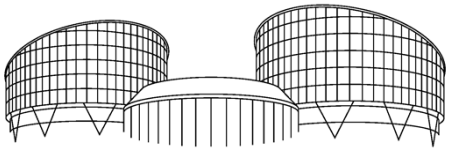

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SHIKSAITOV v. SLOVAKIA

(Applications nos. 56751/16 and 33762/17)

JUDGMENT

This version was rectified on 9 March 2021
under Rule 81 of the Rules of Court.

Art 5 § 1 (f) • Extradition • Authorities' lack of diligence in determining admissibility of extradition of applicant to his country of origin despite refugee status granted by another EU member State • Extradition requested by the country in which the applicant had purportedly been persecuted • Slovak authorities' investigation legitimate in light of 1951 Geneva Convention exclusions for extraterritoriality effect of refugee status granted by Sweden • Applicability of exclusion clause not examined in the asylum proceedings in Sweden • Applicant's overall detention pending extradition lasting more than 21 months, even though all relevant information was available by the end of the second month
Art 5 § 5 • Compensation • No enforceable right to compensation for undue length of detention in violation of Art 5 § 1

STRASBOURG

10 December 2020

FINAL

19/04/2021

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

In the case of Shiksaitov v. Slovakia,

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

Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Linos-Alexandre Sicilianos,
Alena Poláčková,
Péter Paczolay,
Erik Wennerström,
Lorraine Schembri Orland, *judges,*

and Abel Campos, *Section Registrar,*

Having regard to:

the applications (nos. 56751/16 and 33762/17) 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 Russian national of Chechen origin, Mr Hamzat Shiksaitov ("the applicant"), on 22 September 2016 and 27 April 2017 respectively;

the decision to give notice of the complaints under Article 5 §§ 1 (f) and 5 and Article 13 of the Convention to the Slovak Government ("the Government") and to declare inadmissible the remainder of the application;

the parties' observations;

Noting that the Russian Government did not make use of their right to intervene in the proceedings (under Article 36 § 1 of the Convention);

Having deliberated in private on 17 November 2020,

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

INTRODUCTION

1. The case mainly concerns the alleged unlawfulness of the applicant's provisional arrest in Slovakia and his subsequent detention with a view to his extradition to Russia, even though he had previously been granted refugee status in Sweden.

THE FACTS

2. The applicant was born in 1982 and lives in Alvesta (Sweden). He was represented by Ms I. Rajtáková, a lawyer practising in Košice.

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

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

5. On 12 July 2007 the Zavodskoy District Court of Grozny (Chechen Republic) issued an international arrest warrant against the applicant on account of his criminal prosecution for acts of terrorism that he had

allegedly committed in 2004 in Grozny as a member of an armed group and in respect of which, if convicted, he faced a sentence of life in prison.

6. In 2010-2011 the applicant was subjected to extradition proceedings in Ukraine, but fled to Sweden.

7. On 6 December 2011 he was granted asylum in Sweden on the grounds of his political opinions and granted permanent leave to remain.

8. On 15 January 2015 at 20.45, when he was on his way to Ukraine, the applicant was apprehended by the Slovak border police as a person appearing on Interpol's list of wanted persons; he was then taken to the Vyšné Nemecké border police station. The relevant police report cited section 17b(1) of the Police Corps Act (Law no. 171/1993).

9. He was arrested the next day (16 January 2015) at 1 a.m. under Article 504 § 2 of the Code of Criminal Procedure (hereinafter "the CCP"), on the basis of the international arrest warrant that had been issued against him on 12 July 2007. The relevant police report noted that the Košice regional prosecutor (hereinafter "the prosecutor") had authorised the arrest at 1 a.m.

10. Later the same day the applicant was placed in a police detention cell in Košice; he was assigned a lawyer by the Košice Regional Court (hereinafter "the Regional Court"). At 1 p.m he was interviewed by the prosecutor and informed of the reasons for his arrest. It was noted on that occasion that Interpol had confirmed that the applicant was still a wanted person (whose arrest and extradition had been requested by Russia), and that the latter had undertaken to send extradition documents to the Slovak authorities in good time. The applicant denied having committed any crime in Russia, contending that he was being persecuted because of his brother's activities in Chechnya. In response to his statement that he had been granted asylum in Sweden, the prosecutor indicated that the circumstances leading to the granting of asylum to the applicant were being verified.

I. THE APPLICANT'S PRELIMINARY DETENTION (APPLICATION NO. 56751/16)

11. On 17 January 2015 the prosecutor lodged an application with the Regional Court for the applicant to be placed in preliminary detention under Article 504 § 3 of the CCP. It stated that, at that stage, the applicant's refugee status in Sweden, which had been confirmed by Interpol in Stockholm, was not an obstacle to the launching of a preliminary investigation in respect of his possible extradition, given that asylum policy was not standardised throughout the EU. It was thus necessary, pursuant to the European Convention on Extradition of 1957 and the CCP, to secure the applicant's presence in Slovakia until it was established whether his extradition to Russia was admissible.

12. On 19 January 2015, the Regional Court heard the applicant, who reiterated that he had been granted asylum in Sweden. Observing that the process of granting asylum was subject to proceedings that differed from extradition proceedings and that preliminary investigations within extradition proceedings (under Article 502 of the CCP) were to be undertaken by the prosecutor, the Regional Court considered that it was necessary to secure the applicant's presence on Slovak territory until the State requesting extradition had submitted a request for that extradition, as provided by Article 505 § 3 of the CCP. Pursuant to Article 505 § 1 of the CCP, it thus decided to allow the prosecutor's application and to place the applicant in preliminary detention pending the extradition proceedings, with effect from 15 January 2015 at 8.45 p.m.

13. The applicant lodged an interlocutory appeal, which he later completed through a new lawyer of his choice. He mainly asserted that in view of the fact that he had been granted asylum in Sweden, Article 501 (b) of the CCP prohibited his extradition to another country. He also submitted that the authorisation of the prosecutor had been needed for his apprehension on 15 January 2015 and that Russia had not requested (as required under Article 16 of the European Convention on Extradition) that he be placed in preliminary detention.

14. By a letter of 27 January 2015, the prosecutor asked the Swedish authorities to provide more information about the applicant's status in Sweden.

15. On 9 February 2015, the Fifth Chamber of the Supreme Court dismissed the applicant's interlocutory appeal. Referring to the arrest warrant and to the documents relating to the applicant's ongoing criminal prosecution sent via Interpol by the Russian authorities, it considered that the conditions set by the CCP for the preliminary detention had been met. The fact that the applicant had been granted asylum in Sweden (which was to be further investigated by the prosecutor with regard to the exclusion provision of Article 1F of the 1951 Geneva Convention – see paragraph 22 below) did not prevent such detention. It was indeed impossible at that stage to assess whether the extradition would eventually be admissible or not.

16. On 19 February 2015, the applicant lodged a constitutional complaint challenging the Supreme Court's decision. Citing his right not to be deprived of his liberty without a legal basis, he pointed out that the State that had issued the international arrest warrant in respect of him had not requested that he be placed in preliminary detention, and submitted that his refugee status automatically excluded any extradition. He also asserted that several of his procedural rights, as enshrined in Article 6 §§ 1 and 3 (c) of the Convention, had been violated during the proceedings regarding the imposition of his preliminary detention.

17. After a public hearing held on 26 January 2016, the Constitutional Court issued a judgment on 28 January 2016 (no. II. ÚS 352/2015, served

on the applicant's lawyer on 22 March 2016) in which it held that the applicant's rights, as guaranteed by Articles 5 and 6 of the Convention, had not been breached. It stated that the initial limitation of the applicant's liberty had been based on the Police Corps Act and had not required the authorisation of the prosecutor; under Article 504 § 2 of the CCP, only after the authorities had verified that the applicant was still the subject of an international search could he be arrested, with the prior authorisation of the prosecutor. His subsequent placement in preliminary detention had been conditional only on the relevant request being lodged by the prosecutor, pursuant to Article 504 § 3 of the CCP; indeed, Article 16 § 1 of the European Convention on Extradition could not be interpreted to mean that such a request had to be lodged by the State requesting extradition. The Constitutional Court furthermore observed that a translation of the decision on the refugee status granted to the applicant by the Swedish authorities had been submitted by the applicant only after the Supreme Court had decided on the matter, and that the conditions regarding the admissibility of his extradition were subject to a preliminary investigation by the prosecutor, the purpose of which could be challenged without placing the applicant in preliminary detention.

II. THE APPLICANT'S DETENTION PENDING EXTRADITION AND EXTRADITION PROCEEDINGS (APPLICATION NO. 33762/17)

18. On 20 February 2015, the prosecutor lodged an application for the applicant to be placed in detention pending extradition, pursuant to Articles 505 § 5 and 506 § 1 of the CCP. He noted that preliminary detention could not last more than forty days, which would elapse on 23 February 2015, and that the aim of that detention had been attained, since a request for the applicant's extradition (containing the necessary assurances concerning the applicant's treatment and proceedings in respect of him in the event of his extradition) had been lodged by the Russian Prosecutor General's Office on 17 February 2015. The prosecutor noted that during the subsequent proceedings the circumstances surrounding the recognition in Sweden of the applicant's refugee status and the impact of those circumstances on the outcome of the preliminary investigation would be duly examined and that reports would be requested from the Slovak Ministry of Foreign Affairs and UNHCR regarding the security situation in Russia and whether the above-mentioned assurances were likely to be honoured.

19. On 23 February 2015, the Regional Court allowed the above-mentioned application, pursuant to Article 506 § 1 of the CCP, holding that, while the aim of the preliminary detention had been attained with the service of the extradition request, the aim of the extradition proceedings could not be achieved without placing the applicant in

detention pending extradition and thus preventing him from absconding. Noting that the Swedish authorities had not (according to their response to the above-mentioned enquiry lodged by the prosecutor) verified during the asylum proceedings whether the applicant appeared on Interpol's list of wanted persons, the court indicated that the relevant circumstances and their impact on the preliminary investigation would be duly reviewed.

20. The applicant lodged an interlocutory appeal in which he contended, citing Directive 2011/95/EU, that Slovakia was bound by the decision of the Swedish authorities to grant him asylum.

21. On 10 March 2015, the applicant was heard by the prosecutor and informed of the request for his extradition lodged by Russia; he did not consent to his extradition.

22. On 16 March 2015, the Fifth Chamber of the Supreme Court dismissed the applicant's interlocutory appeal against the decision of 23 February 2015. It noted that the extradition request (accompanied by the necessary documents) had been submitted by Russia on 17 February 2015, and that the purpose of the preliminary detention had thereby been achieved; however, the applicant's release at that stage would frustrate the completion of the preliminary investigation and, consequently, the aim of the extradition proceedings. Referring to (i) the exclusion provision of Article 1F (b) of the 1951 Geneva Convention, which specified that the provisions of that Convention should not apply to any person in respect of whom there are serious reasons for considering that he has committed a serious non-political crime outside his country of refuge prior to his admission to that country as a refugee, and (ii) a similar exclusion provision set out in Article 12 § 2 (b) of Directive 2011/95/EU, the Supreme Court considered that the latter provision, although disregarded by Sweden when granting asylum to the applicant, precluded the Slovak Republic from accepting and applying refugee status to the latter (together "the exclusion provisions").

23. In May 2015 the applicant lodged a constitutional complaint against the Supreme Court's decision. Relying on Articles 5 § 1 and 6 § 1 of the Convention, he asserted that the Slovak authorities were bound by the decision of the Swedish authorities to grant him asylum and that there were no grounds to consider that he had committed the acts listed in Article 12 § 2 (b) of Directive 2011/95/EU. Subsequently, the complaint was admitted for examination under no. II. ÚS 53/2016, and a public hearing was held before the Constitutional Court.

24. On 9 October 2015, the prosecutor asked the Regional Court to allow the applicant's extradition to Russia. He referred to (i) the fact that the Swedish authorities had not, before granting asylum to the applicant, verified whether the latter's name appeared in Interpol's database of wanted persons, (ii) the statement of the Office of the UN High Commissioner for Refugees, according to which the protection conferred on the applicant

owing to his refugee status was not unconditional, and (iii) the assurances made by Russia concerning the applicant's treatment and proceedings in respect of him in the event of his extradition .

25. A public hearing held before the Regional Court on 26 January 2016 was adjourned with a view to requesting additional information from the Russian authorities as to the existence of further written evidence that might complement the extradition request. It can be seen from the case file that, in response, the Russian Prosecutor General's Office stated that the above-mentioned extradition request had been based mainly on the fact that the preliminary investigation had led to the issuance of an international search and arrest warrant; the Russian Prosecutor General's Office added that Russian law did not require, for an international warrant to be issued, firm evidence giving rise to the suspicion of a crime having been committed.

26. On 8 September 2016, the Regional Court decided that the applicant's extradition to Russia was admissible. It noted that refugees did not automatically enjoy immunity from criminal prosecution, as provided by Article 1F of the 1951 Geneva Convention and in Article 12 § 2 (b) of Directive 2011/95/EU. In the instant case, given that the applicant was suspected of having committed a serious non-political crime, the latter provision prevented Slovakia – as concluded by the Supreme Court in its decision of 16 March 2015 – from applying refugee status in his respect. Moreover, Russia, as a Contracting Party to the Convention, had provided concrete and specified guarantees that the applicant would not be subjected to any treatment that was contrary to Article 3 of the Convention.

27. By a judgment of 13 October 2016, the Constitutional Court dismissed the applicant's constitutional complaint (no. II. ÚS 53/2016). It observed that a guarantee of *non-refoulement* was not unconditional, since the relevant exclusion provisions allowed for persons who did not deserve refugee protection to be excluded from such protection, and as such did not constitute an obstacle to the requested State undertaking certain actions in the course of extradition proceedings (including proceedings in respect of detention pending extradition) involving such persons. Consequently, Article 14 § 3 (a) of Directive 2011/95/EU obliged member States to revoke the refugee status of a person if they had established that he or she should have been excluded from being accorded the status of refugee under Article 12. The imposition of detention pending extradition was thus a procedural tool allowing the interests at stake to be weighed proportionally. In the instant case there was no reason not to accept at that stage the Supreme Court's conclusions; the general courts were nevertheless called on, in the subsequent proceedings, to examine and take into account all the relevant circumstances (including the Court's case-law in respect of Article 3 of the Convention) before deciding whether to "revoke" the applicant's refugee status and whether to extradite him to Russia.

According to the dissenting opinion of one of the judges, the Constitutional Court should have declared that the applicant's rights had been violated, given that the decision of the Swedish authorities should have been accepted (if need be, after lodging a request with the Court of Justice of the European Union for a preliminary ruling on the acceptance of the Swedish decision), or that, in any event, the risk that the applicant might be subjected to ill-treatment in the event of his extradition to Russia should have been assessed as required by the Court's case-law, namely *M.G. v. Bulgaria*, no. 59297/12, 25 March 2014.

28. After the applicant lodged an interlocutory appeal against the decision of 8 September 2016 (see paragraph 26 above), the Fourth Chamber of the Supreme Court reversed the Regional Court's decision of 8 September 2016 and decided, on 2 November 2016, that the applicant's extradition to Russia was inadmissible, mainly under Article 501 (b) of the CCP. It gave as the main reason for that decision the fact that, having been granted asylum in Sweden, the applicant enjoyed refugee protection on the territory of all EU States, despite the fact that Swedish authorities had not been aware of the criminal charge facing him in Russia. It also concluded that neither the exclusion clause contained in the 1951 Geneva Convention nor the one contained in Directive 2011/95/EU were applicable in the instant case. It furthermore observed, after reviewing all the relevant circumstances (including the general human rights situation in Russia and the reliability of the assurances offered by Russia), that the applicant's extradition would also not be admissible (i) on humanitarian grounds, (ii) owing to a lack of reliable evidence to support the slightest plausibility of the suspicion against him, and (iii) in the light of numerous inaccuracies and contradictions contained in the extradition documents. Lastly, the Supreme Court noted that the action serving as the initial impetus for the applicant's criminal prosecution had to be regarded as "political" and that his political views (together with his brother's political activities) could give rise to bias on the part of the requesting State's authorities, within the meaning of Article 3 §§ 1 and 2 of the European Convention on Extradition.

By the same decision the Supreme Court ordered the applicant's release from detention pending extradition, with immediate effect.

29. On 2 December 2016, the Slovak Minister of Justice decided not to authorise the applicant's extradition to Russia, pursuant to Article 510 § 1 of the CCP.

III. THE APPLICANT'S EXPULSION

30. Upon the applicant's release from detention pending extradition on 2 November 2016, the border police initiated proceedings aimed at securing his administrative expulsion to Sweden and decided to place him in administrative detention, pursuant to section 88(1)(a) of Law no. 404/2011.

31. On 4 November 2016 the border police ordered the applicant's administrative expulsion to Sweden, which took place on 1 December 2016.

32. The applicant challenged this order, upon which the Supreme Court decided, by a judgment of 22 October 2019, to quash the decision on the applicant's expulsion to Sweden and to send the matter back to the border police.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

A. The Police Corps Act of 1993 (Law no. 171/1993 Coll., as amended)

33. The Act governs the organisation and powers of the police. Under section 17b(1), a police officer has the power to apprehend a person on the basis of a request to bring him or her before a court, a prosecuting authority, an administrative authority, or another authority listed by specific provisions. Such a request must refer to the personal data available to the requesting authority, and must specify the underlying legal provisions under which (and the reasons for which) the person is to be brought before the authority in question.

B. Code of Criminal Procedure (Law no. 301/2005 Coll., as applicable at the relevant time)

34. The relevant provisions of Chapter II (Extradition), Part II (Extradition abroad) read as follows:

Article 501
Inadmissibility of Extradition

"Extradition shall be inadmissible if:

...

b) it concerns a person who has applied in the Slovak Republic for asylum or who has been granted such asylum or provided with supplementary protection to the extent of the protection to be provided to such persons under a separate act or an international treaty; this does not apply if it concerns a person who has requested asylum in the Slovak Republic repeatedly and his/her request for asylum has already been subject to a final decision,"

Article 502
Preliminary investigation

"(1) A preliminary investigation shall be conducted by a prosecutor of a regional prosecution office to whom the Ministry of Justice has forwarded a request by a foreign authority for extradition abroad, or in whose district the person to be extradited to the requesting State was arrested or lives. If the preliminary investigation

was opened before the delivery of a request for extradition, the prosecutor shall immediately inform the Ministry of Justice of it.

(2) The goal of a preliminary investigation is to determine whether the conditions for extradition to be ruled admissible are met.

..."

Article 504
Arrest

"(1) Upon a request by foreign authorities, the prosecutor responsible for conducting the preliminary investigation may order [police] to arrest a person whose extradition will be requested by the foreign authorities. The prosecutor shall not be bound by the grounds for detention set out in Article 71.

(2) The person being sought by the foreign authorities for extradition may be arrested by the [police] with the prior authorisation of the prosecutor. Without such authorisation the person may be arrested only in urgent cases and if there is no possibility to obtain such authorisation in advance.

(3) The ... arrest shall be immediately reported to the prosecutor. If the prosecutor does not order the release of the arrested person within forty-eight hours of his/her arrest, he shall lodge, within the same deadline, an application to the court for the person to be held in preliminary detention or in detention pending extradition."

Article 505
Preliminary detention

"(1) The presiding judge of a chamber of the Regional Court shall within forty-eight hours of the person's surrender to that court decide, upon an application lodged by the prosecutor, on the preliminary detention of the arrested person. He/she shall not be bound by the grounds for detention set out in Article 71. Should the presiding judge not, within the above-mentioned time-limit, order that the arrested person be held in preliminary detention, he shall order his/her release.

...

(3) The purpose of preliminary detention is to secure the presence of an arrested person on the territory of the Slovak Republic until the State that has an interest in his extradition submits (pursuant to Article 498) a request for his extradition..

(4) Preliminary detention may not exceed the period of forty days from the moment of the person's arrest. The presiding judge of a chamber of the Regional Court may, upon the lodging of an application by the prosecutor conducting the preliminary investigation, decide to release the person from preliminary detention.

(5) If a request for extradition by the foreign authorities was submitted in the course of the preliminary detention, the Ministry of Justice shall notify to this effect the prosecutor conducting the preliminary investigation. Upon an application by the prosecutor, the presiding judge of a chamber may order that the person be detained pending extradition if the conditions set out in Article 506 § 1 are met.

(6) The release of the person from preliminary detention shall not preclude his/her further placement in preliminary detention or his/her being placed in detention pending extradition."

Detention pending extradition
Article 506

"(1) If it is necessary to prevent the escape of the person whose extradition is sought or to prevent the obstruction of the purpose of such proceedings, the presiding judge of a chamber of a regional court shall place him/her in detention. He/she shall rule to this effect upon the lodging of an application by the prosecutor

(2) conducting the preliminary investigation.

(2) If the person whose extradition is sought gives his/her consent to extradition or if his/her extradition has been declared admissible, the Regional Court shall place the person in detention pending extradition, unless this has already been done earlier under paragraph 1 by the presiding judge.

(3) The presiding judge of a chamber of the Regional Court shall order the release of the person from detention pending extradition as of the day of [the Slovak authorities] surrendering him/her to the foreign authorities – at the latest by the sixtieth day after the decision of the Minister of Justice allowing his/her extradition; ...

In addition, he/she shall order [the person's] release from detention pending extradition if

...

b) the extradition was declared inadmissible by the Supreme Court or if the Minister of Justice has refused to allow the extradition ..."

C. The State Liability Act (Law no. 514/2003 Coll. on liability for damage resulting from the exercise of public authority)

35. Under section 3(1) of the Act the State bears liability for damage caused by public authorities through (a) an unlawful decision, (b) unlawful arrest, detention or another form of deprivation of personal liberty, (c) a decision concerning detention on remand, or (d) official misconduct (*nesprávny úradný postup*).

36. Under section 7, the right to compensation for damage caused by a decision on arrest, by detention or by some other form of deprivation of personal liberty is vested in the person who was subjected to it, provided that that decision was quashed as being unlawful or if official misconduct occurred in connection with it.

37. However, under section 8(6)(h), no such right arises in respect of detention ordered with a view to extradition, unless the damage was caused by an unlawful decision or official misconduct on the part of the Slovak authorities.

II. RELEVANT INTERNATIONAL LAW

A. The European Convention on Extradition

38. The European Convention on Extradition of 13 December 1957 (CETS no. 024), to which Slovakia and Russia are parties, provides as follows:

Article 3 – Political offences

"1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.

2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons."

Article 16 – Provisional arrest

"1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.

...

4. Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought."

B. The United Nations Convention Relating to the Status of Refugees

39. The UN Refugee Convention, adopted in 28 July 1951 in Geneva, to which Slovakia is a party ("the 1951 Geneva Convention"), provides as follows:

Article 1 – Definition of the term "refugee"

"...

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations."

Article 33 – Prohibition of expulsion or return ("refoulement")

"1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

40. In its Conclusion no. 12 (XXIX) on the extraterritorial effect of the determination of refugee status, adopted on 17 October 1978, the UNHCR's Executive Committee stated, in so far as relevant, the following:

"(g)... refugee status as determined in one Contracting State should only be called into question by another Contracting State in exceptional cases when it appears that the person manifestly does not fulfil the requirements of the Convention, e.g. if facts become known indicating that the statements initially made were fraudulent or showing that the person concerned falls within the terms of a cessation or exclusion provision of the 1951 Convention; (...)."

III. RELEVANT EUROPEAN UNION LAW

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted ("the Qualification Directive")

41. The relevant provisions of Directive 2011/95/EU read as follows:

Article 12 – Exclusion

"2. A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:

...

(b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee – that is to say before the date of the issuance of a residence permit on the basis of the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;

..."

Article 14 – Revocation of, ending of or refusal to renew refugee status

"...

3. Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person if, after he or she has been granted refugee status, it is established by the Member State concerned that:

(a) he or she should have been or is excluded from being a refugee in accordance with Article 12;

..."

Article 21 – Protection from refoulement

"1. Member States shall respect the principle of non-refoulement in accordance with their international obligations.

2. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may *refoule* a refugee, whether formally recognised or not, when:

(a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; or

(b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

3. Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee to whom paragraph 2 applies."

THE LAW

I. JOINDER OF THE APPLICATIONS

42. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

43. The applicant complained that his right to liberty had been violated on account of the alleged unlawfulness of his arrest and of his subsequent preliminary detention and detention pending extradition in Slovakia. He relied on Article 5 § 1 of the Convention, which reads, in so far as relevant, 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:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Admissibility

44. The Court notes that this complaint 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. Submissions of the parties

(a) The applicant

45. The applicant disputed that his initial apprehension on 15 January 2015 had been in compliance with the requirements of Slovak law. In particular, he submitted that the conditions set out in section 17b(1) of the Police Corps Act had not been fulfilled, since the police had not acted on any request made by a public authority for him to be brought before it, and that the prosecutor had not authorised such a measure, as required by Article 504 § 2 of the CCP. That also had rendered his subsequent detention unlawful.

46. With regard to his being placed in preliminary detention, the applicant considered as essential the fact that Russia had not lodged any request for him to be placed in preliminary detention, as required by Article 16 of the European Convention on Extradition; that fact should have precluded the domestic authorities from ordering such a measure.

47. As regards both his preliminary detention and detention pending extradition, the applicant argued that they had been contrary to both Article 501 (b) of the CCP and Article 5 § 1 (f) of the Convention on account of the fact that, as a holder of refugee status in Sweden, he could not be extradited to Russia and there had thus been no reason to secure his presence in Slovakia. He also pointed out that in view of the fact that Directives 2011/95/EU and 2013/32/EU had unified EU asylum policy, it was immaterial whether asylum had been granted to him in Slovakia or in another member State of the EU. Consequently, the Slovak authorities had been bound by the decision of Sweden to grant him asylum, and nothing had prevented them from conferring refugee protection on him, contrary to what the Supreme Court had stated in its decision of 16 March 2015. The applicant emphasised that the Supreme Court had only after a considerable period of time identified his refugee status as the main impediment to his extradition, even though he had informed the authorities of the asylum decision from the very outset.

(b) The Government

48. The Government contended, firstly, that the applicant's argument that he had not been arrested in accordance with the domestic law was

unfounded. As confirmed by the Constitutional Court's judgment of 28 January 2016, the applicant's liberty had first been restricted under the Police Corps Act; only the following day had he been arrested under the CCP, after the prior authorisation of the prosecutor had been secured.

49. As to the applicant's argument that his refugee status in itself constituted an obstacle to his extradition (and had rendered both his preliminary detention and detention pending extradition unlawful), the Government observed that that argument had been addressed by the domestic courts. It can be seen from their decisions that the matter of the applicant's status in Sweden had been subject to a preliminary investigation by the prosecutor (starting on 16 January 2015) into the circumstances of the applicant's refugee status. That investigation had been all the more important in the light of the exclusion provisions specified by the relevant international law, since its findings had been likely to impact on the outcome of the extradition proceedings. After the prosecutor had, in the course of that investigation, secured the necessary extradition documents (as well as assurances concerning the applicant's treatment and proceedings in the event of his extradition), he had asked the Regional Court to allow the applicant's extradition to Russia. That court's decision allowing the extradition had later been reversed by the Supreme Court, and the applicant's release had been ordered.

50. It also appeared from the relevant decisions that the applicant's preliminary detention had been based on the fact that he was an internationally wanted person whose extradition had been requested by Russia, and that his detention pending extradition had been justified by the need – before deciding on the admissibility of his extradition – to further explore the elements that had led the Swedish authorities to grant him asylum.

51. The Government furthermore observed that the applicant had been detained from 15 January 2015 until 2 November 2016 – that is to say for a period of one year, nine months and eighteen days, which could not be regarded as excessive. Throughout that period the authorities had been taking steps with a view to the applicant's extradition, carefully examining all the relevant circumstances, including the application of the exclusion provisions, the existence of any obstacles to the extradition, and the content of the extradition documents.

52. The Government emphasised the fact that the Supreme Court's final decision on the inadmissibility of the applicant's extradition to Russia had not been based only on his refugee status in Sweden, but also on other circumstances relating to his criminal prosecution in Russia that had been established during the extradition proceedings – namely the weakness of the assurances given by Russia and of the extradition documents submitted by Russia, and the political nature of the acts giving rise to the applicant's prosecution (see paragraph 28 above). Within that context, the Government

expressed their conviction, based on the relevant international instruments, that refugee status granted in one EU State did not automatically exclude its holder from the possibility of being extradited. In the event that such a possibility was to be realised in the instant case, it was necessary to secure the applicant's presence on Slovak territory, in accordance with Article 5 § 1 (f) of the Convention.

2. The Court's assessment

(a) General principles

53. The Court reiterates that Article 5 § 1 (f) of the Convention does not require that the detention of a person against whom action is being taken with a view to extradition be reasonably considered necessary – for example, to prevent that person's committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to extradite can be justified under national law or the Convention (see, for example, *Umirov v. Russia*, no. 17455/11, § 135, 18 September 2012).

54. The deprivation of liberty must also be "lawful". Where the "lawfulness" of detention is at issue, including the question of whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. In this respect, the Court will thus limit its examination to the question of whether the interpretation of the legal provisions relied on by the domestic authorities was arbitrary or unreasonable (see *Nabil and Others v. Hungary*, no. 62116/12, § 31, 22 September 2015).

55. Compliance with national law is not, however, 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. It is a fundamental principle that no detention that is arbitrary can be compatible with Article 5 § 1, and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still be arbitrary and thus contrary to the Convention. To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009, with further references).

56. Lastly, the Court reiterates that deprivation of liberty under Article 5 § 1 (f) will be acceptable only for as long as extradition proceedings are in progress. If such proceedings are not conducted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (see *Saadi v. the United Kingdom* [GC], no. 13229/03, §§ 72-74, ECHR 2008). The Court has accordingly found violations of that provision in cases where the applicant was detained despite the existence of established circumstances that prevented extradition or expulsion under domestic law - for example, where national law did not allow for deportation pending a decision on asylum (see *R.U. v. Greece*, no. 2237/08, §§ 88-96, 7 June 2011, and *Ahmade v. Greece*, no. 50520/09, §§ 142-144, 25 September 2012), or where extradition was excluded from the outset owing to the applicant's nationality (see *Garabayev v. Russia*, no. 38411/02, § 89, 7 June 2007, and *Garkavyy v. Ukraine*, no. 25978/07, §§ 70 and 75, 18 February 2010) or owing to the applicant's refugee status (*Eminbeyli v. Russia*, no. 42443/02, §§ 7, 17 and 48, 26 February 2009), or where detention for the purpose of extradition was rendered arbitrary from the moment that the decision to grant the applicant refugee status became final and binding (*Dubovik v. Ukraine*, nos. 33210/07 and 41866/08, §§ 61 and 62, 15 October 2009).

(b) Application of those principles to the present case

57. The Court notes that it is common ground between the parties that the applicant was detained with a view to his extradition from Slovakia to Russia, even though the applicant disputed the fact that the law permitted such extradition. It remains to be seen if the detention was justified for the purposes of the second limb of Article 5 § 1 (f) of the Convention.

(i) The applicant's initial apprehension and arrest

58. As to the applicant's apprehension on 15 January 2015 at 20.45, it can be seen from the police report (see paragraph 8 above) and the first decision of the Constitutional Court (see paragraph 17 above) that this initial limitation of liberty was based on section 17b(1) of the Police Corps Act and that the authorisation of the prosecutor was not necessary in order for it to be imposed. The applicant was apprehended in order that he could be taken to the border police station, as his name had been found on the international list of wanted persons. The applicant was arrested the next day under section 504(2) of the CCP after the authorities had verified that he was still the subject of an international search and that Russia had confirmed that an extradition request in respect of the applicant would be sent in good time (see paragraph 10 above).

59. The Court is satisfied that those measures served the purpose of arresting a person "against whom action is being taken with a view to extradition", within the meaning of the second limb of Article 5 § 1 (f) of

the Convention. Indeed, at that point in time the fact that the applicant had refugee status was not yet known to the Slovak authorities and the applicant was no more than a person whose name appeared on the international list of wanted persons. In the view of the Court, this phase of the applicant's deprivation of liberty discloses no appearance of any arbitrariness.

(ii) The applicant's further detention

60. As regards the applicant's further detention, the Court observes that the applicant's allegations under Article 5 § 1 (f) concern two periods of time corresponding to two types of detention: (i) the period of preliminary detention ordered on 19 January 2015 (with effect from 15 January 2015), which lasted until 23 February 2015, and (ii) the period of detention pending extradition, which lasted from 23 February 2015 until 2 November 2016. The applicant did not complain about his subsequent administrative detention with a view to his expulsion to Sweden.

(α) As regards the lawfulness of the applicant's detention

61. With regard to his preliminary detention, the applicant asserted that under Article 16 of the European Convention on Extradition he could not be subject to such a measure without Russia having first requested it.

62. The Court notes that Article 16 of the European Convention on Extradition (see paragraph 38 above) establishes that the provisional arrest of a person whose extradition is sought must be decided on by the requested Party in accordance with its own law. Thus, this international instrument requires in the first place compliance with the domestic procedure (see *Shchebet v. Russia*, no. 16074/07, § 67, 12 June 2008).

63. Under Article 504 § 3 of the CCP, any application to place the applicant in preliminary detention had to be lodged by the prosecutor responsible for conducting the preliminary investigation. Such an application was lodged on 17 January 2015 (see paragraph 11 above) – that is to say within forty-eight hours of the applicant's arrest, as required by the above provision – and was granted by the court, pursuant to Article 505 § 1 of the CCP.

64. In this regard the Court takes cognisance of the interpretation of the applicable rules, as determined by the Slovak Constitutional Court (see paragraph 17 above), whereby it unequivocally stated that the only condition for the applicant's placement in preliminary detention was that a request be lodged by the prosecutor, pursuant to Article 504 § 3 of the CCP; the Constitutional Court furthermore held that Article 16 § 1 of the European Convention on Extradition could not be interpreted to mean that such a request had to be lodged by the State requesting extradition.

65. Moreover, the Court notes that – similarly to Article 16 § 4 of the European Convention on Extradition – Article 505 § 4 of the CCP

established a guarantee against the excessive duration of any period of preliminary detention, indicating that a person could not be detained for more than forty days after his or her arrest.

66. The Court observes in this respect that – pursuant to Articles 505 § 5 and 506 § 1 of the CCP (see paragraph 18 above) – the subsequent placement of the applicant in detention pending extradition was requested by the prosecutor before the maximum duration of the applicant's preliminary detention had elapsed, and that it was ordered by the Regional Court, in accordance with Article 506 § 1 of the CCP (see paragraph 19 above). Subsequently, in accordance with Article 506 § 3 (b) of the CCP, the applicant was released from detention pending extradition after the Supreme Court had ruled against his extradition to Russia (see paragraph 28 above).

67. The foregoing considerations are sufficient to enable the Court to conclude that the detention orders pertaining to both the applicant's preliminary detention and detention pending extradition were issued in compliance with the relevant provisions of the domestic law.

(β) Regarding the domestic authorities' alleged failure to give due consideration to the applicant's recognition as a refugee in Sweden

68. As to the applicant's argument that his detention served no purpose as he could not have been extradited owing to the refugee status granted to him in Sweden, the Court notes that it has consistently held that the detention of a person for the purpose of extradition is rendered unlawful and arbitrary by the existence of circumstances that under domestic law exclude the extradition of that person (see the case-law cited in paragraph 56 above). However, in contrast to the cases mentioned therein, it cannot be asserted in the instant case that the applicant's extradition was completely banned, given that the decision of the Swedish authorities to grant him asylum did not automatically exclude the possibility that the applicant might be extradited by the Slovak authorities.

69. The Court observes in this respect that Article 501 (b) of the Slovak CCP prohibits the extradition of a person who has applied for refugee status in Slovakia or who has been granted such status. In the instant case, however, the applicant had been granted refugee status in Sweden – not in Slovakia. Such a decision is extraterritorially binding in that an award of refugee status by Sweden, as one of the State Parties to the 1951 Geneva Convention, could be called into question by Slovakia only in exceptional circumstances giving rise to the appearance that the beneficiary of the decision in question manifestly falls within the terms of the exclusion provision of Article 1F of the 1951 Geneva Convention and therefore does not meet the requirements of the definition of a refugee contained therein (paragraph 40 above). Thus there might be situations where information which came to light in the course of extradition proceedings concerning a

recognised refugee may warrant a review of his or her status. Consequently, the fact that the applicant had been granted refugee status in Sweden did not automatically mean that he should be considered as a refugee in Slovakia.

70. Indeed, as can be seen from the domestic decisions adopted in the applicant's case, the Slovak authorities did not consider themselves bound by the refugee status conferred on the applicant by Sweden; if they had felt themselves so bound, the provision of Article 501 (b) of the CCP prohibiting the extradition of nationally recognised refugees would automatically have applied (compare *Eminbeyli*, cited above, § 48), as argued by the applicant. Instead, alerted to the applicant's special status and bound by their obligation to respect the principle of *non-refoulement*, the Slovak authorities decided, in the course of standard extradition proceedings, to conduct their own inquiry into the danger of the applicant being persecuted in Russia and to contact the Swedish authorities in order to obtain the full facts of his case. In this context, the Court reiterates that when an extradition request concerns a person facing criminal charges in the requesting State, the requested State is required to act with greater diligence than when an extradition is sought for the purposes of enforcing a sentence, in order to secure the protection of the rights of the person concerned (see *Gallardo Sanchez v. Italy*, no. 11620/07, § 42, ECHR 2015).

71. In the Court's view, it was legitimate for the Slovak courts to examine whether an exclusion provision might be applicable in respect of the applicant – all the more so given that it had been established that the Swedish authorities had not checked the Interpol database during the asylum proceedings in respect of the applicant and had not examined the nature of the criminal charge brought against him in Russia. In so doing, the Slovak authorities had to consider all the circumstances of the applicant's individual case. Given that the requesting State was the country in which the applicant had been persecuted (presumably because of his and his brother's political activities), any evidence presented by it had to be treated with great caution when establishing whether or not the extradition request was based on fabricated charges or whether the crime giving rise to that request could be categorised as "non-political" within the meaning of Article 1F of the 1951 Geneva Convention and Article 12 § 2 (b) of Directive 2011/95/EU. Furthermore, since the Slovak authorities initially concluded that the act amounted to a "non-political" offence, they were obliged to examine whether the extradition might be precluded for other reasons, such as non-compliance with formal requirements under extradition law or, as in the instant case, insufficient evidence in support of the allegations made against the applicant.

72. In view of the above, the Slovak authorities cannot be blamed for having carried out a preliminary investigation with a view to determining whether there were any legal or factual impediments to the applicant's extradition and for having examined the extradition request, despite the

applicant having been previously granted refugee status in Sweden. Such an examination has to be regarded as being intrinsic to actions "taken with a view to extradition".

73. In this respect, the Court observes that according to the relevant domestic decisions, the applicant's detention was justified (under Articles 505 § 3 and 506 § 1 of the CCP) by the necessity to secure his presence on Slovak territory (and thus to prevent any obstruction of the completion of the preliminary investigation and of the fulfilment of the purpose of the extradition proceedings).

74. The Court does not ignore that the applicant's extradition to Russia was eventually declared inadmissible, mainly under Article 501 (b) of the CCP – that is to say because (i) he enjoyed the protection as a refugee granted to him by Sweden also on Slovak territory and (ii) the exclusion provisions were found to be not applicable to him. It reiterates in this respect that the examination of any risks and objections linked to a person's possible removal from the territory of the State is intrinsic to actions "taken with a view to deportation or extradition". Even if such an examination establishes that such risks and objections are well-founded and capable of preventing the person's removal, such a possible future outcome cannot in itself retroactively affect the lawfulness of detention pending examination of a request for extradition (see *Khamroev and Others v. Ukraine*, no. 41651/10, § 77, 15 September 2016).

75. There is thus no evidence in the instant case that would prompt the Court to conclude that the applicant's detention was contrary to national law or to Article 5 § 1 (f) on the grounds that the domestic courts disregarded the fact that he had been recognised as a refugee in Sweden.

(γ) Whether the whole duration of the applicant's detention was justified by "action taken with a view to extradition" within the meaning of Article 5 § 1 (f)

76. The salient issue in the present case is thus whether it can be said that action was being taken with a view to the applicant's extradition throughout the whole duration of his detention and, consequently, whether it was justified under Article 5 § 1 (f) of the Convention. The Court emphasises that detention "with a view to extradition" can only be justified as long as the extradition is in progress and there is a true prospect of executing it (see *Nabil and Others,* cited above, § 38).

77. The Court notes that the applicant's overall detention in view of his extradition lasted from 15 January 2015 to 2 November 2016 – that is to say one year, nine months and eighteen days.

78. It also observes that the Slovak authorities were aware as far back as 16 January 2015 that the applicant had been granted asylum in Sweden, since that information was given to them by the applicant himself (see paragraph 10 above) and was rapidly confirmed by Interpol in Stockholm

(see paragraph 11 above). The first effort on the part of the Slovak authorities to establish the circumstances surrounding Sweden's granting of refugee status to the applicant was made on 27 January 2015, when a letter was sent to the Swedish authorities (see paragraph 14 above). It can be seen from the Regional Court's decision of 23 February 2015 (see paragraph 19 above) that by that date the Swedish authorities had already responded to that letter.

79. In the meantime (to be precise, on 17 February 2015) the Slovak authorities received an extradition request from their Russian counterparts, as well as documents containing assurances provided by the Russian authorities concerning the applicant's treatment and proceedings in respect of him in the event of his extradition. It is furthermore observed that in her application of 20 February 2015 for the applicant to be placed in detention pending extradition, the prosecutor noted that the circumstances surrounding the recognition by Sweden of the applicant's refugee status and their impact on the outcome of the preliminary investigation would be duly examined in the subsequent proceedings and that reports would be requested from the Slovak Ministry of Foreign Affairs and UNHCR regarding the security situation in Russia and whether the above-mentioned assurances were likely to be honoured (see paragraph 18 above).

80. However, as can be seen from the case file, following the hearing of the applicant on 10 March 2015, it took six months (until 9 October 2015) for the prosecutor to ask the Regional Court to allow the applicant's extradition to Russia (see paragraph 24 above). More than three further months elapsed before a hearing was held before the Regional Court on 26 January 2016, but it was adjourned with a view to requesting additional information from the Russian authorities; however, no such information was forthcoming (see paragraph 25 above). The Court notes that the Government have not submitted any information in respect of any other requests made or avenues explored or any details regarding subsequent steps, save for the fact that on 8 September 2016 a new hearing was held before the Regional Court, at which the applicant's extradition was authorised.

81. Lastly, the Court cannot but point out that while the Supreme Court ruled in its decision of 16 March 2015 (see paragraph 22) that the exclusion provision of Article 12 § 2 (b) of Directive 2011/95/EU was applicable to the applicant (given that he was suspected of having committed a serious non-political crime, which prevented Slovakia from accepting and applying the refugee status conferred on him by Sweden), in its decision of 2 November 2016 another chamber of the same court reached the opposite conclusion (see paragraph 28 above) – even though no new information had become available in the meantime (see paragraph 80 above). More importantly, information about the applicant's refugee status (which constituted the main reason for the decision of 2 November 2016) as well as

documents relating to his criminal prosecution in Russia (which allowed for an assessment – for the purposes of the applicability of the relevant exclusion clauses – of the political/non-political nature of his acts) had been available to the Slovak authorities since February 2015 (see paragraphs 78 and 15 above).

82. In the light of the above, the Court considers that the respondent Government have failed to establish that the authorities proceeded in an active and diligent manner when gathering all necessary information and adjudicating legal challenges raised by the case at hand. In the Court's view, nothing prevented the courts from reaching a final decision on the admissibility of the applicant's extradition much earlier than they in fact did.

83. In view of the foregoing, the Court concludes that the grounds for the applicant's detention did not remain valid for the whole period concerned (one year, nine months and eighteen days), and that the authorities failed to conduct the proceedings with due diligence (see, for a similar approach, *M. and Others v. Bulgaria*, no. 41416/08, § 75, 26 July 2011,).

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

III. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

85. The applicant complained of the violation of his right to seek compensation, relying on Article 5 § 5 of the Convention, which reads as follows:

> "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."

A. Admissibility

86. The Court notes that this complaint 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

87. The applicant argued that Slovak law did not enable him to seek compensation for the undue length of his detention, despite the fact that his extradition to the requesting State was eventually ruled inadmissible. This was in contrast to criminal proceedings conducted under Slovak law, regarding which a person was entitled to compensation in respect of his or her pre-trial detention in the event of a final acquittal.

88. The applicant asserted, in particular, that under section 8(6)(h) of the State Liability Act (and in view of the fact that his detention had never been considered unlawful by the domestic courts), he had been deprived of the right to claim compensation on any grounds provided by that Act. This could not be affected by any decision of the Court, since compensation could not be granted under the domestic law without the impugned decision on detention first being quashed.

89. The Government submitted that, in general, the right to compensation for any violation relating to arrest and detention pending extradition was provided by the State Liability Act. While it is true that section 8(6)(h) thereof, which defined more precisely the provision of section3(1)(c) concerning specifically decisions on detention, indicated that compensation for damage caused by detention pending extradition was excluded, it also provided exceptions for the situations in which damage had been caused by an unlawful decision or official misconduct in this respect. The possibility of requesting compensation on these grounds was also secured by points (a) and (d) of section 3(1) of the above Law.

90. With regard to their observations under Article 5 § 1, the Government asserted that, in the instant case, the decisions on the applicant's detention had been lawful and that moreover, the Constitutional Court had not found any violation of the applicant's rights. Therefore no right to compensation arose on the part of the applicant.

91. The Court reiterates that Article 5 § 5 creates a direct and enforceable right to compensation in the national courts (see, for example, *A. and Others v. the United Kingdom*, cited above, § 229) where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 of that Article (see *Vachev v. Bulgaria*, no. 42987/98, § 79, ECHR 2004 (extracts), and *Michalák v. Slovakia*, no. 30157/03, § 204, 8 February 2011). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court. Such an enforceable right must be available either before or after the Court's judgment (see *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 183-184, ECHR 2012).

92. In the present case the Court has found a violation of Article 5 § 1 of the Convention (see paragraph 84 above). It must therefore establish whether or not the applicant had or now has an enforceable right to compensation for the breach of Article 5 § 1 of the Convention.

93. The Court observes that none of the domestic courts considered the applicant's preliminary detention and detention pending extradition to be in breach of the domestic law and that the relevant decisions were not quashed, as required by the State Liability Act. It therefore appears that the applicant did not have had even a theoretical opportunity to claim compensation during the domestic proceedings. At the same time, there is no support in

the text of the State Liability Act or in any other provision of Slovak law to the effect that a compensation claim could be made in a domestic court on the basis of findings made by the Court (see, *mutatis mutandis*, *Osváthová v. Slovakia*, no. 15684/05, § 83, 21 December 2010).

94. The foregoing considerations are sufficient to enable the Court to conclude that neither before nor after the findings made by the Court has the applicant had an enforceable right to compensation for the violation of his rights under Article 5 § 1 of the Convention.

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

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

95. Lastly, the applicant complained under Article 13 that the domestic law did not offer him any remedy enabling him to claim compensation for his unlawful detention.

96. The Court notes that this complaint is linked to that examined above and must therefore likewise be declared admissible.

97. The Court has found above that there has been a violation of Article 5 § 5 of the Convention (see paragraph 94 above). Given that this provision of Article 5 constitutes a *lex specialis* concerning complaints relating to deprivation of liberty, no separate issue arises under Article 13, given the circumstances of this case (see *A.B. and Others v. France*, no. 11593/12, § 158, 12 July 2016).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. Without specifying an amount, the applicant claimed just satisfaction in respect of pecuniary damage corresponding to the costs of his telephone calls and meals (the meals served in prison having not been compatible with his religious beliefs) during his detention. On account of the insurmountable fear, suffering and frustration that he had experienced throughout his detention, the applicant furthermore claimed 135 000 euros (EUR) in respect of non-pecuniary damage. He also submitted that his child having been born in Sweden while he had been in detention, he had had to undergo the humiliating process of having a sample of his saliva being taken for the

purposes of a DNA test; he furthermore submitted that the conditions of his detention had caused him several health problems.

100. The Government asserted that there was no causal link between the alleged pecuniary damage and the violations alleged by the applicant. As regards non-pecuniary damage, the Government considered that the applicant's claim was overstated and that there had been no link between the alleged violations and the damage allegedly suffered by the applicant owing to the conditions of his detention.

101. The Court considers that it has not been shown in the present case that there exists a causal link between the violation of Article 5 of the Convention and the pecuniary damage claimed by the applicant. It therefore rejects his claims under this head[1].

102. However, it finds that the applicant undoubtedly sustained damage of a non-pecuniary nature on account of his suffering and the frustration that he experienced during his detention, which cannot be compensated for by the mere finding of a violation of Article 5 §§ 1 and 5 of the Convention. Making its assessment on an equitable basis, the Court awards him EUR 8,500 in respect of non-pecuniary damage.

A. Costs and expenses

103. The applicants also claimed EUR 14,887 for the costs and expenses incurred before the domestic courts and EUR 5,400 for those incurred before the Court.

104. The Government argued that the total sum claimed in respect of legal representation costs was disproportionately high and that some of the costs claimed had not in fact been incurred in an effort to prevent or redress the alleged violations of the Convention.

105. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 8,000, covering costs under all heads, plus any tax that may be chargeable to the applicant.

B. Default interest

106. 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.

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[1] Rectified on 9 March 2021: Former paragraph 101 "The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,200 under that head." was deleted. The following paragraphs were renumbered.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

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

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

5. *Holds* that no separate issue arises under Article 13 of the Convention;

6. *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, the following amounts at the rate applicable at the date of settlement:
      (i) EUR 8,500 (eight thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

7. *Dismisses*, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Ksenija Turković
President