

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

FIRST SECTION

CASE OF SALMANOV v. SLOVAKIA

(Application no. 40132/16)

JUDGMENT

Art 5 § 1 • Unlawful detention on remand ordered by Supreme Court subsequent to first-instance conviction • Elements of arbitrariness Art 5 § 5 • Compensation • No enforceable right to compensation for the violation of Article 5 § 1

STRASBOURG

20 January 2022

FINAL

20/04/2022

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



In the case of Salmanov v. Slovakia,

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

Péter Paczolay, *President,*
Krzysztof Wojtyczek,
Alena Poláčková,
Gilberto Felici,
Erik Wennerström,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 40132/16) 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 Alexander Salmanov ("the applicant"), on 6 July 2016;

the decision to give notice to the Government of the Slovak Republic ("the Government") of the application;

the parties' observations;

Having deliberated in private on 7 December 2021,

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

INTRODUCTION

1. The application concerns the applicant's detention on remand and the proceedings concerning his application for release in the context of his trial on the charge of bribery.

THE FACTS

2. The applicant was born in 1986 and, at the time of introduction of his application, was serving a prison sentence in Hrnčiarovce nad Parnou. He was represented by Mr V. Križiak, a lawyer practising in Košice.

3. The Government were represented by their co-Agent, Ms M. Bálintová, from the Ministry of Justice.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE CHARGE AGAINST THE APPLICANT AND HIS DETENTION

5. On 23 April 2013 the applicant was remanded in detention pending trial on a charge of bribery. His detention was considered necessary under Article 71 § 1 (b) and (c) of the Code of Criminal Procedure (Law no. 301/2005 Coll., as amended – "the CCP"), which provides for

detention if there is a risk of the person interfering with the course of justice (*kolúzna väzba*) and of engaging in further criminal activities (*preventívna väzba*). In the course of the subsequent pre-trial proceedings, the latter ground for his detention was dropped and solely the former was retained.

6. On 25 September 2013 the applicant was indicted to stand trial before the Specialised Criminal Court ("the SCC") on the above charge.

II. THE APPLICATION FOR RELEASE AND THE ENSUING PROCEEDINGS BEFORE THE ORDINARY COURTS

7. The specific object of his application before the Court is the applicant's detention in the period following his application for release, dated 25 September 2014 and lodged with the SCC on 29 September 2014, in which he argued that his detention was no longer justified in view of its length and other factors.

8. On 11 November 2014 the SCC acceded to the applicant's application and ordered his release.

9. However, on the same day, the prosecution service lodged an interlocutory appeal, to which they would add reasons later (see paragraph 12 below). Consequently, the release order did not become final and the applicant remained in detention.

10. In response to the prosecution's appeal, the SCC cancelled a hearing on the merits of the applicant's indictment which had been scheduled for 14 November and listed two new hearings for 28 November and 3 December 2014, on the assumption that a judgment on the merits would be delivered on the latter date.

11. The prosecution's interlocutory appeal against the decision of 11 November 2014 fell to be determined by the Supreme Court, to which the case file was transmitted on 14 November 2014.

12. On 19 and 21 November 2014 respectively, the prosecution submitted the reasons for their interlocutory appeal, and these were transmitted to the applicant's lawyers for observations, which they submitted between 21 and 25 November 2014.

13. On 27 November 2014, without having decided on the prosecution's appeal, the Supreme Court transmitted the case file back to the SCC, indicating that this was being done in order not to thwart the hearing that was scheduled at first instance for the following day, that is 28 November 2014. At the same time, the Supreme Court instructed the SCC to return the case file to it immediately after the adoption of the judgment on the merits.

14. On 28 November and 3 December 2014, the SCC held the hearings as scheduled; on the latter date it found the applicant guilty as charged and sentenced him to six years' imprisonment.

15. Following the adoption of the conviction, the SCC transmitted the case file back to the Supreme Court for determination of the prosecution's

interlocutory appeal against the decision of 11 November 2014 (to release the applicant).

16. On 4 December 2014 the Supreme Court scheduled a hearing of the prosecution's appeal for 10 December 2014. At that hearing it quashed the SCC's decision of 11 November 2014 (on the applicant's release). While it concurred with the SCC that there were no longer any reasons for detaining the applicant under Article 71 § 1 (b) and (c) of the CCP, it detained him pursuant to Article 71 § 1 (a) of the CCP. In that connection, it observed that the applicant had been convicted at first instance, although the judgment had not yet become final. It referred to the applicant's negative behavioural issues, his previous criminal conviction and previous prosecution for an administrative offence, as well as to the facts that he held four passports and was to be interviewed as a witness in another criminal case. The Supreme Court concluded that in view of these elements, combined with the potentially severe penalty that he was facing, it was necessary to keep the applicant detained due to the risk of absconding.

III. DETENTION DECISION OF 5 FEBRUARY 2015

17. In its decision of 5 February 2015, which concerned the applicant's fresh application for release, the Supreme Court, sitting in a different formation than that which delivered the earlier decision of 10 December 2014, acknowledged that from the time of the pronouncement of a first-instance conviction imposing a prison sentence, the detention of the convicted person fell within the ambit of Article 5 § 1 (a) of the Convention, as opposed to Article 5 § 1 (c), which was applicable until then. Nevertheless, until the conviction became final, the detention was subject to the requirements under the CCP. In so far as those requirements concerned a risk of absconding under Article 71 § 1 (a) of the CCP, the legal position after the first-instance conviction changed in that, if the conviction entailed a severe prison sentence, this in itself gave rise to a risk of absconding with no further elements required. A severe prison sentence was understood as a sentence of at least eight years. It was true that the sentence imposed on the applicant by the first-instance court was only six years: what counted, however, was the applicable penalty scale, which in the applicant's case provided for a severe sentence. The applicant's application for release was accordingly rejected.

IV. CONSTITUTIONAL PROCEEDINGS

18. On 12 and 16 March 2015 the applicant lodged two separate complaints with the Constitutional Court against the Supreme Court and its decision of 10 December 2014 (see paragraph 16 above). He argued that in its contested decision, the Supreme Court had violated his rights to personal liberty, to a fair trial and "to not be presumed guilty".

In that respect, he relied on, among others, Article 5 §§ 1 (c), 3 and 4 of the Convention and their constitutional equivalents, in particular Article 17 of the Constitution (Constitutional Law no. 460/1992 Coll., as amended), in so far as it guaranteed personal liberty (paragraph 1), prosecution and deprivation of liberty solely on grounds and by means provided for by law (paragraph 2) and pre-trial detention solely on grounds and for the time provided for by law, and on the authority of a judicial decision (paragraph 5).

In particular, he contested what he considered to be excessive delays on the part of the lower courts in deciding his application for release, arguing that this had taken 105 days. Moreover, he challenged as arbitrary the Supreme Court's assessment as to the risk of his absconding.

In the summary of his complaints setting out the form of relief sought (*petit*), he asked the Constitutional Court to quash the Supreme Court's decision of 10 December 2014; to remit the case to it; to order the Supreme Court to release him from detention; and to award him 8,000 euros (EUR) in just satisfaction.

19. Regarding the just satisfaction claim, the applicant submitted the following:

> "In view of the above-described incomprehensible and irreversible [*fatálne*] violation of my fundamental rights and freedoms, I demand that the Constitutional Court award me financial satisfaction in the amount of EUR 8,000, to be paid by the Supreme Court, which was directly responsible for the negative situation described in my complaint. Considering that as a result of the error committed by the Supreme Court I remain, at the time of the lodging of this complaint, in detention, I consider the amount of just satisfaction proportionate."

20. On 20 May 2015 the Constitutional Court joined the two constitutional complaints and declared them admissible to the extent that the applicant alleged a violation of his rights under Article 5 § 4 of the Convention and Article 17 §§ 1, 2 and 5 of the Constitution.

21. At the same time, it declared the remaining complaints inadmissible, including those made under Article 5 §§ 1 (c) and 3 of the Convention. It was of the view that application of those provisions was limited to the applicant's initial detention, while the case before it concerned the judicial review of the lawfulness of the later stage of the applicant's detention, which in the Constitutional Court's opinion fell within the ambit of Article 5 § 4 of the Convention. As a result, the Constitutional Court deemed the other provisions relied on to be inapplicable.

22. In the course of the subsequent proceedings before the Constitutional Court, the Supreme Court, as the respondent, presented its observations in reply, addressing the issue of the alleged delays in handling the applicant's detention case.

23. On 3 February 2016 the Constitutional Court delivered its judgment, finding a violation of the applicant's right to personal liberty under Article 17 §§ 1, 2 and 5 of the Constitution as a result of the conduct and the

decision of the Supreme Court of 10 December 2014. It quashed the impugned decision, ordered the Supreme Court to reimburse the applicant's legal costs and held that it could not remit the case as the applicant was no longer in pre-trial detention at that time (see paragraph 28 below).

24. The Constitutional Court referred to its own case-law, according to which Article 17 § 2 of the Constitution encompassed the right to initiate judicial proceedings for the review of the lawfulness of detention and for the release of the detainee if the detention was unlawful. It found, in the first place, that the Supreme Court had failed to decide speedily on the applicant's application for release. In that respect, it observed that after 27 November 2014 the case file had been transferred several times between the two levels of the ordinary courts and found such a course of action self-serving. In its view, nothing indicated that the Supreme Court could not have decided on the prosecution's appeal prior to the hearing of 3 December 2014. It concurred with the applicant's argument that, by failing to do so, the Supreme Court was responsible for the fact that, when eventually deciding on the matter, the situation relevant for its determination had fundamentally changed to the applicant's disadvantage in view of his first-instance conviction.

25. Moreover, as to the substantive grounds for the applicant's detention, the Constitutional Court recapitulated the applicable principles, including that a single factor, such as the severity of the potential penalty, alone was not capable of giving rise to a risk of absconding that would justify detention under Article 71 § 1 (a) of the CCP. Examining whether the Supreme Court had supplemented that factor in the applicant's case with any other element, the Constitutional Court noted that the alleged danger of his absconding had previously been examined by the ordinary courts and that the existence of such a risk had been ruled out. In its view, in so far as the Supreme Court had sought to justify the applicant's detention by any reasons other than the severity of the potential sentence, these were "tendentious, and even illusory" (*tendenčné, ba až iluzórne*).

26. Nevertheless, at the same time the Constitutional Court dismissed the applicant's complaint under Article 5 § 4 of the Convention, finding that at the time of the lodging of the constitutional complaint the applicant had already been convicted (although not with final effect) by the judgment of the SCC of 3 December 2014. In the Constitutional Court's view, he should accordingly have sought protection of his rights under paragraph 1 (a) of Article 5 of the Convention and not paragraph 4.

27. As to the issue of just satisfaction, the Constitutional Court considered that the finding of a violation of the applicant's rights constituted adequate redress. In addition, it noted that, after all (*napokon*), the applicant himself had failed to sufficiently substantiate his claim. In that respect, reference was made to section 50(3) of the Constitutional Court Act (Law no. 38/1993 Coll., as amended) pursuant to which it is for complainants to specify the scope of and reasons for their just satisfaction claims.

V. CONCLUSION OF THE APPLICANT'S TRIAL

28. By a judgment of 28 April 2015, the Supreme Court dismissed the applicant's appeal against the SCC's judgment on the merits, upholding his conviction, which thereby became final and binding.

THE LAW

I. PRELIMINARY OBSERVATIONS

29. The present application is essentially about the applicant's detention on remand, from the viewpoint of the respective provisions of Article 5 of the Convention. The Court notes that these provisions, as well as their constitutional equivalents, were applied at the domestic level, albeit at times in a way that differed from the Convention approach and revealed a degree of internal incoherence.

At one stage of the proceedings, the Constitutional Court appears to have concluded that it was not possible to apply the guarantees of Article 5 § 3 of the Convention beyond the stage of the initial detention and that substantive aspects of detention at later stages of the proceedings were to be assessed under Article 5 § 4 of the Convention (see paragraph 21 above; contrast *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 222 and 231-35, 28 November 2017; *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 87, 5 July 2016; and *Petrov v. Slovakia*, no. 64195/10, § 62, 2 December 2014). Partly in contrast to that, however, at a different stage of the proceedings the Constitutional Court took the view that substantive aspects of the applicant's continued detention were not to be challenged under Article 5 § 4 but rather under Article 5 § 1 (see paragraph 26 above).

Moreover, in its judgment of 3 February 2016, the Constitutional Court found a violation of the applicant's fundamental rights because the Supreme Court (in its decision of 10 December 2014) had failed to substantiate with reference to any pertinent elements that his detention after the first-instance conviction had been justified on the statutory ground in question (Article 71 § 1 of the CCP), whereas in a decision delivered in the meantime (see paragraph 17 above) the Supreme Court had held that, with regard to the stage of the proceedings in issue, there was no need for any additional grounds to justify detention under Article 71 § 1 of the CCP, other than that the applicant faced a severe penalty according to the applicable penalty scale.

In so far as it is relevant and necessary for the determination of the present case, the Court will present its own view on these matters below.

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 3 OF THE CONVENTION

30. With reference to the outcome of the proceedings in respect of his application for release of 25 September 2014, the applicant complained that he had been unlawfully and arbitrarily detained by the Supreme Court, contrary to Article 5 §§ 1 and 3 of the Convention.

31. Noting that the applicant's complaint under Article 5 § 1 is not linked to any of the types of deprivation of liberty covered by it, the Court finds that the complaint falls to be examined under paragraph 1 (a) and (c) of that provision.

The relevant parts of Article 5 read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

32. In their observations, the Government distinguished between two periods of the applicant's detention, separated by the SCC's judgment of 3 December 2014 by which the applicant was convicted (that is, pre-conviction and post-conviction).

33. With regards to the pre-conviction period, the Government referred to the Court's judgment in *Kudła v. Poland* ([GC], no. 30210/96, § 104, ECHR 2000-XI, with further references), according to which a person convicted at first instance cannot be regarded as being detained under Article 5 § 1 (c), but is in the position provided for by Article 5 § 1 (a), and argued that, therefore, this part of the complaint was incompatible *ratione materiae* with the provisions of the Convention, as the impugned decision of the Supreme Court of 10 December 2014 had been adopted after the applicant's conviction by the SCC. Furthermore, the Government asserted that this part of the complaint had also been lodged out of time, as the Constitutional Court had declared the relevant part of the applicant's

constitutional complaint (the part concerning Article 5 §§ 1 (c) and 3) inadmissible on 20 May 2015 and the application had been lodged on 6 July 2016.

34. As for the post-conviction period, the Government submitted that Article 5 §§ 1 (c) and 3 of the Convention was inapplicable and that this period of the applicant's detention fell to be examined under Article 5 § 1 (a), a complaint under which provision was in their view manifestly ill-founded.

35. The applicant insisted that the Supreme Court's conduct and its decision had been unlawful, unfounded and arbitrary, and argued that the violation of his right to personal liberty under Article 17 §§ 1, 2 and 5 of the Constitution, as identified by the Constitutional Court, fell within the scope of Article 5 §§ 1 and 3 of the Convention.

36. The Court observes at the outset that Article 5 of the Convention contemplates the physical liberty of a person and provides a range of guarantees against arbitrary deprivation of liberty in various situations. As already indicated above, the facts of the present case fall within the ambit of Article 5 § 1 of the Convention, partly under (a) and partly under (c), the decisive moment for the determination as to which one of them being the applicant's conviction at first instance (see *Kudła*, cited above, § 104).

1. Detention prior to the first-instance conviction

37. As regards the period prior to the applicant's first-instance conviction (3 December 2014), which falls to be assessed under Article 5 §§ 1 (c) and 3 of the Convention, his application for release of 25 September 2014 was granted by the SCC on 11 November 2014, but that decision was not implemented in view of the prosecution's interlocutory appeal with suspensive effect. The ordinary courts' final decision in that matter was delivered by the Supreme Court on 10 December 2014.

38. The Court notes that in his subsequent constitutional complaint the applicant continued alleging a violation of his rights under Article 5 §§ 1 (c) and 3 of the Convention, and that the Constitutional Court declared this complaint inadmissible on 20 May 2015.

39. Irrespective of which provisions of the Convention or their constitutional equivalents the Constitutional Court relied on in its subsequent examination of the applicant's detention complaint on its merits, that examination only concerned the lawfulness of the applicant's detention after his first-instance conviction, hence that falling within the ambit of Article 5 § 1 (a) of the Convention.

40. Both the decision of the Supreme Court of 10 December 2014 and that of the Constitutional Court of 20 May 2015 were delivered more than six months before the lodging of the application on 6 July 2016. The applicant's complaint under Article 5 §§ 1 (c) and 3 of the Convention is, therefore, belated, and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. Detention after the first-instance conviction

41. As for the detention following his first-instance conviction, the applicant was in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty "after conviction by a competent court" (see *Kudła*, cited above, § 104). Accordingly, this period of his detention falls to be examined under Article 5 § 1 (a) of the Convention.

42. The Court considers, in the light of the parties' submissions, that the complaint of a violation of the applicant's rights under that provision raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must accordingly be declared admissible.

B. Merits

43. The applicant complained that his detention ordered by the Supreme Court in its decision of 10 December 2014, subsequent to his conviction at first instance, had been unlawful and arbitrary.

44. In reply, the Government relied on the Supreme Court's subsequent decision of 5 February 2015 (see paragraph 17 above), arguing that at the material stage of the proceedings the fact that the applicant had been facing the possibility of a severe prison sentence had been the sole element necessary to prove the risk that the applicant might abscond within the meaning of Article 71 § 1 (a) of the CCP. As he had in fact been facing such a possibility, his detention had been lawful, and his Convention complaint was unfounded.

45. The Court recalls that it is well-established case-law under Article 5 § 1 of the Convention that any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f), be "lawful", that is in compliance with national law, and should also be in keeping with the purpose of protecting the individual from arbitrariness (see, for example, *Grubić v. Croatia*, no. 5384/11, §§ 36-38, 30 October 2012).

46. In the present case, even though the applicant's detention after his first-instance conviction fell within the ambit of Article 5 § 1 (a) of the Convention, under the national law it remained subject to the requirements of Article 71 § 1 of the CCP. Under those provisions, even at that stage of the proceedings, for detention to be justified specific conditions must be fulfilled if, such as in the applicant's case, there is a risk of absconding. In that context, the Court notes specifically that there is no separate statutory regime in the respondent State for detention after and on the basis of a first-instance conviction and that the first-instance judgment convicting the applicant contained no findings and rulings with regard to his detention under Article 71 § 1 of the CCP.

47. The detention under examination was authorised by the Supreme Court in its decision of 10 December 2014, on a variety of grounds. In addition to that of facing a potentially severe penalty, the Supreme Court noted the applicant's negative behavioural issues, his previous criminal conviction and prosecution, the fact that four passports had been issued to him, and that he was to be interviewed as a witness in another criminal case.

48. In that regard, the Constitutional Court noted in its judgment of 3 February 2016 that the ordinary courts had already previously dismissed claims of a risk of the applicant's absconding and that the grounds relied on by the Supreme Court were "tendentious, and even illusory". On that basis, the Constitutional Court concluded that the Supreme Court had violated various aspects of the applicant's right to liberty and quashed its decision of 10 December 2014.

49. In these circumstances, the Court discerns little room for any doubt that the applicant's detention at the material time was contrary to the requirements of the national law and accordingly unlawful for the purposes of the Convention.

50. In so far as the Government have tried to reverse the above-mentioned view by relying on the Supreme Court's decision of 5 February 2015, the Court notes first of all that there is no indication of any domestic case-law preceding the impugned detention decision of 10 December 2014 to show that the principles reflected in the decision of 5 February 2015 already applied at that time. In particular, no such indication is apparent from the decision of 10 December 2014 itself. Furthermore, although the decision of 5 February 2015 preceded the Constitutional Court's judgment of 3 February 2016, it was neither relied on by the Supreme Court in responding to the applicant's complaint before the Constitutional Court (see paragraph 22 above) nor taken note of by the latter in its judgment. The status of the decision of 5 February 2015 in terms of national law at the relevant time is accordingly unclear.

51. In addition, the Court notes that, as concluded by the Constitutional Court, the Supreme Court's handling of the applicant's application for release of 25 September 2014 was marked by a self-serving pattern of delaying its decision, with the attendant result that the material circumstances for the determination of his detention situation had changed in the meantime (see paragraph 24 above). This, in combination with seeking to justify the applicant's detention by grounds that the Constitutional Court found not to be consistent with reality, is suggestive of a degree of arbitrariness.

52. In these circumstances, the Court cannot but find that the applicant's detention under the Supreme Court's decision of 10 December 2014 was contrary to the requirements of Article 5 § 1 of the Convention.

There has accordingly been a violation of that provision.

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

53. The applicant further complained that his application for release of 25 September 2014 had not been decided on speedily by the domestic courts as required by 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

1. The parties' submissions

54. The Government objected at the outset that, although this complaint before the Court concerned the alleged lack of speediness of the proceedings on his application for release of 25 September 2014 in their entirety, that is both before the SCC and before the Supreme Court, in his constitutional complaint the applicant had only contested the length of the proceedings before the latter. He had accordingly not exhausted domestic remedies as regards the duration of the proceedings before the SCC.

55. As for the remainder of those proceedings, that is the proceedings before the Supreme Court, the Government also submitted that the applicant had not exhausted domestic remedies, albeit on different grounds, as follows.

Firstly, they argued that, in his constitutional complaint, he had failed to raise his just satisfaction claim in accordance with the applicable procedural requirements. In that regard, they relied on the relevant finding of the Constitutional Court (see paragraph 27 above).

Secondly, they argued that, in addition to the constitutional complaint, for the purposes of the exhaustion requirement the applicant could and should have pursued another remedy, namely a claim against the State for damages under the State Liability Act.

And, thirdly, they contended that in so far as the alleged lack of speediness concerned the review of the lawfulness of the applicant's detention falling within the ambit of Article 5 § 1 (c) of the Convention, this complaint should have been raised before the Constitutional Court within the statutory time-limit of two months from the date when his detention under that regime ended (namely, the date of his conviction at first instance (3 December 2014)). As he had only applied to the Constitutional Court in March 2015, this was outside the time-limit according to the applicable procedural requirements.

56. Alternatively, the Government argued that the complaint with regard to the Supreme Court was in any event manifestly ill-founded. They submitted that the review of the lawfulness of the applicant's detention falling within the ambit of Article 5 § 1 (a) of the Convention had been incorporated into the SCC's conviction judgment of 3 December 2014.

57. Finally, they argued that, in view of the Constitutional Court's judgment of 3 February 2016, the applicant had in any event lost his victim status in relation to the alleged violation by the Supreme Court of his Article 5 § 4 rights.

58. The applicant contested these arguments and reiterated his complaint.

2. The Court's assessment

59. The Court notes, in agreement with the first part of the Government's non-exhaustion argument, that the applicant only directed his constitutional complaint against the Supreme Court. In other words, he did not direct it at the SCC, whereby he prevented the Constitutional Court from examining the speediness of the contested proceedings that took place before the SCC (see, in general, *Obluk v. Slovakia*, no. 69484/01, § 61, 20 June 2006, and, specifically in the detention context, *Alojz v. Slovakia* (dec.), no. 63800/10, §§ 21-22, 21 January 2014). Accordingly, his Article 5 § 4 complaint in relation to the proceedings before the SCC must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

60. Next, the Court notes that the applicant's just satisfaction claim was dismissed by the Constitutional Court on two grounds: that the finding of a violation afforded the applicant adequate redress, and that, "after all", he himself had failed to sufficiently substantiate his claim (see paragraph 27 above). It is not entirely clear what the relationship between these grounds is from the wording used ("after all"), however, the Court notes that only the latter supports the Government's argument and that the former contradicts it. To the extent that the Constitutional Court referred to section 50(3) of the Constitutional Court Act, which provides that just satisfaction claims before the Constitutional Court are to specify the scope of the grounds on which they rest, the Court notes that this reference was made only in general terms with no suggestion as to how it applied *in concreto* to the applicant's claim.

61. In the present case, the applicant made a just satisfaction claim before the Constitutional Court, specifying both the amount and its grounds. In particular, he claimed damages to be paid to him by the Supreme Court in the amount of EUR 8,000, seeking to establish the Supreme Court's liability for his situation as described in his constitutional complaint, and linking the claim to the error he alleged the Supreme Court had committed and its repercussions on the applicant (see paragraph 19 above).

62. The Court observes that it has neither been argued by the Government nor established otherwise that there is any settled case-law or other interpretative guidance as to how just satisfaction claims before the Constitutional Court are to be formulated. Reiterating that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, for example, *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32), the Court concludes that the applicant in the present case cannot be faulted under the exhaustion requirement of Article 35 § 1 of

the Convention for how he pursued his case before the Constitutional Court. The relevant part of the Government's non-exhaustion plea must accordingly be dismissed.

63. Furthermore, as to the argument that the applicant should have claimed damages under the State Liability Act, the Court notes that it examined at length and ultimately dismissed essentially the same argument in the case of *Horváth v. Slovakia* (no. 5515/09, §§ 67-80, 27 November 2012, with further references). Noting its conclusion as regards the way the applicant lodged his claims before the Constitutional Court (see the preceding paragraph), and to the extent that the Government's argument with reference to the State Liability Act has been substantiated, the Court finds nothing in the present case to justify a different conclusion from that reached in *Horváth*. The argument is accordingly dismissed.

64. As to the Government's remaining non-exhaustion argument that the applicant failed to raise in due time before the Constitutional Court his Article 5 § 4 complaint with regard to the speediness of the review by the Supreme Court of the lawfulness of his detention prior to 3 December 2014, the Court notes first of all that in its decision of 20 May 2015, the Constitutional Court declared the applicant's Article 5 § 4 complaint admissible in its entirety (see paragraph 20 above). Moreover, irrespective of the provisions under which it subsequently examined the merits of this complaint, that examination essentially entailed a review of the speediness of the Supreme Court's judicial review of the lawfulness of the applicant's detention, making no distinction such as that put forward by the Government. Accordingly, there does not appear to be any basis for the argument made, in the light of which it must be dismissed.

65. Moving on to the Government's alternative objections, the Court notes first of all that, in so far as they suggested that the lawfulness of the applicant's Article 5 § 1 (a) detention had been examined in the SCC's convicting judgment of 3 December 2014, the facts of the case do not appear to support any such proposition. In particular, the SCC's judgment contains no examination and no rulings in respect of the applicant's application for release of 25 September 2014 or the prosecution's interlocutory appeal against the SCC's decision of 11 November 2014 to grant that application (in this connection, see also *König v. Slovakia*, no. 39753/98, §§ 19-21, 20 January 2004, with further references).

66. As to the Government's objection under Article 34 of the Convention, the Court notes first of all that this argument has been formulated exclusively with reference to the Article 5 § 4 complaint. As it is closely linked to the merits of that complaint, the examination of that argument should be joined to the merits of the case.

67. The Court concludes therefore that this complaint, in relation to the proceedings before the Supreme Court, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for

declaring it inadmissible has been established. It must accordingly be declared admissible.

B. Merits

68. The applicant complained that the examination of the lawfulness of his detention by the Supreme Court in response to his application for release of 25 September 2014 had fallen short of the speediness requirement under Article 5 § 4 of the Convention.

69. The Government argued to the contrary.

70. The Court considers that, in view of its finding of a violation of Article 5 § 1 of the Convention and of the reasons behind it (see in particular paragraph 51 above), there is no need to examine separately on the merits the admissible part of the applicant's complaint under Article 5 § 4 of the Convention. This conclusion also applies to the Government's objection under Article 34 of the Convention, the examination of which was joined to the merits of that complaint.

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

71. The applicant also complained that he had not been compensated by the Constitutional Court for the violation of his right to liberty, contrary to Article 5 § 5 of the Convention, which reads 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

72. The Government pointed out that the Constitutional Court had concluded that the applicant's complaints under Article 5 §§ 1 (c) and 3 of the Convention were inadmissible (in its decision of 20 May 2015) and that his complaint under Article 5 § 4 was unfounded (in its judgment of 3 February 2016). Since in their view there had been no violation of these provisions, they considered Article 5 § 5 to be inapplicable *ratione materiae*.

73. Alternatively, the Government submitted that the applicant had failed to lodge his just satisfaction claim before the Constitutional Court in accordance with the applicable procedural requirements and that it had been open to him to claim damages under the State Liability Act, along the same lines as those argued under Article 5 § 4 of the Convention (see paragraph 55 above). On that basis, they argued that the applicant had not exhausted domestic remedies.

74. The applicant disagreed and reiterated his complaint.

75. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty

effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions. In this connection, the effective enjoyment of the right to compensation guaranteed by Article 5 § 5 must be ensured with a sufficient degree of certainty (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 182, ECHR 2012, and *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X).

76. In the present case, in its judgment of 3 February 2016, the Constitutional Court found a violation of various aspects of the applicant's constitutional right to liberty, which provides similar guarantees to those under Article 5 §§ 1 to 4 of the Convention (see, for example, *Fruni v. Slovakia*, no. 8014/07, §§ 64-66, 21 June 2011). In addition, the Court itself has found a violation of the applicant's rights under Article 5 § 1 (see paragraph 52 above). In these circumstances, Article 5 § 5 is applicable.

77. As to the Government's non-exhaustion objection, the Court notes that in essence it is linked to the underlying violation of the applicant's rights under Article 5 § 1 of the Convention, rather than to the matter of the existence or absence of an enforceable right to compensation, as is relevant for the purposes of Article 5 § 5 of the Convention. Nevertheless, as the existence or absence of such a right is to some extent subject to similar considerations, the Court considers that the Government's non-exhaustion objection is to be examined together with the merits of the complaint, to which it is accordingly to be joined.

78. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must accordingly be declared admissible.

B. Merits

79. As to the merits, the parties made no separate observations, other than those referred to above.

80. The Court reiterates that in order to find a violation of Article 5 § 5, it has to establish that the finding of a violation of one of the other paragraphs of Article 5 could not give rise, either before or after the Court's judgment, to an enforceable claim for compensation before the domestic courts (see *Stanev*, cited above, § 184).

81. Compensation for detention imposed in breach of the provisions of Article 5 must be not only theoretically available but also accessible in practice to the individual concerned. It must comprise a right to compensation for pecuniary damage, but also afford a right to compensation for any distress, anxiety and frustration that a person may have suffered as a result of a

violation of other provisions of Article 5 (see *Khachatryan and Others v. Armenia*, no. 23978/06, § 157, 27 November 2012).

82. The Court also reiterates, as to the substantive foundation of the right in question in the Slovakian legal order, that Article 46 §§ 3 and 4 of the Constitution provides for a right to compensation for damage caused, *inter alia*, by an unlawful decision of a court, the modalities being left for regulation by way of a statute, *in concreto* the State Liability Act, with claims for damages under that legislation falling within the jurisdiction of the ordinary courts. In addition to that, there is another procedure which may result in an award of compensation in respect of damage owing to a violation of the rights under Article 5 §§ 1 to 4 of the Convention, namely that of an individual complaint under Article 127 of the Constitution (see *Martikán v. Slovakia* (dec.), no. 21056/08, §§ 15-16, 24-30 and 43-46, 9 October 2012).

83. In the present case, it was the latter procedure that the applicant made use of. Along with his constitutional complaint, he also lodged a claim for compensation in respect of non-pecuniary damage in such a way that no reproach can be made under the requirement of exhaustion of domestic remedies (in that respect, see also *Boris Popov v. Russia*, no. 23284/04, § 84, 28 October 2010, and *Michalák v. Slovakia*, no. 30157/03, §§ 139-141 and 206, 8 February 2011). Yet his just satisfaction claim was dismissed on the ground that the finding of a violation of his rights constituted in itself adequate compensation.

84. Having regard to all the circumstances, including the character of the underlying violation of the applicant's rights under Article 5 § 1 of the Convention (see paragraph 52 above), as well as the elements of arbitrariness found (see paragraph 51 above), the Court finds this conclusion by the Constitutional Court contrary to the spirit of Article 5 of the Convention (see, *a contrario*, *Martikán*, cited above, § 48, with further references, and, *mutatis mutandis*, *Michalák*, cited above, § 206).

85. As to any enforceable right to compensation to be pursued before the ordinary courts under the State Liability Act, the Court notes first of all that it found above in connection with his Article 5 § 4 complaint that the applicant was not required for the purposes of Article 35 § 1 to do so. Although no such non-exhaustion objection has been raised in relation to the Article 5 § 1 complaint, the Constitutional Court's conclusion that the finding of a violation of the applicant's rights was in itself adequate compensation tends by its very nature to negate any enforceable right to compensation under the State Liability Act (see *Michalák*, cited above, § 206, and *Karlin v. Slovakia*, no. 41238/05, § 106, 28 June 2011).

86. In this context, the Court observes that the functional relationship between the two mechanisms in issue has not been entirely clarified (see *Martikán*, cited above, §§ 49 and 52, and *Yegorov v. Slovakia* (dec.) [Committee], no. 4698/13, § 29, 22 May 2018).

87. In so far as there is any case-law which demonstrates the possibility of success of a compensation claim under the State Liability Act after a just satisfaction claim has been dismissed by the Constitutional Court, such case-law post-dates (14 October 2016) the facts of the present case; it was a single occurrence originating in a first-instance court only; and it has been challenged in an appeal (see *Yegorov*, cited above, §§ 18-19), with no information having been made available to the Court as to the resolution of the matter with final effect. In these circumstances, any enforceable right to compensation under the State Liability Act cannot be said at the material time to have had any realistic prospect of success (see *Sakık and Others v. Turkey*, 26 November 1997, § 59, *Reports of Judgments and Decisions* 1997-VII).

88. It is on similar grounds as those referred to above (see in particular paragraphs 83 and 85-87) that the Government's non-exhaustion objection must be dismissed.

89. At the same time, there is no evidence of any statutory or case-law basis at the national level for claiming Article 5 § 5 compensation following findings of a violation of Article 5 §§ 1 to 4 of the Convention by the Court (see, recently, *Shiksaitov v. Slovakia*, nos. 56751/16 and 33762/17, § 93, 10 December 2020, with further references).

90. The foregoing considerations are sufficient to enable the Court to conclude that the applicant did not have an enforceable right to compensation for the violation of his rights under Article 5 § 1 of the Convention.

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

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

91. Lastly, the applicant complained that he had not had an effective remedy at his disposal in respect of the above-mentioned violations. He relied on Article 13 of the Convention, which provides:

> "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."

92. The Government maintained that the applicant did not have an arguable complaint such as to make Article 13 applicable. In any event, in their submission he had had an effective remedy, namely a complaint to the Constitutional Court and a civil action for compensation under the State Liability Act.

93. The applicant disagreed, arguing that he had not obtained appropriate redress in the proceedings before the Constitutional Court.

94. The Court reiterates that, in accordance with its well-established case-law, where a violation of Article 5 § 1 is in issue, Article 5 §§ 4 and 5 of the Convention constitutes *lex specialis* in relation to the more general requirements of Article 13 (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 69, ECHR 1999 II; and *Ruslan Yakovenko v. Ukraine*, no. 5425/11, § 30,

4 June 2015, with further references). Consequently, the less stringent requirements of Article 13 are absorbed by the former provision.

In view of the foregoing and having regard to its conclusion regarding the applicant's complaints under Article 5 §§ 1, 4 and 5 of the Convention (see paragraphs 52, 70 and 90 above), it finds that no separate issue arises under Article 13 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicant claimed 8,000 euros (EUR) in compensation for what he classed as negative consequences of the impugned decisions, specifying that not even this amount could fully compensate the actual losses he had suffered.

97. The Government argued that the applicant had failed to characterise his claim as pertaining to damage of a pecuniary or non-pecuniary nature. He had not provided any evidence of pecuniary damage. If the claim related to non-pecuniary damage, it was excessive.

98. The Court considers that, in view of the circumstances, the claim undoubtedly concerns damage of a non-pecuniary nature. It finds that the applicant must have sustained some damage. Ruling on an equitable basis, and respecting the principle of *non ultra petita*, it considers that the sum is to be awarded in full, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

99. The applicant also claimed EUR 2,000 in respect of the costs and expenses incurred before the Court, submitting an invoice from his lawyer.

100. The Government did not object to this claim.

101. 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 were actually and necessarily incurred and are reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, §§ 54-55, ECHR 2000-XI, with further references). 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 sum of EUR 2,000 to cover legal

representation before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

102. 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 under Article 5 § 1 (a) of the Convention admissible;

2. *Declares* the complaint under Article 5 §§ 1 (c) and 3 of the Convention and that under Article 5 § 4 of the Convention, in so far as it concerns the proceedings before the Specialised Criminal Court, inadmissible;

3. *Decides* to join to the merits the Government's objection under Article 34 of the Convention in relation to the complaint under Article 5 § 4 of the Convention, in so far as it concerns the proceedings before the Supreme Court;

4. *Declares* admissible the complaint under Article 5 § 4 of the Convention, in so far as it concerns the proceedings before the Supreme Court;

5. *Decides* to join to the merits the Government's objection under Article 35 § 1 of the Convention (non-exhaustion) in respect of the complaint under Article 5 § 5 of the Convention and *rejects* it;

6. *Declares* admissible the complaint under Article 5 § 5 of the Convention;

7. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

8. *Holds* that there is no need to examine separately on the merits the admissible part of the complaint under Article 5 § 4 of the Convention and the Government's objection under Article 34 of the Convention in respect of that complaint;

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

10. *Holds* that no separate issue arises under Article 13 of the Convention;

11. *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 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  (ii) EUR 2,000 (two 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.

Done in English, and notified in writing on 20 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Registrar	Péter Paczolay President