

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

THIRD SECTION

CASE OF KUC v. SLOVAKIA

(Application no. 37498/14)

JUDGMENT

STRASBOURG

25 July 2017

FINAL

25/10/2017

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Kuc v. Slovakia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Luis López Guerra,
Helen Keller,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 4 July 2017,

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

PROCEDURE

1. The case originated in an application (no. 37498/14) 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 Ladislav Kuc ("the applicant"), on 12 May 2014.

2. The applicant was represented by Ms T. Vorobelová, a lawyer practising in Košice. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. Relying on Article 5 §§ 1 (c), 3 and 4 of the Convention, the applicant alleged that his detention had been too long and had lacked relevant and sufficient grounds. He further complained of the failure of the domestic courts to take account of his personal circumstances caused by his mental (schizotypal) disorder and assess them in the light of the reasons for his continued detention.

4. On 11 July 2014 the application was communicated to the Government.

5. Following a preliminary examination of the admissibility of the application, on 25 August 2015, the Chamber to which the case had been allocated decided to adjourn it and request further information from the parties concerning the course of the proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1979 and is currently detained in the Trenčín hospital for charged and convicted persons.

A. Arrest, detention and accusation

7. The applicant was arrested on 1 January 2012 and charges were brought against him the following day for the criminal offence of endangering public safety. The charge was based on the suspicion that he had made home-made explosive devices; that he had sent some of them, together with written threats, to veterinarians and the head office of a supermarket chain; and that he had planted one of the devices next to a fast food outlet and had allowed it to explode with a view to promoting animal rights.

8. On 4 January 2012 the Košice I District Court remanded the applicant in custody pending trial to prevent him from continuing his criminal activity. The District Court took into account, *inter alia,* the nature of the criminal charge and the fact that the applicant had been having long-term psychiatric treatment. An interlocutory appeal by the applicant was unsuccessful.

9. Courts at two levels of jurisdiction reviewed and confirmed the lawfulness of the applicant's detention on five occasions as follows.

10. Between 28 March 2012 and 21 May 2012 courts at two levels dismissed applications by the applicant for release. They relied on a risk of reoffending and took into account new charges that had been brought against him as well as the testimony of various witnesses and victims. In that connection, they referred to evidence that the applicant had been planning his attacks for a long time and in a systematic way. On 3 May 2012 the domestic courts added new grounds for his detention, namely a risk that he might abscond. That was based on a statement by a witness who had allegedly said that the applicant had declared that he would try to flee if he was arrested. The evidence in the case, in particular the applicant's computer, suggested that he had "entertained the idea of counterfeiting an ID".

11. On 11 June 2012 the District Court prolonged the applicant's detention by five months (until 1 January 2013) on the grounds that the investigation was not finished, that further charges had been brought against him since May 2012, and that the criminal charges had been reclassified as a crime of terrorism and the acquisition and possession of firearms. The domestic courts concluded that his criminal case was complex owing to the extent and nature of his criminal activity and repeated the grounds for his

detention, namely the possibility of his reoffending and absconding. The court also ordered a report by an expert on extremism and terrorism. That decision was upheld on appeal.

12. At the pre-trial stage the applicant was committed to the hospital for charged and convicted persons in Trenčín on two occasions, namely between January and February 2012 and March and June 2012 because, *inter alia*, he had demonstrated signs of anxiety, made threats of suicide and needed to have his mental state examined.

13. On 1 October 2012 the applicant was indicted to stand trial on the above charges before the District Court.

14. Between 3 October and 27 December 2012 the applicant applied two more times for release to courts at two levels of jurisdiction. Given the serious accusations made against him in the meantime (on 1 October 2012) for crimes including terrorism, the courts upheld both grounds for his continued detention. In addition, they referred to a witness statement that the applicant had written a will where he had expressed the alleged intention to commit a terrorist suicide attack. Furthermore, the courts rejected bail and guarantees of supervision offered by the applicant's parents since they had been unable to prevent the crimes while the applicant had lived in their house.

B. Trial and the first conviction

15. The District Court held seven hearings in the criminal case against the applicant. It examined oral and documentary evidence, including evidence from several experts. It delivered its judgment on 19 June 2013, finding the applicant guilty of the charges and sentencing him to twenty-five years in prison. However, on 30 October 2013 the Regional Court quashed the judgment following an appeal by the applicant and remitted the case to the District Court for re-examination.

16. The Regional Court observed that in the course of the appellate proceedings, on 24 October 2013, the applicant had submitted a report by two certified experts concluding that he had long been suffering from a mental schizotypal disorder preventing him from understanding the illegal nature of his behaviour and from controlling it ("the second expert report"). Those conclusions were contrary to those in a report by two other experts at the pre-trial stage of the proceedings ("the first expert report"), which had concluded that the applicant was not suffering from a mental illness but merely a personality disorder. Resolving that contradiction was imperative in order to establish whether or not the applicant was criminally responsible. The Regional Court therefore instructed the District Court to obtain a third opinion from an expert institute. In addition, it ordered the lower court to resolve an issue concerning the legal classification of the applicant's impugned actions.

17. In the meantime, on 4 September 2013, while the criminal proceedings were pending on appeal, the Regional Court decided to keep the applicant in detention on the same grounds as before (see paragraph 14 above).

18. The subsequent course of the trial is described in paragraphs 27 *et seq*. below.

C. Application for release of 23 December 2013 and related constitutional complaint

19. After the verdict was quashed on appeal and remitted to the District Court for re-examination, the applicant, assisted by his lawyer, applied for release on 23 December 2013. He referred to his mental disorder as established in the second expert report of 24 October 2013. He added that he had been seeing a psychiatrist since the age of 14 and needed medicine on a daily basis to prevent suicidal thoughts. He could not live without that medicine, even in detention, as he required treatment and sessions with a psychiatrist. He submitted that there was no risk of him absconding if at large as he had only had a basic education, had no financial means, no job, had never travelled alone outside his home town, and was completely dependent on his parents, emotionally, financially and for everyday care. Moreover, there was no risk he would continue his criminal activity if he was under medication and being properly treated, or, alternatively, if he was committed to a psychiatric institution, as he feared for the future after the charges had been brought against him.

20. The applicant's parents supported his application for release and offered to stand as guarantors of his pledge that he would live in accordance with the law. They also supported his request that his detention be replaced by supervision by a parole officer.

21. On 10 January 2014 the District Court heard the applicant, his lawyer, and the Public Prosecution Service as regards his request for release. According to the transcript of the hearing, the applicant and his counsel reiterated and further developed their arguments made in the application and submitted that his mental condition meant that his absconding was not realistic.

22. The Government's observations show that on the same date the District Court sent a letter to the director of the detention centre in Košice where the applicant was being held, asking for information about the applicant's state of health. It enquired whether the applicant was being provided with the drugs he had been prescribed and whether the detention centre was able to provide the applicant with his treatment. The director of the detention centre replied on the same day in the affirmative.

23. On 13 January 2014 the District Court dismissed the applicant's application to be released and his supplementary requests, a decision that

was upheld by the Regional Court on 29 January 2014 after an interlocutory appeal by the applicant.

24. The courts concluded that there was still a strong suspicion against the applicant, which added to the reasons for keeping him detained. They observed that he had created explosives and contemplated where to plant them over a long time and in a systematic way. He had lived with his parents and a search of the home they shared had shown that they had clearly not been aware of his illegal activities and had been unable to prevent them. The applicant faced a particularly severe potential penalty, had declared openly that he would try and flee in case of arrest and a search of his computer had suggested that he had contemplated counterfeiting an ID.

Regarding the nature, scope and seriousness of the alleged offences and the applicant's character, the courts concluded that the conditions for a restriction of liberty still existed. In addition, they observed that the relevant authorities had proceeded with the case expeditiously and with due diligence.

Moreover, the courts found that the requirements for alternative measures, such as a parental guarantee, a pledge by the applicant or replacing his detention with supervision had not been met.

There was no separate consideration of the applicant's mental condition as such. The correspondence between the district court and the director of the detention centre was not mentioned in the courts' decisions.

25. The applicant subsequently turned to the Constitutional Court with a complaint under Article 127 of the Constitution, alleging a violation of his rights, *inter alia*, under Article 5 §§ 1 (c), 3 and 4 of the Convention, or their constitutional equivalents.

As to the substance, he raised arguments that were similar to those in his application to be released. He added that the courts had failed to take into account the specific nature of his situation, consisting of his mental disorder; that the length of his detention had been excessive and based on irrelevant and insufficient reasons; and that the only matter open to debate was whether he was legally insane, which impacted on his criminal liability.

26. On 2 April 2014 the Constitutional Court dismissed the complaint as manifestly ill-founded. It endorsed the reasons given by the ordinary courts and concluded that they had been relevant and sufficient to keep the applicant detained. It gave no answer to his argument concerning the specific nature of his situation.

D. Subsequent developments in respect of the merits of the case

27. Following remittal of the case by the Regional Court, the District Court asked the expert institute on 9 December 2013 to produce a report on the applicant's mental condition. On 20 March 2014 it also ordered that the

applicant be admitted to the psychiatric department of the Trenčín hospital for charged and convicted persons in order to have his mental health examined. The report was filed on 1 July 2014, and the District Court heard the case between January and July 2014.

28. On 10 July 2014 the District Court again found the applicant guilty. The Regional Court dismissed an appeal by the applicant on 10 October 2014. He was sentenced to twenty-five years' imprisonment, thirty-six months' protective supervision and payment of damages. No ordinary appeal being available, the judgment became final and binding.

29. Nevertheless, the applicant appealed on points of law and the Supreme Court quashed the District and Regional Court judgments owing to breaches of the law to the applicant's disadvantage. The matter was remitted to the District Court for fresh examination. The Supreme Court provided an extensive interpretation of the criminal offence of terrorism and concluded that the lower courts' legal interpretation of the case had been wrong as the applicant's motive had not included elements of the crime of terrorism.

30. Subsequently, the case returned to the District Court and the applicant remained detained pending trial as of 14 April 2016.

31. Taking into account the Supreme Court's judgment and its legal interpretation of the crime in question, the District Court once again found the applicant guilty of, *inter alia*, the criminal offence of endangering public safety, the illegal acquisition, possession and trafficking of firearms, the making of serious threats, extortion, and attempted bodily harm and sentenced him to twenty-three years and six months in prison on 29 September 2016. It also ordered protective supervision lasting thirty-six months. The applicant appealed and those proceedings are still pending.

32. On 29 November 2016 the applicant was transferred from the Košice detention centre to the hospital in Trenčín after he reportedly collapsed.

II. RELEVANT DOMESTIC LAW

33. Under Article 71 § 1 of the Code of Criminal Procedure (no. 301/2005 Coll.) applicable at the relevant time, a person charged with a criminal offence could be detained, *inter alia*, where there were reasonable grounds for believing that he or she would abscond (Article 71 § 1 (a)), influence witnesses or other defendants or otherwise hamper the investigation (Article 71 § 1 (b)), continue their criminal activities, take an attempted offence to completion or commit an offence which he or she had prepared or threatened to commit (Article 71 § 1 (c)).

THE LAW

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

34. Relying on Article 5 §§ 1 (c), 3 and 4 of the Convention, the applicant raised a number of interrelated complaints concerning his detention. He alleged that it had been too long and had lacked relevant and sufficient grounds.

35. The Court, being the master of the characterisation to be given in law to the facts of a case (see, for example, *Margaretić v. Croatia*, no. 16115/13, § 75, 5 June 2014), considers that this complaint falls to be examined under Article 5 § 3 of the Convention, which reads as follows:

> "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."

A. Admissibility

36. The Court observes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

37. The applicant reiterated his complaints and commented on the expert evidence concerning his mental health. He said he had not had proper treatment because he had been detained in a detention centre and had needed psychiatric treatment, medication and therapy. In his view, he should have been released or placed in an institution where he could have received adequate treatment, rather than being kept in detention.

To support that argument he maintained that his detention became unlawful as the domestic courts, when dealing with his application to be released of 23 December 2013, had failed to take into account the personal circumstances of his mental (schizotypal) disorder and assess them in the light of his continued detention. He referred to the second expert report, which had concluded that he suffered from a mental schizotypal disorder. He submitted that at the material time there had existed no risk of him absconding, in particular because he had lacked financial means, had been unemployed and had needed medication and psychiatric sessions. He

pointed out that the domestic courts had failed to address his argument that if properly treated he would neither reoffend nor abscond.

In support of his argument, he provided a history of his medical condition, treatment he had been provided with since the age of 14, his health condition as well as the medical care provided while in detention. He also analysed the experts' conclusions.

38. The Government contested the applicant's arguments. They maintained that the courts had indeed considered his mental condition, contrary to his suggestion. In particular, the District Court had heard the applicant and his lawyer on the reasons for the applicant's application for release on 10 January 2014 and on the same day had requested a report on his health from the detention centre (see paragraph 22 above). Moreover, the courts had had the first and second expert reports at their disposal and had thus been aware of the applicant's condition. Nevertheless, they had been satisfied with the care being given to the applicant in the detention centre and the reasons justifying his detention.

The Government submitted that the applicant's arguments were self-serving. They highlighted that it was during his detention that he had become convinced that he needed to be held in a psychiatric institution rather than in a regular detention centre. They referred to the various letters he had sent to the District Court judge, in which he had asked to be transferred to a psychiatric hospital in 2013, or, on another occasion in January 2014 during his stay in the Trenčín hospital, to be transferred back to the detention centre. They added that the conclusions of the first expert report had been eventually confirmed by the third report of 1 July 2014.

In addition, they argued that the applicant's mental condition had only been relevant for the assessment of his ability to understand and control his behaviour, which was in turn relevant for the question on the merits of his criminal liability and not for questions concerning his detention.

In their view, a detained person's mental condition was only pertinent to questions of whether that condition was compatible with detention and whether the detainee was receiving adequate medical care. Neither of those issues had arisen in the applicant's case. His mental health had required treatment and the detention centre had been able to provide him with it.

39. As regards the length of the applicant's detention, the Government submitted that the contested period had been justified and in line with the Court's case-law.

The Government submitted that at the given time there had been reasons to keep the applicant in detention. They pointed out that he had confessed to most of the crimes and that his confession had been confirmed by a search of his home and expert evidence. The suspicion against him had accordingly been strong and the courts had given relevant and sufficient reasons to justify the need to keep him in detention.

In addition, in the Government's view the authorities had acted with due diligence. They had obtained a great deal of evidence, including an expert examination of the applicant's sanity for legal purposes. The authorities had also had to obtain new expert evidence in response to the applicant's line of argument in his appeal against his first conviction.

2. The Court's assessment

(a) The period to be taken into consideration

40. The Court reiterates that according to its well-established case-law, in determining the reasonableness of the length of detention under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when he is released (see, for example, *Fešar v. the Czech Republic*, no. 76576/01, § 44, 13 November 2008), or when the charge was determined, even if only by a court of first instance (see *Belevitskiy v. Russia*, no. 72967/01, § 99, 1 March 2007).

41. Having regard to its previous jurisprudence, the Court should make an overall evaluation of multiple and consecutive periods of detention under Article 5 § 3 in order to assess the reasonableness of the overall length of an applicant's detention on remand (see, among many other authorities, *Solmaz v. Turkey*, no. 27531/02, §§ 34-37, 16 January 2007, and *Dirdizov v. Russia*, no. 41461/10, § 105, 27 November 2012).

42. Also, in view of the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention, the Court is entitled to examine the length of the applicant's detention only to the extent that it has been challenged before the Constitutional Court (see *Fruni v. Slovakia*, no. 8014/07, § 177, 21 June 2011).

43. In the present case, the Court observes that following his arrest on 1 January 2012 the applicant was remanded in custody on 4 January 2012 and convicted at first instance on 19 June 2013.

He was detained from that date "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and therefore that period of his detention falls outside the scope of Article 5 § 3 (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000–XI).

However, on 30 October 2013 the Regional Court quashed the applicant's conviction on appeal. After that date his detention was again covered by Article 5 § 3. The Constitutional Court determined matters concerning his continued detention on 2 April 2014.

44. In those circumstances, and in view of the fact that the applicant was detained on a continuous basis following his arrest, save for the periods he was detained within the meaning of Article 5 § 1 (a), the Court concludes that the multiple, consecutive periods of detention should be regarded as a whole. In as far as the applicant exhausted domestic remedies, the period

under consideration consisted of two sub-periods, from 1 January 2012 to 19 June 2013 (one year, five months and eighteen days) and from 30 October 2013 to 2 April 2014 (five months and ten days), which in total amounted to one year, ten months and twenty-eight days.

(b) General principles

45. The persistence of a reasonable suspicion that a person who has been arrested has committed an offence is a *conditio sine qua non* for the lawfulness of continued detention, but after a certain amount of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings (see, among other authorities, *Letellier v. France*, 26 June 1991, § 35, Series A no. 207; *Yağcı and Sargın v. Turkey*, 8 June 1995, § 50, Series A no. 319-A; and *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 87, ECHR 2016 (extracts)).

46. There is a general rule that the domestic courts are better placed to examine all the circumstances of a case and take all the necessary decisions, including those in respect of detention on remand. To this end, they must examine all the evidence for or against the existence of a genuine requirement of public interest justifying a departure from the rule of respect for individual liberty, with due regard to the principle of the presumption of innocence, and must set them out in their decisions dismissing applications for release. It is essentially on the basis of the reasons given in those decisions and the facts cited by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see, among others, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV, and *Stašaitis v. Lithuania*, no. 47679/99, § 82, 21 March 2002).

47. In exercising this function, the Court has to ensure that the domestic courts' arguments for and against release must not be "general and abstract" (see, for example, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX (extracts), and *Nikolov v. Bulgaria*, no. 38884/97, § 73, 30 January 2003), but contain references to specific facts and the personal circumstances justifying an applicant's detention (see, *mutatis mutandis*, *Panchenko v. Russia*, no. 45100/98, § 107, 8 February 2005).

48. Where circumstances that could have warranted a person's detention may have existed but were not mentioned in the domestic decisions it is not the Court's task to establish them and take the place of the national authorities which ruled on the applicant's detention (*Bykov v. Russia* [GC], no. 4378/02, § 66, 10 March 2009, and *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, § 77, 13 January 2009).

49. The Court also notes that there is all the more call for such a reasoned decision when the domestic courts have had to assess the grounds for detention of an applicant who has alleged a serious psychiatric condition (see, for example, *Csáky v Hungary*, no. 32768/03, §§ 35-36, 28 March 2006).

(c) Application of the general principles to the present case

50. The Court needs to evaluate whether the national authorities put forward weighty reasons to justify his detention during one year, ten months and twenty-eight days (see, for example, *G. v. Russia*, no. 42526/07, § 112, 21 June 2016).

51. The Court observes that the applicant was charged on ten counts of a serious crime. The grounds for his detention were the danger of reoffending, to which was added that of absconding in May 2012. The gravity of the criminal offences of which he was accused was also taken into consideration. The domestic courts referred on several occasions to the long and systematic planning of the offences, his long-lasting psychiatric treatment and the fact that he had not denied committing most of the acts. They also relied on evidence and witness testimony which suggested that the applicant had entertained the idea of forging an ID and trying to escape if apprehended. They also considered alternative measures.

The Court is therefore satisfied that until the applicant's first conviction, the domestic authorities could reasonably fear in the circumstances of the case that the applicant would commit new offences and abscond, given his past history and character (see *Clooth v. Belgium*, 12 December 1991, § 40, Series A no. 225, and *A.J.P. v. France*, no. 17020/05, § 71, 29 October 2009).

52. However, once the investigation had been completed, the indictment brought, the applicant convicted for the first time, and the conviction quashed on appeal in October 2013, the applicant continued to be deprived of his liberty. The Court notes that in the subsequent period the question before the domestic courts concerned solely whether he was legally insane, which was to be corroborated by a third expert report.

53. The Court must look at the passage of time and examine whether the grounds for detention provided in the domestic courts' decisions were still sufficient and relevant, especially in the light of his application for release of 23 December 2013.

54. In that application, the applicant presented new evidence (the second expert report), arguing that his personal circumstances had changed and the grounds for his detention had become irrelevant. He referred to his personal and health circumstances including, *inter alia*, the need for psychiatric treatment for his schizotypal disorder, which in his opinion rendered his detention inadequate and unnecessary.

55. The Court notes that in response to the applicant's application the domestic courts made no reference to his health condition. They merely reiterated their previous arguments from pre-conviction decisions on detention stating that, given the seriousness of the charges against him, there was a risk he would reoffend and abscond. The Court reiterates that while it is true that neither the risk of absconding nor that of reoffending can be completely negated by the passage of time or by a conviction judgment delivered in the meantime (and subsequently quashed), those reasons should be examined in view of all the circumstances of the case.

56. Accordingly, the Court is of the view that the risk of absconding or reoffending should have been assessed against the background of the applicant's personal circumstances and health condition, even if that condition was contested at the relevant time. It notes that as early as in October 2013 the domestic courts had had at their disposal a new expert report contradicting the previous findings about the applicant's mental condition. They were therefore obliged to consider it and to respond to the applicant's allegation about an alleged absence of grounds for his detention in the light of that information, the more so since they were aware of his previous psychiatric treatment and his admission to hospital while in detention, which had lasted for several months (see, *mutatis mutandis*, *Csáky v. Hungary*, no. 32768/03, § 36, 28 March 2006). Instead, they limited themselves to referring to their previous detention decisions, without developing them to reflect the new situation, in particular the applicant's reference to his mental condition. In addition, his argument that there was no danger of his reoffending or absconding provided he was treated properly went unanswered (see, for example, *Orban v. Croatia*, no. 56111/12, § 61, 19 December 2013).

57. The Court observes the Government's submission that the domestic courts had in fact dealt with the applicant's alleged specific circumstances, the adequacy of the conditions of his detention and his need for treatment when deciding on his application for release lodged on December 2013, and the copies they produced of an exchange of letters between the president of the District Court and the director of the detention centre concerning the applicant's health and the detention centre's capacity to provide him with proper care (see paragraphs 22 and 38).

58. While the Court takes note of the Government's contentions, it is the national courts' responsibility to set out the arguments for or against detention in their decisions after they had examined them (see, for example, *Labita v. Italy* ([GC], cited above, § 170); or *Nikolov v. Bulgaria*, no. 38884/97, §§ 74 *et seq*., 30 January 2003). In the present case, the Court observes that the substance of those letters is in no way reflected in the impugned domestic courts' decisions.

59. The foregoing considerations are sufficient to enable the Court to conclude that the grounds given by the domestic authorities in response

to the applicant's request for release of 23 December 2013 failed to take account of his personal circumstances, notably as regards his psychiatric condition. As a result, the applicant's pre-trial detention was based on grounds which cannot be seen as sufficient between 24 October 2013 (when the domestic courts had two conflicting expert reports about the applicant's mental health at their disposal) and 2 April 2014 (when the Constitutional Court delivered its decision).

In those circumstances it is not necessary to examine whether the proceedings were conducted with special diligence (see, for example, *Solmaz v. Turkey*, no. 27561/02, § 43, 16 January 2007, and *Kulikowski v. Poland*, no. 18353/03, § 51, 19 May 2009).

60. The Court therefore finds that there has been a violation of Article 5 § 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

61. In his observations the applicant referred to his mental condition, deterioration of his health condition and the treatment he had received while in detention. He did not rely on any Convention Article.

62. The Court finds in the light of all the material in its possession and in so far as the matters complained of are within its competence, that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or the Protocols thereto and that the admissibility criteria set out in Articles 34 and 35 of the Convention have not been met.

63. It must therefore declare this part of the complaint inadmissible.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

66. The Government contested the claim as unfounded and exaggerated.

67. The Court awards the applicant EUR 6,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

68. The applicant also claimed EUR 18,600 for the costs and expenses incurred before the domestic courts (the ordinary courts and the Constitutional Court) and before the Court.

69. The Government submitted that the expenses incurred before the ordinary courts had concerned the merits of the applicant's case and had not related to the violation alleged in the present application. As regards the proceedings before the Constitutional Court and the Court, they were prepared to accept the applicant's claim for costs in accordance with the Court's case-law.

70. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that some of the expenses incurred before the ordinary courts concerned the applicant's application for release rather than the proceedings on the merits.

71. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 9,000, plus any tax that may be chargeable to the applicant, covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 5 § 3 of the Convention admissible and the remainder of the application inadmissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 25 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President