

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

THIRD SECTION

DECISION

Application no. 50929/08
Pierre WAKIL
against Slovakia

The European Court of Human Rights (Third Section), sitting on 29 May 2012 as a Committee composed of:

Ineta Ziemele, *President,*
Ján Šikuta,
Nona Tsotsoria, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 26 September 2008,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Pierre Wakil, is a Slovak national, who was born in 1962. He is serving a prison term in Leopoldov.

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

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

4. The applicant was detained in custody in the context of criminal proceedings in which he was accused of a drug offence.

5. On 20 December 2007 he applied for release.

6. The Trnava District Court dismissed the complaint on 25 March 2008. The decision was served on the applicant on 14 April 2008.

On 30 April 2008 the Trnava Regional Court dismissed the applicant's complaint against that decision.

7. On 27 May 2008 the Constitutional Court found that in the above proceedings the Trnava District Court had breached the applicant's right under Article 5 § 4 of the Convention to have his application for release decided speedily. It awarded the equivalent of 995 euros (EUR) to the applicant as just satisfaction and ordered the District Court to reimburse the costs of the applicant's legal representation in the constitutional proceedings.

COMPLAINT

8. With reference to the above proceedings the applicant alleged a breach of Article 5 § 4 of the Convention.

THE LAW

9. The applicant complained that his right to a speedy review of his application for release had been breached. He relied on Article 5 § 4 of the Convention which provides:

> "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."

10. The Government referred to the Constitutional Court's judgment and argued that the applicant could no longer claim to be a victim within the meaning of Article 34 of the Convention. They further maintained that, in any event, the applicant had not exhausted domestic remedies as he had not claimed compensation under the State Liability Act 2003.

11. The applicant argued that he had not obtained appropriate redress in the proceedings before the Constitutional Court as (i) the just satisfaction awarded to him was low and (ii) he had not been released.

12. The Court reiterates that an applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on whether the domestic authorities have acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V).

13. In the present case the Constitutional Court, on 27 May 2008, found that in the above proceedings the Trnava District Court had breached the applicant's right under Article 5 § 4 of the Convention to have his application for release decided speedily. It awarded the equivalent of EUR 995 to the applicant as just satisfaction and ordered the District Court to reimburse the costs of the applicant's legal representation in the constitutional proceedings.

14. Having regard to the fact that the Constitutional Court expressly acknowledged a breach of the applicant's right under Article 5 § 4 of the Convention, the established case-law on the subject, and to the fact that the amount of just satisfaction is comesurate with its own awards under Article 41 of the Convention in similar cases (see *Štetiar and Šutek v. Slovakia*, nos. 20271/06 and 17517/07, §§ 128 and 137, 23 November 2010; *Gál v. Slovakia*, no. 45426/06, §§ 62 and 73, 30 November 2010; *Osváthová v. Slovakia*, no. 15684/05, §§ 69 and 104, 21 December 2010; or *Michalák v. Slovakia*, no. 30157/03, §§ 200 and 228, 8 February 2011), the Court concludes that the applicant can no longer claim to be a "victim" within the meaning of Article 34 of the Convention of the alleged violation of Article 5 § 4.

15. It follows that the application 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.

Marialena Tsirli
Deputy Registrar

Ineta Ziemele
President