CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 54334/00
by Ivan LEXA
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 5 July 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 28 September 1999,

Having regard to the partial decision of 23 September 2003,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ivan Lexa, is a Slovakian national who was born in 1961 and lives in Bratislava. He is represented before the Court by MM.Ľ. Hlbočan and J. Cuper, lawyers practising in Bratislava.

A. The circumstances of the case

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

1. The background to the case

Between 1995 and 1998 the applicant was the Director of the Slovak Information Service (*Slovenská informačná služba*) which is the Slovakian intelligence service.

On 31 August 1995 Mr M. Kováč, the son of the then President of the Slovak Republic, was forcibly brought from Slovakia to an Austrian village in the vicinity of the Slovakian border. Following a phone call the Austrian police found him intoxicated in a car. He was detained as the Munich District Court (*Amtsgericht*) had issued an arrest warrant against him.

On 20 February 1996 the Vienna Court of Appeal (*Oberlandesgericht*) refused to extradite Mr Kováč to Germany for the purpose of his prosecution there. The Vienna Court of Appeal held, *inter alia*, that witness statements of a former member of the Slovak Information Service and of the President of the Slovak Republic supported the allegation of Mr Kováč according to which members of the secret service had brought him to Austria against his will in the context of political controversies in Slovakia.

The Slovakian police started an investigation into the incident and expressed the view that several offences had been committed in that context.

On 3 March 1998 and on 7 July 1998 Mr. V. Mečiar, the Prime Minister who then exercised several powers entrusted to the President of the Slovak Republic, delivered two decisions on amnesty. In them it was ordered not to bring and to discontinue any proceedings concerning the possible criminal offences committed in the context of the forcible abduction of Mr Kováč. The decisions were published in the Collection of Laws.

On 18 September 1998 the police investigator decided not to pursue the case concerning the above offences which, as the decision stated, had been committed by unknown perpetrators. Reference was made to the decision on presidential amnesty of 7 July 1998 and to Articles 11(1)(a) and 159(2) of the Code of Criminal Procedure.

In September 1998 the applicant was elected as a member of the National Council of the Slovak Republic (the Parliament) for a four year period.

On 8 December 1998 the newly appointed Prime Minister, Mr M. Dzurinda, in his capacity of Acting President of Slovakia, delivered a new decision on amnesty in the above case. The decision was published in the Collection of Laws on the same day. In it reference was made, *inter* alia, to Article 102(1)(i) of the Constitution. Its purpose was to eliminate disputes as to whether his predecessor's above two decisions were in conformity with the Constitution. Under the decision of 8 December 1998, the provisions of the earlier decisions concerning the non-commencement

and discontinuance of any proceedings concerning the possible criminal offences committed in the context of the abduction of Mr Kováč were to be revoked.

In February 1999 the daily *Sme* published declassified parts of a report on the activities of the Slovak Information Service submitted by its newly appointed Director. It stated, *inter alia*, that the Slovak Information Service had taken extensive measures with a view to concealing its participation in the abduction of Mr Kováč and in order to hamper an appropriate investigation into the circumstances of that action.

2. Criminal proceedings against the applicant and his detention on remand

After the relevant parts of of the above decisions on presidential amnesty of 3 March 1998 and of 7 July 1998 had been revoked, a police investigator, on 26 February 1999, informed the National Council of the Slovak Republic that the applicant was suspected of having committed several offences in the context of abduction of Mr Kováč. As the applicant enjoyed the immunity of a Member of Parliament, the investigator requested that the National Council should give its consent to his prosecution. In a decision of 9 April 1999 the National Council granted the investigator's request.

On 9 April 1999 the police investigator started criminal proceedings against the applicant. The applicant was accused of several offences on the ground that he had been involved, in his capacity as Director of the Slovak Information Service, in the abduction of Mr Kováč in 1995.

On 15 April 1999 the National Council gave its consent to the applicant's detention on remand. On the same day the Bratislava 1 District Court detained the applicant on remand with reference to Article 67(1)(b) of the Code of Criminal Procedure. The decision stated that the applicant could influence the witnesses or otherwise hamper the investigation.

The applicant filed a complaint. He argued, *inter alia*, that the Prime Minister's above decision of 8 December 1998 was contrary to the Constitution. The Bratislava Regional Court dismissed the complaint on 17 May 1999. The decision stated that the applicant's case fell within the jurisdiction of the Constitutional Court. The Regional Court further held that the applicant had been remanded in custody in accordance with the relevant law.

On 27 May and on 15 June 1999 the applicant filed an application for release. On 15 June 1999 the Bratislava 1 District Court dismissed it. The decision stated that the applicant had attempted to contact other members of the Slovak Information Service and that he could influence witnesses in case of his release.

On 17 June and on 12 July 1999 the applicant filed a complaint against this decision. On the latter date he argued, with reference to the Constitutional Court's finding No. I. ÚS 30/99 of 28 June 1999 (see

"Proceedings before the Constitutional Court" under point 4 below), that the decision to quash the relevant part of the presidential amnesty had been contrary to the Constitution. The applicant further argued that there existed no relevant reasons for his detention.

On 19 July 1999 the Bratislava Regional Court ordered the applicant's release. The Regional Court found that most of the relevant evidence had been taken and that the assumption that the applicant could influence witnesses or his co-accused was no longer justified. The applicant was released on that day.

The Minister of Justice filed a complaint in the interest of the law against this decision. On 10 September 1999 the Supreme Court dismissed the complaint. In the Supreme Court's view, the Regional Court had proceeded in accordance with the relevant provisions of the Code of Criminal Procedure. The Supreme Court's decision further stated that the case was at a preliminary stage and that it was therefore for the prosecuting authorities dealing with it to decide what conclusions should be drawn from the Constitutional Court's decision of 28 June 1999 according to which the Constitution did not allow the quashing of an earlier amnesty.

On 27 November 2000 the applicant and several other persons were indicted on several offences before the Bratislava III District Court.

On 29 June 2001 the District Court discontinued the criminal proceedings against the applicant and the other accused persons. The decision referred to the Constitutional Court's findings No. I. ÚS 30/99 of 28 June 1999 and No. I. ÚS 48/99 of 20 December 1999 as well as to Article 11(1)(f) of the Code of Criminal Procedure. It stated that the Prime Minister's decision of 8 December 1998 to revoke the relevant provisions of his predecessor's decision to grant an amnesty in relation to the offences imputed to the applicant and his co-accused was null and void and that it had no basis in the Code of Criminal Procedure.

On 5 June 2002 the Bratislava Regional Court dismissed the public prosecutor's complaint against this decision. It also dismissed the complaint filed by the applicant and his co-accused concerning the relevant legal provisions on which the decision to discontinue the proceedings was based.

The General Prosecutor filed a complaint in the interest of the law against the Regional Court's decision.

The complaint was dismissed by the Supreme Court on 20 December 2002. The decision stated that the amnesty of 3 March 1998 relating to the offences imputed to the applicant and his co-accused prevented the criminal proceedings against them from being pursued. Reference was made also to the Constitutional Court's finding No. I. ÚS 30/99 of 28 June 1999. The Supreme Court shared the lower courts' view that the investigator's decision not to pursue the case delivered on 18 September 1998 was final and that the proceedings concerning the

offences in question could not subsequently be resumed as the matter had become *res iudicata*.

3. Alleged interference with the applicant's right to be presumed innocent

As from November 1998, following the parliamentary election and the ensuing change of Government, the Minister of the Interior as well as several high-ranking governmental officials made statements in which, as the applicant maintained, they had publicly accused him of having committed several offences while he had held the post of Director of the Slovak Information Service.

In his submissions to the Court the applicant, in particular, pointed to the following statements.

In an interview broadcast on 3 February 1999, the Minister of the Interior qualified the applicant's allegation that he had not been involved in the abduction of Mr Kováč as "a statement typical of people who become hysterical and lose control of the situation for which they are themselves responsible". The Minister further reminded the applicant that confession was considered as an extenuating circumstance. He stated that the authorities dealing with the case had enough evidence to prove false the applicant's allegations about his innocence, and that the evidence available sufficed for convicting the applicant.

On 2 March 1999 the Head of the Investigation Department of the Ministry of the Interior stated in a radio broadcast that it had been shown with sufficient certainty that the applicant had committed several offences in the context of the forcible abduction of Mr Kováč.

On 7 May 1999 the Minister of the Interior stated in a TV news broadcast in connection with the statement of a former official of the Slovak Information Service about the abduction of Mr Kováč:

> The Minister: "The statement [of a former high-ranking official of the Slovak Information Service] was complex considering the position which he had held in the organisation and it coincided with the statements of the others. This means that, together with the other statements, it is unequivocal that the whole structure of the Slovak Information Service was involved in the abduction."
>
> Journalist: "That is also Ivan Lexa."
>
> The Minister: "So was Ivan Lexa."

On 4 August 1999 the applicant complained to the General Prosecutor that his right to be presumed innocent had been violated by the Minister of the Interior and several governmental officials. On 23 August 1999 the General Prosecutor replied to the applicant that his right to be presumed innocent had not been infringed in that the public had been informed about the conduct of the proceedings.

On 10 September 1999 the Minister of the Interior made the following statements in a radio interview:

> Journalist: "[The Minister] and his team are convinced that the offences imputed to Ivan Lexa will be proven. Otherwise the Minister of the Interior is prepared to draw consequences in his own respect."
>
> The Minister: "For example, depending on the reasons for which possible dismissals and indictments would be based, I would draw consequences ... which the law offers to me including ones that would concern me as a politician and the representative of the [Ministry of the Interior]."
>
> Journalist: "That means that you would resign, apparently."
>
> The Minister: "Well, of course, this could also be the final step."

On 10 October 1999 the Minister of the Interior made the following statements in a TV interview:

> Journalist: "... After his release Ivan Lexa has complained more and more frequently to international institutions that in his case the right to be presumed innocent has been violated and that he has been referred to as a criminal without any judicial finding to that effect. You expressed the view, without any judicial decision, that Ivan Lexa had been behind the abduction of Michal Kováč junior. Do you think that the complaints of Ivan Lexa are justified?"
>
> The Minister: "He is not justified in complaining. After all, these matters were investigated into by the General Prosecutor's Office to which [the applicant] had complained. Also this statement of mine, when you consider it in the context ..."
>
> Journalist: "... is again your view..."
>
> The Minister: "...no, no. When you consider it in the context, it is justified. Quite simply, if the Slovak Information Service committed such an action, then the head of that organisation cannot remain outside without his share of guilt being examined."
>
> Journalist: "Thus do we now know for sure that the Slovak Information Service, the former one, had committed this action?"
>
> The Minister: "On the basis of the knowledge which we have at present, yes."

At a press conference held on 24 July 2000 the Minister of the Interior stated in respect of the applicant:

> "... Unfortunately it is being shown that a State institution was headed, according to what the investigators have established, by a gangster."

The Minister further expressed the view that the applicant had been related to mafia of Russian origin. The statements were published in several newspapers.

At a press conference held on 27 July 2000 a Member of Parliament presiding over the parliamentary committee for defence and security stated that the applicant was "a part of the organised crime in Slovakia", that he

had absconded "as a criminal", that there existed sufficient evidence for the applicant to be tried "for the offence of abduction which could be clearly proved" and that "it is clear, that Lexa is a criminal".

On 9 August 2000 the applicant filed two requests for an injunction with the Bratislava I District Court. He requested, with reference to Article 11 of the Civil Code and to Article 50(2) of the Constitution, that the Minister of the Interior and the above Member of Parliament should be ordered to abstain from referring to the applicant as a "criminal", "gangster" and a "person related to mafia". The applicant requested that the injunctions should remain valid pending a final decision on his claims for protection of his personal rights relating to the statements in question. It does not appear from the documents before the Court that the applicant actually filed such actions.

The Bratislava I District Court dismissed the requests for an injunction on 5 and 8 September 2000 respectively. The decisions stated that the cases in question did not call for an interim measure to be issued as the alleged interference with the applicant's rights had already occurred. In addition, in issuing an interim measure as requested by the applicant the court would prejudge the merits of the case.

In a TV interview of 1 August 2000 the Prime Minister made the following statement as regards the applicant who was then staying at an unknown place abroad:

> "Politically, this case is finished. Lexa himself has proved that he has dirty hands. And together with him, of course, also his then political companions ..."

On 16 September 2003 the applicant submitted to the Court a quantitative analysis of references to him in 3 nation-wide newspapers, 2 radio-stations and 2 TV-stations. The analysis was elaborated by a limited liability company specialised in monitoring of media and it covers the period between 31 October 1998 and 1 January 2001. During that period there had been a total of 3,216 references to the applicant in the above media. The applicant thus came fourth in the number of references after the Prime Minister, the President of Slovakia, and the Vice-Prime Minister in charge of the economy. 2,262 references concerned the assessment of the applicant and his actions which were characterised by the notions "criminal", "unlawful", "suspect", "accused", "indicted" and "prosecuted". 915 of these references contained or were related to statements of the Prime Minister, the Minister of the Interior, the Minister of Justice, the General Prosecutor, the Director of the Slovak Information Service and a Section Director of the Police Corps. The material further contains 19 pages of selected texts in which reference was made to the applicant.

4. Proceedings before the Constitutional Court

(a) Proceedings No. I. ÚS 30/99

Thirty-seven Members of Parliament requested that the Constitutional Court should give an interpretation of Article 102(1)(i) of the Constitution concerning the President's right to grant an amnesty.

On 28 June 1999 the First Chamber of the Constitutional Court adopted decision No. I. ÚS 30/99 which reads as follows:

> "The right of the President of the Slovak Republic under Article 102(1)(i) of the Constitution of the Slovak Republic consists of granting amnesty in any of the forms set out in this Article.
>
> However, this right does not authorise the President of the Slovak Republic to amend in any way whatsoever a decision on amnesty which has been published in the Collection of Laws of the Slovak Republic."

This decision was published in the Collection of Laws on 24 July 1999. In it, the Constitutional Court held that no provision of the Code of Criminal Procedure foresaw the possibility of resuming criminal proceedings following a decision to quash an amnesty. Reference was also made to Article 4 § 1 of Protocol No. 7 to the Convention and to the principle of legal certainty. It concluded that Article 102(1)(i) of the Constitution could not serve as a basis for any decision by which the President of the Slovak Republic adversely affected, from the point of view of the criminal law, the position which a person had acquired as a result of an amnesty.

(b) Proceedings No. II. ÚS 69/99

On 22 April 1999 the applicant complained to the Constitutional Court that his rights including Article 17(2) of the Constitution had been violated in that the criminal proceedings against him were pursued despite the decisions on amnesty given on 3 March 1998 and on 7 July 1998.

The Second Chamber of the Constitutional Court rejected the complaint on 15 July 1999. The decision stated, *inter alia*, that the decisions on amnesty of 3 March 1998 and of 7 July 1998 were phrased in such a way that they did not exclude the applicant's prosecution and detention on remand regardless of the decision of 8 December 1998. Furthermore, the decision on the interpretation of the relevant provisions of the Constitution set out in the Constitutional Court's decision No. I. ÚS 30/99 of 28 June 1999 was of an abstract nature and it had no legal effect in respect of proceedings, omissions or decisions of State authorities which had given rise to the point at issue. In addition, decision No. I. ÚS 30/99 of 28 June 1999 could not be effective prior to its publication in the Collection of Laws.

(c) Proceedings No. II. ÚS 80/99

On 22 June 1999 the applicant filed another petition with the Constitutional Court. He alleged a violation of Article 17(2) of the Constitution in that he was prosecuted for offences which fell under the amnesty of 3 March and 7 July 1998.

On 18 August 1999 the Second Chamber of the Constitutional Court dismissed the petition as being manifestly ill-founded. The decision stated, *inter alia*, that the decision No. I. ÚS 30/99 of 28 June 1999 (see above) concerned merely the interpretation of the relevant provision of the Constitution and that it did not, as such, affect the validity of the decision on amnesty of 8 December 1998.

(d) Proceedings No. I. ÚS 48/99

On 20 December 1999 the First Chamber of the Constitutional Court delivered decision No. I. ÚS 48/99 on a petition filed by one of the applicant's co-accused. In it the Constitutional Court found a violation of the petitioner's rights under Article 17(2) of the Constitution in that the investigator had brought criminal proceedings against him, on 1 February 1999, notwithstanding that the offences of which he had been accused fell under the amnesty of 3 March and 7 July 1998. The Constitutional Court quashed the investigator's decision in question. As a result, the criminal proceedings against the petitioner were dropped.

In its decision the Constitutional Court held that the investigator's decision to discontinue the criminal proceedings given on 18 September 1998 was final and that it could not be changed under Slovakian law.

The Constitutional Court also addressed the question as from which date its above decision No. I. ÚS 30/99 was effective. That decision concerned the interpretation of Article 102(1)(i) of the Constitution and, as such, it was of a declaratory nature. Where relevant, such decision was effective *ex tunc*. The fact that a public authority, prior to the finding of the Constitutional Court, considered its actions to be in conformity with the Constitution, could not serve as a justification for such actions once the Constitutional Court has found that such was not the case.

The Constitutional Court further declared erroneous the argument according to which its decision No. I. ÚS 30/99 was effective only from the moment of its publication in the Collection of Laws on 24 July 1999. In particular, neither the Constitutional Court Act nor the Collection of Laws Act provided for the compulsory publication in the Collection of Laws of a decision under Article 128(1) of the Constitution. The binding effect of similar decisions could not, therefore, depend on whether or not they were published in the Collection of Laws.

5. Other relevant facts

On 25 August 2003 the Bratislava IV District Court granted the applicant's action under Article 11 of the Civil Code and ordered the publisher of a daily newspaper to apologise to the applicant and to pay him 1 million Slovakian korunas in compensation for non-pecuniary damage (proceedings No. 6 Coch 6/2003). The court established that the defendant was liable for defamatory statements concerning mainly the past of the applicant.

B. Relevant domestic law and practice

1. Constitutional provisions and practice

Article 17(2) provides that any person can be prosecuted or deprived of liberty only for reasons and by means provided for by law. Under paragraph 5 of Article 17, a person can be remanded in custody only for reasons and during a period of time provided for by law and in accordance with a decision of a court.

Article 50(2) provides that any person prosecuted for a criminal offence is to be deemed innocent until his or her guilt has been established by a final judgment of a court.

At the relevant time Article 102(1)(i) read as follows:

> "The President [of the Slovak Republic] grants amnesty, pardons or mitigates sentences imposed by criminal courts, orders that criminal proceedings should either not be started or not pursued and expunges sentences."

In a commentary on the Constitution written by a group of authors headed by the then President of the Constitutional Court and published in 1997 the view was expressed that a presidential decision on an amnesty cannot be quashed (Milan Čič a kolektív: *Komentár k Ústave Slovenskej republiky,* Matica slovenská 1997, p. 376).

Pursuant to Article 128(1), the Constitutional Court is to interpret constitutional laws where the point in issue is disputable. A law shall provide for further details.

2. The Constitutional Court Act (No. 38/1993 Coll.)

Pursuant to Section 33(2), where the Constitutional Court finds that a legal rule is contrary to the Constitution or a relevant international treaty, the operative part of its finding is to be published in the Collection of Laws.

Section 33(4) provides that, where the view of the Constitutional Court expressed in a finding on the merits of a case or in a decision on the interpretation of constitutional laws under Article 128(1) of the Constitution

is of general importance, the Constitutional Court may decide to have it published in the Collection of Laws.

3. The Collection of Laws Act (No. 1/1993 Coll.)

Section 1(1) provides, *inter alia*, that decisions given by the Constitutional Court on the conformity of legal rules with the Constitution or relevant international treaties are declared by means of their publication in the Collection of Laws.

Under paragraph 2(b) of the same section, President's decisions to grant an amnesty are to be published in the Collection of Laws.

Pursuant to Section 2, all texts published in the Collection of Laws are deemed to have become known to everybody concerned on the date of publication.

4. The Code of Criminal Procedure

Article 11(1)(a), as in force until 1 August 2001, provides that criminal proceedings shall not be brought or, if brought, shall be discontinued when so ordered by the President of the Slovak Republic in the exercise of his right to grant grace or amnesty.

Under Article 11(1)(f), criminal proceedings may not be brought or, if brought, shall be discontinued when, *inter alia*, earlier criminal proceedings against the same person and concerning the same matter have been discontinued by a final decision, with the exception of cases where such a decision was quashed in subsequent proceedings provided for by law.

Pursuant to Article 67(1)(b), an accused can only be remanded in custody when there are concrete grounds to believe that he or she will influence witnesses or the co-accused or otherwise hamper the investigation into the relevant facts of the case.

Pursuant to Article 159(2), the prosecutor or investigator shall decide not to pursue a case at a stage prior to bringing criminal proceedings where such proceedings are not permissible under Article 11(1) of the Code of Criminal Procedure.

Article 188(1)(c) in conjunction with Article 172(1)(d) provides that a court shall discontinue criminal proceedings, after a preliminary examination of the indictment, where a prosecution is not permissible for reasons set out in Article 11(1) of the Code of Criminal Procedure.

5. The Civil Code

The right to protection of a person's dignity, honour, reputation and good name is guaranteed by Articles 11 et seq. of the Civil Code.

According to Article 11, any natural person has the right to protection of his or her personality, in particular of his or her life and health, civil and human dignity, privacy, name and personal characteristics.

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

Article 13(2) provides that, in cases where the satisfaction obtained under Article 13(1) is insufficient, in particular because a person's dignity and position in society has been considerably diminished, the injured person is entitled to compensation for non-pecuniary damage.

COMPLAINTS

1. The applicant complained that his prosecution following the amnesty of 3 March and 7 July 1998 was not permissible under Slovakian law and that, therefore, his detention on remand in this context was not in accordance with a procedure prescribed by law. He relied on Article 5 § 1 of the Convention.

2. The applicant alleged a violation of Article 6 § 2 of the Convention in that public officials had repeatedly stated that he had committed the offences imputed to him and that the authorities continued prosecuting him despite the Constitutional Court's findings concluding that such prosecution was not permissible.

THE LAW

1. The applicant complained that his prosecution following the amnesty of 3 March and 7 July 1998 was not permissible under Slovakian law and that, therefore, his detention on remand in this context had not been in accordance with a procedure prescribed by law. He relied on Article 5 § 1 of the Convention the relevant part of which provides:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

The Government maintained that the applicant's deprivation of liberty had not been arbitrary as it had been based on the relevant provisions of the Code of Criminal Procedure. As the decisions on amnesty of 3 March 1998 and of 7 July 1998 had been invalidated by the decision given on

8 December 1998, and since the Constitutional Court's finding No. I. ÚS 30/1999 was published in the Collection of Laws on 24 July 1999, that is after the applicant had been released, at the relevant time there had existed no legal impediment for the prosecuting authorities to pursue the criminal proceedings against the applicant and for his detention on remand in that context. The Constitutional Court's decision No. II. ÚS 69/99 of 15 July 1999 confirmed this position.

The Government further maintained that the applicant's detention had been lawful and justified within the meaning of both Article 5 § 1 (c) of the Convention and Article 67(1)(b) of the Code of Criminal Procedure. There had existed sufficient evidence for accusing the applicant of an offence, and the information available indicated that the applicant had attempted to contact other members of the Slovak Information Service who had also been suspected of having been involved in the abduction or Mr Kováč.

The Government concluded that this part of the application was manifestly ill-founded.

The applicant contended that the arguments put forward by the Government were contrary to domestic law and practice. He relied, in particular, on the Constitutional Court's findings No. I. ÚS 30/99 and No. I. ÚS 48/99 and alleged that the reasons given therein clearly showed that his detention had not been permissible in terms of domestic law. It was accordingly contrary to Article 5 § 1 of the Convention.

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

2. The applicant complained that his right to be presumed innocent had been violated in that public officials repeatedly stated that he had committed the offences imputed to him and that he had been prosecuted notwithstanding that the Constitutional Court had found that it was not permissible. He relied on Article 6 § 2 of the Convention which provides:

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

The Government first objected that the applicant had not exhausted domestic remedies as, in particular, he had not sought the protection of his personal rights pursuant to Article 11 et seq. of the Civil Code.

Should the Court not consider the above remedy as effective, the Government contended that, as the application had been introduced on 28 September 1999, the complaints about the statement of the Minister of the Interior of 3 February 1999 and the statement of the Director of the Investigation Section of the Ministry of the Interior of 2 March 1999 had

been submitted outside the six months' time-limit laid down in Article 35 § 1 of the Convention.

As to the statements of the Minister of the Interior of 7 May 1999, of 10 September 1999 and of 10 October 1999, to which the applicant had expressly pointed in his submissions to the Court prior to communication of the application, the Government contended that the applicant's complaint under Article 6 § 2 of the Convention was, in any event, manifestly ill-founded. In particular, those statements were made after the applicant had been accused of several offences, and they were not made by persons directly involved in the criminal proceedings against the applicant. When considered in the context of the existing situation and the evidence available, the statements in issue could not be interpreted as being contrary to the applicant's right to be presumed innocent.

Finally, the Government recalled that the newly appointed Director of the Slovak Information Service and the Vienna Court of Appeal had established that the Slovak Information Service had been involved in the abduction of Mr Kováč.

The applicant contended that he had submitted the application to the Court within six months after the General Prosecutor's Office had failed to protect his right to be presumed innocent. In addition, the violation of his right under Article 6 § 2 of the Convention had continued also during the period after the introduction of the application.

The alleged violation of the applicant's right to be presumed innocent had been committed by high-ranking officials of public authorities who had been the superiors of the investigators dealing with the criminal case against the applicant at the preliminary stage. Accordingly, the State was liable for their actions. The protection under Article 11 et seq. of the Civil Code against unjustified interference with one's personal rights extended, however, only in respect of individuals but not in respect of the State as such. In support of his argument the applicant relied on the above decisions given by the Bratislava I District Court on 5 and 9 September 2000 respectively on his requests for an injunction.

The applicant further maintained that high-ranking officials had launched a massive campaign, at regular press conferences, in the course of which they had continued to accuse him of various offences. He relied, in particular, on the above analytical research covering the period between 31 October 1998 and 1 January 2000 and argued that the Government had failed to comment on the public officials' statements contained therein.

The fact that the authorities dealing with the case at the preliminary stage had prosecuted the applicant, despite the Constitutional Court's findings No. I. ÚS 30/99 and No. I. ÚS 48/99, amounted in itself to a violation of Article 6 § 2 of the Convention which had lasted until 5 June 2002 when the Bratislava Regional Court had given the final decision to discontinue the criminal proceedings.

a) As regards the complaint about particular statements of several public officials to which the applicant referred in his submissions, the Court finds that it was open to the applicant to seek protection of his rights by means of an action under Article 11 et seq. of the Civil Code. The documents submitted indicate that the applicant successfully used that remedy in respect of a publisher and it sees no reason for which the applicant could not also have used it in respect of the statements in issue. The fact that the domestic court dismissed his two above requests for an injunction does not absolve him from this requirement. The Court notes, in particular, that the reasons for which those requests were dismissed in no way prejudged the decision on the merits of his claims. In his requests the applicant himself asked for an injunction to be issued pending the determination of his claims for protection of his personal rights which he intended to file. However, the applicant has not shown that he actually filed such actions. The Court does not accept the applicant's argument that that remedy was not effective, for the purpose of Article 35 § 1 of the Convention, on the ground that proceedings under Article 11 et seq. of the Civil Code would only concern the officials in their individual capacity, but not the State as such which he considers liable for the alleged violation of his rights under Article 6 § 2 of the Convention.

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

b) As regards the applicant's complaint that he was prosecuted until 2002 in disregard of the Constitutional Court's findings No. I. ÚS 30/99 and No. I. ÚS 48/99 and that the State officials launched a campaign in media against his person, the Court finds that, to the extent that it has been substantiated, this part of the application discloses no appearance of a violation of Article 6 § 2 of the Convention.

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

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint under Article 5 § 1 of the Convention concerning the lawfulness of his detention;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President