

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

THIRD SECTION

CASE OF ŠABLIJ v. SLOVAKIA

(Application no. 78129/11)

JUDGMENT

STRASBOURG

28 April 2015

FINAL

28/07/2015

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



In the case of Šablij v. Slovakia,

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

Josep Casadevall, *President,*
Luis López Guerra,
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 7 April 2015,

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

PROCEDURE

1. The case originated in an application (no. 78129/11) 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 Ukrainian national, Mr Nikolaj Šablij ("the applicant"), on 18 December 2011.

2. The applicant was represented by Mr K. Hynek, a lawyer practising in Bratislava.

The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged that the length of the proceedings in respect of the request he made for release from pre-trial detention in September 2010 was incompatible with the "speediness" requirement under Article 5 § 4 of the Convention, and that he had been denied any financial compensation in that respect.

4. On 12 July 2013 the complaints mentioned above were communicated to the Government, and the remainder of the application was declared inadmissible. At the same time, the Ukrainian Government were informed of the case and invited to exercise their right of intervention, to which invitation they have not responded (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant's identity has been the subject of controversy at the national level. In his submission to the Court he referred to himself as mentioned above (see paragraph 1), and indicated his year of birth as 1977.

6. During the proceedings in Slovakia described below, the applicant also was or has been referred to as Jurij Rybakovas, with the surname at birth of Vilcinskas, alias Kolja, born in 1976, and as Valerij Juriovi Grinevsky, a Lithuanian national.

A. Arrest, detention and trial

7. On 31 December 2007 the applicant was arrested; on 4 January 2008 he was remanded in custody pending trial on charges of conspiracy and murder.

8. On 18 June 2009 the Bratislava I District Court (*Okresný súd*) authorised extension of his pre-trial detention until 28 August 2009. Following an appeal by the applicant the Bratislava Regional Court (*Krajský súd*) on 25 June 2009 upheld that decision.

9. On 11 August 2009 the applicant was indicted to stand trial; on 22 August 2009 the District Court dismissed his request for release.

10. The District Court heard the case on 27-29 October 2010 and a further hearing was scheduled for 12 to 14 January 2011.

11. On 27 July 2011 the applicant was acquitted; his acquittal was upheld on appeal on 18 April 2013.

B. Request for release of September 2010

12. On 16 September 2010, while he was still in detention, and acting through the intermediary of his lawyer, the applicant requested release. In support of the request, he argued that he was innocent and that his detention in the present trial was no more than an arbitrary means of retaining him in detention in the interest of another trial.

The request was submitted by mail and was received at the District Court on 20 September 2010.

13. On 12 January 2011 the District Court heard the applicant in private, when he confirmed that he was seeking a response to the request for release he had made in September 2010. On the same day the District Court dismissed the request and the applicant stated on the record that he wished to appeal.

14. Through his lawyer, the applicant submitted his reasons for appealing in writing on 17 January 2011. At the same time, he offered a pledge that, if released, he would live in accordance with the law.

15. On 25 January 2011, at a private session, the Regional Court dismissed the applicant's appeal and rejected his offer. It observed, *inter alia*, that there had been unjustified delay in dealing with the applicant's request at the first level of jurisdiction, which could potentially serve as a ground for calling the President of its Chamber to account, but which in itself did not constitute a reason for releasing the applicant.

16. The written version of the decision of 25 January 2011 was served on the applicant via the District Court on 23 February 2011. It was not amenable to appeal.

C. Final domestic decision

17. In March 2011 the applicant lodged a complaint under Article 127 of the Constitution (Constitutional Law no. 460/1992 Coll., as amended) with the Constitutional Court (*Ústavný súd*).

He directed the complaint against the District Court and alleged that, in determining his request for release of September 2010, there had been a violation of his right under Article 5 § 4 of the Convention to a "speedy" review of the lawfulness of his detention.

In terms of redress, he claimed reimbursement of his legal costs and 6,000 euros (EUR) by way of compensation.

18. On 5 April the Constitutional Court declared the complaint admissible; on 21 June 2011 it found a violation of the applicant's right as claimed.

Referring to its previous judgments in cases nos. III. ÚS 7/00, I. ÚS 18/03, III. ÚS 126/05 and III. ÚS 216/07, the Constitutional Court observed that the "speediness" requirement would usually not be deemed to have been respected if the length of the proceedings in question amounted to months, as opposed to weeks; if the proceedings lasted more than one month at a single level of jurisdiction; or if there had been a period of judicial inactivity amounting to weeks.

As regards the merits, the Constitutional Court found the District Court's handling of the applicant's request "particularly lengthy" and "extraordinarily and unacceptably long". It could neither be justified nor explained by the fact that, at the hearing held on 27-29 October 2010 (see paragraph 10 above), the applicant had taken no action and had not demanded a decision on his request for release.

19. As regards just satisfaction, it awarded the applicant reimbursement of his legal costs but rejected the remainder of his claim. In that regard, the Constitutional Court referred to "the principle of fairness", "the particular circumstances of the case", and a premise that monetary compensation was

only to mitigate loss suffered as a result of a violation of an individual's fundamental rights and freedoms. It concluded that the finding of a violation of the applicant's rights was sufficient just satisfaction for him.

20. The Constitutional Court's decision was served on the applicant on 23 September 2011.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. The relevant domestic law and practice are summarised in the Court's judgment in the case of *Horváth v. Slovakia* (no. 5515/09, §§ 35-54, 27 November 2012).

THE LAW

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

22. The applicant complained that the length of the proceedings in his request for release of September 2010 was incompatible with the requirement of "speediness" provided for in Article 5 § 4 of the Convention, which reads as follows:

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

A. Admissibility

23. The Government relied on the Constitutional Court's judgment of 21 June 2011, and considered that by virtue of that judgment the applicant had lost his "victim" status within the meaning of Article 34 of the Convention in respect of the alleged violation of his rights under Article 5 § 4 of the Convention. It was true that the Constitutional Court had granted the applicant no compensation for non-pecuniary damage. However, in the Government's submission, this was compatible with the Court's own approach in cases where it had found that the finding of a violation of applicants' Article 5 rights constituted in itself sufficient just satisfaction for any non-pecuniary damage they had sustained.

24. Moreover, and in any event, in so far as the applicant had not been awarded any compensation by the Constitutional Court, the Government submitted that he had failed to comply with the requirement of Article 35 § 1 of the Convention to exhaust domestic remedies, since he had failed to claim damages under the 2004 State Liability Act ("the SL Act").

In support of the argument, they submitted that, on the specific facts of the case, other forms of redress than financial compensation did not in principle come into question; relied on a report by the Constitutional Court and a judgment of the Bratislava I District Court of 17 August 2009 (see *Horváth*, cited above, §§ 40-43 and 54); and referred to the Court's decision in *Martikán v. Slovakia* (no. 21056/08, 9 October 2012).

25. The applicant responded that the Constitutional Court's rejection of his claim in respect of non-pecuniary damage was inconsistent with its position in other comparable cases, and objected that claiming damages under the SL Act was inefficient because, among other reasons, as regards his entitlement to compensation an ordinary court dealing with a compensation claim under that Act would be unlikely to reach a conclusion different from that reached by the Constitutional Court.

26. The Court will first deal with the Government's non-exhaustion objection. It observes that it rejected substantially the same objection after a thorough examination in the *Horváth* case (cited above, §§ 67-82). In so far as the Government's argument has been substantiated, it finds no reasons for reaching a different conclusion in the present case.

27. To the extent that the Government have sought to rely on its decision in *Martikán*, the Court reiterates that that case concerned only and exclusively Mr Martikán's rights under Article 5 § 5 of the Convention and that, in assessing his complaints under that provision, the Court specifically noted that it was not called upon to examine the Government's non-exhaustion plea, which in its essence was linked to the underlying violation of Mr Martikán's rights under Article 5 § 4 of the Convention, rather than to his complaints under the Court's examination (see *Martikán*, cited above, §§ 40 and 49).

28. The Government's non-exhaustion objection in the present case must therefore be dismissed.

29. The Court further considers that the Government's objection concerning the applicant's status as a "victim" is closely linked to and should be joined to the merits of the complaint.

30. Furthermore, the Court considers that this part of the application raises serious questions of fact and law which are of such complexity that their determination should depend on an examination on the merits. It cannot therefore be considered manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

31. The applicant contended that the determination of his request for release of September 2010 had fallen short of the requirements of Article 5 § 4 of the Convention, in particular as regards its "speediness".

32. Referring to the Constitutional Court's judgment of 21 June 2011, the Government conceded that the lawfulness of the applicant's detention had not been decided speedily as required under Article 5 § 4 of the Convention.

2. The Court's assessment

33. The Court reiterates that Article 5 § 4, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of the detention, and ordering its termination if it proves unlawful. In order to determine whether the requirement that a decision be given "speedily" has been complied with, it is necessary to effect an overall assessment where the proceedings were conducted at more than one level of jurisdiction. The question whether the right to a speedy decision has been respected must – as is the case for the "reasonable time" stipulation in Articles 5 § 3 and 6 § 1 of the Convention – be determined in the light of the circumstances of each case, including the complexity of the proceedings, the conduct of the domestic authorities, the conduct of the applicant and what was at stake for the latter (for a recapitulation of the applicable principles, see *Mooren v. Germany* [GC], no. 11364/03, § 106, ECHR 2009-...).

34. In the present case the applicant submitted his request for release on 16 September 2010. It was received at the District Court on 20 September 2010 and the final decision on it was served on him on 23 February 2011.

35. The period under consideration thus lasted 154 days (see, for example, *Singh v. the Czech Republic*, no. 60538/00, § 74, 25 January 2005, and *Cabala v. Slovakia*, no. 8607/02, § 68, 6 September 2007), during which time his request was examined at two levels of jurisdiction.

36. In view of the Constitutional Court's finding of a violation of the applicant's right to a speedy review of the lawfulness of his detention within the meaning of Article 5 § 4 of the Convention (see paragraph 18 above), the Government's admission (see paragraph 32 above), and its own case-law on the subject (see the summary in, for example, *Osváthová v. Slovakia*, no. 15684/05, § 77, 21 December 2010), the Court finds that the proceedings on the applicant's request for release were not in conformity with the speediness requirement of Article 5 § 4 of the Convention.

3. The victim status of the applicant

37. In view of the above conclusion, it remains to be examined whether the applicant can still claim to be a victim.

38. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive the applicant of his or her status as a "victim" within the meaning of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Rosselet-Christ v. Slovakia*, no. 25329/05, § 49, 26 October 2010, with further references).

39. In the present case the Constitutional Court expressly acknowledged the breach of the applicant's rights under Article 5 § 4 and awarded him reimbursement of his legal costs, but rejected the remainder of his compensation claim.

40. The Court notes that, in rejecting the remainder of the applicant's claim, the Constitutional Court referred to "the principle of fairness", "the particular circumstances of the case", and a premise that monetary compensation was only to mitigate the loss suffered as a result of a violation of an individual's fundamental rights and freedoms (see paragraph 19 above). However, it has not explained the application of these principles in the present case in any detail, and the Court finds it difficult to reconcile with the Constitutional Court's other findings such as the District Court's handling of the applicant's request having been "particularly lengthy" and "extraordinarily and unacceptably long" (see paragraph 18 above).

41. Moreover, the Court also notes that the Regional Court dealing with the applicant's interlocutory appeal against the first-instance decision rejecting his request for release itself observed that there had been delays at the first level of jurisdiction, which potentially opened up the possibility of calling the President of its Chamber to account (see paragraph 15 above).

42. The Court also considers that the relatively extensive length of the domestic courts' decision-making on the applicant's request and the absence of any concrete grounds for that delay called in the present case for redress in financial terms, and that it should be differentiated from those referred to by the Government, in which no award under Article 41 of the Convention in respect of non-pecuniary damage was justified. In that regard the Court notes specifically that the Government themselves have acknowledged that in this case redress other than financial compensation did not in principle come into question (see paragraph 24 above).

43. In these circumstances, and with respect to its own case-law on the matter (for comparison see, for example, *Rapacciuolo v. Italy*, no. 76024/01, 19 May 2005; *Vejmola v. the Czech Republic*, no. 57246/00, 25 October 2005; *Rahmani and Dineva v. Bulgaria*, no. 20116/08, 10 May 2012; and *Alikhonov v. Russia*, no. 35692/11, 31 July 2012), the Court finds that the Constitutional Court's judgment has not provided the

applicant with redress compatible with the Article 34 requirements in order to deprive him of his "victim" status within the meaning of Article 34 of the Convention.

4. Conclusion

44. The applicant can thus still claim to be a "victim" within the meaning of the said provision in respect of the breach of his rights under Article 5 § 4 of the Convention, and the Government's objection in this regard must be dismissed.

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

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

45. The applicant also complained that he had been denied any financial compensation in respect of the excessive length of the proceedings in his request for release of September 2010. In that regard, in substance, he relied on Article 5 § 5 of the Convention, which provides as follows:

> "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."

A. Admissibility

46. The Court notes that this 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

47. The Government referred to their arguments concerning the exhaustion of domestic remedies as regards the complaint under Article 5 § 4 of the Contention. In particular, they considered that the SL Act provided a comprehensive framework for claims for compensation in respect of detention contrary to Article 5 §§ 1 to 4 of the Convention, which was complemented by and independent of the procedural protection under Article 127 of the Constitution, and that these ways of seeking compensation for the violation of his rights under Article 5 § 4 of the Convention jointly were compatible with the requirements of its Article 5 § 5.

48. The applicant has made no specific submission on this point.

49. The Court considers that, in view of its above findings concerning the complaint under Article 5 § 4 of the Convention (see paragraphs 28,

36 and 44 above), it is not called upon to examine the Article 5 § 5 complaint separately on its merits.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant made a claim in respect of non-pecuniary damage. In so far as can be established, the amount of this claim was EUR 2,380.

52. The Government contested the claim as overstated.

53. The Court considers that the claim should be granted in full. It therefore awards the applicant EUR 2,380, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

54. The applicant also claimed EUR 392.73, plus 19% value-added tax, for the costs and expenses incurred before the Court. In support of that claim, he submitted copies of a legal assistance contract with his lawyer and of the latter's bill for the above amount, payable on completion of the Convention proceedings.

55. The Government submitted that that they had no objection to an award of compensation in respect of a demonstrably incurred amount.

56. 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 (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

57. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the principal amount of the claim in full, plus any tax that may be chargeable to the applicant. It therefore awards him EUR 392.73, plus any tax that may be chargeable to the applicant, for the proceedings before the Court.

C. Default interest

58. 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. *Joins* the Government's objection under Article 34 of the Convention to the merits of the application and *rejects* it;

2. *Declares* the application admissible;

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

4. *Holds* that there is no need for a separate examination of the complaint of the alleged violation of Article 5 § 5 of the Convention on its merits;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 2,380 (two thousand three hundred and eighty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 392.73 (three hundred and ninety-two euros seventy-three cents), 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.

Done in English, and notified in writing on 28 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Josep Casadevall
President