

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

THIRD SECTION

DECISION

Application no. 16502/09
Tobiáš LOYKA
against Slovakia

The European Court of Human Rights (Third Section), sitting on 9 October 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Egbert Myjer,
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 23 February 2009,

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

1. The applicant, Mr Tobiáš Loyka, is a Slovak national, who was born in 1947 and lives in Bratislava. He was represented before the Court by Mr B. Jablonka, a lawyer practising in Bratislava.

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

## A. The circumstances of the case

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

### *1. Detention*

3. The applicant was detained and tried on a charge of fraud. So far as the subject matter of the present application is concerned, the term of the applicant's detention was authorised until 14 March 2008.

4. Prior to the expiry of the authorised term of his detention, and by means of several applications, the applicant sought the withdrawal of all the judges of the courts involved in his case on the grounds of bias.

5. The applicant also requested release and the public prosecution service requested an extension of the term of the applicant's detention. Both requests were dismissed by the Poprad District Court (*Okresný súd*) and, following interlocutory appeals (*sťažnosť*), by the Prešov Regional Court (*Krajský súd*) on 8 February and 5 March 2008 respectively.

6. On 13 March 2008 the applicant was indicted to stand trial on the above charges and, the following day, that is to say on 14 March 2008, he submitted an urgent request for release, relying on the expiry of the term of his detention on that very day, as mentioned above.

7. On 17 March 2008 the president of the District Court bench trying the applicant informed him by way of a letter, in response to his request for release, that it was sufficient for the lawfulness of his detention to be examined at a later date, together with the preliminary examination of the indictment (*predbežné prerokovanie obžaloby*).

8. Of the challenges for bias submitted by the applicant, the one which is decisive for the purposes of the present case was directed against all the judges of the District Court. It was dismissed as unfounded by the Supreme Court (*Najvyšší súd*) and its decision was served on the District Court on 27 March and 15 April 2008, respectively.

9. On 15 April 2008, after receiving the Supreme Court's decision concerning the impartiality of its judges, the District Court dismissed the applicant's request for release of 14 March 2008, and ruled that he should remain in detention.

10. On 7 May 2008, following an interlocutory appeal by the applicant, the Regional Court came to the conclusion that, in the absence of a decision to extend his detention beyond 14 March 2008, the applicant's detention had had no lawful basis. It therefore quashed the decision of 15 April 2008 and ordered the applicant's release: the order was implemented immediately.

11. The trial is still pending.

*2. Constitutional complaint*

12. On 1 April 2008 the applicant lodged a complaint under Article 127 § 1 of the Constitution (Constitutional Law no. 460/1992 Coll., as amended) with the Constitutional Court (*Ústavný súd*).

Relying on Article 5 §§ 3 and 4 of the Convention, the applicant contended that the District Court had arbitrarily failed to release him from detention from 14 March 2008 onwards and to determine speedily the lawfulness of his detention when he had requested release on that day.

The applicant sought an order for his release and the equivalent of some 15,350 euros (EUR) in damages.

13. In reply to the complaint, the District Court argued that it had not been possible for it to determine the applicant's request for release of 14 March 2008 as long as and until his challenge of bias against all its judges had not been determined. It had ruled on the applicant's request the same day, as soon as it had been determined and the Supreme Court decision of 27 March 2008 in that respect had been served on the District Court.

14. On 17 April and 3 September 2008 respectively the Constitutional Court declared the complaint admissible and found a violation of the applicant's rights under Article 5 § 4 of the Convention. It held that, in the circumstances, a decision on the applicant's request for release had been in the category that had to be taken immediately (*neodkladný úkon*) and should have taken precedence over the determination of impartiality of the District Court's judges.

At the same time, the Constitutional Court held that the complaint under Article 5 § 3 of the Convention was consumed by that under Article 5 § 4 of the Convention.

As to the applicant's just satisfaction claim, the Constitutional Court held that the protection of the applicant's rights had been completed by his release and that, in the circumstances, the finding of a violation of his rights was sufficient redress for him. Lastly, the applicant was awarded costs.

The Constitutional Court's judgment (*nález*) was served on the applicant on 16 October 2008 and no appeal lay against it.

## B. Relevant domestic law and practice

*1. Constitution*

15. The relevant part of Article 46 reads as follows:

"...

3. Everyone shall have the right to compensation for damage caused by an unlawful decision of a court, other State body or a body of public administration, or by wrongful official action.

4. Conditions and details ... shall be provided for by an Act of Parliament."

16. Article 127:

"1. The Constitutional Court shall decide on complaints by natural or legal persons alleging a violation of their fundamental rights or freedoms ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.

2. If the Constitutional Court finds a complaint justified, it shall deliver a decision stating that a person's rights or freedoms as set out in paragraph 1 have been violated by a final decision, specific measure or other act and shall quash that decision, measure or act. If the violation that has been found is the result of a failure to act, the Constitutional Court may order [the authority] which has violated the rights or freedoms to take the necessary action. At the same time it may remit the case to the authority concerned for further proceedings, order that authority to refrain from violating the fundamental rights and freedoms ... or, where appropriate, order those who have violated the rights or freedoms set out in paragraph 1 to restore the situation to that existing prior to the violation.

3. In its decision on a complaint the Constitutional Court may award appropriate financial compensation to a person whose rights under paragraph 1 have been violated.

4. Liability for damage or other loss in respect of a person who has violated rights or freedoms as referred to in paragraph 1 shall not be affected by a Constitutional Court decision."

### *2. Constitutional Court Act*

17. The Constitutional Court Act (Law no. 38/1993 Coll., as amended) governs the organisation of the Constitutional Court, the procedure before it and the status of its judges.

An individual complaint under Article 127 of the Constitution is made subject to the rule of exhaustion of ordinary remedies, which is formulated in the relevant part of section 53(1) and (2) as follows:

"1. A[n] [individual] complaint is not admissible if the complainant has not exhausted legal remedies or other legal means, which a statute effectively provides to [the complainant] with a view to protecting [the complainant's] fundamental rights or freedoms, and which the complainant is entitled to use under special statute.

2. The Constitutional Court shall not declare a[n] [individual] complaint inadmissible even if the condition under paragraph 1 has not been fulfilled, if the complainant establishes that [the complainant] has not fulfilled this condition for reasons worthy of particular consideration."

18. Under its section 56(4), when dealing with individual complaints, in the event of a finding of a violation of a fundamental right or freedoms:

"The Constitutional Court may also grant appropriate financial compensation to a person whose fundamental right or freedom has been violated."

19. Section 56(6) provides that:

"If the Constitutional Court quashes a final and binding (*právoplatné*) decision, measure or act and remits the matter for further proceedings, the person who issued the decision, decided on the measure or carried out the act is liable to examine and determine the matter anew. In such proceedings or procedure [he] is bound by the legal view of the Constitutional Court."

### *3. Constitutional Court report*

20. In connection with the present application, as well as three other individual applications under the Convention of a similar kind, the Constitutional Court produced a report.

The report is dated 7 March 2011 and concerns specifically the existence of an enforceable right to compensation, as required by Article 5 § 5 of the Convention, in respect of detention in contravention of Article 5 §§ 1 to 4 of the Convention and the Constitutional Court's practice in awarding appropriate financial compensation.

The report and case-law references contained therein can be summarised as follows.

21. Awarding appropriate financial compensation under Article 127 § 3 of the Constitution is an optional remedy in respect of a violation by a public authority of fundamental rights and freedoms of individuals and legal entities which has been found by the Constitutional Court. The purpose of appropriate financial compensation is to complete the protection of the fundamental right violated in instances where it has been established that the violation occurred in such a way as to call for a level of protection higher than the mere finding of a violation or, as the case may be, an order by the Constitutional Court that a case be dealt with without a violation of the fundamental right in question (cases nos. IV ÚS 410/04 and IV ÚS 139/08).

The question of an award of appropriate financial compensation arises in particular where it is not possible to remedy a violation of a right or freedom by way of quashing the impugned decision or measure or by restoring the status quo ante (case no. I ÚS 15/02).

The purpose of appropriate financial compensation is to reduce the loss felt as a result of the violation of the fundamental right; the Constitutional Court determining the award of compensation on an equitable basis and taking into account the circumstances of the individual cases concerned (*mutatis mutandis*, case no. III ÚS 424/08).

22. As regards the system of remedies in respect of detention in violation of Article 5 §§ 1 to 4 of the Convention, by virtue of Article 127 § 4 of the Constitution, the liability of a person who has violated rights or freedoms as referred to in paragraph 1 of that Article for damage or other

loss is not to be affected by the Constitutional Court's decision, including on appropriate financial compensation. This provision is of particular relevance in correlation with the right to compensation for damage (including non-pecuniary damage) caused by a public authority under the State Liability Act.

23. The provision of Article 127 § 3 of the Constitution, which allows for an award of appropriate financial compensation, is a special and autonomous remedy, which is independent of the State Liability Act. It does not constitute a *lex specialis* and, therefore, an award or non-award of appropriate financial compensation under Article 127 of the Constitution does not preclude a claim for compensation for pecuniary or non-pecuniary damage under sections 7, 8 and 9 of the State Liability Act.

*4. State Liability Act*

24. The State Liability Act (Law no. 514/2003) was enacted on 28 October 2003 and became operative on 1 July 2004. It provides for the liability of the State for damage which has been caused by, *inter alia*, unlawful arrest, detention (*zadržanie*) or other deprivation of liberty (section 3(1)(b)); decisions concerning remand in custody (*väzba*) (section 3(1)(c)); and wrongful official action (section 3(1)(d)).

25. Pursuant to section 7, where a decision on arrest, detention or any other deprivation of liberty has been quashed as being unlawful or where there has been wrongful official action in that context, a person affected by it is entitled to compensation for damage.

26. The right to compensation for damage caused by a decision concerning detention on remand is vested in the person who has been detained, provided that the criminal proceedings against him or her have been dropped (section 8(5)(a)), or he or she has been acquitted (section 8(5)(b)), or the matter has been referred to another authority (section 8(5)(c)).

27. However, no such right arises when the person concerned himself or herself has given cause to be remanded in custody (section 8(6)(a)).

28. Section 9, which deals with compensation for damage caused by wrongful official action, provides:

> "1. The State is liable for damage caused by wrongful official action. Wrongful official action includes a public authority's failure to take action or issue a decision within the statutory time-limit, general inactivity in the exercise of public authority, unjustified delays in proceedings or other unlawful interference with rights and legally recognised interests of individuals and legal entities.
>
> 2. The right to compensation for damage caused by wrongful official conduct is vested in the person who sustained the damage."

29. Section 17 defines the manner and extent of compensation for damage. Its relevant part provides:

> "1. Damage and lost profit shall be compensated for, unless special legislation provides otherwise.
>
> 2. In the event that the finding of a violation of a right alone is not adequate compensation in view of the loss caused by the unlawful official action or wrongful official conduct, monetary compensation shall also be awarded for non-pecuniary damage, if it is not possible to compensate for it otherwise."

30. Under section 25(4), unless provided for otherwise by special legislation, disputes concerning matters regulated by the State Liability Act are to be decided upon by the courts.

*5. Ordinary courts' practice*

31. In a judgment of 16 March 2007 (in case no. 4C 258/2006) the Brezno District Court allowed an action for damages by two individuals against the State under the State Liability Act and ordered the defendant to pay the costs of their defence in a criminal trial that had ended with their acquittal.

On 22 November 2007 the Banská Bystrica Regional Court upheld the judgment following the defendant's appeal.

32. On 14 October 2009 the Bratislava Regional Court allowed an appeal (case no. 2Co 238/2008) in an action by an individual against the State under the State Liability Act for damages and awarded him a sum of money in compensation for non-pecuniary damage caused by his remand in custody in the context of a criminal trial that had ended with his acquittal.

33. In a judgment of 17 August 2009 (case no. 19C 47/2006) the Bratislava I District Court allowed an action for damages by an individual against the State under the State Liability Act and awarded the claimant a sum of money in compensation for non-pecuniary damage caused by wrongful official action in connection with his detention pending a criminal trial.

The impugned wrongful official action concerned extension of the claimant's detention pending trial.

The action was preceded by a constitutional judgment of 19 October 2005 (case no. I. ÚS 65/05) in which the Constitutional Court found a violation of the claimant's rights under Article 5 §§ 3 and 4 in connection with the same facts.

However, the Constitutional Court did not award the claimant damages as he had made no claim for damages.

## COMPLAINT

34. The applicant complained under Article 5 § 5 of the Convention that in its judgment of 3 September 2008 the Constitutional Court had denied

him an enforceable right to compensation in respect of the violation of his rights under Article 5 § 4 of the Convention, as found by the Constitutional Court.

## THE LAW

35. The applicant complained that he had been granted no financial compensation for the violation of his right under Article 5 § 4 of the Convention, in violation of 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."

36. The Government objected that, by operation of the Constitutional Court's judgment of 3 September 2008, and in particular in view of the redress afforded thereby, the applicant had lost the status of a victim within the meaning of Article 34 of the Convention. In addition, they submitted that the applicant had failed to respect the requirement of Article 35 § 1 of the Convention in so far as it was required of him to exhaust domestic remedies, in that he had failed to claim damages under the State Liability Act. In that respect, the Government relied on the Constitutional Court's report (see paragraphs 20 et seq. above) and the judgment of the Bratislava I District Court of 17 August 2009 (see paragraph 33 above). Moreover, and in any event, in view of their arguments in support of the above two objections, the Government considered the application manifestly ill-founded.

37. In reply, the applicant disagreed and reiterated his complaint. In particular, he submitted that he had sought redress before the Constitutional Court under four heads: a finding of a violation, an order for release, damages and costs. As the Constitutional Court had allowed his claims under only two of these heads, the applicant still considered himself to be a victim of a violation of his Convention rights. He also emphasised the seriousness of an interference consisting of a deprivation of liberty and the length of time the courts had taken to determine his request for release.

Lastly, the applicant was of the view that the State Liability Act was inapplicable, given the facts of his case, because the criminal proceedings against him had neither been dropped (section 8(5)(a)), nor had he been acquitted (section 8(5)(b)), nor had the matter been referred to another authority (section 8(5)(c)) (see paragraph 26 above).

38. The Government responded that the limitation contained in section 8(5)(a), (b) and (c) of the State Liability Act only applied to damage caused by a decision concerning detention on remand but not by unlawful

official action, which was covered in sections 7 and 9 of the Act and to which no such limitation applied.

39. The Court considers that the Government's pleas under Articles 34 and 35 § 1 of the Convention appear to be linked to the underlying violation of the applicant's rights under Article 5 § 4 of the Convention, rather than to his right under Article 5 § 5 of the Convention. However, it should be recalled that the scope of the present application is limited to the applicant's complaint that he has been denied an enforceable right to compensation under Article 5 § 5 of the Convention and not more. In that respect, the Court observes specifically that the only document submitted by the applicant in support of the application is the Constitutional Court's judgment of 3 September 2008 and that, in particular, no documents at all have been submitted in respect of the underlying facts, decisions and claims.

That being so, the Court considers that it is not necessary to make a separate ruling in respect of these objections, because the application is in any event inadmissible on other grounds, as explained below.

40. For that matter, 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 (see, for example, *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A). 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, recently, *Stanev v. Bulgaria* [GC], no. 36760/06, § 182, ECHR 2012, with further references).

41. In the present case, a violation of the applicant's rights under Article 5 § 4 of the Convention was found by the Constitutional Court in its judgment of 3 September 2008 on account of the District Court's failure to deal immediately with the applicant's request for release of 14 March 2008 (see paragraph 14 above). Article 5 § 5 of the Convention is therefore applicable and it remains for the Court to examine whether the applicant has had the benefit of an enforceable right to compensation in that respect.

42. As to the substantive foundation of that right, the Court notes that Article 46 §§ 3 and 4 of the Constitution (see paragraph 15 above) provides for the 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.

43. The substantive legal basis for the right to compensation is further specified in the State Liability Act, in particular in its sections 3, 7, 8, 9 and 17 (see paragraphs 24 to 29 above), which deal with claims for compensation for pecuniary and non-pecuniary damage caused by public authorities, *inter alia* in the context of remand in custody.

44. At the procedural level, claims for damages under the State Liability Act fall within the jurisdiction of the ordinary courts (see paragraph 30 above).

45. Moreover, in addition to the above, there is another procedure which may result in an award of compensation in respect of damage due to a violation of the rights under Article 5 §§ 1 to 4 of the Convention. In particular, under Article 127 of the Constitution, individuals and legal entities have the standing to assert their fundamental rights and freedoms before the Constitutional Court, which in turn has the powers to acknowledge a violation of their rights, to quash a contested decision, to order the taking of necessary action, to remit the case to the authority concerned for further proceedings, to order that authority to refrain from violating the fundamental rights and freedoms in question and to restore the situation to that existing prior to the violation, as well as to grant appropriate financial compensation to the victim (see paragraph 16 above).

46. As has been noted above, in the present case the applicant decided to pursue his claims under Article 127 § 1 of the Constitution and was successful in substance. However, his claim for compensation under Article 127 § 3 of the Constitution was dismissed, essentially on the ground that the protection of his rights had been completed by his release and that, in the circumstances, the finding of a violation of his rights was sufficient redress for him (see paragraph 14 above).

47. As a matter of principle, the Court is unconvinced that the release of an individual from detention pending trial itself constitutes just satisfaction in respect of a violation of that individual's rights under Article 5 § 4 of the Convention, especially when the underlying detention has proven to be devoid of legal basis. It nevertheless reiterates that, in the present case, it is not called upon to scrutinise the case under the exhaustion of domestic remedies rule or with respect to the underlying violations of the applicant's rights, but rather to limit its review to the scope of the application as substantiated (see paragraph 39 above).

48. From that perspective, the Court observes that the Constitutional Court's position taken as regards the applicant's claim for compensation in the present case does not stem from law but is rather based on the Constitutional Court's assessment of the specific facts of a singular case.

49. Furthermore, the Court also notes that the applicant arguably had another avenue for asserting his claims, that under the State Liability Act. In that respect the Court observes that the functional relationship between this remedy and that under Article 127 of the Constitution has not been entirely clarified. However, as the scope of the Court's examination of the present case is limited as pointed out above, it will limit itself to noting that by virtue of Article 127 § 4 of the Constitution, the Constitutional Court's decision in respect of an individual complaint appears to have no impact on the liability for damage of those responsible for the loss of the victim. It

would appear that this rule has direct application to the relationship between Constitutional Court decisions concerning compensation for damage resulting from the violation of fundamental rights and freedoms found and claims for damages on the same basis under the State Liability Act.

50. The Court considers it useful to point out that the present case is structurally different from that relied upon by the Government (see paragraph 33 above) in that, contrary to the present case, in that case the complainant's just-satisfaction claim had previously not been rejected by the Constitutional Court (see also *Osváthová v. Slovakia*, no. 15684/05, § 61, 21 December 2010).

51. Furthermore, the Court considers it useful to distinguish the present case from those of *Osváthová* (cited above, § 83), *Michalko v. Slovakia* (no. 35377/05, § 175, 21 December 2010), and *Michalák v. Slovakia* (no. 30157/03, § 202, 8 February 2011), in which a violation of Article 5 § 5 of the Convention was found, in that – contrary to the present case – in those cases the applicants' constitutional complaints had been unsuccessful in substance.

52. In conclusion, in so far as the application has been substantiated, the Court finds that in the specific circumstances of the applicant's case it was Article 127 of the Constitution and the State Liability Act that made it possible for the applicant to apply for compensation for the violation of his rights under Article 5 § 4 of the Convention, and that their combined effect was compatible with the requirements of Article 5 § 5 of the Convention.

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

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President