



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

FOURTH SECTION

CASE OF CABALA v. SLOVAKIA

(Application no. 8607/02)

JUDGMENT

STRASBOURG

6 September 2007

FINAL

06/12/2007

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 Cabala v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 8607/02) 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 Slovak national, Mr Peter Cabala (“the applicant”), on 5 February 2002.

2. The Slovak Government (“the Government”) were represented by their Agent, Ms A. Poláčková, who was subsequently succeeded in that function by Ms M. Pirošíková.

3. The applicant alleged several violations of his Convention rights in connection with his detention and criminal proceedings against him.

4. On 16 February 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it 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 1975 and lives in Prievidza.

A. Criminal trial

6. On 4 August 1999 the applicant was charged with conspiracy and extortion under Articles 9 § 2 and 235 §§ 1 and 2 (b) of the Criminal Code. The charge was based on the suspicion that, acting as part of an organised group and posing as a police officer, the applicant had lured an individual into a car, driven him to another place and forced him at gunpoint to pay an amount of money. Two days later, following his arrest (see below), a lawyer was officially assigned to the applicant.

7. Between September and December 1999 the investigators assigned to the case heard evidence from and organised a confrontation between the accused, the victim and a witness and obtained other evidence.

8. On 7 January 2000 the Nitra District Prosecutor indicted the applicant to stand trial in the Nitra District Court (*Okresný súd*) on the above charge.

9. On 21 January 2000 the District Court remitted the bill of indictment to the prosecution service for further investigation. It found that the facts had not been established adequately, in particular because it had been overlooked that, at the time of the alleged offence, the applicant had still been on probation following a conviction for an extremely serious offence (*obzvlášť závažný trestný čin*). It had equally been overlooked that the applicant was also facing prosecution for another extremely serious offence. These facts had to be examined and taken into account in the present case.

10. On 22 June 2000 an investigator interviewed the applicant again.

11. On 17 July 2000 the prosecutor filed the indictment again, classifying the applicant as an “extremely dangerous recidivist” as defined by Article 41 § 1 of the Criminal Code.

12. The applicant requested on 24 July and 21 December 2000 and 30 May 2001 the replacement of his officially assigned lawyers on the ground that he had lost confidence in them. New lawyers were assigned to him on 16 October 2000, 23 April 2001 and 13 September 2001 respectively. The applicant finally appointed a lawyer of his choice, in November 2001.

13. On 4 June 2001 the applicant's co-accused requested that the case against him be dealt with separately from that against the applicant on the ground that the applicant had deliberately been protracting the proceedings.

14. On 6 June 2003, after he had been released from detention (see below), the applicant informed the District Court that he could not take part in the proceedings as he was receiving psychiatric treatment. He sent similar letters to the District Court on 13 October 2003 and 14 February 2005. In a letter of 30 October 2003 to the District Court the applicant's psychiatrist confirmed that the applicant was receiving treatment but considered that there was nothing to prevent him from taking part in the proceedings.

15. Consequently, on 4 March 2005, the District Court appointed a psychologist to report on the applicant's mental health. The report was

submitted on 26 May 2005 with the conclusion that the applicant was fit to take part in and able to comprehend the meaning of the criminal proceedings against him.

16. In the course of the proceedings the District Court held hearings on 13 December 2000, 12 September and 15 October 2001, 23 January, 6 March and 29 May 2002, 22 January 2003, 29 November 2004 and 2 March 2005. Further hearings were listed for 30 March and 9 May 2001 and 22 September 2003. The first of these did not take place as one of the lay judges was unable to attend. The latter two were cancelled without any reasons having been given.

17. The applicant unsuccessfully challenged on twelve occasions (on 13 December 2000, 27 March, 27 April, 28 May and 17 July 2001, 12 February, 6 March and 23 April 2002, 13 January and 5 September 2003, 1 July and 5 September 2005) the District Court or the Regional Court for bias. Further unsuccessful challenges were lodged by the applicant's co-accused. In substance, it was alleged that, given the background of the case, the judges involved were influenced by the fact that it concerned organised criminal gangs. The applicant also argued that the whole case was a fabrication and that over the recent period he had not had effective legal representation.

18. The applicant or his lawyers requested on six occasions (25 October 2000, 27 April and 20 November 2001, 28 April, 6 June and 13 October 2003) that a hearing be rescheduled. Further postponements were requested by the applicant's co-accused.

19. The applicant unsuccessfully complained numerous times to the Prosecutor General, the Ministry of Justice and various other public institutions concerning the manner in which the proceedings against him were being conducted.

20. The criminal proceedings against the applicant are still pending.

B. Detention

21. On 6 August 1999 the applicant was arrested on the above charge. According to the arrest report, the applicant resisted and attempted to escape. The police forcibly entered his flat, used force against him and put him in handcuffs. There is no indication that the applicant suffered any injuries.

22. Later on 6 August 1999 the District Court heard evidence from the applicant and remanded him in detention under Article 67 § 1 (a) of the Code of Criminal Procedure (CCP) finding that there was a risk that he would abscond.

23. In the above-mentioned decision of 21 January 2000, which concerned the remittal of the applicant's indictment, the District Court also ruled that the reasons for the applicant's detention persisted.

24. On 9 and 21 August 2000 the applicant requested that he be released from detention. The requests were dismissed on 27 September 2000 and, on appeal, on 24 January 2001. The courts found that there was a strong suspicion against the applicant and that his continued detention was warranted in view of his “personality, previous way of life, the seriousness of the charge and the potential penalty, the fact that the offence had been committed away from the applicant's place of habitual residence and the fact that during his arrest the applicant had attempted to escape”.

25. On 19 July 2001 the District Court requested that the Supreme Court (*Najvyšší súd*) authorise an extension of the applicant's detention over the two-year time-limit provided for in Article 71 § 2 of the CCP. It was submitted that it had not been possible to complete the proceedings earlier mainly due to the applicant's unfounded repeated challenges of bias and other procedural applications.

26. On 31 July 2001 the Supreme Court extended the applicant's detention until 6 February 2002. The reasons for his detention as found at the time of remanding him persisted. He was unemployed and was not staying at a fixed address. He was considered an extremely dangerous recidivist, which, according to the Supreme Court, constituted a further ground for his detention under Article 67 § 1 (c) of the CCP as there was a risk that he would continue engaging in criminal activities. It had not been possible to complete the proceedings earlier and it was in the interests of justice that the applicant remained detained. There was no hearing held before the Supreme Court and no appeal was available against its decision.

27. In the meantime, on 6 and 20 July 2001, the applicant lodged two requests for release with the Supreme Court. He argued, *inter alia*, that since 30 May 2001, when he had expressed a lack of confidence in his lawyer, he had in fact had no legal representation, whereas such representation was mandatory. The requests were transmitted to the District Court by which they fell to be determined at first instance, on 12 and 30 July 2001, respectively.

28. The District Court dismissed the applicant's requests for release of July 2001 on 15 August 2001. On 27 August 2001 the applicant lodged an appeal and on 14 September 2001 the District Court transmitted the appeal to the Nitra Regional Court (*Krajský súd*) for determination. The latter court returned the case file to the District Court without a decision because the District Court had failed to secure service of a copy of the challenged decision on the applicant's new lawyer. On 2 October 2001 the District Court retransmitted the applicant's appeal to the Regional Court, which dismissed it on 3 October 2001. The case file was returned to the District Court on 18 October 2001.

29. Both the District Court and the Regional Court examined the applicant's detention in private sessions (*neverejné zasadnutie*). The session before the Regional Court was attended by the public prosecution but not by

the defence. Both courts “were of the view” that the applicant was still under a strong suspicion. They considered that, in view of his personality, his life thus far, the fact that he was suspected of having committed an extremely serious intentional offence away from the applicant's place of habitual residence and the fact that he was potentially facing a heavy penalty, the risk that the applicant would abscond persisted. A general reference to the previous decisions, but not to any specific facts, was made.

30. On 24 January 2002 the District Court again requested an authorisation for the extension of the applicant's detention. It was argued that it had not been possible to complete the proceedings earlier mainly due to the applicant's unfounded repeated challenges of bias, rejecting his lawyers and other procedural applications.

31. On 30 January 2002 the Supreme Court extended the applicant's detention until 31 July 2002. It held that the previous reasons for detaining him remained valid. It was observed that the applicant was suspected of having committed a serious offence after having been released on licence following a conviction for robbery. For reasons related to the nature of the case as well as the applicant's repeated challenges of bias, it had not been possible to complete the proceedings earlier. The interests of justice still required that the applicant remain detained.

32. On 27 March 2002 the applicant requested release. The request was dismissed on 3 May 2002 and, on appeal, on 28 August 2002. However, in the meantime, on 31 July 2002, the Regional Court decided that the applicant should be released and he was, on the last-mentioned date.

C. Constitutional complaint

33. On 20 April 2005 the applicant lodged a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*). He directed the complaint against the District Court and argued that the proceedings before it had been too lengthy.

34. On 28 September 2005 the Constitutional Court declared the complaint inadmissible as being manifestly ill-founded. It observed that the length of the proceedings had been due to the applicant's numerous and repeated procedural applications, which could not be imputed to the District Court, whose conduct of the proceedings had been active and expeditious.

II. RELEVANT DOMESTIC LAW AND PRACTICE

35. The relevant domestic law and practice is summarised in the Court's decisions of 13 June 2006 in the case of *Kontrová v. Slovakia* (no. 7510/04) and 4 January 2005 in the case of *Loyka v. Slovakia* (no. 62219/00) and in its judgments of 30 January 2007 in the case of *Pavlík v. Slovakia*

(no. 74827/01, §§ 53-73) and of 27 February 2007 in the case of *Nešťák v. Slovakia* (no. 65559/01, §§ 31-58).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

36. The applicant complained that his detention had been unlawful, unjustified and arbitrary, that several decisions concerning his detention had been taken while he had had no legal representation despite its being mandatory and that the procedure in respect of his requests for release had fallen short of the applicable standards. He relied on Article 5 of the Convention, the relevant part of which provides:

“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;

...

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

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

A. Admissibility

1. Domestic remedies

(a) Action for damages under the 1969 State Liability Act and protection of his personal integrity under Articles 11 et seq. of the Civil Code

37. In respect of all the Article 5 complaints, the Government submitted that the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, by seeking damages under the State Liability Act of 1969 and protection of his personal integrity under Articles 11 et seq. of the Civil Code.

38. The applicant disagreed.

39. The Court recalls that it has previously addressed at length the question of the effectiveness from the point of view of Article 35 § 1 of the Convention of the remedies referred to by the Government in similar situations (see, for example, *Tám v. Slovakia*, (dec.), no. 50213/99, 1 July 2003; *Kučera v. Slovakia*, (dec.), no. 48666/99, 4 November 2003; *König v. Slovakia* (dec.), no. 39753/98, 13 May 2003; *Pavletić v. Slovakia* (dec.), no. 39359/98, 13 May 2003; and, most recently, *Nešťák*, cited above, §§ 59-65). 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. In the cases of *Pavlík* (cited above, §§ 78-80) and *Nešťák* (cited above, §§ 62-64), the Court moreover observed that in situations like the present one there appeared to be no legal basis on which civil courts could review matters that had been determined differently by criminal courts. The Court finds no reasons to depart from this conclusion in the present case.

Furthermore, the Court finds it appropriate to point out that the remedies referred to by the Government in the present case are remedies before civil courts, which undoubtedly have no jurisdiction to order release or otherwise directly remedy the impugned state of affairs (see *Pavletić v. Slovakia*, no. 39359/98, §§ 69 and 72, 22 June 2004, and also *Weeks v. the United Kingdom*, judgment of 2 March 1987, Series A no. 114, p. 30, § 61). These remedies are by definition aimed at obtaining compensation and might possibly be of relevance under paragraph 5 of Article 5 of the Convention (see, for example, *Yağcı and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, p. 17, § 44, and *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, p. 34, § 79) which, however, the applicant did not invoke. The remedies designed specifically for the purpose of directly remedying the situation complained of are those provided for under the Code of Criminal Procedure, which the applicant repeatedly resorted to.

Accordingly, the Government's objection relating to non-exhaustion of the actions under the 1969 State Liability Act and Articles 11 et seq. of the Civil Code must be dismissed.

(b) Complaint under Article 127 of the Constitution

40. The Government further argued that, since 1 January 2002, the applicant had had at his disposal a new remedy, a complaint under Article 127 of the Constitution. As he had made no use of it, his complaints of his detention after the given date and of the length of his detention were inadmissible for non-exhaustion of domestic remedies.

41. The applicant disagreed.

42. The Court observes that on 1 January 2002 a new remedy under Article 127 of the Constitution became available in Slovakia for human rights complaints (see *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 and 60226/00, ECHR 2002 IX).

By virtue of that provision the Constitutional Court has the power to declare that a person's human rights or freedoms have been violated and to quash the impugned decision, measure or act. If the violation is the result of a failure to act, the Constitutional Court has the power to order the inactive authority to take the necessary action. At the same time it may remit the case to the authority concerned for further proceedings, order such authority to refrain from violating the fundamental rights and freedoms and, where appropriate, order those responsible to restore the situation that existed prior to the violation and to pay the victim appropriate financial compensation (see, for example, *Kontrová*, cited above).

This remedy was found applicable to Article 5 issues in the period starting from 1 January 2002 and, in principle, applicants should be required to make use of it in order to comply with the exhaustion of domestic remedies rule pursuant to Article 35 § 1 of the Convention (see *Loyka*, cited above).

43. For the sake of completeness, the Court would observe that, given the powers bestowed on the Constitutional Court under Article 127 of the Constitution to grant direct redress of both a preventive and compensatory nature, which are broader and substantially different from the powers of the ordinary courts under the 1969 State Liability Act and Articles 11 et seq. of the Civil Code, the complaint under Article 127 of the Constitution must be distinguished from the remedies analysed above.

44. As for the length of the applicant's detention, specifically, it is to be noted that he was detained until 31 July 2002. At that time as well as at the time of the introduction of the application, the new constitutional remedy under Article 127 of the Constitution already existed (see *Andrášik and Others*, cited above). The Court finds no reasons why the applicant could

not have raised his complaint of the length of his detention under that provision (see, *mutatis mutandis*, *Loyka*, cited above).

45. There is no indication that the applicant sought protection before the Constitutional Court of his rights under Article 5 §§ 1, 3 and 4 of the Convention, as regards the lawfulness of, justification for and the proceedings in respect of his detention in the period starting from 1 January 2002 and as regards the length of his detention.

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

2. *Six months*

46. The Government objected that the applicant's initial remand in detention and some of the subsequent decisions in respect of his detention and the proceedings leading to such decisions had been given or taken place more than six months before the date of introduction of the application.

47. The applicant maintained his complaint.

48. The Court notes that the applicant was arrested and remanded in custody in 1999 (see paragraphs 21 and 22 above) and that his subsequent continued detention was examined several times in connection with requests for his release and for the extension of his detention (see paragraphs 23-26 above) in the period more than six months before the date of introduction of the application on 2 February 2002 (see paragraph 1 above).

49. By virtue of Article 35 § 1 of the Convention, the Court is prevented from examining the decisions (alleged to be in breach of Article 5 § 1 of the Convention) that were taken in the period specified in the preceding paragraph as well as the proceedings (alleged to be in breach of Article 5 § 4 of the Convention) leading to them (see *Mello v. Slovakia* (dec.), no. 67030/01, 21 June 2005, and *Pavlik*, cited above, § 85).

It follows that the relevant part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

3. *Decision on the applicant's requests for release of July 2001*

50. As for the period prior to 1 January 2002 and, at the same time, less than six months before the date of introduction of the application, the Government submitted that the applicant's detention had been lawful and justified.

51. The applicant disagreed and upheld the complaint.

52. The Court considers that the legality of and justification for the applicant's detention in the specified period (see paragraph 50 above) falls to be examined primarily under Article 5 § 1 (c) of the Convention. In this period, the applicant's detention was examined on his requests for release of

6 and 20 July 2001 (see paragraphs 27-29 above). The domestic courts found that there was a strong suspicion against the applicant. His detention was found to be necessary in view of his personality, previous way of life, the seriousness of the charge, the fact that the alleged offence had been committed away from the applicant's place of habitual residence and the severity of the potential penalty. The courts referred to their previous decisions from which it further transpires that during his arrest the applicant had attempted to escape and that he was considered an extremely dangerous recidivist which constituted a further ground for his detention.

53. Although the brevity of the domestic courts' reasoning and the lack of direct reference to specific facts are not entirely free from criticism, the Court finds that there are insufficient grounds for holding it to be "arbitrary" within the meaning of Article 5 of the Convention (see, for example, *Ambruszkiewicz v. Poland*, no. 38797/03, §§ 32 and 33, 4 May 2006).

54. As regards the applicant's specific claim that his detention in the given period was unlawful because he had no effective legal representation, the Court observes that in the circumstances it appears more appropriate to examine it under paragraph 4 rather than under paragraph 1 of the Article invoked. The Court nevertheless notes the applicant had been free to appoint a lawyer of his choice at any time. As he did not do so at the initial stage of the proceedings, three official lawyers were appointed to represent him one after another. He dismissed the first two lawyers for loss of confidence and finally replaced the third by a counsel of his choice. With reference to the specific period under consideration, the applicant requested a replacement of his officially assigned lawyer on 30 May 2001 and a new one was appointed to represent him on 13 September 2001. The applicant thus had legal representation and, in so far as the application has been substantiated, there appear to be no *prima facie* grounds for doubting the effectiveness of the legal assistance he received.

55. In the light of the foregoing considerations, the Court finds no indication that the applicant's detention during the given period was incompatible with the guarantees of Article 5 § 1 of the Convention.

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

4. Proceedings in respect of requests for release of July 2001

56. The Government accepted that the complaint in respect of the proceedings on the requests for release of July 2001 was not manifestly ill-founded as regards the principle of the equality of arms but argued that it was manifestly ill-founded as regards the "speediness" of those proceedings.

57. The applicant reiterated his complaint.

58. The Court notes that the complaint of the lack of fairness and speediness in the proceedings on the requests for release of July 2001 falls

to be examined under Article 5 § 4 of the Convention. It also finds that this complaint, taken as a whole, 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

1. Equality of arms and other elements of fairness

59. The applicant complained that the proceedings in respect of his requests for release of 6 and 20 July 2001 were not fair in terms of Article 5 § 4 of the Convention.

60. The Government raised no substantive arguments.

61. The Court first recalls that it has already examined whether the proceedings applicable to requests for release from pre-trial detention under the provisions of Slovakian law, as it stood at the relevant time, complied with the requirements of Article 5 § 4 of the Convention. It considered that such proceedings fell short of these requirements, in particular as regards the principle of equality of arms (see *Nešťák*, cited above, §§ 81-83).

62. In the present case it is to be noted that the applicant's requests for release of 6 and 20 July 2001 were determined in private sessions by the District Court on 15 August 2001 and by the Regional Court on 3 October 2001. It is not in dispute that under the applicable law the applicant could not be, and was not, present at those sessions. However, the prosecution could attend and was present at the session before the Regional Court on 3 October 2001.

63. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 5 § 4 of the Convention on account of the lack of fair proceedings in respect of the applicant's requests for release of 6 and 20 July 2001.

64. In view of its finding in the preceding paragraph, the Court considers that it is not necessary to examine the proceedings in question separately from the point of view of the other elements of fairness.

2. Speediness of the proceedings

65. The applicant complained that the proceedings in respect of his requests for release of 6 and 20 July 2001 had not been "speedy".

66. The Government pointed out that the applicant had lodged his requests for release with the wrong court. Initial delays resulting from this fact could not be imputed to the State. The applicant's request for replacement of his lawyer had subsequently had to be determined. Moreover, the proceedings as a whole had been substantially slowed down

by the applicant's challenges for bias and other procedural applications. The Government concluded that the "speediness" requirement had been fulfilled.

67. According to the Court's case-law concerning Article 5 § 4 of the Convention, a periodic judicial review must, if it is to satisfy the requirements of those provisions, comply with both the substantive and the procedural rules of the national legislation and moreover be conducted in conformity with the aim of Article 5, namely to protect the individual against arbitrariness (see, among other authorities, *Herczegfalvy v. Austria*, judgment of 24 September 1992, Series A no. 244, p. 24, § 75).

Article 5 § 4 of the Convention does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention and for hearing applications for release. Nevertheless, a State which institutes such a system must in principle accord to the detainees the same guarantees on appeal as at first instance (see, among other authorities, *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, p. 23, § 84).

The requirement that a decision be given "speedily" is undeniably one such guarantee; however, in order to determine whether it has been complied with, it is necessary to effect an overall assessment where, as here, the proceedings were conducted at two levels of jurisdiction (see *Navarra v. France*, judgment of 23 November 1993, Series A no. 273-B, p. 28, § 28).

68. In the present case the applicant lodged his request for release with the Supreme Court on 6 July 2001 and then again on 20 July 2001. These requests then had to be transmitted to the District Court by which they fell to be determined at first instance. The Supreme Court transmitted them on 12 and 30 July 2001 respectively. It then took the District Court until 15 August 2001 to determine these requests. On 27 August 2001 the applicant appealed and the District Court transmitted his appeal to the Regional Court for determination. However, on 13 September 2001 the District Court appointed the applicant a new lawyer without securing service of the decision of 15 August 2001 on him. This lack of action was classified by the Regional Court as a procedural flaw on account of which the appeal could not be determined. This error had to be corrected and the appeal resubmitted to the Regional Court, which finally dismissed it on 3 October 2001. The latter decision was not pronounced publicly and there is no indication as to when it was communicated to the applicant or to his representative (see, for example, *Koendjibiharie v. the Netherlands*, judgment of 25 October 1990, Series A no. 185-B, p. 40, § 28, and *Singh v. the Czech Republic*, no. 60538/00, § 74, 25 January 2005). The proceedings under examination thus lasted at least eighty-eight days.

69. In assessing the "speediness" of these proceedings, the Court accepts that the proceedings were delayed both by the applicant's failure to lodge his request with the right court and by his overall conduct in the proceedings. Further delays were created as a result of the District Court's failure to

secure service of its decision on the applicant's new lawyer who was appointed by that very court. Finally, it must also be taken into account that while the applicant's requests for release of July 2001 were still pending, he was by law prevented from submitting a new request for release without relying on new facts (see *Singh*, cited above, § 76, and *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, p. 2, § 56). Taking into account all the elements at its disposal, including the total length of those proceedings, the Court finds that the proceedings in respect of the applicant's requests for release of 6 and 20 July 2001 were not “speedy” for the purposes of Article 5 § 4 of the Convention. This conclusion is not altered by the fact that, in the relevant period, the applicant's detention was also examined by the Supreme Court, on 31 July 2001, in connection with the request by the prosecution service for its extension, a procedure in which the applicant had no opportunity to participate (see, for example, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3302, § 162).

There has accordingly been a violation of Article 5 § 4 of the Convention on account of the lack of “speedy” proceedings in respect of the applicant's requests for release of 6 and 20 July 2001.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

70. The applicant also complained that the proceedings against him had fallen short of the guarantees of a fair hearing within a reasonable time and that his right to be presumed innocent had been violated by virtue of the Supreme Court's decisions of 31 July 2001 and 30 January 2002. He relied on Article 6 of the Convention, the relevant part of which reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by an ... impartial tribunal ...

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

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require ...”

A. Admissibility

1. Fair hearing

71. It is to be noted that the proceedings against the applicant are still pending. Any complaint under Article 6 §§ 1 and 3 of the Convention concerning their outcome is therefore premature.

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

2. Presumption of innocence

72. In so far as the complaint under Article 6 § 2 of the Convention has been substantiated and domestic remedies exhausted (see, *mutatis mutandis*, paragraph 45 above), there is no appearance of a violation of the applicant's right to be presumed innocent (compare and contrast *Nešťák*, cited above, §§ 88-91).

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

3. Reasonable time

73. The Government claimed that the complaint was manifestly ill-founded in view of all the circumstances.

74. The applicant disagreed.

75. The period to be taken into consideration began on 4 August 1999 when the applicant was charged (see, among many other authorities, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 44, ECHR 2004-XI) and has not yet ended. It has thus lasted more than seven years and eleven months for the investigation phase and one level of jurisdiction.

76. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

77. The Government argued that the applicant had substantially protracted the proceedings, in particular by his numerous unfounded challenges for lack of impartiality and other vexatious procedural applications. In view of his contribution to their length, the proceedings could not be said to have lasted an unreasonably long time.

78. The applicant reiterated his complaint.

79. 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 pending the determination of a criminal charge against him, 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 and also *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 83, ECHR 2003-IX (extracts)).

80. 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).

81. 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. Although the Court accepts that the applicant's procedural conduct has contributed somewhat to the overall length of the proceedings (see paragraphs 13 - 15, 17 and 18 above), it holds that this cannot be construed as absolving the respondent State from the duty to ensure that appropriate measures are taken in order for the "reasonable time" requirement to be observed in proceedings which fall within the ambit of Article 6 § 1 of the Convention.

Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. This conclusion applies both to the state of the proceedings now and at the time of the Constitutional Court's assessment (see paragraph 34 above).

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

IV. REMAINING ALLEGED VIOLATIONS OF THE CONVENTION

82. Lastly, the applicant complained (i) under Article 10 of the Convention that his right to freedom of expression had been violated in that his period of detention had been extended as a punishment for having accused the courts of bias; (ii) under Article 13 of the Convention that the authorities had been ignoring his complaints and applications; and (iii) under Article 14 of the Convention that he had been discriminated against because he was defending himself in a trial involving organised crime.

83. In so far as these complaints have been substantiated, the Court has found no indication of a violation of the applicant's Convention rights.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed 1,700,000 Slovakian korunas¹ (SKK) in respect of non-pecuniary damage.

86. The Government contested that claim.

87. The Court considers that the applicant must have suffered some damage of a non-pecuniary nature. Ruling on an equitable basis it awards him 6,000 euros (EUR) under that head

B. Costs and expenses

88. The applicant did not make any claim for costs and expenses incurred in the proceedings.

C. Default interest

89. 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* admissible the complaint that the proceedings in respect of the applicant's requests for release of 6 and 20 July 2001 were incompatible with the guarantees of Article 5 § 4 of the Convention and that the length of the proceedings was incompatible with the “reasonable time” requirement under Article 6 § 1 of the Convention;
2. *Declares* inadmissible the remainder of the application;

¹ SKK 1,700,000 is equivalent to approximately EUR 45,000.

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the lack of fair proceedings in respect of the applicant's requests for release of 6 and 20 July 2001;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the lack of “speedy” proceedings in respect of the applicant's requests for release of 6 and 20 July 2001;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings;
6. *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 6,000 (six thousand 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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President