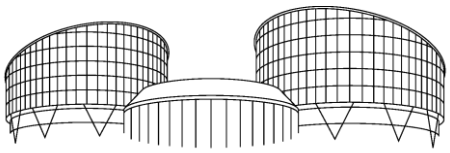

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF AKHADOV v. SLOVAKIA

(Application no. 43009/10)

JUDGMENT

STRASBOURG

28 January 2014

FINAL

28/04/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Akhadov v. Slovakia,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 7 January 2014,

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

PROCEDURE

1. The case originated in an application (no. 43009/10) 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 Russian national, Mr Khizri Akhadov ("the applicant"), on 19 July 2010.

2. The applicant was represented by Mr M. Škamla, a lawyer practising in Žilina.

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

3. The applicant alleged that the proceedings concerning his application for a judicial review of an order for detention with a view to expulsion had been incompatible with the "speediness" requirement of Article 5 § 4 of the Convention.

4. On 29 November 2012 the application was communicated to the Government. At the same time, the Government of the Russian Federation were informed of the case and invited to exercise their right of intervention, in response to which they submitted that they did not wish to do so (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and, at the material time, lived in Žilina.

A. Events and decisions underlying the complaint

6. On 26 June 2009 the applicant went to the offices of the Asylum Authority in Gbely with the intention of applying for asylum in Slovakia. From there, he was escorted to the Foreigners Police Department in Bratislava, where he arrived at about 3 p.m.

7. Following questioning on the same day, that is to say on 26 June 2009, the Foreigners Police Department decided to detain (*zaistenie*) the applicant, finding, *inter alia*, that he was staying in Slovakia without a valid travel document or any legal entitlement, and in spite of a previous decision expelling him from Slovakia and banning him from returning there for five years.

8. Under the detention order of 26 June 2009, the applicant was detained in the Alien Detention Centre in Medveďov.

9. On 16 July 2009 the Trnava Regional Court (*Krajský súd*) received a submission dated 13 July 2009 in which the applicant applied for judicial review of the order of 26 June 2009, challenging the assessment of the facts and the interpretation and application of the law by the police.

10. On 13 August 2009 the Regional Court held a hearing at which the applicant was not present in person but was represented by his lawyer. At the conclusion of the hearing, on the same day and in the presence of the applicants' lawyer, the Regional Court dismissed the claim.

11. The written version of the judgment of 13 August 2009 was sent out on 27 August 2009 and served on the applicant on 7 September 2009.

12. On 2 November 2009 the applicant lodged a complaint with the Constitutional Court (*Ústavný súd*), relying on Article 127 of the Constitution (individual complaint) and Article 5 § 4 of the Convention (speedy review of the lawfulness of detention), and complaining about the length of the proceedings in respect of his application dated 13 July 2009.

13. On 16 December 2009 the Constitutional Court declared the complaint inadmissible as being manifestly ill-founded.

It observed, on the one hand, that the Regional Court had granted the police as long as fifteen days to submit observations in reply to the applicant's claim, which the Constitutional Court held to have been disproportionately long.

However, overall, the decision-making process in respect of the applicant's claim had lasted only twenty-nine days, and not thirty-one days,

as argued by the applicant. On that account, the Constitutional Court observed that the period under consideration had not commenced until 16 July 2009 – when the applicant's submission had reached the Regional Court – and that it ended on 13 August 2009, when the applicant had learned of the Regional Court's judgment through his lawyer.

The written version of the Constitutional Court's decision was served on the applicant on 21 January 2010.

14. Meanwhile, at an unspecified time in November 2009, the applicant had been expelled to Russia.

B. Further progress of the application of 13 July 2009

15. In his observations in reply to those of the Government on the admissibility and merits of the present application, the applicant informed the Court that he had challenged the judgment of 13 August 2009 by means of an appeal to the Supreme Court (*Najvyšší súd*).

16. On 3 November 2009 the Supreme Court quashed the impugned judgment and remitted the matter to the Regional Court for re-examination, having found that the latter had neither established all the relevant facts nor dealt properly with some of the applicant's material objections.

17. On 19 January 2010 the Regional Court ruled anew on the applicant's application dated 13 July 2009 by quashing the order of 26 June 2009 and remitting the matter to the Foreigners Police Department for a new decision on the grounds that they had failed both to establish and properly to assess all the relevant facts. The decision was served on the applicant on 19 February 2013.

THE LAW

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

18. The applicant complained that the length of the initial proceedings before the Regional Court in respect of his application dated 13 July 2009 had been incompatible with the requirement of a "speedy" review as provided 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."

19. The Government contested that argument.

A. Admissibility

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

B. Merits

1. Arguments of the parties

21. The applicant complained of the lack of a speedy review of the lawfulness of his detention in response to his application dated 13 July 2009 as dealt with by the Regional Court and resulting in the Constitutional Court's decision of 16 December 2009.

22. In reply, the Government submitted that the relevant period had not commenced until the applicant's submission of 13 July 2009 had reached the Regional Court, that is to say on 16 July 2009, and that it had ended once its judgment had been delivered at a hearing in the presence of the applicant's lawyer, that is to say on 13 August 2009. It had thus lasted twenty-eight days. In that connection, the Government quoted extensively from the Constitutional Court's decision of 16 December 2009 to support the argument that there had not been any delay attributable to the Regional Court and that the proceedings before it had been compatible with the requirement of speediness under the provision invoked.

23. The applicant responded by informing the Court of further developments in the proceedings (see paragraphs 15–17 above), emphasising that the detention order of 26 June 2009 had ultimately been quashed as unlawful and arguing that this should be taken into account when assessing his Convention complaint.

2. The Court's assessment

24. The Court reiterates that, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of the deprivation of their liberty, Article 5 § 4 also proclaims their right – following the institution of such proceedings – to a speedy judicial decision on the lawfulness of the detention, its termination being ordered if it proves unlawful. In order to determine whether the requirement that a decision be given "speedily" has been complied with, it is necessary – where the proceedings were conducted at more than one level of jurisdiction – to make an overall assessment. The question of 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).

25. As to the period to be considered in the present case, the Court observes that, although dated 13 July 2009, the applicant's submission challenging the detention order of 26 June 2009 actually reached the Regional Court on 16 July 2009. In the absence of any explanation by the applicant of this difference of dates, the Court assumes that the applicant's submission challenging the detention order of 26 June 2009 was actually lodged on 16 July 2009, and that is when the period under consideration commenced.

26. The Regional Court's judgment of 13 August 2009 was delivered publicly in the presence of the applicant's lawyer, and that is when the period under consideration ended (see, for example, *Koendjbiharie v. the Netherlands*, 25 October 1990, § 28, Series A no. 185-B, and *Singh v. the Czech Republic*, no. 60538/00, § 74, 25 January 2005). The proceedings under examination thus lasted at least twenty-eight days.

27. It has not been argued by the Government – and the Court has not found any evidence by other means to support the conclusion – that the applicant's detention case was of any particular complexity or that he contributed to the length of the impugned period in any way.

28. As to the conduct of the authorities, the Court observes that, as emphasised by the Government, the period under consideration consisted of two sub-periods, one in which the Foreigners Police Department had the opportunity to submit its observations in reply, and the other used by the Regional Court to call a hearing and determine the application.

29. It is true that, if taken separately, these two sub-periods do not seem to raise an issue under Article 5 § 4 of the Constitution. The Court however points out that both of them are attributable to organs of the respondent State and occurred under the authority of the Regional Court, that is to say the defendant in the context of the ensuing constitutional complaint.

30. The Court observes that the applicant has limited his complaint to the period of the initial examination of his application by the Regional Court. In other words, the applicant has not contested the subsequent procedure concerning his appeal to the Supreme Court, the subsequent re-examination of his application dated 13 July 2009 by the Regional Court and the presumed final determination of his detention case.

31. Nevertheless, with regard to the conduct of the authorities the Court considers it of relevance that the applicant's detention case was by no means concluded with the judgment of 13 August 2009, that the proceedings subsequently lasted for a further substantial period of time, and that the judgment was eventually quashed as unlawful.

32. In addition, it should be taken into account that the detention order challenged by the applicant had been issued by the Foreigners Police Department, that is to say a non-judicial body (see *Abidov v. Russia*, no. 52805/10, § 58, 12 June 2012).

33. All in all, regard being had to the Court's case-law on the subject (see, for example, *Rehbock v. Slovenia*, no. 29462/95, §§ 85-88, ECHR 2000-XII; *Kadem v. Malta*, no. 55263/00, no. 55263/00, §§44 and 45, 9 January 2003; *Abidov*, cited above, §§ 60-63; *Niyazov v. Russia*, no. 27843/11, §§ 155-164, 16 October 2012; and *Savriddin Dzhurayev v. Russia*, no. 71386/10, §§ 227-237, ECHR 2013, the foregoing considerations are sufficient to enable the Court to conclude that the applicant's application dated 13 July 2007 was not determined "speedily".

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

36. The Government challenged the claim as being overstated.

37. The Court awards the applicant EUR 2,600 in respect of non-pecuniary damage.

B. Costs and expenses

38. The applicant also claimed EUR 5,000 for the applicant's legal costs both at domestic level and before the Court.

39. The Government requested that the matter be determined in accordance with the Court's case-law.

40. 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 (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

41. In the present case, the applicant has failed to provide any supporting documents substantiating his claim under this head. The Court accordingly rejects the applicant's claim for costs and expenses.

C. Default interest

42. 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 § 4 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,600 (two thousand six hundred 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.

Done in English, and notified in writing on 28 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President