



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

FIRST SECTION

CASE OF KUC v. SLOVAKIA

(Application no. 17101/19)

JUDGMENT

STRASBOURG

2 September 2021

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

In the case of Kuc v. Slovakia,

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

Péter Paczolay, *President*,

Alena Poláčková,

Gilberto Felici, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 17101/19) 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 Ladislav Kuc (“the applicant”), on 22 March 2019;

the judgment delivered by the Court in the applicant’s previous case *Kuc v. Slovakia* (no. 37498/14, 25 July 2017);

the decision to give notice to the Slovak Government (“the Government”) of the complaint concerning the alleged unlawfulness and length of the applicant’s pre-trial detention;

the parties’ observations;

Having deliberated in private on 6 July 2021,

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

INTRODUCTION

1. The present case concerns the alleged failure of the domestic courts to provide relevant and sufficient reasons for the applicant’s continued detention pending trial.

THE FACTS

2. The applicant was born in 1979. At the time of lodging the application he was serving a sentence in Banská Bystrica Prison. He was represented before the Court by Ms T. Vorobelová, a lawyer practising in Košice.

3. The Government were represented by their co-Agent, Ms M. Bálintová, from the Ministry of Justice.

4. The facts preceding those which were at the origin of the present application had been summarised in the Court’s judgment in *Kuc v. Slovakia* (no. 37498/14, §§ 7-32, 25 July 2017). They show that the applicant had been arrested on 1 January 2012 and that he had been kept in detention before and pending his criminal trial.

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

6. On 14 April 2016, the Supreme Court, acting upon an appeal on points of law by the applicant, quashed the lower courts’ judgments finding the applicant guilty of a continuous crime of terrorism and sentencing him,

inter alia, to twenty-five years in prison. Holding that the law had been breached to the applicant's disadvantage, the Supreme Court provided a thorough explanation of the criminal offence of terrorism and concluded that the lower courts' legal interpretation of the case had been wrong as the applicant's motive had not included elements of that crime.

7. The matter was remitted to the Košice I District Court for fresh examination, following which the parties suggested that the evidence be supplemented.

8. On the same day, the Supreme Court ordered the pre-trial detention of the applicant – who was at the time serving the prison sentence previously imposed on him (see paragraph 28 below) – on account of a risk of his absconding and reoffending. The Supreme Court observed that there was a reasonable fear that the applicant, being a recidivist, might continue his criminal activity if left at large. As to the risk of absconding, the Supreme Court pointed to the applicant's personality structure and to the fact that he had no solid family, social or professional ties.

9. On 8 June 2016, the Constitutional Court dismissed a constitutional complaint by the applicant against that decision as manifestly ill-founded. It referred to the specific reasons given by the Supreme Court and considered that the applicant's arguments only amounted to his subjective assessment of the relevant circumstances.

10. The hearing scheduled by the District Court for 30 June 2016 was adjourned until 22 July 2016 because of the absence of the explosives expert who had been summoned to appear at the prosecutor's request.

11. At the hearings of 22 July and 16 September 2016 the District Court heard the above-mentioned explosives expert, a medical expert who had previously prepared a report on the applicant's mental condition, and the applicant's former psychiatrist; and it examined reports that had been requested from the detention centre. According to the report produced by the prison psychiatrist on 19 July 2016, the applicant had been prescribed medication and his state was unstable; the director of the prison stated in his report of 26 September 2016 that the applicant had no disciplinary problems and was complying with the relevant rules.

12. By a judgment of 29 September 2016 the District Court found the applicant guilty of, *inter alia*, several particularly serious crimes, including endangering public safety; making serious threats; and illegal acquisition, possession and trafficking of firearms, and sentenced him to twenty-three years and six months in prison. It also ordered protective supervision lasting thirty-six months.

13. The applicant and the prosecutor appealed and, on 22 November 2016, the file was transmitted to the Košice Regional Court.

14. Between December 2016 and February 2017 the Regional Court and the Supreme Court dealt with an objection of bias by the applicant, and his request for the case to be referred to another appellate court.

15. On 20 April 2017 the Regional Court quashed the judgment of 29 September 2016 and remitted the case to the District Court for fresh examination. According to the Government, the judgment was quashed on the grounds that the District Court had erred, in particular in the legal classification of certain acts committed by the applicant.

16. The applicant's subsequent objection of bias in respect of the president of the District Court's chamber was dismissed at two levels of jurisdiction.

17. On 11 September 2017 the applicant applied for release. He claimed that his stay in prison had eliminated any risk of his reoffending and had negatively impacted on his health, that his fragile mental state had deteriorated even further, and that there was no real risk of his absconding since he was in need of daily psychiatric treatment. He asserted that the prison could only provide him with (addictive) medication whereas he instead needed psychiatric therapy.

The applicant's parents supported his application and offered to stand as guarantors of his pledge that he would live in accordance with the law.

18. On 26 and 29 September 2017, the District Court heard the applicant, his lawyer, and the Public Prosecution Service, as regards the applicant's request for release. The applicant stated that he had had several epileptic fits, following which he had been hospitalised, and that he had stopped seeing the prison doctor because of the doctor's inhuman approach and had limited himself to having his medication prescribed. The court further requested a report from the detention centre, according to which the applicant had been examined in the Trenčín hospital in December 2016 without a diagnosis of epilepsy being made, but had refused to stay there for further examination; according to the hospital report, the applicant had mainly insisted on having a certain drug prescribed. The report also stated that the detention centre was able to provide medical care to any kind of patients.

19. On 29 September 2017 the District Court dismissed the applicant's application to be released as well as the guarantees offered, considering that the detention grounds under Article 71 § 1 (a) and (c) of the Code of Criminal Procedure still persisted. The court mainly referred to the nature, circumstances and the manner in which the alleged offences had been committed, and to the fact that despite having lived together, the applicant's parents had clearly not been aware of his illegal activities and had been unable to prevent them. The court further observed that the applicant had suffered from mental health problems even before his arrest and that the detention centre was able to provide him with adequate medical care.

20. The interlocutory appeal by the applicant was dismissed as unfounded on 16 October 2017. The Regional Court was of the view that neither the medical reports submitted nor the applicant's allegations had revealed any reasons for his release, and that the documents in the file did

not support the applicant's subjective assessment of the state of his health nor his assertion that he could be provided with more adequate treatment outside the detention centre. The grounds for detention as established by the Supreme Court remained unchanged and the risk of absconding was rather increasing with the criminal proceedings coming to their end, given that the lower limit of the likely sentence was ten years, and with regard to the applicant's personality structure and the absence of any ties.

21. On 15 December 2017 the applicant challenged the decision of 16 October 2017 before the Constitutional Court, alleging a violation of his rights under Article 5 §§ 1 (c) and 3 of the Convention. He pointed to the length of the criminal proceedings, arguing that the examination of the evidence had ended a long time ago, and that since 2013 it was only the legal classification of the acts that had been the subject of examination; and to the fact that he had already been detained for six years. He also asserted that the Regional Court had failed to take into account his mental (schizotypal) disorder, his deteriorating health condition and the fact that he had become addicted to the medication prescribed by the prison doctor, which had caused him to collapse several times, and he needed cessation therapy which was not available in prison.

22. On 2 November 2017 the District Court found the applicant guilty of several crimes and offences and sentenced him to ten years in prison, thirty-six months' protective supervision and confiscation of several items.

23. On 24 January 2018, the Regional Court dismissed the applicant's appeal but increased, upon an appeal by the prosecutor, the applicant's prison sentence to twelve years.

24. On 27 June 2018 the Supreme Court dismissed an appeal on points of law by the applicant.

25. By a decision of 1 August 2018 (which was served on the applicant's lawyer on 26 September 2018) the Constitutional Court dismissed a constitutional complaint by the applicant concerning his detention (see paragraph 20 above). It held that, considered together, the lower courts' decisions were compliant with the relevant legal provisions and were free from arbitrariness. In particular, they had convincingly established and specifically noted all the relevant facts underlying the grounds for detention under Article 71 § 1 (a) and (c) of the Code of Criminal Procedure, and had adequately responded to the applicant's arguments.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

The Code of Criminal Procedure

26. Under Article 71 § 1 of the Code of Criminal Procedure (no. 301/2005 Coll.), as applicable at the relevant time, a person charged with a criminal offence could be detained where there were reasonable

grounds for believing that he would abscond (Article 71 § 1 (a)); influence witnesses or other defendants or otherwise hamper the investigation (Article 71 § 1 (b)); or continue his criminal activities, complete an attempted offence, or commit an offence which he had prepared or threatened to commit (Article 71 § 1 (c)).

27. Article 79 § 3 entitled an accused to apply for release at any time. Where the public prosecutor did not grant such an application in the course of pre-trial proceedings, the public prosecutor had to submit it immediately to the court. The decision on an application for release had to be taken without delay. If that application was dismissed, the accused could only renew it thirty days after the decision had become final unless he or she cited other reasons justifying his or her release.

28. Pursuant to Article 380 § 2, if the accused was serving a prison sentence imposed by a previous judgment and the Supreme Court, upon an appeal on points of law, quashed that sentence, it was simultaneously called upon to decide on the detention. According to Article 380 § 3, the length of that detention had to be examined separately and independently from the detention ordered in the initial proceedings.

29. Under Article 388 § 1, if a new determination of the matter was required, the Supreme Court could make an order to that effect. Pursuant to Article 391 § 1, legal opinions and instructions given by the Supreme Court were binding upon the bodies making a new determination of the matter.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

30. The applicant complained that the courts had not given relevant and sufficient reasons for keeping him in detention after the quashing of his previous conviction. He relied on Article 5 § 3 of the Convention, which reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. Admissibility

31. The Government alleged that, as to the period of detention between 14 April 2016 and 29 September 2016, the applicant had challenged it by a constitutional complaint which the Constitutional Court had dismissed on 8 June 2016 (see paragraph 9 above), that is more than six months before the lodging of the present application.

32. The applicant argued that he had lodged the application in time.

33. The Court notes that the Constitutional Court's decision referred to by the Government only concerned the decision of 14 April 2016 by which the Supreme Court had ordered, pursuant to Article 380 § 2 of the Code of Criminal Procedure (see paragraph 28 above), that the applicant be detained again pending trial. As such, and being issued on 8 June 2016, that decision of the Constitutional Court could cover neither the period until 29 September 2016 nor the applicant's subsequent detention which the applicant contested by his application for release of 11 September 2017 (see paragraph 17 above). That application was dismissed by the lower courts' decisions of 29 September 2017 and 16 October 2017 (see paragraphs 19 and 20 above); ultimately, the matter was the subject of the Constitutional Court's decision of 1 August 2018, which was served on the applicant's lawyer on 26 September 2018 (see paragraph 25 above).

34. The present application having been introduced on 22 March 2019 and thus within six months after the service of the latter decision, the preliminary objection raised by the Government must be dismissed.

35. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

36. The applicant first pointed out that he had been detained since 4 January 2012 and that such a lengthy deprivation of liberty eliminated any risk that he would pursue his criminal activity dating back to 2011. He then observed that in its judgment of 14 April 2016 quashing his conviction (see paragraph 6 above), the Supreme Court had expressed a legal opinion on the classification of the acts in question, which was binding on the lower courts (see paragraph 29 above). However, the District Court had failed to comply with that legal opinion, which had led to the quashing of its judgment of 29 September 2016 by the Regional Court (see paragraph 15 above). In the applicant's view, it was the conduct of the District Court, which had been issuing allegedly illegal judgments since 2014 when the facts had been established, that had most affected the length of the criminal proceedings and, thus, also the length of his detention, rather than his objections of bias, which had been dealt with quickly.

37. The applicant maintained that owing to his congenital and incurable mental disorder, confirmed by medical experts, he should have been placed in a closed psychiatric facility and not in a detention centre. He argued that the only treatment he had been provided with in detention was medication, including addictive drugs, which had made him collapse. He also asserted that owing to his poor medical condition he would have been incapable of either absconding or reoffending. In such an exceptional situation, he should

not have been kept in detention for such a long period. However, the courts had neither sufficiently examined the reasons underlying his application for release nor taken into account the overall length of his detention or the delays in the criminal proceedings.

38. The Government admitted that – in view of the fact that the applicant had been detained on a continuous basis, save for the periods between 29 September 2016 and 20 April 2017 and after 2 November 2017, when he had been detained within the meaning of Article 5 § 1 (a) of the Convention – the two remaining periods of the detention, which fell under Article 5 § 1 (c), should be regarded as a whole (the Government cited *Kuc v. Slovakia*, no. 37498/14, § 44, 25 July 2017).

39. They noted that in ordering the applicant's detention starting from 14 April 2016, the Supreme Court had relied on the same detention grounds that had been applied throughout the proceedings before that date, and those grounds had remained relevant. The applicant had opposed them, pointing to the length of the detention and his health condition. In response, the District Court, after having heard the applicant, his lawyer and medical doctors, and having examined the reports from the detention centre as well as the applicant's medical documentation (see paragraphs 11 and 18 above), had held that the applicant had already suffered from mental health problems before his arrest and that the detention centre was able to provide him with adequate medical care (see paragraph 19 above). As to the alleged deterioration of his health, the applicant had admitted before the court that he had voluntarily stopped seeing the prison doctor and that he had been hospitalised after he had collapsed; however, his allegation that the collapses were due to epileptic fits had been refuted (see paragraph 18 above). Nor had the Regional Court found any medical reasons for the applicant's release (see paragraph 20 above).

40. The Government were thus convinced that the courts had provided relevant and sufficient grounds for the applicant's detention, given that there had been strong reasons to assume that the applicant would be found guilty and a prison sentence imposed (from which the entire length of the detention would be deducted) and that he would abscond or reoffend if released. Moreover, the domestic authorities had acted speedily and had gathered additional evidence without delay. The course of the proceedings had nevertheless been to a certain extent affected by the applicant's procedural applications (see paragraphs 14 and 16 above).

2. *The Court's assessment*

41. The Court observes that the general principles regarding the right to trial within a reasonable time or to release pending trial, as guaranteed by Article 5 § 3 of the Convention, have been stated in a number of its previous judgments (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI; *McKay v. the United Kingdom* [GC],

no. 543/03, §§ 41-44, ECHR 2006-X, with further references; and *Petrov v. Slovakia*, no. 64195/10, § 55, 2 December 2014).

42. In the present case, the Court notes that following the quashing of his previous conviction by the Supreme Court, the applicant was returned to detention on 14 April 2016 and convicted at first instance on 29 September 2016. He was detained from the latter date “after conviction by a competent court”, within the meaning of Article 5 § 1 (a), and therefore that period of his detention falls outside the scope of Article 5 § 3. However, on 20 April 2017 the Regional Court quashed the applicant’s conviction on appeal. After that date his detention was again covered by Article 5 § 3, until 2 November 2017, the date of his further conviction by the first-instance court. The Constitutional Court determined matters concerning the applicant’s continued detention on 1 August 2018.

43. Thus, the period to be taken into consideration consisted of two periods, from 14 April to 29 September 2016 (five months and sixteen days), and from 20 April to 2 November 2017 (six months and thirteen days), which in total amounted to approximately one year. Nevertheless, in assessing the overall reasonableness of the period of the applicant’s detention for the purposes of Article 5 § 3, the Court will take into account the fact that the applicant had already been detained previously within the same set of criminal proceedings, as described in the Court’s first judgment in his case (see, *mutatis mutandis*, *Fruni v. Slovakia*, no. 8014/07, § 180, 21 June 2011, and *Idalov v. Russia* [GC], no. 5826/03, § 130, 22 May 2012).

44. In justifying the applicant’s continued detention and dismissing his application for release, the courts considered that the grounds based on a risk of his absconding and reoffending, established by the Supreme Court’s decision of 14 April 2016, were still relevant and that the risk of absconding had even increased in view of the sentence likely to be imposed shortly. They also referred to the nature, circumstances and the manner of committing the alleged offences, the applicant’s personality structure and the inability of his parents, who had offered a guarantee, to prevent his illegal activities in the past. The courts further found the applicant’s argument that his health condition had been deteriorating to be unsubstantiated, and held that the detention centre was able to provide him with adequate medical treatment for his long-lasting problems (see paragraphs 19 and 20 above). The Constitutional Court endorsed those findings.

45. The Court notes that the same grounds were the basis for the applicant’s detention in the previous phase of the proceedings described in the Court’s first judgment (see *Kuc*, cited above). It is true that the applicant himself admitted that sufficient evidence of his guilt had been gathered, and he confessed to the charges. However, the seriousness of the charges cannot in itself serve to justify long periods of detention (see, among other

authorities, *Khudoyorov v. Russia*, no. 6847/02, § 180, ECHR 2005-X (extracts)). Although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207, and *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003).

46. As to the question whether the domestic courts established and convincingly demonstrated the existence of specific facts in support of their conclusions that the applicant could abscond or reoffend, the Court observes that they assessed those risks mainly with reference to the applicant's "personality" and the circumstances of the criminal case against him. Although they might have been mentioned in the earlier decisions which are not the subject of the present application, no details about the applicant's personality or any particular facts warranting his continued detention were given in the decisions dismissing his application for release. In addition, the applicant's arguments that his poor mental state prevented him from absconding, and that the prison could not provide him with cessation therapy went unanswered.

47. The Court is thus not convinced that the domestic courts' decisions were based on an analysis of all the relevant facts, and has doubts as to whether the grounds for the applicant's detention, as reflected in the perfunctorily reasoned court decisions, retained their sufficiency for the additional period of the applicant's detention which is under consideration. The Court observes in this connection that a deprivation of liberty is a continuing situation, which becomes more serious with the passage of time. From that perspective, the Court considers that the additional period of the applicant's detention was of a particular importance, having regard to the fact that the applicant had been detained under various regimes, but within the same criminal proceedings, ever since 1 January 2012 (see paragraph 4 above) (see, *mutatis mutandis*, *Fruni*, cited above, § 194, and *Yegorov v. Slovakia*, no. 27112/11, § 125, 2 June 2015).

48. Furthermore, the Court finds, in any case, that the authorities cannot be said to have displayed "special diligence" in the conduct of the proceedings (see, *mutatis mutandis*, *Sulaoja v. Estonia*, no. 55939/00, §§ 64-65, 15 February 2005). As appears from the relevant facts (see paragraphs 6 and 15 above), as well as from the applicant's submissions (see paragraph 36 *in fine* above), which the Government did not refute, considerable delays were caused by repeated remittals of the case to the District Court, owing to that court's incorrect legal classification of the acts in question, which was noted by the Supreme Court. The authorities did not express any concern about the fact that such a repeated quashing of the District Court judgments resulted in the applicant's extended detention (see,

mutatis mutandis, *Mitev v. Bulgaria*, no. 40063/98, § 109, 22 December 2004).

49. The Court considers that that approach was incompatible with the requirements of Article 5 § 3 of the Convention. It reiterates that in the conduct of criminal proceedings against accused persons who are detained, the authorities must display special diligence and reduce any delay to the minimum possible.

50. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage for the deterioration of his health, anxiety and stress suffered as a result of his detention, and the improper treatment of those conditions.

53. The Government objected that the grievances concerning the applicant’s health fell outside the scope of his complaint under Article 5 § 3. In any event, they contested the claim as being overstated and requested that, should the Court find a violation of the Convention, any just satisfaction be awarded in an adequate amount.

54. Having regard to all the circumstances of the case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation (see *Dervishi v. Croatia*, no. 67341/10, § 151, 25 September 2012). Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

55. The applicant also claimed EUR 3,000 for the costs and expenses incurred before the Court.

56. The Government contested the claim since the applicant had failed to substantiate it by any documents proving that he had paid for his legal representation or that he was under a contractual obligation to do so.

57. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown

that these have been actually and necessarily incurred and are reasonable as to quantum. The Court points out that under Rule 60 §§ 2 and 3 of the Rules of Court “the applicant must submit itemised particulars of all claims, together with any relevant supporting documents”, failing which “the Chamber may reject the claim in whole or in part” (see *Zborovský v. Slovakia*, no. 14325/08, § 67, 23 October 2012).

58. In the instant case, the Court observes that the applicant did not substantiate his claim with any relevant supporting documents establishing that he was under an obligation to pay the costs of legal services or that he had actually paid them. Accordingly, the Court does not award any sum under this head (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 133-134, ECHR 2004-XI, and *Zborovský*, cited above, § 68).

C. Default interest

59. 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 application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *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;
4. *Dismisses* the remainder of the applicant’s claim for just satisfaction.

KUC v. SLOVAKIA JUDGMENT

Done in English, and notified in writing on 2 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President