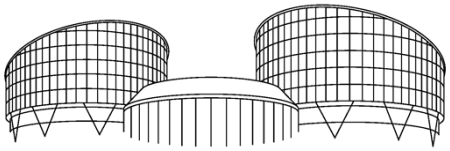

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MÓRY AND BENC v. SLOVAKIA

(Applications nos. 3912/15 and 7675/15)

JUDGMENT

STRASBOURG

22 January 2019

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Móry and Benc v. Slovakia,

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

Vincent A. De Gaetano, *President,*
Helen Keller,
Dmitry Dedov,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking,
María Elósegui, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 18 December 2018,

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

PROCEDURE

1. The case originated in two applications (nos. 3912/15 and 7675/15) 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 two Slovak nationals, Mr Marek Móry ("the first applicant") and Mr Matúš Benc ("the second applicant"), on 14 January and 3 February 2015 respectively.

2. The applicants were represented by Ms I. Lenčéšová, a lawyer practising in Nitra. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. On 24 January 2017 the applicants complaints' raised under Article 5 § 1 of the Convention were communicated to the Government and the remainder of the applications was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The first applicant was born in 1973 and lives in Horná Kráľová. The second applicant was born in 1980 and lives in Nitra.

5. On 14 March 2014 a judge of the Nitra District Court remanded the applicants in detention pending trial on the charge of continuous criminal offence of insurance fraud. This followed their arrest on 11 March 2014.

6. With respect to the first applicant, the District Court decided that there were reasons to suspect that he would influence witnesses, reoffend and continue to make illegal financial gains. With respect to the second applicant, the District Court concluded that there was a reason to suspect that he would interfere with witnesses and his co-accused to influence the evidence they would give.

7. On 21 March 2014 both applicants lodged an interlocutory appeal, arguing that no specific factual elements had been relied on in the District Court's decision to justify their pre-trial detention.

8. On 1 April 2014 the Nitra Regional Court dismissed the applicants' interlocutory appeals, referring to the findings of the District Court.

9. On 24 April 2014 the applicants lodged a constitutional complaint alleging that the decisions on their detention lacked specific reasons justifying their pre-trial detention. They each requested just satisfaction of 5,000 euros (EUR).

10. The Constitutional Court joined their complaints and on 24 September 2014 found a violation of their rights under Article 5 §§ 1 and 4 of the Convention. It quashed the relevant part of the decision of the Regional Court and awarded each of the applicants EUR 1,000 as just satisfaction in addition to their legal costs and expenses in the amount of EUR 284.

The Constitutional Court noted that where the ordinary courts used only formal and standard phrases in their decisions on detention (as was the case with the applicants), suspicion arose as to whether they had looked properly at the specific circumstances at hand. It concluded that even though the ordinary courts had referred to some specific facts, which allegedly justified the applicants' detention, they had failed to explain them in their decisions. Furthermore, the Regional Court had not dealt with some of the applicants' core arguments and thus had not remedied the shortcomings of the District Court's decision.

In view of the above, the Constitutional Court concluded that the applicants' pre-trial detention had been based on an arbitrary decision lacking proper and sufficient reasoning.

11. In the meantime, on 30 May 2014 the applicants had been released and placed under supervised probation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant domestic law and practice is summarised in the Court's judgment in the cases of *Kuc v. Slovakia* (no. 37498/14, § 33, 25 July 2017) and *Horváth v. Slovakia* (no. 5515/09, §§ 35-54, 27 November 2012).

THE LAW

I. JOINDER OF THE APPLICATIONS

13. The Court considers that given their common factual and legal background the two applications should be joined, in accordance with Rule 42 § 1 of the Rules of Court.

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

14. Referring to the Constitutional Court's findings and arguing that no sufficient redress has been granted to them in that respect, the applicants complain that their pre-trial detention was arbitrary. The Court considers that in so far as this complaint has been substantiated, it most naturally falls to be examined under Article 5 § 1 (c), which in its relevant part reads 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:
>
> ...
>
> (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;

A. Admissibility

15. The Government relied on the Constitutional Court's judgment of 24 September 2014, and considered that by virtue of that judgment the applicants had lost their "victim" status within the meaning of Article 34 of the Convention. In so far as the applicants claimed to have been awarded insufficient compensation by the Constitutional Court, the Government further submitted that they had failed to comply with the requirement of Article 35 § 1 of the Convention to exhaust domestic remedies, since they had failed to claim damages under the State Liability for Damage Act (Law no. 514/2003 Coll., as amended - "the SLD Act").

16. The applicants maintained that they were still victims of the violation of Article 5 § 1 of the Convention, as confirmed by the Constitutional Court. Referring to the case-law of the Court, they argued that the compensation awarded by the Constitutional Court was insufficient. According to their opinion, the claim for damages under the SLD Act would be ineffective in their case.

17. The Court will first deal with the Government's non-exhaustion objection. It observes that, after having examined it *in extenso*, it rejected substantially the same objection as to the requirement to exhaust the remedy under the SLD Act in the *Horváth* case (cited above, §§ 67-82) 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. The Government's non-exhaustion objection must therefore be dismissed.

18. The Court further considers that the Government's objection concerning the applicants' status as "victims" is closely linked to and should be joined to the merits of the complaint (see *Kormoš v. Slovakia*, no. 46092/06, § 50, 8 November 2011).

19. Furthermore, the Court considers that this part of the applications 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

20. The applicants argued that the decisions of the domestic courts by which they had been deprived of liberty were arbitrary. They maintained that the just satisfaction awarded to them by the Constitutional Court was insufficient considering the harm suffered by detention.

21. Referring to the findings of the Constitutional Court, the Government conceded that the applicants' complaints were not manifestly ill-founded but stated that in view of the amounts of just satisfaction awarded to the applicants at the domestic level, they were no longer victims within the meaning of Article 34 of the Convention. In that respect, they pointed to the Court's own approach in cases where it had found that the finding of a violation of applicants' rights constituted in itself sufficient just satisfaction for any non-pecuniary damage they had sustained.

2. The Court's assessment

22. The Court reiterates that where the "lawfulness" of detention is in issue, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. The compliance with national law is, however, not sufficient: Article 5 § 1

requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. In the context of Article 5 § 1 (c), the reasoning of the decision ordering detention is a relevant factor in determining whether a person's detention must be considered as arbitrary (for recapitulation of the applicable principles see *Mooren v. Germany* [GC], no. 11364/03, §§ 72-81, 9 July 2009).

23. In its decision of 24 September 2014 the Constitutional Court established that the applicants' detention had been based on arbitrary decisions lacking proper and sufficient reasoning. The Court finds no reasons to reach a different conclusion and considers that the applicants' detention was not in conformity with the requirements of Article 5 § 1 (c) of the Convention.

24. In view of the above conclusion, it remains to be examined whether the applicants can still claim to be victims in that respect.

25. 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).

26. Since in its judgment of 24 September 2014 the Constitutional Court acknowledged a breach of the applicants' right under Article 5 § 1, the only issue which arises in that respect in the present case is whether the redress afforded to them can be considered as appropriate and sufficient.

27. When determining such issue the Court will have regard to its own practice in similar cases. This does not imply that in situation where domestic authorities awarded a sum to the applicant with a view to redressing the breach found, such sum must correspond to the Court's award. The issue must be determined in light of all relevant circumstances including the nature of the breach and the way and speediness in which it was established by domestic authorities for which it is in the first place to ensure respect for rights and freedoms guaranteed by the Convention. The level of just satisfaction granted at national level must nevertheless not be manifestly inadequate in the particular circumstances of the case (see *Kormoš*, cited above, § 73).

28. The Constitutional Court awarded each applicant EUR 1,000 as just satisfaction and reimbursement of their legal costs and expenses. At the time of the Constitutional Court judgment the applicants had been released.

29. The first question is whether, in the circumstances, such redress was "appropriate". The Court has previously found that monetary compensation for damage resulting from unlawful detention may constitute "appropriate" redress for an applicant who, by the time he was awarded it, was no longer in detention (see *Trepashkin v. Russia*, no. 36898/03, §§ 71-72, 19 July 2007). The Court sees no reason to depart from such conclusion in

the case under consideration. It accepts, accordingly, that the redress afforded to the applicants was appropriate.

30. As to the "sufficiency" of the redress, the Court considers that the sum awarded as just satisfaction, albeit not negligible as such, was not sufficient to provide the applicants with appropriate redress in the circumstances. When reaching this conclusion the Court had regard, in particular, to the importance of the right to liberty and security as enshrined in Article 5 § 1 and other criteria which it has applied for the determination of just-satisfaction awards under Article 41 of the Convention (see *Kormoš*, cited above, § 75, with further references).

31. The applicants can thus still claim to be "victims" within the meaning of Article 34 of the Convention in respect of the breach of their rights under Article 5 § 1 of the Convention, and the Government's objection in this respect must be dismissed.

32. There has accordingly been a violation of Article 5 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

1. Pecuniary damage

34. The applicants claimed EUR 3,000 each in respect of pecuniary damage for legal services connected with their representation in the pre-trial proceedings.

35. The Government contested these claims.

36. The Court observes that this claim concerns the costs of legal representation and as such falls to be considered under the "cost and expenses" head. It further observes that no further claim in respect of pecuniary damage has been raised. The Court therefore finds no call for making any award under this head.

2. Non-pecuniary damage

37. In their application form before the Court the applicants claimed EUR 4,000 each in respect of non-pecuniary damage suffered as a consequence of arbitrary detention. In their observations they referred to

their previous submissions and requested the Court to award compensation for non-pecuniary damage to the amount awarded in similar cases.

38. The Government pointed out that the applicants had failed to specify the exact amount of their claims and had claimed just satisfaction corresponding to the awards in similar cases. They invited the Court to award the applicants compensation in an adequate way, left to the discretion of the Court.

39. The Court takes the view that the applicants must have sustained non-pecuniary damage as a result of the violation found which cannot be made good by the Court's finding of a violation alone. Ruling on an equitable basis and having regard to the applicant's submissions and particular circumstances of the case, it awards each applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

40. The applicants claimed EUR 3,000 each for legal representation in the pre-trial proceedings, including representation during their detention. They submitted receipts of 14 March 2014 issued and signed by the applicants' legal representative, addressed to Ms A. Móriová and Ms M. Bencová, and specifying that they concerned "ten acts of legal defence".

41. The Government contested these claims. They submitted that there was no indication that any of the domestic costs and expenses claimed by the applicants had been incurred for the purpose of preventing or obtaining redress for the alleged violation.

42. By Rule 60 § 2 of the Rules of Court, itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Chamber may reject the claim in whole or in part. Furthermore, costs and expenses are only recoverable in so far as they relate to the violation found (see, among many other authorities, *Andrejeva v. Latvia* [GC], no. 55707/00, § 115, ECHR 2009).

In the present case, apart from specifying that the legal costs in question concerned "ten acts of legal defence", the applicants' claim provides no further details, in particular none showing that the legal service in question was provided with a view to prevent or redress the violation found. Accordingly, the claim has to be dismissed.

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,

1. *Decides*, unanimously, to join the applications;

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

3. *Declares*, unanimously, the applications admissible;

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

5. *Holds*, unanimously,
   (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, by six votes to one, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Vincent A. De Gaetano
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Serghides is annexed to this judgment.

V.D.G.
J.S.P.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. My only disagreement with the judgment is that I am unable to reject the applicants' claim for costs *in whole*, as the majority did.

2. Indeed, Rule 60 § 2 of the Rules of Court provides that "[t]he applicant must submit itemised particulars of all claims, together with any relevant supporting documents".

3. However, in the event of non-compliance with the above requirement, paragraph 3 of the same Rule provides that "the Chamber may reject the claims in whole or in part". The use of the word "may" in the above sentence is not of a mandatory nature as the word "shall" would have been, had it been used instead. So, in my humble view, in a case where the applicant fails to submit itemised particulars, the Court's discretion is not confined only to rejecting a claim in whole or in part but also extends to not rejecting it at all. It all depends on the particular circumstances of a case how the Court can exercise its discretion and deal with the issue of legal costs.

4. In their written observations of 27 July 2017 (p. 3), the applicants argue the following in relation to their claims for legal costs:

> "In relation to satisfaction for pecuniary damage for legal services connected with representation of both claimants in pre-trial proceeding (police investigation) including representation during the stay in custody, we paid EUR 3,000 each, what is supported by attached copies of relevant documents."

The relevant receipts of payment indicate that they concern "ten acts of legal defence". It is clear from these documents and the statement in the applicants' observation that each of the applicants actually paid his lawyer the amount of EUR 3,000. The respondent Government, in the last paragraph of their observations to the Court dated 8 September 2017, admit that the applicants "substantiated" the claim for the reimbursement of their legal costs and expenses "by the annexed voucher".

5. To my mind, it is clear from the applicants' above statement in their observations, and having regard to all the circumstances of the case, that the amount of EUR 3,000 paid by each applicant for legal costs related to legal services which were provided with the view to prevent or redress the violation found.

6. The said statement of the applicants in their written observations, together with the attachment of copies of the relevant receipts and the content of these receipts, cannot be said to be in full but only in partial compliance with the provisions of Rule 60 § 2. Though there is no itemisation of particulars of costs as required by Rule 60 § 2, the two receipts do contain some description, both numerical and substantial, of the legal services rendered, i.e. "ten" "acts of legal defence". In addition, in the statement in the applicants' observations there is a further description of the legal services rendered, that is to say the "representation of both claimants

in pre-trial proceedings (police investigation) including representation during the stay in custody".

7. Hence, I would not exercise my discretion so strictly, as the majority did by rejecting the whole of the applicants' claim in respect of costs, also having regard to the fact that this amount of EUR 3,000 was actually paid by each applicant to his lawyer. I would exercise my discretion more leniently, and on a reasonable and equitable basis I would award EUR 2,000 to each applicant plus tax.

8. My proposal is in line with the approach of the same Chamber, namely Chamber III, in *Khani Kabbara v. Cyprus,* no. 24459/12, 5 June 2018, where the Court held that the respondent State was to pay the applicant EUR 3,000 plus any tax that might be chargeable for costs and expenses. In that case the Court, in paragraph 168 of its judgment, noted that "the invoice submitted by the applicant does not contain an itemised breakdown of his claim". It also went on to say the following, in the same paragraph: "[t]hat being said, regard being had to Rule 60, the submissions of the applicant's lawyer and the documents in the case-file, the Court considers it reasonable to award the sum of EUR 3,000 under this head."

9. Undoubtedly, applicants coming before the Court must follow the Rules of Court if they wish to succeed in their claims. But on the other hand, the Court cannot be so strict and formalistic as to prevent the applicants from ultimately enjoying the award which they have garnered in non-pecuniary damage for a serious violation of their human rights. This would happen if their claim before the Court were to be rejected in whole, as happened in the present case, even if to a certain extent the applicants complied with Rule 60 § 2.

10. In my humble view a human right cannot be protected practically and effectively, especially if the Court finds a violation of it - as in the present case, concluding that there was a violation of the applicants' right under Article 5 § 1 of the Convention - if an applicant cannot be compensated for legal costs he has already paid at the domestic level regarding an issue which was subsequently brought before the Court. The principle of effectiveness, which is inherent in all the Convention provisions dealing with human rights, is also implicit in Article 41 of the Convention on just satisfaction, which covers both pecuniary damage, including costs, and non-pecuniary damage.

11. In the present case the applicants did not submit any claim for legal costs in respect of proceedings before the Court. This, together with the fact that the applicants were successful with their complaint under Article 5 § 1 before the Court, is an important additional consideration which should have been taken into account by the Court to the extent of preventing it from rejecting *in whole* the applicants' claim for costs incurred at the domestic level.