CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF PAVLETIĆ v. SLOVAKIA

(Application no. 39359/98)

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 Pavletić 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. 39359/98) against the Slovak Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Mr Nenad Pavletić ("the applicant"), on 25 July 1997.

2. The applicant was represented by Mr M. Čulić, a lawyer practising in Pula. The Slovakian Government ("the Government") were represented by their Agent, Mr P. Vršanský, succeeded by Mr P. Kresák in that function.

3. The applicant alleged, in particular, that his rights under Article 5 §§ 3, 4 and 5 as well as under Articles 6 and 13 of the Convention had been violated in the context of criminal proceedings leading to his conviction of an offence.

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 13 May 2003, the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The 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 1962 and lives in Marčana (Croatia).

9. On 26 January 1995 a police investigator in Banská Bystrica (Slovakia) apprehended the applicant on the ground that he had been accused, together with another person, of trafficking in women. Subsequently the following relevant facts occurred and decisions were taken.

A. The applicant's detention on remand

10. On 27 January 1995 the Banská Bystrica District Court remanded the applicant in custody with effect from 26 January 1995. The decision stated that the applicant had brought two women from Slovakia to Spain and that he had forced one of them to carry out prostitution under the threat of shooting her. The judge considered the detention necessary with a view to preventing the accused from absconding and from committing further offences within the meaning of Article 67(1)(a) and (c) of the Code of Criminal Procedure. On 31 January 1995 the applicant challenged this decision through his lawyer.

11. On 15 February 1995 the Banská Bystrica Regional Court quashed the District Court's decision of 27 January 1995 on the ground that the reasons for it were not sufficient. The Regional Court noted that the applicant was a foreign national without a permanent address in Slovakia. It therefore considered his detention necessary, within the meaning of Article 67(1)(a) of the Code of Criminal Procedure, and remanded him in custody as from 26 January 1995.

12. On 21 July 1995 a judge of the Banská Bystrica District Court extended the applicant's detention on remand until 26 August 1995 on the ground that the public prosecutor had decided to re-examine a witness who was staying abroad. The court considered that there was a risk of the applicant's absconding in case of his release.

13. On 11 August 1995 the Banská Bystrica District Court extended, at the public prosecutor's request, the applicant's detention on remand until 26 December 1995. The decision stated that a witness staying abroad could not be re-examined and that it was also necessary to establish whether the accused persons had tried to benefit from the prostitution of other persons. The court considered the applicant's detention necessary within the meaning of Article 67(1)(a) of the Code of Criminal Procedure. Reference was made to the fact that the applicant was a foreign national and that he did not have permanent residence in Slovakia.

14. On 15 December 1995 the Banská Bystrica District Court extended the applicant's detention on remand until 25 January 1996. The decision stated that the lawyer appointed to represent the applicant on 20 November 1995 needed more time to study the case file. Furthermore, the lawyer was ill and because of her absence the applicant had refused, on 6 December 1995, to acquaint himself with the outcome of the investigation.

15. On 19 April 1996 the applicant lodged a constitutional petition. He alleged, *inter alia*, that he was discriminated against as the Regional Court had refused to release him, referring to his nationality and to the fact that he had no permanent residence in Slovakia.

16. On 22 January 1997 the Supreme Court refused to grant a further extension of the applicant's detention on remand. It found that the requirements laid down in Article 71(2) of the Code of Criminal Procedure were not met. In particular, the Supreme Court noted that the case was not complex and that the period of almost one year during which the case had been pending at the preliminary stage was excessive given the scope of evidence that had to be taken. Furthermore, the first instance court had scheduled the main hearing for 30 September 1996, that is more than eight months after the case had been submitted to it on 22 January 1996. The Supreme Court found no relevant reasons for such delays. The decision stated that the applicant's two stays in hospital had not been of long duration and that they had not prevented the main hearing from being held. The Supreme Court's decision was transmitted to the Regional Court on 7 February 1997.

17. On 23 January 1997 the Supreme Court ordered the prison administration to release the applicant. The applicant was released on 26 January 1997.

18. On 26 March 1997 the Constitutional Court declared manifestly ill-founded the applicant's petition of 19 April 1996. The decision stated, with reference to the criminal file, that the applicant's detention had been necessary within the meaning of Article 67(1)(a) of the Code of Criminal Procedure as there had existed a risk that he would abscond in case of his release.

B. Applications for release lodged by the applicant

19. On 16 May 1995 the applicant lodged an application for release. It was dismissed by the Banská Bystrica District Court on 31 May 1995 on the ground that his detention was still necessary within the meaning of Article 67(1)(a) of the Code of Criminal Procedure. The applicant filed a complaint. He argued that the fact that he was a foreign national did not justify the fear that he might abscond.

20. The Banská Bystrica Regional Court dismissed the complaint on 12 July 1995. The decision stated that the fear that the applicant might abscond in case of his release was justified. The typed minutes, a copy of which the applicant received from the Regional Office of Investigation in Banská Bystrica on 29 November 1995, indicate that the Regional Court examined the applicant's complaint in camera in the presence of J.M., a public prosecutor. According to those minutes, the public prosecutor "proposed to dismiss the applicant's complaint". At a later stage of the proceedings J.M. presided over the Regional Court chamber which delivered the judgment of 13 June 1997 (see below).

The applicant submitted to the Court another copy of the same minutes, included in the criminal file, in which the name of another person is handwritten as the public prosecutor who had attended the deliberations.

21. On 16 August 1995 the applicant lodged another application for release. He alleged that there had been undue delays in the proceedings and that the fear that he would abscond in case of his release was unsubstantiated. The applicant further complained that he was discriminated against on the ground of his nationality.

22. The Banská Bystrica District Court dismissed the request on 20 September 1995. The applicant filed a complaint which was dismissed by the Banská Bystrica Regional Court on 18 October 1995. The courts considered it probable that the applicant, a foreign national, would leave Slovakia in case of his release.

23. On 10 January 1996 the applicant requested the public prosecutor to release him. In a letter of 19 January 1996 the Banská Bystrica Regional Prosecutor stated that he had dismissed the application for release and that he would transmit it to the Banská Bystrica Regional Court together with the indictment. The Regional Court did not decide on the applicant's request.

C. The criminal proceedings against the applicant

24. On 25 April 1995 the police investigator accused the applicant of blackmail in addition to the charge of trafficking in women. On 15 May 1995 the Banská Bystrica District Prosecutor dismissed the applicant's complaint against the investigator's decision.

25. On 12 October 1995 the police investigator dismissed the applicant's request for further witnesses to be heard with a view to establishing, in particular, the relevant facts relating to the stay of the two Slovakian women in Spain. On 21 November 1995 the Banská Bystrica Regional Prosecutor dismissed the applicant's complaint against this decision. Both authorities considered that the taking of further evidence was superfluous.

26. On 18 October 1995 the applicant withdrew the authority of the lawyer who had represented him until then. At the same time he requested the court to appoint a lawyer *ex officio.* On 20 November 1995 the Banská Bystrica District Court appointed another lawyer to assist the applicant *ex officio*.

27. On 19 December 1995 and on 10 January 1996 the applicant learned of the outcome of the investigation. On the latter date he requested that further evidence be included in the case file. The police investigator dismissed the request on 11 January 1996.

28. On 17 January 1996 the applicant requested that the authority of the lawyer appointed on 20 November 1995 be withdrawn. He further asked for a time-limit to be set during which he could appoint a lawyer of his own choice. The applicant received no reply.

29. On 22 January 1996 the Banská Bystrica Regional Prosecutor indicted the applicant for trafficking in women and blackmail before the Banská Bystrica Regional Court.

30. After this date the applicant was twice treated as an in-patient in a hospital for prisoners in Trenčín.

31. On 2 February 1996 the Banská Bystrica Regional Prosecutor informed the Regional Court that the applicant had challenged the interpreter. The letter further stated that the interpreter considered herself biased as the applicant's submissions about her were insulting.

32. The first hearing before the Regional Court was held on 30 September 1996. The applicant challenged the presiding judge I.B. on the ground that he was xenophobic. The case was adjourned. On 4 December 1996 the Supreme Court found that the presiding judge of the Regional Court was not biased.

33. On 13 June 1997 the Banská Bystrica Regional Court convicted the applicant of trafficking in women and sentenced him to three years' imprisonment. It further ordered the applicant's expulsion from Slovakia.

34. The court established that, on 13 January 1995, the applicant had brought two women who were sisters from Slovakia to Spain on the false pretext of offering them a job as tourist guides. He threatened to shoot them, took away their passports and plane tickets and forced one of them to stay at night in a club where prostitution was carried out. On 17 January 1995 the applicant left Spain. On 25 January 1995 the women escaped and returned to Slovakia.

35. The court chamber was presided over by judge J.M. who had participated as a public prosecutor, on 12 July 1995, in the examination by the Banská Bystrica Regional Court of the applicant's complaint against Banská Bystrica District Court's decision of 31 May 1995 concerning the applicant's request for release.

36. Upon the delivery of the Regional Court's judgment the applicant indicated orally that he wished to appeal. Subsequently he left Slovakia. The Slovakian authorities were informed that the applicant had not stayed at his address in Croatia and that an international arrest warrant had been issued against him in Croatia on the ground that he was subject to a prison sentence which had been imposed in 1995. As the applicant's whereabouts were unknown the public prosecutor proposed, on 24 November 1997, that the case be proceeded with in his absence.

37. On 23 April 1998 the Supreme Court dismissed the appeal. It decided following a public hearing in the applicant's absence as he was in hiding.

38. The Supreme Court held that the Regional Court had established all relevant facts and had assessed them in accordance with the law while respecting the applicant's right of defence. The Supreme Court addressed the arguments raised by the applicant in his appeal. The decision stated that the Supreme Court had examined all aspects of the case and had had regard also to possible shortcomings in the proceedings which had not been challenged by the applicant as required by Article 254(1) of the Code of Criminal Procedure.

39. On 28 May 1998 the Banská Bystrica Regional Court decided to include the period during which the applicant had been detained in the period of imprisonment to which he was sentenced. Reference was made to the relevant provisions of criminal law under which such a decision is to be taken in cases where a person sentenced to a prison term has previously been detained in the context of criminal proceedings against him or her.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional provisions

40. Pursuant to Article 11, as in force at the relevant time, 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.

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

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

B. The Code of Criminal Procedure

41. Article 30(2) provides, *inter alia*, that a person who earlier acted in a criminal case as a public prosecutor is to be excluded from dealing with the same case as a judge.

42. In accordance with Article 67(1)(a), an accused can only be remanded in custody when there are reasonable grounds for believing that he or she would abscond or hide in order to avoid prosecution or punishment, especially when he or she has no permanent address.

43. Article 67(1)(c) provides for detention on remand of an accused person when there are reasonable grounds for believing that he or she would commit further offences or accomplish an attempted offence.

44. Under Article 71(2), the maximum length of a person's detention on remand should not exceed two years. The Supreme Court may extend it by another year when the criminal proceedings cannot be concluded, because of the complexity of the case or for other serious reason, within the two years' period provided that the release of the accused person would jeopardise the proceedings.

45. Article 72(2) entitles the accused to apply for release at any time. When the public prosecutor dismisses such an application in the course of pre-trial proceedings, he or she shall submit it immediately to the court. The court shall rule on such an application without delay. In the event that the application is dismissed, the accused may renew it fourteen days after the decision becomes final unless he or she invokes other reasons.

46. Under Article 254(1), unless there are formal shortcomings in an appeal, the appellate court shall review the lawfulness and justification of all conclusions of the first instance court which may be appealed against as well as compliance with the procedural requirements in the proceedings leading to the first instance judgment. In doing so the appellate court shall also have regard to any shortcomings which have not been complained of in the appeal.

C. The Civil Code

47. 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.

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

49. 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 have to 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

50. 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 civil, administrative or criminal proceedings with the exception of decisions which concern deprivation of liberty and imposition of a penalty.

51. Section 5(1) provides that a person who is deprived of liberty is entitled to compensation when the criminal proceedings against him or her are dropped or when he or she is acquitted. However, under paragraph 2(a) of Section 5, such compensation is excluded when the person concerned is responsible for his or her detention in that, in particular, he or she tried to abscond or was otherwise responsible for the facts on which the decision concerning the detention was based.

52. Section 18(1) renders the State liable for damage caused in the context of carrying out functions vested in public authorities which results from the 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

53. 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.

54. 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. Domestic courts' practice

55. 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).

56. 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.

57. 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.

58. 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.

59. 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 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 OBJECTIONS

A. Article 34 of the Convention

60. The Government referred to the Supreme Court's decision of 22 January 1997 in which it had refused to grant a further extension of the applicant's detention on remand on the ground that the previous period of his detention had been excessive in the particular circumstances of the case. They further referred to the fact that, following the applicant's conviction, the domestic authorities had included the period of his detention on remand in the prison term which the applicant had to serve. The Government concluded that the applicant could not claim to be a victim, within the meaning of Article 34 of the Convention, of a violation of his rights under Article 5 § 3 of the Convention.

61. The Court notes that the Government did not raise this objection, which relates to the admissibility of the case, at the admissibility stage of the proceedings. On that account, they may be considered in principle estopped from raising it at this stage (Rule 55 of the Rules of Court; see *inter alia, Amrollahi v. Denmark*, no. 56811/00, § 22, 11 July 2002; and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 44, ECHR 1999-II).

In any event, the Supreme Court did not provide full redress to the applicant in respect of shortcomings affecting the length of his detention which had occurred prior to its decision of 22 January 1997. Furthermore, the decision to include the period of the applicant's detention in the term of imprisonment which he had to serve was not based on the alleged violation of Article 5 § 3 of the Convention. In this respect the applicant cannot, therefore, be said to have lost his victim status within the meaning of Article 34 of the Convention.

B. Article 35 § 1 of the Convention

62. The Government objected, as they had done at the admissibility stage, that the applicant had failed to exhaust domestic remedies in respect of his complaints under Article 5 §§ 3 and 4 of the Convention. They argued that the applicant could have obtained redress by means of an action for damages under the State Liability Act of 1969 and also by means of an action for protection of his personal rights under Article 11 et seq. of the Civil Code.

63. The applicant contested this view.

1. As regards the complaint under Article 5 § 4 of the Convention

64. The Court recalls that in the decision on the admissibility of the application the question relating to the exhaustion of domestic remedies in respect of the applicant's complaint under Article 5 § 4 of the Convention was joined to the merits.

65. Firstly, the Government argued that in respect of his complaint concerning the domestic authorities' failure to decide on his application for release the applicant could have obtained redress by means of an action for damages under the State Liability Act of 1969. They admitted that under that Act it was not possible to obtain compensation for damage of a non-pecuniary nature with the exception of cases where damage to a person's health was caused within the meaning of Regulation No. 32/1995. However, the applicant could have requested that Article 5 § 5 of the Convention be applied by the domestic courts in accordance with Articles 11 and 144(2) of the Constitution and claimed compensation also for non-pecuniary damage. They submitted, with reference to the judgment of the Šaľa District Court delivered in proceedings no. 4C 109/97 on 29 October 1998 and to decision no. 8 Co 109/99 delivered by the Nitra Regional Court on 23 March 2000 (see paragraphs 56 and 57 above) that the applicant could have obtained compensation for non-pecuniary damage and thus appropriate redress under that Act.

66. Secondly, the Government argued that the applicant could also have filed an action for protection of his personal rights under Article 11 et seq. of the Civil Code. They submitted that personal rights within the meaning of Article 11 of the Civil Code implicitly comprised also the right to protection of a person's liberty and privacy. Misconduct in the context of official proceedings or an unlawful decision was capable of interfering with one's personal rights.

67. The applicant disagreed and maintained that the Government had failed to show that, in practice, the remedies invoked were capable of effectively redressing the alleged violations of his rights under Article 5.

68. 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).

69. A civil court invited to rule, in the context of proceedings under the State Liability Act of 1969, on the possible misconduct of authorities dealing with the criminal case of the applicant does not have jurisdiction to order release if the detention is unlawful, as required by Article 5 § 4 (see *Weeks v. the United Kingdom*, judgment of 2 February 1987, Series A no. 114, p. 30, § 61).

70. The Court recalls that it has previously addressed the question of the effectiveness of the compensatory remedy in question in similar cases (see *Tám v. Slovakia* (dec.), no. 50213/99, 1 July 2003, with further references and *Kučera v. Slovakia* (dec.), no. 48666/99, 4 November 2003). It did not find it established that the possibility of obtaining appropriate redress in respect of alleged breaches of Article 5 § 4 of the Convention 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.

71. 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 breach of Article 5 § 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). It follows that the applicant was not required to use that remedy in order to comply with the requirements of Article 35 § 1 of the Convention.

72. The Court further notes that the remedy available under Article 11 et seq. of the Civil Code is also not capable of directly remedying the state of affairs complained of as a civil court dealing with an action for protection of one's personal rights cannot interfere with the powers of prosecuting authorities as enshrined in the Code of Criminal Procedure.

73. As regards the possibility of obtaining compensation for damage of non-pecuniary nature under Article 13(2) and (3) 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 § 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 thereby 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.

74. Furthermore, the information available does not show that at the relevant time it was the practice of domestic courts to grant a 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 59 above) was delivered several years after the applicant had been released and the complaints had been submitted to the Court. 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 complaint which the applicant makes.

75. The Government's preliminary objection in respect of this complaint must therefore be dismissed.

2. As regards the complaint under Article 5 § 3 of the Convention

76. The Court recalls that in its decision on the admissibility of the application it dismissed the Government's objection, with reference to its practice in similar cases (see, for example, *Yagci and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 44; *Tomasi v. France*, judgment of 28 July 1992, Series A no. 241-A, § 79 and *Leperlier v. France*, no. 13091/87, Commission decision of 1 October 1990, with further reference). The Court further noted, in view of the information before it, that compensation for damage of a non-pecuniary nature is excluded under the State Liability Act of 1969 with the exception of cases

where damage to a person's health has been caused. It held that an action under Article 11 et seq. of the Civil Code equally did not constitute a remedy capable of directly redressing the impugned state of affairs.

77. The Government contested these conclusions as being contrary to the principle of subsidiarity underlying Articles 13 and 35 § 1 of the Convention. They submitted, in particular, that by refusing to consider as effective remedies of compensatory nature in cases concerning alleged breach of Article 5 § 3 of the Convention the Court deprived the Contracting States of the possibility of preventing or remedying at domestic level the violations alleged before they are submitted to it.

78. The applicant contended that the Government had not shown that he could have obtained redress by means of the remedies invoked by them.

79. In the light of the information before it the Court is not satisfied, for reasons similar to those set out above, that the remedies invoked by the Government were sufficiently certain and offered reasonable prospects of success in respect of the complaint which the applicant makes under Article 5 § 3 of the Convention. In these circumstances, there is no need to separately address the Government's argument according to which a claim for compensation for damage represents, in principle, an effective remedy in respect of complaints under Article 5 § 3 of the Convention about the length of one's detention on remand.

80. This objection must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

81. The applicant complained that his detention on remand had lasted an unreasonably long time and that there had been no relevant reasons for it. He invoked Article 5 § 3 of the Convention which provides:

> "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. Release may be conditioned by guarantees to appear for trial."

82. The Government maintained that the applicant could no longer claim to be a victim as (i) in its decision of 22 January 1997 the Supreme Court had admitted that the domestic authorities had not acted with due diligence and (ii) following his conviction, the domestic authorities had included the period of his detention on remand in the prison term which the applicant had to serve.

83. The applicant maintained that the length of his detention on remand was mainly due to the Slovakian authorities' failure to proceed with the case in an appropriate manner. He argued that the investigation at the preliminary stage had proceeded at a slow pace. In particular, he pointed out that the domestic authorities had taken more than one month to appoint a lawyer for him following his request of 18 October 1995, and that they had not availed

themselves of all the means available with a view to obtaining the relevant witness statements and proceeding with the case without undue delays.

84. The Court has already dismissed above the Government's objection, which relates rather to the admissibility of the application than to its merits.

85. The applicant was detained on remand from 26 January 1995 to 26 January 1997, that is for two years.

86. The domestic courts based their decisions concerning the applicant's detention on remand on the fact that he was suspected of having committed an offence and considered his continued detention necessary with a view to preventing him from absconding. Reference was made to the fact that the applicant was a foreign national without a permanent address in Slovakia. The Court is satisfied that the grounds given by the judicial authorities were sufficient and relevant and, accordingly, justified the deprivation of liberty of which the applicant complains.

87. As regards the conduct of domestic authorities, the Court takes note of the Supreme Court's finding of 22 January 1997 according to which the case was not complex and the period of almost one year during which the case was pending at the preliminary stage was excessive given the scope of evidence that had to be taken. Furthermore, the first instance court scheduled the main hearing for 30 September 1996, which is more than eight months after the case had been submitted to it on 22 January 1996. In view of these conclusions the domestic courts cannot be said to have displayed "special diligence" in the conduct of the proceedings as required by the Court's case-law (see, among other authorities, *Assenov v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3300, § 154, and *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 251-A, p. 15, § 30).

88. Article 5 § 3 of the Convention has therefore been violated.

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

89. The applicant complained that his application for release from detention on remand of 10 January 1996 had not been decided upon speedily 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."

90. The Court notes that the Banská Bystrica Regional Prosecutor informed the applicant that he would transmit his request for release of 10 January 1996 to the Banská Bystrica Regional Court. Under Article 72(2) of the Code of Criminal Procedure, the latter was obliged to

decide on the request without delay. However, no decision has been delivered on the applicant's request.

91. There has therefore been a violation of Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

92. The applicant complained that under Slovakian law he had no enforceable right to compensation for the alleged violations of his rights under Article 5 §§ 3 and 4 of the Convention. He relied on Article 5 § 5 of the Convention which provides:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

93. The Government relied on their arguments set out above in respect of their objection relating to non-exhaustion of domestic remedies and maintained that the State Liability Act of 1969 and Article 11 et seq. of the Civil Code provided the applicant with an enforceable right to compensation as required by paragraph 5 of Article 5.

94. The applicant contended that the Government had failed to show that, in view of the existing practice, an action for compensation under the State Liability Act of 1969 had any prospects of success in the particular circumstances of his case.

95. Paragraph 5 of Article 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in contravention of paragraphs 1 and 4 of that Article. According to the Court's case-law, the answer to the question whether a violation of paragraphs 3 and 4 of Article 5 gives an entitlement to compensation for non-pecuniary damage depends on the circumstances of each case (see, for example, *Nikolova,* cited above, § 76; *Rakevich v. Russia*, no. 58973/00, § 52, 28 October 2003, *Klamecki v. Poland (no. 2)*, no. 31583/96, § 164, 3 April 2003, or *Kadem v. Malta*, no. 55263/00, § 60, 9 January 2003). However, it is understood that paragraph 5 of Article 5 does not prohibit the Contracting States from making the award of compensation dependent upon the ability of the person concerned to show damage resulting from the breach (see *Wassink v. the Netherlands*, judgment of 27 September 1990, Series A no. 185-A, p. 14, § 38).

96. In the light of the information before it the Court is not satisfied that compensation for damage of a non-pecuniary nature could have been awarded to the applicant under the State Liability Act of 1969 (see paragraphs 70 and 71 above). It further notes that the award of non-pecuniary damages which the applicant could obtain 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 (paragraph 73 above). Such compensation is limited to infringements of one's personal rights within the meaning of Article 11 of the Civil Code and to cases where a person's dignity and position in society have been considerably diminished. It has not been shown that in that context compensation is available for distress, anxiety and frustration which may result from violations of Article 5 §§ 3 or 4 of the Convention and which may call for compensation depending on the particular circumstances of the case (see *Rakevich,* cited above, § 52).

97. As the applicant did not have an enforceable right to appropriate compensation in respect of his complaints about the length of his detention and about the failure to decide on his application for release, there has been a violation of Article 5 § 5.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

98. The applicant complained that he had no effective remedy at his disposal as regards the alleged violations of his rights under Article 5 §§ 4 and 5 of the Convention. He relied on Article 13 of the Convention which provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

99. The Government argued that the applicant had effective remedies at his disposal, namely an action for compensation under the State Liability Act of 1969 and under Regulation No. 32/1965 as well an action for protection of his personal rights pursuant to Article 11 et seq. of the Civil Code.

100. The applicant disagreed.

101. In view of the above findings on the applicant's complaints under Article 5 §§ 4 and 5 of the Convention, a separate examination of this complaint is not called for.

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

102. The applicant complained that the presiding judge of the Regional Court lacked impartiality as he had earlier acted as a public prosecutor in the case. He relied on Article 6 § 1 of the Convention the relevant part of which provides:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

103. The Government maintained that any shortcomings as regards the alleged lack of impartiality of the presiding judge of the Regional Court by which the applicant was convicted were remedied in the proceedings at second instance. In any event, the fact that the judge in question had earlier been involved in the proceedings concerning the applicant's detention did not, as such, cast doubts on his impartiality. The Government maintained, in particular, that the issues the judge had previously to address were not related to the question whether or not the applicant was guilty.

104. The applicant argued, with reference to the Court's judgment in the case of *Piersack v. Belgium* (judgment of 1 October 1982, Series A no. 53) and to Article 30(2) of the Code of Criminal Procedure, that the judge in question lacked impartiality and should not have decided the criminal charges against him. The fact that the name of a different person was later indicated in the minutes of the Regional Court's deliberations held 12 July 1995 confirmed this conclusion. As the Supreme Court had not reversed the judgment of the first instance court the shortcomings in the proceedings at first instance of which the applicant complained could not be said to have been remedied in the appellate proceedings.

105. The Court notes that the applicant raised his objection relating to the alleged bias of J.M. neither in the course of first instance proceedings nor before the appellate court. He failed to do so without invoking any relevant reason for such an omission. It is therefore not now open to the applicant to complain about the impartiality of the judge in question (see *Bulut v. Austria*, judgment of 22 February 1996, *Reports* 1996-II, § 34).

106. Accordingly, there has been no violation of Article 6 § 1 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. 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

108. The applicant claimed 94,000 euros (EUR) in compensation for pecuniary damage. That sum corresponded to the loss of profit of the company which the applicant had owned in Slovakia and to loss of income relating to an employment contract which the applicant had concluded in 1994.

The applicant further claimed EUR 200,100 in respect of non-pecuniary damage. He submitted that the violations of the Convention complained of had caused him suffering and distress, that he had been separated from his family for more than two years and that he had not received appropriate dental treatment during his detention.

109. The Government contended that in the criminal proceedings the applicant had been convicted and the period of his detention had been deducted from the prison term which had been imposed. They therefore considered that the claims for compensation, to the extent that they related to the alleged breaches of the Convention, should be rejected. Furthermore, there was no causal link between the claim relating to the alleged failure to provide the applicant with appropriate medical treatment and the alleged violation of his Convention rights.

110. The Court notes that the length of the applicant's detention pending trial was deducted from his sentence. In these circumstances, and even assuming that there is a causal link between the violations of Article 5 of the Convention found and the alleged loss of income of the applicant, the claim relating to pecuniary damage is to be dismissed (see *Punzelt v. the Czech Republic*, no. 31315/96, § 103, 25 April 2000).

In view of the circumstances of the case the Court further considers that the above finding of a violation of Article 5 §§ 3, 4 and 5 of the Convention constitutes, for the purpose of Article 41 of the Convention, sufficient satisfaction for any prejudice which the applicant may have suffered.

B. Costs and expenses

111. The applicant claimed EUR 8,077.34. That sum comprised fees of the lawyers representing the applicant in both domestic proceedings (EUR 500) and in the proceedings before the Court (EUR 1,000) and EUR 6,577.34 for translation of documents.

112. The Government objected that the applicant had incurred no additional costs in the domestic proceedings that could be related to the alleged violation of his rights under Articles 5 and 6 of the Convention. As to the fees of the lawyer representing the applicant before the Court and the costs relating to translation of documents, the Government considered the sums claimed to be excessive.

113. The Court recalls that that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova,* cited above, § 79 and *Smith and Grady v. the United Kingdom* (just satisfaction), nos. 33985/96 and 33986/96, § 28, ECHR 2000-IX).

Considering the relevant circumstances of the case the Court, on an equitable basis, awards EUR 2,500 under this head.

C. Default interest

114. 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 objections;

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

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

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

5. *Holds* that it is not necessary to examine separately the complaint under Article 13 of the Convention;

6. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

7. *Holds* that the finding of a violation of Articles 5 §§ 3, 4 and 5 of the Convention constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

8. *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 costs and expenses 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;

9. *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