fell within the jurisdiction of the Supreme Court. The Constitutional Court's review was merely subsidiary and did not apply to the dismissal order directly. As for the decision of the Supreme Court, it could not be reviewed either because the applicant's constitutional complaint was not directed against it.

3. *Deprivation of liberty*

(a) Remand in detention

11. On 11 March 1999, at 2.40 p.m., the police detained the applicant on the above charges. He was assigned an *ex officio* lawyer.

12. On 12 March 1999 the applicant was brought before the judge of the Zvolen District Court (*Okresný súd*).

The parties disagree as to the exact time when this took place. The Government rely on the minutes of the applicant's questioning which bear his signature and indicate that he had appeared before the judge at 2 p.m. The applicant now claims that he was presented to the judge at 3.50 p.m., which is after the 24-hour statutory time-limit.

The applicant pleaded not guilty. There is no indication that he complained about infringement of the above time-limit. The questioning was concluded at 4.47 p.m. with the District Court's decision to remand the applicant in detention (see the subsequent paragraph).

13. On 12 March 1999 the District Court remanded the applicant under Article 67 § 1 (b) and (c) of the Code of Criminal Procedure (CCP) which allowed for detention of persons charged with criminal offences where there were reasonable grounds for believing that if released they would interfere with the course of justice or continue to engage in criminal activities. The court found it established that the applicant's liberty had been restricted on the previous day at 2 p.m. There was a strong suspicion against him which was based on testimonies of P., M. and 7 witnesses. The applicant was suspected of having threatened and used violence against P. and M. over an extended period. Therefore it could be presumed that he would continue doing so with a view to hampering the proceedings. This presumption rendered his detention justified on the legal grounds referred to above.

14. The applicant's appeal (*sťažnosť*) against the remand order was dismissed by the Banská Bystrica Regional Court (*Krajský súd*) on 13 April 1999.

(b) Detention prior to 26 April 2000 (i.e. more than six months before the introduction of the application)

15. In the period prior to 26 April 2000 the applicant filed numerous petitions for release. They were dismissed by the prosecution service, the District Court and the Regional Court on various grounds including that

some of the petitions had been lodged earlier than 14 days from the final determination of the previous petition and, as they contained no new relevant information, they had to be dismissed under Article 72 § 2 of the CCP.

In all cases the authorities found that the suspicion against the applicant and the grounds for his detention, as established at the time of his remand, still persisted. In decisions of 19 October 1999 and 28 February 2000 the District Court moreover observed that covert messages from the applicant to his wife, P. and her family members had been intercepted, which showed that he had actually attempted to interfere with the course of justice and that he was likely to act violently. The existence of such messages was established by the prison administration and the prosecution service, which confirmed it in their respective letters of 15 and 26 July 1999.

16. On 3 September 1999 the District Court authorised extension of the applicant's detention under Article 71 § 1 of the CCP until 11 December 1999.

(c) Detention after 26 April 2000

17. On 31 March 2000, the District Court found the applicant guilty and sentenced him (see below). At the same time it decided that for the time being the applicant should be released from detention. The release order was however not yet enforceable as it had been challenged by the prosecution.

18. On 24 May 2000 the Regional Court allowed the prosecutor's appeal against the release order and ruled that the applicant should remain in detention. With reference to the intercepted letters the Regional Court found that the applicant had attempted to influence witnesses and concluded that, if released, it was likely that he would exert pressure on the victims with a view to having their statements modified.

19. On 28 July 2000 the District Court dismissed the applicant's petition for release. The applicant appealed to the Regional Court but on 7 August 2000 withdrew the appeal. The Regional Court acknowledged the withdrawal on 23 August 2000.

20. On 16 August 2000 the applicant petitioned for release again. He contested the charges and argued that there was no risk that he would continue to offend as envisaged by Article 67 § 1 (c) of the CCP.

21. In a letter of 7 September 2000 the District Court informed the applicant that under Article 72 § 2 of the CCP his petition of 16 August 2000 could not be dealt with because it had been lodged prior to the final determination of his previous petition and contained no new relevant information.

22. On 28 November 2000 the applicant lodged a fresh petition for release and the District Court ordered his release on 7 December 2000.

23. On 17 January 2001 the Regional Court upheld the release order of 7 December 2000 on the prosecutor's appeal. It referred to the evidence

taken in the course of the proceedings, the length of the applicant's detention and the fact that his criminal record was clear. It concluded that the reasons for his detention had fallen away.

The applicant was released on the same day.

24. In the course of the proceedings the applicant unsuccessfully attempted to have criminal proceedings brought against the officials dealing with his case. He complained, *inter alia*, that no decision had been given to authorise the extension of his detention after 11 December 1999 (see paragraph 16 above).

4. Criminal trial

25. On 12 March 1999 the District Court issued a search warrant for two flats and a cottage used by the applicant. The searches took place on 12 and 16 March 1999.

26. On 17 March 1999 the Zvolen District Prosecutor dismissed the applicant's appeal against his charges. His appeal against the extended charge for extortion was dismissed later.

27. On 26 July 1999 the District Court assigned the applicant a new *ex officio* lawyer at the applicant's request.

28. On 10 December 1999 the applicant was indicted to stand trial in the District Court on the above charges.

29. On 20 December 1999 the case was assigned to a different judge of the District Court, V.Š., because the previous judge knew the applicant and felt personally biased.

30. The District Court held hearings on 10, 13 and 31 March 2000 at which it heard the applicant, the victims and several witnesses.

31. Following the hearing of 31 March 2000, on the same day, the District Court found the applicant guilty as charged and sentenced him to two years' imprisonment. Both the applicant and the prosecution appealed.

32. On 21 June 2000 the Regional Court quashed the District Court's judgment and remitted the case to the latter for the taking of further evidence and re-examination. The Regional Court held that it was necessary to re-hear the case as in the course of the proceedings there had been a change in the District Court's chamber dealing with it.

33. On 26 July 2000 the District Court assigned the applicant a new *ex officio* lawyer at the request of the previous lawyer who felt that the applicant had no confidence in him.

34. On 20 September 2000 the Regional Court exempted Judge V.Š. from dealing with the applicant's case at her own request because she felt partial because of the applicant's persistent use of invectives against her.

35. The case was assigned to a new judge, M.Š., who also requested his exclusion. He submitted that he knew the applicant and that he felt concerned by his invectives directed against the previous judge.

36. On 8 November 2000 the Regional Court ruled that M.Š. would not be excluded from dealing with the applicant's case.

37. On 20 March 2001 M.Š. again requested his exclusion from the case as he felt biased after the applicant had filed an unsuccessful criminal complaint against him.

38. On 12 April 2001 the Regional Court found that M.Š. was not disqualified from dealing with the case as, being a professional judge, he had to be prepared to accept a certain level of criticism without losing his impartiality.

39. On 1 October 2001 the District Court ordered an expert examination of the applicant's mental health. On 7 November 2001 the Regional Court quashed this order on the applicant's appeal for reasons of formality.

40. Between 7 February and 29 November 2002 the District Court held 5 hearings and made three attempts at establishing the whereabouts of P. who was believed to be staying in Italy.

41. On 10 January 2003 the District Court held another hearing following which, on the same day, it found the applicant guilty as charged and sentenced him to four and a half years' imprisonment and a fine. In reaching that conclusion the District Court took into account the testimonies of numerous witnesses, reports from several experts and complex documentary evidence. The applicant appealed.

42. On 4 June 2003 the Regional Court quashed the judgment of 10 January 2003 and found the applicant guilty of having run a business without authorisation and of extortion. It acquitted him of the remaining charges and sentenced him to 22-months' imprisonment and a fine.

43. The Prosecutor General challenged the judgment of 4 June 2003 by means of a complaint in the interest of law (*sťažnosť pre porušenie zákona*) filed with the Supreme Court.

44. On 10 February 2004 the Supreme Court quashed the judgment of 4 June 2003 and ordered the Regional Court to re-examine the applicant's appeal against the judgment of 10 January 2003.

45. The Regional Court called hearings for 16 June and 18 August 2004. They had to be adjourned as the applicant did not appear.

The Regional Court requested that the applicant be brought by the police and eventually issued a warrant for his arrest.

The applicant then appeared before the Regional Court of his own accord and the arrest warrant was quashed.

46. On 6 October 2004 the Regional Court held a hearing following which, on the same day, it upheld the District Court's judgment of 10 January 2003 as regards the conviction and increased the penalty which had been imposed in the judgment of 4 June 2003 to two years' imprisonment.

47. The Minister of Justice challenged the judgment of 6 October 2004 by means of a complaint in the interest of law. He contested mainly the

imposed sentence considering that the Regional Court had failed to take due account of the seriousness of the offences and the context in which they had been committed.

48. On 1 June 2005 the Supreme Court quashed the judgment of 6 October 2004 finding that the sentence imposed was too lenient. The Regional Court was accordingly instructed to re-examine the applicant's appeal against the judgment of 10 January 2003.

49. On 20 September 2005 the Regional Court held a hearing following which, on the same day, it increased the sentence imposed in the judgment of 10 January 2003 to 3 years' imprisonment. No further appeal was available. The applicant then unsuccessfully sought to challenge his conviction in the Constitutional Court.

5. Constitutional complaint

50. On 26 February 2003 the applicant lodged a complaint under Article 127 of the Constitution asserting violations of his constitutional rights in the criminal proceedings against him. He complained *inter alia* about the length of the proceedings, directing this part of his complaint exclusively against the District Court.

51. On 14 April 2004 the Constitutional Court declared the complaint about the length of the criminal proceedings before the District Court admissible and the remaining complaints inadmissible.

52. On 30 September 2004 the Constitutional Court found that the District Court had violated the applicant's right to a hearing "without unjustified delay" (Article 48 § 2 of the Constitution).

The Constitutional Court found that the subject-matter of the proceedings was not particularly complex and that no undue delays could be attributed to the applicant. In contrast, the District Court had been inactive without any justification between 12 April and 1 October 2001.

The Constitutional Court concluded that the finding of a violation of the applicant's right was in itself sufficient just satisfaction for him. In view of all the circumstances including the fact that there had only been one relatively insignificant period of unjustified delay, the Constitutional Court considered that financial compensation for the applicant's non-pecuniary damage would not be appropriate. It however awarded him reimbursement of his legal costs.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution (Constitutional Law no. 460/1992 Coll., as applicable at the relevant time) and the Constitutional Court's practice

53. Article 11 provides that international instruments on human rights and freedoms ratified by the Slovak Republic and promulgated under statutory requirements have precedence over national laws, provided that they guarantee greater constitutional rights and freedoms.

54. Under the Constitutional Court's case-law (see, for example, the decision of 22 March 2000, file no. I. ÚS 9/00) ordinary courts are obliged in civil proceedings to interpret and apply the relevant laws in accordance with the Constitution and with international treaties. Accordingly, the ordinary courts have the primary responsibility for upholding rights and fundamental freedoms guaranteed by the Constitution or international treaties.

55. Pursuant to Article 17 § 2 no one shall be prosecuted or deprived of liberty except for reasons and in a manner provided for by law.

56. Article 48 § 2 provides, *inter alia*, that every person has the right to have his or her case tried without unjustified delay.

57. Under Article 50 § 2 any person against whom criminal proceedings are conducted is to be presumed innocent until proved guilty by a final judgment by a court of law.

B. Code of Criminal Procedure (Law no. 141/1961 Coll., as applicable at the relevant time)

58. Detention on remand is governed by the provisions of Articles 67 *et seq.* A person charged with a criminal offence (*obvinený*) can be detained *inter alia* when there are reasonable grounds for believing that he or she would influence the witnesses or the co-accused or otherwise hamper the investigation (Article 67 § 1 (b)) or continue criminal activity, complete an attempted offence or commit an offence which he or she prepared or threatened to commit (Article 67 § 1 (c)).

59. Article 71 § 1 provides *inter alia* that where detention in the pre-trial phase of proceedings exceeded six months and the release of the detainee would jeopardise the purpose of the proceedings, a single judge can extend the detention for a period of up to one year. A motion for such an extension shall be lodged by the public prosecution service. A further extension of detention in the pre-trial phase of the proceedings beyond the one-year limit can be authorised by a chamber of judges up to a maximum of two years.

60. Under Article 71 § 2 detention on remand in the pre-trial phase of the proceedings and in the proceedings before a court taken together cannot exceed two years. An extension by another year can be authorised by the Supreme Court.

61. Article 72 § 2 entitles the detainee to apply for release at any time. When the public prosecutor dismisses such an application in the pre-trial phase of the proceedings, he or she shall submit it immediately to the court. The court shall rule on such an application without delay. If the application is dismissed, the accused may renew it fourteen days after the decision has become final unless he or she invokes different reasons.

C. Civil Code (Law no. 40/1964 Coll.)

62. Under Article 11, natural persons have the right to protection of their personality rights (personal integrity), in particular their life and health, civil and human dignity, privacy, name and personal characteristics.

63. Under Article 13 § 1, natural persons have the right to request that unjustified infringements of their personality rights be discontinued and that the consequences of such infringements be eliminated. They also have the right to appropriate just satisfaction.

64. Article 13 § 2 provides that, in cases where the satisfaction obtained under Article 13 § 1 is insufficient, in particular because the injured party's dignity or social standing has been considerably diminished, the injured party is also entitled to financial compensation for non-pecuniary damage.

65. In an action of 26 June 2002 a married couple asserted a claim against the Ministry of Justice for financial compensation for non-pecuniary damage caused to them by detention on remand and criminal proceedings against them, which ended with their acquittal. The principal thrust of the claim was that their prosecution and the whole trial had been unlawful and arbitrary.

The action was examined on appeal by the Banská Bystrica Regional Court under file number 16Co 256/05. In its judgment of 7 July 2006 the court interpreted the claim as a claim for protection of personal integrity under Article 11 of the Civil Code. It reviewed briefly the course of the criminal proceedings against the plaintiffs and concluded that they had failed to establish that there had been any unlawfulness. Relying on the judgment of the Supreme Court of 20 October 2005 file number 5Cdo 150/03, the court held that criminal proceedings which were conducted in compliance with the applicable laws could not constitute an unjustified interference with personal integrity even if they ended with an acquittal. The court also addressed briefly the length of the plaintiffs' detention and concluded that it had not been excessive. The above claim was thus not accepted, unlike other claims made in the same action (compensation for lost profit, legal costs and infringement of the presumption of innocence).

66. Further details concerning protection of personal integrity under the Civil Code are summarised in *Kontrová v. Slovakia* ((dec.), no. 7510/04, 13 June 2006).

D. Code of Civil Procedure (Law no. 99/1963 Coll.)

67. Article 8 defines the jurisdiction of the ordinary courts. Pursuant to its first paragraph, unless jurisdiction is conferred by statute on other authorities, the ordinary courts examine and decide upon matters stemming from relations under civil law, labour law, family law, the law of co-operatives, and commercial law. Under paragraph 2, other matters may be examined and decided upon by the ordinary courts only if a statute so provides.

68. Under the terms of Article 135 civil courts are bound, inter alia, by the decisions of the competent authorities that a criminal offence has been committed and by whom (paragraph 1). Other questions which normally fall to be decided by other authorities can be decided by a civil court. However, if the competent authorities decided upon such a question, the civil court will adopt their decision (*vychádza z ich rozhodnutia*).

E. State Liability Act of 1969 (Law no. 58/1969 Coll.)

69. The Act lays down rules for State liability for damage caused by unlawful decisions (Part (*Časť*) One) and wrongful official conduct (Part Two).

70. The general scope of State liability for damage caused by unlawful decisions is defined in section 1 (1). Pursuant to this provision the State is liable for damage caused by unlawful decisions by its bodies and agencies inter alia in criminal proceedings. However, decisions concerning detention and sentencing are excluded.

71. Special rules concerning State liability for damage caused by decisions on detention are embodied in sections 5 *et seq.* The State is liable for damage caused by such decisions only in respect of persons against whom the proceedings have been discontinued or who have been acquitted (section 5 (1)).

72. Section 18 (1) renders the State liable for damage caused by wrongful official conduct on the part of its bodies and authorities in carrying out their functions.

73. A claim for compensation may be allowed where the claimant shows that he or she suffered damage as a result of a wrongful act of a public authority, quantifies its amount, and shows that there is a causal link between the damage and the wrongful act in question.

The Act does not allow for compensation for non-pecuniary damage unless it is related to a deterioration in a person's health (for further details, see *Havala v. Slovakia* (dec.), no. 47804/99, 13 September 2001).

THE LAW

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

74. The applicant complained (i) that he had not been brought before a judge in less than 24 hours after his arrest; (ii) that his detention had been arbitrary; and (iii) that its extension in the period after 11 December 1999 had lacked judicial authorisation. He relied on Article 5 § 1 of the Convention, which reads as follows:

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

A. The Government's objection as to exhaustion of domestic remedies

75. The Government objected that the applicant had failed to exhaust domestic remedies in respect of all his complaints under Article 5 of the Convention in that he had failed to seek damages under the State Liability Act of 1969 and/or protection of his personal integrity under Articles 11 *et seq.* of the Civil Code.

They submitted that in determining such claims the courts would not only be bound by the provisions of the State Liability Act of 1969 and the Civil Code but would also be obliged to take due account of the provisions of relevant international instruments. They would thus be obliged to consider not only the pecuniary aspect of the damage but to decide also on compensation for any possible non-pecuniary damage.

In that connection the Government contested the Court's conclusions as to the ineffectiveness of the said remedies in similar cases against Slovakia

(see *Tám v. Slovakia*, no. 50213/99, §§ 44-54, 22 June 2004, *Pavletić v. Slovakia*, no. 39359/98, §§ 62-80, 22 June 2004, *Kučera v. Slovakia* (dec.), no. 48666/99, 4 November 2003 and *König v. Slovakia* (dec.), no. 39753/98, 13 May 2003).

It was true that there were no final domestic decisions proving that these remedies offered good prospects of success in the circumstances of the present case. This was however mainly due to the fact that the present situation was rather exceptional and the remedies in question had not yet been tested in this context. Nevertheless, there were no domestic decisions showing that these remedies were a priori bound to fail in the applicant's case.

76. The applicant disagreed.

77. The Court recalls that it has previously addressed the question of the effectiveness of the remedies referred to by the Government in similar cases (see *Tám*, *Kučera*, *König* and *Pavletič*, cited above). It did not find it established that the possibility of obtaining appropriate redress by making use of these remedies was sufficiently certain in practice and offered reasonable prospects of success as required by the relevant Convention case-law.

The Court finds no reasons to depart from this conclusion. Moreover, and in any event, the Court finds it appropriate to note the following.

78. The scope of jurisdiction of the civil courts is defined in Article 8 of the Code of Civil Procedure which is the *lex generalis* in the matter. From this provision it follows that matters of criminal law can be examined and decided upon by a civil court only if a statute so provides. Under Article 135 § 1 of this Code if a certain question has been determined by a criminal court, civil courts would adopt the criminal court's decision.

79. In the present case the applicant's liberty was restricted by decisions of the criminal courts. The general rules do not seem to provide any basis on which civil courts could reconsider their decisions.

80. Damage caused by decisions taken in criminal proceedings is regulated by the provisions of Part One of the State Liability Act of 1969 which is the *lex specialis* in the matter. Under its sections 5 *et seq.* damage caused by decisions concerning detention can be compensated only if the criminal proceedings were discontinued or resulted in an acquittal, neither of which is the applicant's case.

81. The Court finally observes that the case underlying the judgment of the Banská Bystrica Regional Court of 7 July 2006 file no. 16Co 256/05 (see paragraph 65 in section "Relevant domestic law and practice" above) was substantially different from the present in that there the plaintiffs had been acquitted. It should also be taken into account that the events of the present case occurred well before the judgment of 7 July 2006, which appears unprecedented.

82. In the light of the above the Court concludes that the Government's objection of non-exhaustion of domestic remedies must be dismissed.

B. Remand in detention

83. The Government submitted that the complaint about the applicant's remand in detention was in any event belated and manifestly ill-founded.

84. The applicant disagreed and reiterated his complaint.

85. The Court observes that the applicant was arrested on 11 March 1999, his detention was ordered by the District Court on 12 March 1999, the remand order was upheld on appeal by the Regional Court on 13 April 1999, and no further appeal was available. The application was introduced on 26 October 2000, that is to say more than six months after the final decision was taken (see *Mello v. Slovakia* (dec.), no. 67030/01, 21 June 2005).

86. It follows that the complaint concerning the remand in detention has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

C. Detention prior to 26 April 2000

87. The Government objected that the complaint was in any event manifestly ill-founded.

88. The applicant disagreed and reiterated his complaint.

89. The observes that the applicant's detention in the period prior to 26 April 2000 was reviewed and upheld on numerous occasions by the prosecution service and by courts at two levels of jurisdiction. They exercised supervision over the detention on the applicant's repeated requests for release and on one occasion also *ex officio* in connection with authorising the extension of the detention beyond the statutory six-month limit.

In so far as these decisions were given prior to 26 April 2000, that is to say more than six months before the date of introduction of the present application, the Court is barred from examining them by virtue of Article 35 §§ 1 and 4 of the Convention (see, *mutatis mutandis*, *Tariq v. the Czech Republic*, no. 75455/01, § 77, 18 April 2006).

It follows that the complaint of the detention in the period prior to 26 April 2000 has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

D. Detention after 26 April 2000

90. The Government submitted that the complaint was in any event manifestly ill-founded.

91. The applicant disagreed and argued that his detention had been wholly and entirely unjustified and that the grounds on which it had been purportedly based were a malicious conspiracy. According to him he had never sent any compromising messages from prison.

92. The Court considers that the applicant was detained under Article 67 § 1 (b) and (c) of the CCP on the suspicion of having committed several offences and on the basis of a concern that, if at liberty, he would interfere with the course of justice and continue to engage in criminal activities.

The applicant was detained on 11 March 1999. In the pre-trial phase of the proceedings his detention was subject to a time-limit of six months under Article 71 § 1 of the CCP, which was extended until 11 December 1999 by the District Court on 3 September 1999. Before the expiry of this extended time-limit, on 10 December 1999, the applicant was indicted to stand trial before the District Court. By virtue of the indictment the proceedings entered their stage before the court. In this stage of the proceedings the applicant's detention was subject to a new time-limit of two years pursuant to Article 71 § 2 of the CCP. The applicant was finally released from detention on 17 January 2001, well before the expiry of the two-year limit.

93. In so far as the complaint has been substantiated the Court has found no indication of any substantive or procedural unlawfulness of the applicant's detention under the domestic law.

94. The Court notes that the suspicion against the applicant was based on testimonies of several witnesses and finds that the "reasonableness" of the suspicion raises no issue under Article 5 of the Convention (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 155, ECHR 2000-IV).

95. The domestic authorities' concern that the applicant would interfere with the proceedings and continue to offend was based on the violent nature of the applicant's behaviour and the fact that he had been threatening and using violence against P. and M. for a long time.

In the period after 26 April 2000 their concern was further supported by his attempts to send secret messages from prison. The existence of such messages had been established by the prison administration, the prosecution service, the District Court and the Regional Court (see paragraphs 15 and 18 above). In so far as the applicant now contests their existence, he has not substantiated his claim.

96. In the light of the above the Court has found no grounds for holding the applicant's detention to be "arbitrary" within the meaning of Article 5 of the Convention (see, *a contrario*, *Ambruszkiewicz v. Poland*, no. 38797/03, §§ 32 and 33, 4 May 2006).

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

97. The applicant complained that his conviction had been arbitrary and that the length of the proceedings had been excessive. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

1. Fairness of proceedings

98. The Court observes that the applicant was convicted of conducting a business without authorisation, extortion and rape. There is no doubt that his conviction had a valid legal basis in the Criminal Code.

The applicant's charges were examined several times by courts at three levels of jurisdiction in proceedings which were adversarial in their nature.

The courts heard the applicant and numerous witnesses and examined complex expert and other evidence. The applicant was represented by a lawyer throughout the proceedings and he was provided with ample opportunity to state his arguments, to challenge the submissions made by the prosecution and to submit anything he considered relevant to the outcome. The District Court and the Regional Court supported their findings with reasons that do not appear manifestly arbitrary or wrong.

99. In the light of the above the Court has found no indication of any procedural unfairness within the meaning of Article 6 § 1 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Length of proceedings before the Regional Court and Supreme Court

100. The Court observes that in his constitutional complaint of 26 February 2003 the applicant contested exclusively the length of the proceedings before the District Court (see paragraph 50 above).

He did not include the phases prior to the indictment and before the Regional Court and the Supreme Court in his constitutional complaint. The Constitutional Court was thus prevented from examining those parts of the proceedings (see *Obluk v. Slovakia*, no. 69484/01, § 61, 20 June 2006) and the applicant cannot be considered as having exhausted domestic remedies in respect of them (see *Šidlová v. Slovakia*, no. 50224/99, § 53, 26 September 2006).

It follows that this part of the length of proceedings complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

3. Length of proceedings before the District Court

101. The Government argued primarily that in view of the Constitutional Court's judgment (*nález*) of 30 September 2004 the applicant had lost his status of a "victim" within the meaning of Article 34 of the Convention in respect of the length of this part of the proceedings.

They submitted in the alternative that this part of the application was manifestly ill-founded. In support of that contention they maintained that the subject-matter of the proceedings had been of a certain factual and procedural complexity. Although no unjustified delays could be imputed to the applicant, it was an objective fact that he had protracted the length of the proceedings by making numerous submissions and petitions for which the State could not be held responsible. As for the conduct of the authorities, there had been no major delays apart from those in the period between 12 April and 1 October 2001.

102. The applicant disagreed. He submitted that the whole proceedings had been conducted in an arbitrary fashion and had been much too lengthy. Having received no just satisfaction from the Constitutional Court, the applicant claimed that he was still a victim.

103. The Court reiterates that an applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on the fact whether the domestic authorities acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress in relation thereto. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, among may other authorities, *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-...).

104. There is a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage. However, in some cases, the non-pecuniary damage may be only minimal or none at all (see *Nardone v. Italy*, no. 34368/98, 25 November 2004). The domestic courts will then have to justify their decision by giving sufficient reasons (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 204, ECHR 2006-...).

105. In the present case the Constitutional Court expressly found that the District Court had violated the applicant's right to a hearing "without unjustified delay". However, apart from that finding, it granted the applicant no just satisfaction. It considered that an award of just satisfaction was not appropriate, given in particular the fact that unjustified delay in the proceedings had occurred only once and had been relatively insignificant.

The Court cannot subscribe to that conclusion in view of the overall length of the proceedings and the fact that during a part of them the applicant had been deprived of his liberty.

The applicant can accordingly still claim to be a "victim" of a breach of the "reasonable time" requirement in this part of the proceedings.

106. In the specific circumstances of the present case the Court must examine the part of the proceedings which took place before the District Court. This period started with the filing of the bill of indictment on 10 December 1999 and lasted until the District Court ruled on the case on 31 March 2000 (i.e. more than 3 months). The period under consideration then resumed on 21 June 2000 when the Regional Court quashed the above judgment and lasted until 10 January 2003 when the District Court determined the case anew (i.e. more than 2 years and 6 months). The period to be considered thus lasted in total more than 2 years and 9 months for a single level of jurisdiction.

107. Although the pre-trial stage of the proceedings and the proceedings before the Regional Court and the Supreme Court are not the subject-matter of the admissible part of this application, they cannot be dissociated completely from the proceedings before the District Court, which are under examination, and they should be taken into consideration.

108. In view of the above considerations as well as having regard to the finding of 30 September 2004 by the Constitutional Court of a violation of the applicant's right to a hearing without unjustified delay, the Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

109. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). Where a person is kept in detention on remand, the fact of his detention is a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met (see, for example, *Abdoella v. the Netherlands*, judgment of 25 November 1992, Series A no. 248-A, p.17, § 24).

110. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

111. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument

capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings before the District Court was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

112. The applicant alleged a violation of his right to be presumed innocent in that he had been dismissed from the police before the completion of the criminal proceedings against him. He relied on Article 6 § 2 of the Convention, which reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

113. The Court observes that the applicant challenged his dismissal by way of an administrative appeal and that this appeal was dismissed on 14 June 1999. Although the statutory period for challenging the dismissal by way of an administrative-law action in the Supreme Court was two months, the applicant waited until 29 May 2002 before filing his action. The Supreme Court consequently declared his action inadmissible as being belated.

114. In these circumstances the applicant cannot be considered as having exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, § 66).

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

115. 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

116. The applicant claimed 1,000,000 Slovakian korunas[1] (SKK) by way of just satisfaction for his damage. He made no claim in respect of costs and expenses.

117. The Government contested the claim.

118. The Court does not discern any causal link between the violation found and the alleged pecuniary damage. However, it considers that the applicant must have suffered some damage of a non-pecuniary nature. Ruling on an equitable basis it awards him 2,400 euros under that head.

B. Default interest

119. 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. *Declares* the complaint concerning the length of the proceedings before the District Court admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 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, EUR 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage, the above amount to be converted into the national currency of the respondent State 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* the remainder of the applicant's claim for just satisfaction.

---

[1] SKK 1,000,000 is equivalent to approximately 26,000 euros.

Done in English, and notified in writing on 30 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY	Nicolas BRATZA
Registrar	President