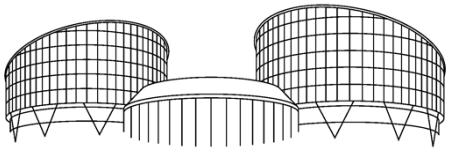

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SCHRAM v. SLOVAKIA

(Application no. 8555/17)

JUDGMENT

STRASBOURG

23 October 2018

This judgment is final but it may be subject to editorial revision.

In the case of Schram v. Slovakia,

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

Dmitry Dedov, *President,*
Alena Poláčková,
Jolien Schukking, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 2 October 2018,

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

PROCEDURE

1. The case originated in an application (no. 8555/17) 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 Dávid Schram ("the applicant"), on 19 January 2017.

2. The applicant was represented by Mr R. Bardač, a lawyer practising in Bratislava. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. On 7 June 2017 the application was communicated to the Government.

4. The Government had no objection to the examination of the application by a Committee.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1985 and lives in Bratislava.

6. On 20 December 2014 the Bratislava IV District Court ordered the applicant's pre-trial detention in the context of criminal proceedings in which he was prosecuted for committing the criminal offence of manslaughter. The reason for his detention was the risk of reoffending.

7. On 3 March 2015 the applicant submitted a request to the District Prosecution Office for release from pre-trial detention. In it, he asked for his detention to be replaced with supervision by a probation officer. The request was received by the latter on 4 March 2015 and dismissed on 5 March 2015, following which it was transferred to the District Court for a judicial determination.

8. On 26 March 2015 the District Court held a hearing and dismissed the applicant's request for release. The written version of that decision was served on the applicant on 14 April 2015 and, after several unsuccessful attempts at delivery, was served on the applicant's lawyer on 21 April 2015.

9. The applicant's lawyer lodged a written interlocutory appeal with the District Court within the statutory three-day period, namely on 24 April 2015. The case file was transferred to the Bratislava Regional Court on 29 April 2015 and the applicant's appeal was dismissed in chambers on 7 May 2015. The written version of that decision was served on the applicant's lawyer on 18 May 2015.

10. On 1 June 2015 the applicant filed a constitutional complaint, relying *inter alia* on Article 5 § 4 of the Convention. He alleged that the authorities had not proceeded speedily with his request for release. He formally challenged the proceedings held before the District Curt, the decision of the Regional Court of 7 May 2015 and the proceedings preceding this decision. He also requested compensation of 2,000 euros (EUR) in addition to his legal costs and expenses.

11. On 30 March 2016 the Constitutional Court declared the part of his complaint in respect of the proceedings held before the District Court admissible and the remainder inadmissible. The Constitutional Court held that it had found no irregularities in the Regional Court's decision of 7 May 2015.

12. On 21 June 2016 the Constitutional Court found a violation of the applicant's right guaranteed under Article 5 § 4 of the Convention. It did not award him any compensation or legal costs and expenses. The Constitutional Court scrutinised only the District Court's proceedings and concluded that they had lasted 44 days. The District Court had therefore failed to deal with the applicant's request speedily and to serve the written decision on him promptly. With respect to the financial compensation, the Constitutional Court referred to "the principle of fairness", "the particular circumstances of the case", the duration of the delays and the intensity of the interference, and concluded that the finding of a violation of the applicant's right constituted a sufficient redress.

THE LAW

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

13. The applicant complained that the proceedings concerning his request for release had not complied with the requirement of "speediness" provided for in Article 5 § 4 of the Convention, which reads as follows:

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

A. Admissibility

14. The Government objected that the applicant had failed to comply with the requirement of Article 35 § 1 of the Convention to exhaust domestic remedies on two grounds. Firstly, they argued that in his constitutional complaint the applicant had failed properly to identify all authorities responsible for the alleged violation of his rights, notably the prosecution and the Regional Court. Secondly, and in so far as the applicant had not been awarded any compensation by the Constitutional Court, the Government submitted that he had failed to claim damages under the State Liability for Damage Act (Law no. 514/2003 Coll., as amended - "the SLD Act").

15. Furthermore, the Government maintained that by virtue of the Constitutional Court's judgment of 21 June 2016, the applicant had lost his "victim" status within the meaning of Article 34 of the Convention. Although the Constitutional Court had granted the applicant no just satisfaction, this was, in the Government's submission, compatible with the Court's own approach in cases where it had found that the finding of a violation of the applicant's Article 5 rights constituted in itself sufficient just satisfaction for any non-pecuniary damage he had sustained.

16. The applicant disagreed with the Government's objections. He considered the remedy under the SLD Act inefficient because an ordinary court would unlikely reach a conclusion different from that of the Constitutional Court. As to the victim status, he stated that he should be entitled to other form of compensation than just a statement that his rights had been breached.

17. The Court will first deal with the Government's non-exhaustion objection concerning the proper formulation of the constitutional complaint.

18. It observes that the applicant failed to direct his constitutional complaint against the prosecution. It follows that, in so far as the applicant's present complaint concerns the phase of the proceedings on the request for release before the prosecution from 3 to 5 March 2015, the applicant cannot be considered as having complied with the requirement of exhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention (see *Alojz v. Slovakia*, no. 63800/10, § 22, 21 January 2014). The Court will accordingly proceed to examine the applicant's complaint, in so far as it concerns the District Court and the Regional Court.

19. The Court further notes that the applicant formally directed his constitutional complaint against both, the District and the Regional Court. In such situation, nothing prevented the Constitutional Court to examine the

overall duration of the judicial review of applicant's detention (see *Obluk v. Slovakia*, no. 69484/01, § 62, 20 June 2006). This part of the Government's non-exhaustion objection is therefore to be dismissed.

20. The Government further objected that the applicant should have claimed damages under the SLD Act. The Court reminds that it rejected substantially the same objection in the case of *Horváth v. Slovakia* (no. 5515/09, §§ 67-82, 27 November 2012) and confirmed this approach more recently in *Šablij v. Slovakia* (no. 78129/11, § 26, 28 April 2015). It further notes that the Government provided no evidence that the national law or jurisprudence has changed from those considered in these cases. In these circumstances, the Court finds no reasons to depart from the jurisprudence cited above in the present case. This part of the Government's non-exhaustion objection must therefore also be dismissed.

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

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

B. Merits

1. The parties' arguments

23. The applicant contended that the determination of his request for release had fallen short of the "speediness" requirement of Article 5 § 4 of the Convention and that the Constitutional Court had failed to remedy the situation because he had not been awarded compensation in respect of non-pecuniary damage.

24. Referring to the Constitutional Court's judgment of 21 June 2016, the Government conceded that the lawfulness of the applicant's detention had not been decided speedily by the District Court as required under Article 5 § 4 of the Convention.

2. The Court's assessment

25. The Court reiterates that Article 5 § 4, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of the detention, and ordering its termination if it proves unlawful. In order to determine whether the requirement that a decision be given "speedily" has

been complied with, it is necessary to effect an overall assessment where the proceedings were conducted at more than one level of jurisdiction. The question whether the right to a speedy decision has been respected must – as is the case for the "reasonable time" stipulation in Articles 5 § 3 and 6 § 1 of the Convention – be determined in the light of the circumstances of each case, including the complexity of the proceedings, the conduct of the domestic authorities, the conduct of the applicant and what was at stake for the latter (for a recapitulation of the applicable principles, see *Mooren v. Germany* [GC], no. 11364/03, § 106, 9 July 2009).

26. In the present case the applicant's request for release was transferred to the District Court on 5 March 2015 and the final decision of the Regional Court was served on his lawyer on 18 May 2015. The period under consideration thus lasted two months and thirteen days, during which time his request was examined by two levels of courts (see, for example, *Schvarc v. Slovakia*, no. 64528/09, § 24, 14 January 2014).

27. In view of the Constitutional Court's finding of a violation of the applicant's right to a speedy review of the lawfulness of his detention within the meaning of Article 5 § 4 of the Convention (see paragraph 12 above), the Government's admission (see paragraph 24 above), and its own case‑law on the subject (see the summary in, for example, *Osváthová v. Slovakia*, no. 15684/05, § 77, 21 December 2010), the Court finds that the proceedings on the applicant's request for release were not in conformity with the speediness requirement of Article 5 § 4 of the Convention.

28. It remains to be examined whether the applicant can still claim to be a victim of the violation of the Convention provision under consideration.

29. The Court reiterates that an applicant is deprived of his or her victim status if the national authorities have acknowledged the violation of the applicant's rights either expressly or in substance and then afforded appropriate and sufficient redress for it (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 193, ECHR 2006-V).

30. In its judgment of 21 June 2016 the Constitutional Court acknowledged the breach of the applicant's rights under Article 5 § 4 but made no award in respect of non-pecuniary damage and legal costs.

31. The Court observes that in many contexts pecuniary redress is required in order to restore an applicant's rights. However, unlike other Convention provisions, Article 5 contains a special clause in its paragraph 5 which requires that pecuniary compensation be made for detention which was contrary to that provision (see, *mutatis mutandis*, *Shcherbina v. Russia*, no. 41970/11, § 40 26 June 2014). The Court further notes that in a number of previous cases the sole acknowledgment of the violation of Article 5 of the Convention was insufficient to deprive the applicant of his or her victim status (see *Šablij*, cited above, § 43; *mutatis mutandis*, *Kováčik v. Slovakia*, no. 50903/06, § 41, 29 November 2011).

32. In these circumstances and considering its own approach on the matter (see *Šablij*, cited above, § 43, with further references), the Court finds that the Constitutional Court's judgment has not provided the applicant with redress compatible with the Article 34 requirements in order to deprive him of his "victim" status, and the Government's objection in this regard must be dismissed.

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

II. ALLEGED VIOLATION OF ARTICLES 5 § 5 and 13 OF THE CONVENTION

33. The applicant complained that he had been denied financial compensation in respect of the lack of speedy review of his request for release and that he had no effective domestic remedy to challenge this result. He relied on Articles 5 § 5 and 13 of the Convention, which read as follows:

Article 5 § 5

"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."

Article 13

"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."

A. Admissibility

34. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

35. The Government considered that the SLD Act provided a comprehensive framework for claims for compensation in respect of detention contrary to Article 5 §§ 1 to 4 of the Convention, which was complemented by and independent of the procedural protection under Article 127 of the Constitution, and that these ways of seeking compensation for the violation of his rights under Article 5 § 4 of the Convention were compatible with the requirements of its Article 5 § 5.

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

37. The Court considers that, in view of its above findings concerning the complaint under Article 5 § 4 of the Convention, it is not necessary to examine the complaints made under Articles 5 § 5 and 13 separately on merits (see *Šablij,* cited above, § 49; *Pavletič v. Slovakia*, no. 39359/98, § 101, 22 July 2004).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed 2,000 euros (EUR) in respect of non-pecuniary damage.

40. The Government contested the claim as overstated.

41. The Court considers that the claim should be granted in full. It therefore awards the applicant EUR 2,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

42. The applicant did not submit a claim under this head.

C. Default interest

43. 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 part of application concerning the phase of the proceedings on the request for release before the prosecution from 3 to 5 March 2015 inadmissible and the rest of the application admissible;

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

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

4. *Holds* that there is no need to examine the merits of the complaints under Articles 5 § 5 and 13 of the Convention;

5. *Holds*
(a) that the respondent State is to pay the applicant, within three months, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 23 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Dmitry Dedov
President