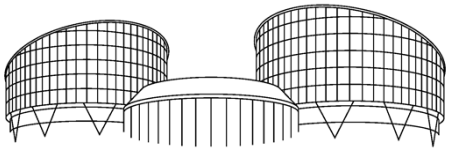

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF RIBÁR v. SLOVAKIA

(Application no. 56545/21)

JUDGMENT

Art 35 § 1 • Applicant's failure to exhaust available domestic remedies with regard to his complaints as to some of the material conditions of his detention • Court's examination limited to complaints for which no effective domestic remedies were available
Art 3 (substantive) • Inhuman and degrading treatment • Applicant's detention on remand under the ordinary regime (as opposed to the mitigated regime) for more than one year and four months, with twenty-three hour confinement to his cell and very limited out-of-cell activity, to prevent him from interfering with the course of justice • Cumulative conditions of detention, along with the applicant's specific complaints and the length of his detention, not amounting to ill-treatment under Art 3

Prepared by the Registry. Does not bind the Court.

STRASBOURG

12 December 2024

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

In the case of Ribár v. Slovakia,

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

Ivana Jelić*, President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Georgios A. Serghides,
Raffaele Sabato,
Alain Chablais,
Artūrs Kučs*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 56545/21) 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 Martin Ribár ("the applicant"), on 12 November 2021;

the decision to give notice of the application to the Government of the Slovak Republic ("the Government");

the parties' observations;

Having deliberated in private on 19 November 2024,

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

INTRODUCTION

1. The applicant complained of the conditions of his detention pending trial, which was ordered, *inter alia*, to prevent him from interfering with the course of justice (*kolúzna väzba*) and lasted approximately one and a half years. His complaint concerns in particular the extent of his confinement to his cell (in relation to the limited amount of the time that he had been able to spend out of his cell and any activities that had been allowed to him).

2. The application mainly raises issues concerning domestic remedies under Article 35 § 1 of the Convention and issues of substance under Article 3 of the Convention.

THE FACTS

3. The applicant is a practicing lawyer. He was born in 1977, lives in Bratislava and was represented by Mr M. Marhavý, a lawyer practising in Bratislava.

4. The Government were represented by their Agent, Ms M. Bálintová.

5. The facts of the case may be summarised as follows.

I. THE APPLICANT'S PROSECUTION AND DETENTION

6. On 28 October 2019 the applicant was charged with (i) setting up, conceiving and maintaining a criminal enterprise, and (ii) perjury and extortion (it being suspected that he had acted for the benefit of a certain criminal gang in the guise of providing legal services to its members, and having thereby coordinated their respective testimony in order to shield the top ranks of the gang from criminal prosecution).

7. On the same day, the applicant was arrested on those charges, and an order for his detention was issued on 30 October 2019, with a view to preventing him from (i) interfering with the course of justice within the meaning of Article 71 § 1 (b) of the Code of Criminal Procedure (Law no. 301/2005 Coll., as amended – "the CCP") and (ii) continuing to engage in criminal activities within the meaning of Article 71 § 1 (c) of the CCP. Under a decision of the Supreme Court of 9 March 2021, the first of those grounds for detaining the applicant was lifted and only the latter was retained.

8. Meanwhile, on 17 June 2020 the applicant requested that he be released; his request was dismissed at first instance by the Specialised Criminal Court and on appeal by the Supreme Court on 15 July and 12 August 2020, respectively.

9. However, on 13 May 2021, the Constitutional Court allowed the applicant's complaint by quashing the Supreme Court's decision of 12 August 2020 and instructing the Supreme Court to order the applicant's immediate release.

10. In doing so, the Constitutional Court observed that the quashed decision had cited the relevant principles but had not been supported by the facts of the case. Both grounds for the applicant's detention (namely, the risk of his interfering with the course of justice and the risk that he would continue to engage in criminal activities) had been based solely on the nature of the actions attributed to him in the wording of his charges. The longer his detention lasted, the stronger the grounds for it had to be. Moreover, the specification of those of his actions that were alleged to constitute the offence of extortion was vague and insufficient. This was important, given that those alleged actions potentially carried a penalty of either between twenty and twenty-five-years' imprisonment or a life sentence (compared to the penalty carried by the remaining charges that he faced – namely, between five to ten years in prison). The gravity of the alleged extortion in turn had a negative impact on the possibility for the applicant's detention to be replaced by alternative measures. Lastly, the lower courts had failed to give an adequate answer to the applicant's specific arguments – including his assertion that the actions of which he had been accused had constituted a legitimate exercise of his legal profession.

11. The applicant's detention ended with his release on 14 May 2021.

12. Findings similar to those contained in the constitutional judgment (*nález*) of 13 May 2021 were also made by the Constitutional Court in judgments delivered on 30 September and 2 December 2021, which retrospectively concerned decisions dismissing later requests for release lodged by the applicant. In the latter of those two judgments, the court also found that the review of the lawfulness of the applicant's detention in response to the respective request for release had not been speedy.

II. CONDITIONS OF THE APPLICANT'S DETENTION

13. In view of the fact that he was a remand prisoner, the conditions of the applicant's detention were primarily regulated by Law no. 221/2006 Coll., as amended ("the Detention Act") and Decree of the Minister of Justice no. 437/2006 Coll., as amended ("the Detention Order").

14. In so far as until 9 March 2021 the grounds for the applicant's detention included the alleged need to prevent him from interfering with the course of justice, until that date an additional set of rules applied to it: for example, the applicant was only entitled to receive visits and make telephone calls with the authorisation of the relevant prosecuting authority (sections 19(2) and 21(1) of the Detention Act, as worded at the time in question) and post sent to and by him had to pass inspection by that authority (section 20(3) of the Detention Act).

15. The applicant was detained in Banská Bystrica Prison ("BBP") and throughout his detention there he remained in one and the same double-occupancy cell in which he was placed alone – initially because there was no non-smoker inmate to be housed with him, and then at the applicant's own request. The cell had a surface area of 8.02 square metres, in addition to which there was an in-cell sanitary annexe comprising a sink, shower and toilet. Part of the cell's surface area was taken up by a bunk bed, two cupboards, a table and two chairs, which were not attached to the ground. There was also a shelf and a television set. In the applicant's submission, the surface area that was not taken up by any furniture amounted to some 3 square metres.

16. It is uncontested that the applicant was normally confined to his cell, where he was locked up for twenty-three hours a day; at the time of anti-COVID-19 hygiene measures imposed by Order of the Director General of the Prison and Court Guard Service ("the PCGS") no. 44/2021 (from 22 March until 21 April 2021), he spent twenty-three and a half hours a day in his cell.

17. While in his cell, the applicant was free to read, write, watch television and engage in physical exercise. According to prison records, he borrowed sixty-six books from the prison library.

18. Out-of-cell activities consisted of access for one hour a day (for half an hour a day during the period of the COVID-19 health and safety measures)

to one of nine outdoor yards. These had surface areas of between 9.45 and 53.5 square metres, were located on the rooftop, were surrounded by high concrete walls (the tops of which were covered by a steel net with square holes of 15 cm by 15 cm) and were each fitted with a pull-up bar and a set of parallel bars. Some of them also had other sporting equipment, such as a ball and skipping ropes. Each of the yards was also fitted with a canopy for protection from inclement weather, but their layout allowed for no horizontal view.

19. The applicant submitted that most of his outdoor periods had been spent in a 6 m by 4 m yard that had been equipped with a pull-up bar and parallel bars, and that there had been periods lasting for as long as several weeks during which he had not seen the sun. In response, the Government acknowledged that, owing to the orientation of the yard in question and the timing of the applicant's outdoor periods, there may have been instances when the sun had not been visible from it.

20. In view of the fact that the applicant had been detained in order to prevent him from interfering with the course of justice (and, in part, also in view of the COVID-19 health and safety rules), the applicant spent these outside periods alone.

21. At his own request, the applicant saw a chaplain on average once a week. In addition, on five occasions, he had the opportunity and made use of it to go to gym (between 17 February and 5 March 2021).

22. After several earlier requests lodged by the applicant had been dismissed, on 14 December 2020 and 10 March 2021 the prosecuting authority granted him permission to telephone, without the presence of a third person, his spouse and mother, and his two children. The applicant was subsequently allowed to (and did) telephone these persons regularly.

23. The applicant received "closed" in-person visits by his spouse on 25 September and 23 October 2020. Requests lodged by him for permission to receive other visits were dismissed by the prosecuting authority.

24. In addition, the applicant received "virtual visits" via the Internet from his family lasting one hour on 20 November 2020 and lasting twenty minutes on 18 December 2020, 22 January, 12 February and 12 and 26 March 2021.

25. Having been reviewed by the prosecuting authority, the applicant's private correspondence took on average seventeen to nineteen days, following dispatch, to reach its recipient.

26. The applicant also referred to other aspects of the conditions of his detention, such as the presence or absence of daylight in his cell, the availability or absence of hot water for personal hygiene and other purposes, the temperature in his cell in the winter months, the amount and nutritional value of prison food, and what he described as systematic interference with his sleep by the conducting of hourly checks on inmates at night.

III. APPLICANT'S STATEMENTS AS REGARDS THE CONDITIONS OF HIS DETENION AND REMEDIES USED IN THAT REGARD

27. On 5 January 2021 the applicant's lawyer wrote to the Prosecutor General to request a personal meeting with him, explaining that he was acting pursuant to an "initiative of practicing lawyers for the support of the rule of law" (*Iniciatíva advokátov za právny štát*) and that this initiative had been prompted by the applicant's detention. The letter may be understood as suggesting that his detention was unjustified, that there had been delays in the investigation into the applicant's case and that it had been pursued in an arbitrary fashion. Moreover, the letter professed that "the conditions of persons facing charges detained with a view to preventing them from interfering with the course of justice [were] worse than those of persons detained for the purpose of serving a prison sentence under the strictest regime – [a situation that was] untenable in the long run and [called] for a change".

28. In so far as the letter from the applicant's lawyer could be understood to include a complaint about the detention conditions of those remanded in custody with a view to preventing them from interfering with the course of justice, it was forwarded to the respective department within the Public Prosecution Service ("the PPS") responsible for ensuring adherence to lawfulness in places of detention. An extraordinary inspection was then carried out on 12 February 2021 to establish whether lawfulness had been adhered to in BBP during the period from 17 December 2020 until the date of that inspection.

29. The inspection was carried out by two prosecutors (attached respectively to the district office and the regional office of the PPS in Banská Bystrica). Its findings were noted in a record drawn up by the district prosecutor in which it was observed, *inter alia*, that in the period under review no detainee had lodged a request for an interview with the PPS. In response to the letter of 5 January 2021 (see paragraph 27 above), the inspection entailed an individual interview with the applicant on 12 February 2021 in which he stated that "as regards the conditions of his detention in BBP as such for the purpose of preventing him from interfering with the course of justice, the applicant had no reservations, assessed very positively the attitude of the members of the [PCGS], and identified as the only negative [factor] the fact that his being detained had impacted not only him but also the members of his family".

30. A further record was drawn up by the regional prosecutor on 22 February 2021 for the information of the Prosecutor General; it specifically concerned the applicant's situation. In addition to yielding findings identical to those laid out above, the report noted that the documentation reviewed revealed that no reproach had ever been made as regards the applicant's behaviour. He fulfilled his duties to the satisfaction of

prison staff, spent his free time engaged in correspondence, reading and watching television, and maintained regular contact with his family and a narrow circle of acquaintances via correspondence and the receipt of parcels and through "video visits". In his interview with the prosecutors, the applicant had come across as being calm and well-balanced. He submitted that in so far as his outdoor periods had been spent in the mid-sized yard measuring 15 square metres, he was content since he could well make use of the fitness equipment there. The applicant's objections were understood to concern the length of his detention and the attendant separation from his family, which did not constitute matters concerning the conditions of his detention but rather fell within the purview of the branch of the PPS responsible for his prosecution. Given that the interview with the applicant revealed no facts indicative of any irregularity in the conditions in which he was detained, there was no need to take any corrective measures.

31. Nevertheless, the regional prosecutor noted that persons detained for the purpose of preventing them from interfering with the course of justice often complained that they had the right to spend outdoors no more than one hour per day – the same entitlement accorded to prisoners serving life sentences. Moreover, the yards used for such outdoor periods were set up in such a way as to not afford a view in the horizontal direction (unrestricted by surrounding walls); that arrangement had been repeatedly criticised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT").

32. Meanwhile, on 29 January 2021, the applicant was interviewed by a member of the PCGS as to how he was coping with his detention at a psychological level. The record of this interview notes that the applicant said that he felt well and that he was content with the conditions of his detention in BBP, adding jokingly that he would welcome more space in his cell. Overall, he came across as calm and well balanced.

33. The record of a similar interview, held on 12 April 2021, indicates that the applicant had raised no issues and had stated that he had no health problems.

34. On 14 July 2021 the applicant lodged a complaint with the Constitutional Court against his investigators and the managing authorities of BBP; he asserted, *inter alia*, that the conditions of his detention contravened the provisions of Articles 3 and 8 of the Convention. In so far as can be seen from the summary of the complaint in the Constitutional Court's ensuing decision (see the following paragraph), in its relevant part the applicant challenged in particular the extent of his confinement to his cell, the extent and conditions of his daily outdoor periods, the lack of any other out-of-cell activities available to him, the amount of natural lighting in his cell, delays in the delivery of his correspondence, the fact that he had only been allowed to telephone his family and to receive visits from them after his detention had already lasted a significantly long time, the fact that that he had only been

allowed two in-person visits (with all the others having been "virtual visits"), and the interruption of his sleep by the regular nocturnal checks conducted on inmates.

35. On 30 September 2021 the Constitutional Court rejected the complaint as inadmissible, essentially on the grounds of non-exhaustion of ordinary remedies. In that regard, it noted that the applicant had failed to pursue his claims by way of lodging a complaint under section 65da of the Prison and Court Guard Service Act (Law no. 4/2001 Coll, as amended – "the PCGSA") and by seeking a remedy from the PPS under the Public Prosecution Service Act (section 18 of Law no. 153/2001 Coll., as amended – "the PPS Act") and the Detention Act. This was without prejudice to his standing to claim compensation in civil proceedings in respect of any pecuniary and non-pecuniary damage.

IV. APPLICANT'S HEALTH CONDITION AFTER HIS RELEASE

36. The applicant submitted that, prior to his detention, he had been an active sportsman and had suffered from no health issues. After his detention, and as a consequence of the conditions thereof – in particular, the lack of opportunity to engage in physical movement, poor food, a lack of direct daylight and the disruption to his sleep – his health had deteriorated in that he had developed pain in the back, knees and tendons, varicose veins, osteoarthritis, slipped vertebrae, deterioration in eyesight, glaucoma and insomnia.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CODE OF CRIMINAL PROCEDURE

37. Under Article 210, a person facing charges (*obvinený*) has standing to request a review of the actions taken at the pre-trial stage of the proceedings by the police and the PPS. Actions taken by the police are to be reviewed by the PPS, and actions taken by the PPS are to be reviewed by a higher-level PPS body.

38. It has been recognised by the Constitutional Court (for example, in a decision of 11 May 2021 that it gave in respect of an unrelated case – namely no. I. US 205/2021) that Article 210 of the CCP provided a person who had been remanded in custody with a view to preventing him or her from interfering with the course of justice with a remedy in the event that a prosecuting authority exercised its power to review such a person's correspondence. In addition, the Constitutional Court noted that if a review carried out under Article 210 of the CCP were to reveal any unlawfulness on the part of the prosecuting authority, this would allow a compensation claim

to be lodged under the State Liability Act (Law no. 514/2003 Coll. as amended – "the SL Act").

39. Similar findings were made in a judgment of 10 February 2022 in an unrelated case no. III. US 456/2021, which concerned a complaint of an inmate detained on remand, *inter alia*, for the purposes of preventing him from interfering with the course of justice, concerning restrictions on his contact with close persons imposed by the prosecuting authority. The Constitutional Court acknowledged established practice of the ordinary courts as well as its own to the effect that, the remedy to be exhausted in such circumstances was that before the PPS under Article 210 of the CCP, adding that this remedy met all the requirements for an effective remedy under Article 13 of the Convention.

40. In a constitutional judgement of 8 July 2022 in an unrelated case (no. I. US 120/22), the Constitutional Court dealt with the refusal of a prosecuting authority to allow a person facing criminal charges – who had been remanded in custody with a view to preventing him from interfering with the course of justice – to make private telephone calls (including to his mother). The PPS subsequently acknowledged that that person's complaint in respect of that refusal was to be reviewed under Article 210 of the CCP and that there had been an interference with that person's right to respect for his private and family life. However, as that person had meanwhile been released, no remedy could be afforded. The admissible part of his complaint to the Constitutional Court was aimed against the PPS and relied on his rights under Article 8 of the Convention. In its observations in reply, the PPS acknowledged that the applicable statutory rules were imperfect, and that that was going to be addressed by a legislative amendment that was under preparation (see paragraph 52 below). The Constitutional Court, for its part, noted that the core of the problem was the proportionality of the contested measure and concurred with the PPS in that, in view of the complainant's release, there was no room for allowing his complaint.

II. PUBLIC PROSECUTION SERVICE ACT

41. The Act governs the status and jurisdiction of the PPS and its members (section 1). The PPS has a duty, *inter alia*, to protect the rights and legally recognised interests of individuals (section 3(1)) by exercising oversight over respect for lawfulness in places where persons are kept in deprivation of their personal liberty (section 4(1)(b)). In discharging this duty in relation to institutions where persons are detained on remand, the PPS must see to it that Acts of Parliament and other statutes are respected (section 18(1)(a)). For that purpose, the PPS is duty-bound to conduct inspections (section 18(3)(a)) and to quash or suspend the effects of any decision if it is contrary to an Act of Parliament or another statute (section 18(3)(c)).

42. Details concerning the exercise of oversight over respect for lawfulness in places where persons are detained on remand are set out in an Order of the Prosecutor General, issued on 12 May 2010 under the powers entrusted in him by section 10(1) of the PPS Act.

43. The PPS exercises its jurisdiction under the Act when an application is lodged seeking that it do so, which entails the taking of such measures as are necessary in order to rectify any established violations, provided that the taking of such measures does not fall within the exclusive jurisdiction of other bodies under another Act of Parliament (section 31(1), (2) and (3)). A person lodging such an application is entitled to seek a review by a higher-level body within the PPS of the lawfulness of how his or her application has been handled if that person is dissatisfied therewith (section 36(1)). Any third or further request is only to be examined if it is based on new facts or if a higher prosecutor so decides (section 36(2)).

44. In handling such an application under section 31, the PPS is duty-bound to examine all the circumstances that are decisive for an assessment of whether an Act of Parliament or another statute has been violated and whether any measures within the jurisdiction of the PPS are to be taken (section 36a(1)). If the application is well-founded, the PPS shall take such measures (section 36a(2)).

III. PRISON AND COURT GUARD SERVICE ACT

45. Under the Act, persons detained on remand are entitled to make a complaint aimed at ensuring the protection of those of their rights or legally-recognised interests that they consider to have been violated by actions or omissions on the part of the PCGS, provided that they identify specific shortcomings the rectification of which is within the purview of the PCGS – especially any violation of the law or internal regulations of the PCGS (section 65da).

46. The complaint is to be dealt with either by the department within the PCGS responsible for the impugned action or a higher-level body within the PCGS under rules specified in section 65db. If the examination of the complaint reveals a violation of the inmate's rights or legally recognised interests, the complaint is to be declared well-founded (section 65dj(1)). A record is to be made of the examination, which must specify, in the case of well-founded complaints, any measures to be taken for the rectification of the shortcomings established and their cause (section 65dj(2)(g)).

47. Within fifteen days of the serving of the record of the examination on him or her, the complainant is entitled to seek a review of how his or her complaint has been handled. The review shall be carried out at first instance by the body that handled the original complaint and (in the event that the complainant's claims are not fully satisfied) at second instance by a higher-level body within the PCGS. Such a review is subject to similar rules

as the examination of the original complaint, but its outcome cannot be subject to a further review (section 65dk).

IV. THE DETENTION ACT AND THE DETENTION ORDER

48. The Act governs the procedures concerning how persons are held in detention on remand, their rights and duties, and the oversight to be exercised over how they are held in such detention (section 1). Under its section 7(2)(c), remand prisoners detained with a view to preventing them from interfering with the course of justice are to be placed in a cell separately from other remand prisoners.

49. Conditions of detention on remand specified in the Act include the stipulation that a cell must comply with requirements concerning daylight and artificial light, as well as concerning heating (section 12(5)). Moreover, remand prisoners are entitled to eight hours of uninterrupted sleep in bed and – subject to the internal rules of the prison in question – to rest in their beds even at times other than during the night. During the night, the lights in their cells are to be turned off. A short period of illumination for the purposes of conducting an inspection is permitted (section 15). In addition, remand prisoners are entitled to shower in warm water at least two times a week or, if justified by circumstances, as necessary (section 16(7) of the Act, in conjunction with section 21(1) of the Order).

50. Pursuant to section 13 of the Act, food is served three times a day according to nutritional recommendations. Section 14 of the Order provides further that food is to be prepared in accordance with approved menus, procedures and financial limits (subsection 2), and in the volume recommended by the Ministry of Health (subsection 3). Hygiene and quality of food is overseen by a medical doctor or another medical professional (subsection 1).

51. Section 16a of the Act provides that every detainee is entitled to an outdoor period in a designated area of at least one hour every day. The wording in force at the material time specified that, in justified cases, such periods might be limited or cancelled. In 2022 an amendment was adopted (Law no. 339/2022 Coll.) that added the provision that in justified cases the length of such periods might also be extended.

52. As regards the right of remand prisoners to make and receive telephone calls, section 21 of the Act provides that inmates remanded in custody with a view to preventing them from interfering with the course of justice may make telephone calls only upon the authorisation of the relevant prosecuting authority (subsection 1, as applicable at the relevant time; subsection 3 at present). The 2022 amendment referred to in the preceding paragraph provided that, in the case of a telephone call to a “close person” (*blízka osoba*), such authorisation could be denied only if that close person was being prosecuted in respect of the same matter as the inmate or if it had

been objectively established that that person had engaged any collusive activity in the prosecution of that inmate (the new subsection 3).

53. To assert and safeguard their rights and legally recognised interests under the Act, detainees are entitled to address demands, complaints and applications both to bodies of Slovakia with authority to deal with applications or complaints in the area of human-rights protection and to international bodies and institutions with authority to deal with such matters under international treaties binding upon Slovakia (section 29(1) of the Act).

54. Section 29(2) of the Act provides that, upon a detainee's request, he or she is to be granted an interview with the governor or another person appointed for that purpose by the governor, with a prosecutor exercising the powers of the PPS under section 59, or with institutions empowered to inspect how persons are held in detention under section 60. Further details are set out in the Detention Order, under which an interview with the governor of the prison in question is to take place within one week – or, in urgent cases, immediately (Article 39 § 1 of the Detention Order), and the director is to examine without delay all information concerning any violation of the rights of the detainee in question and to take measures preventing such a violation (Article 39 § 2 of the Detention Order).

55. Inmates detained on remand may be detained under an ordinary regime (*štandardný režim*) or a mitigated regime (*zmiernený režim*) (section 35 of the Act). The ordinary regime applies to detainees who must not be placed under the mitigated regime (section 36 of the Act); this includes inmates detained with a view to preventing them from interfering with the course of justice (Article 37 § 3 (a) of the Order). The mitigated regime requires that premises must be provided for educational, spare-time and sporting activities in which inmates are entitled to move around freely at designated times and to socialise with other inmates (section 37(1) and (2)).

56. Under section 59 of the Act, responsibility for overseeing the observance of respect for the lawfulness in detention facilities is entrusted to the PPS, as also provided by section 18 of the PPS Act (see paragraph 41 above).

57. Under section 60(1) of the Act, the following institutions are also empowered to inspect the conditions under which persons are held in detention: (a) Parliament, (b) the Minister of Justice (in person and through his or her deputies), (c) the Director General of the PCGS, and (d) such other bodies as the CPT. This is, however, without prejudice to the duty of the PCGS to carry out its own internal oversight (section 60(2)).

V. THE CONSTITUTIONAL COURT'S PRACTICE REGARDING COMPLAINTS CONCERNING PRISON CONDITIONS

58. In case no. IV. US 427/21 the complainant challenged, *inter alia*, a number of aspects of the conditions of his detention by the police and his

subsequent detention on remand. In a decision of 7 September 2021 the Constitutional Court declared the complaint inadmissible – essentially on account of his failure to exhaust ordinary remedies. The court noted the provisions of sections 29(2), 59 and 60 of the Detention Act, section 39 of the Detention Order and sections 31(2) and 36(1) of the PPS Act, in particular in so far as they provided the applicant with a remedy before the PPS. According to the Constitutional Court's well-established case-law, the exhaustion of that remedy was necessary in order to obtain standing to complain of such matters before the Constitutional Court. In so far as the complainant had addressed any complaints to the PPS which were still pending, his complaints to the Constitutional Court were premature. Moreover, should the alleged violations of his rights have caused the complainant any damage, it was open to him to claim compensation under the SL Act.

59. In a case that led to the lodging of a complaint no. III. US 242/2023, a convicted inmate complained to the prison administration of a number of aspects of his detention, including the fact that even though he was entitled to receive open visits, these were nevertheless taking place in a room in which visitors were separated from detainees by a partition wall (in which a physical window was open to enable communication between both sides). Upon receiving his complaints, the PPS assessed the situation and concluded that it complied with the applicable laws and standards – including as interpreted by the most recent report issued by the CPT on its 2018 visit to Slovakia. As further applications lodged by the applicant with higher-level bodies within the PPS were to no avail, he turned to the Constitutional Court, alleging a violation of his rights under, *inter alia*, Article 8 of the Convention.

60. In a judgment of 31 October 2023 the Constitutional Court found a violation of the complainant's Article 8 rights owing to the fact that, in its response to the applicant's complaints, the PPS had focused on the wording of the applicable national legislation, but had failed to draw such appropriate conclusions from the CPT report and the Court's jurisprudence as were relevant to the interpretation of the national rules. Even though it was the prison administration that was responsible for the unlawful situation with regard to the applicant's open visits, it remained the responsibility of the PPS to ensure respect for the rules in question. The matter was accordingly remitted to the PPS and the complainant was awarded 6,000 euros (EUR) in damages.

61. In case no. I. US 419/23, an inmate serving a prison sentence unsuccessfully complained before the PPS that his consultations with his lawyers in his prison would routinely take place in a room equipped with a CCTV monitoring device. In a judgment of 9 November 2023 the Constitutional Court found that the PPS had violated several of his fundamental rights (including his right to respect for his private life under Article 8 of the Convention) by failing to give adequate reasons for dismissing his complaints and to examine the proportionality of the measure

complained of. The court held that, if the aim of the contested measure could have been achieved by less invasive means, then the measure in question had constituted a disproportionate interference with his rights. The PPS was accordingly ordered to re-examine the matter, and the complainant was awarded EUR 2,000 in damages.

VI. CPT REPORT ON ITS VISIT TO SLOVAKIA FROM 19-28 MARCH 2018, 19 DECEMBER 2018, CPT/INF (2019) 20

62. The relevant part of the report provides:

"46. ... Most days, the prisoners concerned spent about 22 hours or more locked up alone in their cells. Such a state of affairs is not acceptable. ... The CPT must stress once again that ... all prisoners [should], from the outset of their imprisonment, be subject only to the restrictions that are necessary for their safe and orderly confinement.

...

60. ... The CPT recommends that steps be taken at [BBP] to ensure that:

- the minimum standard of 4m² of living space per person in multiple-occupancy cells (not counting the area taken up by in-cell sanitary annexes) is fully respected in practice;

...

62. The outdoor yards used [at BBP] were located on the rooftop surrounded by high concrete walls which obstructed any outside view and lacked sports equipment. Moreover, some of the yards were too small for genuine physical exertion (measuring 9.5 and 14.5 m²). In this context, the CPT is pleased to note that the management was planning to use the larger inner yard located on the ground floor once again, at least for some categories of prisoner.

The CPT recommends that the Slovak authorities ensure that in all prisons inmates can have daily access to outdoor facilities large enough to enable them to physically exert themselves. Further, all such outdoor facilities should be equipped with at least some basic sports equipment.

Further, the Committee invites the Slovak authorities to explore the possibility to enable all prisoners at [BBP] to have at least occasional access to an outdoor yard which allows a horizontal view.

...

63. As regards remand prisoners ... it is a matter of serious concern that the majority of remand prisoners under the standard regime were locked up in their cells for about 23 hours on most days in enforced idleness with no other activity than one hour of outdoor exercise, reading books, watching TV and access to a gym once a week. In this connection, the CPT recognises that the provision of organised activities in remand prisons, where there is likely to be a high turnover of inmates and in some cases a potential risk of collusion, poses particular challenges. However, it is not acceptable to leave prisoners to their own devices for months and even years on end.

64. While acknowledging the efforts made by the management of [BBP] to improve the regime for inmates, the CPT recommends that the Slovak authorities take resolute action to provide all prisoners at [BBP] ... with a comprehensive programme of out-of-cell activities. The aim should be to ensure that all prisoners (including those on

remand) spend a reasonable part of the day (i.e. eight hours or more) outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association. The longer the period of imprisonment, the more developed the regime offered to prisoners should be.

..."

THE LAW

I. PRELIMINARY OBJECTIONS

A. The parties' submissions

63. Relying on the Constitutional Court's decision in respect of the applicant's complaint in the present case (see paragraph 35 above), the Government objected that he had failed to assert his rights before the domestic authorities (in particular, the PPS – and, if necessary, before the Constitutional Court), in line with the applicable statutory provisions. Moreover, he had failed to pursue his rights before the ordinary courts by way of bringing an action for the protection of his personal integrity and an anti-discrimination action. In addition, as regards his assertion that he had sustained damage to his health, it had been open to him to claim damages before the ordinary courts.

64. In so far as the applicant – relying on the position taken by the PPS in a different case (see the following paragraph) – opposed the above-noted arguments, in the Government's view he had misconceived the context of that other case. Moreover, the applicant had advanced no complaints concerning the conditions of his detention, despite having had various opportunities to do so at the domestic level – including during interviews with members of the PCGS and the PPS on 29 January and 12 February 2021 (see paragraphs 29-32 above).

65. In reply, the applicant argued that the alleged violations had stemmed directly from regulations provided by statute; therefore, no domestic remedy had been available in respect of them. The basis for this premise had been recognised by the regional prosecutor, who – in his report of 22 February 2021 – had noted the CPT's criticism of the length of time that prison inmates were confined each day to their cells and the conditions in which their outdoor periods were spent (see paragraph 31 above). Moreover, in an unrelated case before the Constitutional Court, the PPS had recognised that the statutory regulation of telecommunication of inmates was imperfect (see paragraph 40 above). As regards any alleged damage caused to his health, the applicant responded that that did not constitute the primary grounds for his application but served merely to complete the overall picture.

66. Concerning his statements in the interview with the PCGS on 29 January 2021, the applicant argued that they had been prompted by (and had responded to) external events unrelated directly to the conditions of his

detention and that the Government had failed to recognise from his ironic tone that he had meant the opposite of what he had said. Similarly, the true meaning of the submissions that he had made to the PPS during the extraordinary inspection conducted by the latter on 12 February 2021 had been determined by the questions to which those submissions had constituted a response; those questions had been focused on the presence or absence of any ill-treatment on the part of inmates or members of the PCGS. In his submission to the Court, the applicant explained that in his exchange with the PPS, he had also complained of a lack of out-of-cell activities, only to be told that this was conform to the applicable laws. At the time of that interview, he had already been allowed telephone contact with his family; thus the most pressing of his issues had already been resolved.

B. The Court's assessment

67. The Court notes above all that, as explained by the applicant himself, his submission concerning the repercussions of the conditions of his detention for his health is not intended to form a separate Convention complaint. Accordingly, the Government's preliminary objections do not need to be assessed in so far as they concern this particular aspect.

1. Case-law principles

68. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to first use the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their actions before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy under the domestic system available in respect of the alleged breach (whether or not the provisions of the Convention are incorporated into national law). In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights. Under Article 35 § 1, normal recourse should be had by an applicant to remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness, there being no obligation to have recourse to remedies that are inadequate or ineffective (see *Maslák v. Slovakia (no. 2)*, no. 38321/17, § 113, 31 March 2022, with further references).

69. The Court also reiterates that the scope of the obligation under Article 13 depends on the nature of the aggrieved person's complaint under

the Convention. With respect to complaints under Article 3 of inhuman or degrading conditions of detention, two types of relief are possible: improvement in these conditions and compensation for any damage sustained as a result of them. Therefore, for a person held in such conditions, a remedy capable of rapidly bringing the ongoing violation to an end is of the greatest value and, indeed, indispensable in view of the special importance attached to the right under Article 3. However, once the impugned situation has come to an end because the person has been released or placed in conditions that meet the requirements of Article 3, he or she should have an enforceable right to compensation for any breach that has already taken place. In other words, in this domain preventive and compensatory remedies have to be complementary to be considered effective (ibid., 114, with a further reference).

70. As regards Slovakia, since 2002 lodging an individual complaint with the Constitutional Court under Article 127 of the Constitution has been viewed by the Court as constituting a remedy that, in general, must be exhausted for the purposes of satisfying the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention (see *Hoholm v. Slovakia*, no. 35632/13, § 64, 13 January 2015, with further references). It is in principle directly available to any party concerned, subject to the requirement to exhaust ordinary remedies (see, for example, *Mihal v. Slovakia*, no. 22006/07, § 29, 5 July 2011).

71. Where the alleged violation is closely linked to the applicable law itself, two situations may be distinguished.

To the extent that any individual decisions are at stake that involved an element of interpretation or application of the applicable law or the exercise of any discretionary power, a complaint under Article 127 of the Constitution has been found to constitute a remedy that must be exhausted under the rule of exhaustion of domestic remedies laid down in Article 35 § 1 of the Convention (see *Orange Slovensk*o, *a.s. v. Slovakia* (dec.), no. 43983/02, 24 October 2006; also contrast *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, §§ 85-86, ECHR 2007-XIII (extracts), as well as, for illustrative purposes, *Július Pereszlényi-Servis TV-Video v. Slovakia* (dec.) [Committee], no. 25175/15, § 59, 25 May 2021).

On the other hand, in so far as the alleged violation resulted directly from how the law governed the matter in question, the applicants were found not to have any remedy before the Constitutional Court – particularly in view of its established case-law to the effect that private parties had no standing to initiate a review of the constitutionality of legislation (see *L.G.R. and A.P.R. v. Slovakia* (dec.), no. 1349/12, § 55, 13 May 2014, with further references).

2. Application of the case-law principles in the present case

(a) General considerations

72. In matters concerning conditions of detention on remand, there is a set of rules applicable to all inmates and an additional set of rules applicable to inmates detained with a view to preventing them from interfering with the course of justice.

73. Both sets of rules are embodied mainly in the Detention Act, and also in secondary legislation enacted within its purview. The general rules are implemented by the PCGS, with the decisions and actions taken by the PCGS being reviewable by the PPS, as provided specifically in sections 59 of the Detention Act and 18 of the PPS Act (see paragraphs 41 and 56 above). Additional rules – such as those concerning the need for correspondence to be monitored and the receiving of visits and the making of telephone calls to be authorised – are implemented by the prosecuting authority (see paragraphs 14 and 52 above), the decisions and actions of which are again reviewable by the PPS under Article 210 of the CCP (see paragraphs 37 to 39 above).

74. As to the remedy before the PPS, in *Maslák (no. 2)* (cited above, §§ 117, 128 and 167) the Court noted that it was preventive in nature and that it had no compensatory potential. Even though that case concerned conditions of detention for the purpose of service of a prison sentence, as opposed to detention on remand as is at stake in the present case, the essential features of the remedial mechanism available before the PPS for safeguarding the rights and freedoms of prisoners in both regimes are similar (see paragraphs 41-44, 53 and 56 above and *Maslák (no. 2)*, cited above, §§ 83-86, 90 and 92).

75. The decisions and actions of the PPS taken in relation to rights and freedoms of prisoners are ultimately reviewable by the Constitutional Court under Article 127 of the Constitution, which has the power under that provision to provide redress both of preventive and compensatory nature (see *Maslák (no. 2)*, cited above, § 75 and the constitutional judgments noted at paragraph 78 below).

76. It is true that in its examination in *Maslák (no. 2*) (cited above, §§ 167, 168 and 175)), which was linked to Mr Maslák's service of a part of his prison sentence under a high-security regime, the Court assessed critically the way how, on the specific facts of that case, the PPS and the Constitutional Court had made use of their jurisdiction in the matter.

77. However, neither the Court's findings in *Maslák* (in that regard, for illustrative purposes see also *Papaj v. Slovakia* (dec.) [Committee], nos. 41510/16 and 81651/17, §§ 10-12, 18 October 2022) nor any other factor known to the Court at the present time support the conclusion that the remedial mechanism for safeguarding the rights and freedoms of remand prisoners to be pursued before the PPS and, if necessary, before the Constitutional Court should in general be considered to fall short of the

requirements of an effective remedy for the purposes of Article 35 § 1 of the Convention.

78. In fact, the recent examples of the functioning of this mechanism in practice may be seen as demonstrating its effectiveness, in that the Constitutional Court ordered the PPS to ensure respect for inmates' rights with regard to the format of visits and the practical arrangements for consultations with one's lawyers, and awarded them damages (see paragraphs 60 and 61 above). Moreover, it follows from its decisions that any finding of a violation of the rights or freedoms of the person concerned may serve as a basis for a compensation claim under the SL Act (see paragraphs 38 and 58 above).

79. As regards the functioning of the existing remedial mechanism in relation to the additional set of rules applicable to inmates detained with a view to preventing them from interfering with the course of justice, the Court notes the judgment of the Constitutional Court of 10 February 2022 in an unrelated case (see paragraph 39 above), in which it held that the remedy before the PPS under Article 210 was available in the given type of a situation as a matter of established practice and that it was compatible with the requirements of Article 13 of the Convention.

80. Moreover, and in any event, any involvement in matters such as those at stake in the present case by the PPS under Article 210 of the CCP would be further challengeable before the Constitutional Court under Article 127 of the Constitution. Such was indeed the position in another unrelated case before the Constitutional Court that resulted in its judgment of 8 July 2022. In that case, the Constitutional Court ultimately declined to afford protection to an inmate's rights on the grounds that he had meanwhile been released (see paragraph 40 above). However, there is no indication that this judgment reflects any established practice and, more importantly, that it demonstrates any limits on the efficiency of the said mechanism with regard to detention on remand that (as in the case of Mr Ribár) is or was ongoing at the relevant time.

(b) Assessment of the present case

81. In the present case, it is undisputed that, with regard to the general rules on detention on remand, the applicant did not avail himself of the possibility to assert his rights before the PPS and that this was why his constitutional complaint was rejected (see paragraphs 34 and 35 above).

82. In so far as the applicant argues that the alleged violations stemmed directly from statute, the Court notes that in respect of various material conditions of the applicant's detention, such as exposure to daylight in a cell, the availability of hot water in a cell, the temperature of a cell, the quality and quantity of prison food and interference with sleep, the respective legal provisions are implemented by the PCGS. It has not been alleged or otherwise established that, in their implementation, there is no room for interpretation

or any discretion on the part of the PCGS (see paragraph 71 above). The implementation of such rules by the PCGS has been challengeable before the PPS as a matter of law and well-established practice and the effectiveness of such a challenge, if necessary, ultimately before the Constitutional Court, has clearly been demonstrated by recent relevant jurisprudence (see paragraphs 58-61 above). By not having done so, the applicant failed to exhaust the available domestic remedies, as required under Article 35 § 1 of the Convention.

83. The situation is similar with regard to the implementation of the set of additional rules pertaining to the applicant's detention with a view to preventing him from interfering with the course of justice. More specifically, in view of the particular nature of his detention, the applicant's ability to make telephone calls and receive visits primarily depended on his receiving authorisation to do so from the prosecuting authority. Until a late stage of the period of his detention, that authorisation was denied. The applicant may have complained about that before the PPS (again with no success), but there is no indication that he subsequently did so before the Constitutional Court. In that regard too, he failed to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. By contrast, even though the applicant in *Laduna v. Slovakia* (no. 31827/02, 13 December 2011) was detained under a similar regime and complained of similar matters with a different conclusion, the application of the set of additional rules was not at stake in his case.

84. The applicant's remaining complaints essentially concern the amount of time that he spent confined to his cell, the amount of time afforded to him for outdoor periods, the conditions of such outdoor periods (such as the size of the yard and whether that yard afforded a horizontal view) and the lack of any in-cell or other out-of-cell activities, which correlate with the matter of the size of his cell (see *Muršić v. Croatia* [GC], no. 7334/13, § 103, 20 October 2016). In that regard, the Court is aware that under the respective provisions of the Detention Act the extent of inmates' outdoor periods is defined by determining their minimum duration and that, accordingly, a longer duration is not excluded (see paragraph 51 above). However, as demonstrated by the CPT reports (see paragraph 63 of the report cited in paragraph 62 above), the reality of the situation appears to be that outdoor exercise periods of a minimal duration are provided as a matter of routine. The same applies to the absence of any other out-of-cell activities. Moreover, the Court notes that, without rearranging the system as a whole, a general application of the given statutory rule in a manner allowing for outdoor periods of a longer duration than the defined minimum to all inmates (or their taking place in the larger of the available yards or in differently arranged yards) would by the nature of things conflict with the system's temporal and spatial limits.

85. Given these circumstances, the Court accepts that, as regards the amount of time of confinement to cell and that for outdoor periods, the conditions in which such outdoor periods were spent, and the lack of in-cell and other out-of-cell activities, the statutory rules were in practice applied in a way that allowed for no significant discretion. As a result, the alleged violation stemmed directly from statute and could not have been effectively challenged at the domestic level (see paragraph 71 *in fine* above). This conclusion by definition extends to any remedies that might be sought before the ordinary courts.

3. Conclusion

86. The Court dismisses the Government's preliminary objections regarding the amount of time for which the applicant was confined to cell, the amount of time allowed for his outdoor periods, the conditions in which such outdoor periods were spent, the lack of any possibility for him to engage in any in-cell or other out-of-cell activities and the associated matter of the size of his cell (see paragraph 85 above).

87. As regards the remaining complaints, concerning (i) the other of the material conditions of the applicant's detention and (ii) his telephone contact with and visits from family members, the Government's objection based on the remedial mechanism to be pursued before the PPS and the Constitutional Court is sustained (see paragraphs 82-83 above).

Accordingly, the complaints in question must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

88. The above-noted conclusions render it unnecessary to examine the Government's preliminary objections based on other remedies.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

89. Relying on Article 3 of the Convention, the applicant complained of the size of his cell and the amount of time for which he had been confined to it, the amount of time allowed for his outdoor periods, the conditions in which such outdoor periods had been spent and the lack of any possibility for him to engage in any in-cell or other out-of-cell activities.

90. The relevant part of Article 3 of the Convention reads as follows:

> "No one shall be subjected to ... inhuman or degrading treatment or punishment."

A. Admissibility

91. The Court notes that the 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. The parties' submissions

92. The applicant contested (i) the amount of time that he had spent each day confined to his cell, and (ii) the absence of any in-cell activities (other than reading, writing and watching television) and of any out-of-cell activities (other than outdoor periods of insufficient scope and in inadequate conditions). He pointed out that, as recognised by the Constitutional Court (see paragraphs 9 et seq. above), his detention had lacked relevant and sufficient grounds and that there had been a gross error in the legal classification of one of the offences for which he had been prosecuted. In his view, this disclosed a pattern of arbitrariness that correlated with the conditions of his detention.

93. The Government pointed to the size and layout of the applicant's cell, contending that it had been possible for him to move around in it, and adding that he had been placed in it alone in part on objective grounds and in part at his own request. Both the length of the time during which he had been confined to his cell and that available for outdoor periods had complied with the applicable rules. In the applicant's own submissions to the Court and the PPS on 12 February 2021, he had stated that most of his outdoor periods had been spent in a yard of about 25 square metres in surface and that in so far as they had taken place in the yard measuring 15 square metres he had been content (see paragraphs 19 and 30 above). In his cell, the applicant had been free and had in fact made use of the opportunity to exercise, read, write, and watch his own television. As regards reading material from the prison library, none of his requests for a book had ever been refused. As regards any other activities, it had been possible for the applicant to ask that he be assigned work, but there was no indication that he had ever made use of it.

2. The Court's assessment

(a) Case-law principles

94. In its judgement in the case of *Muršić* (cited above, §§ 96-101, with further references), the Court summarised the applicable general principles as follows:

- Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour.

- Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case – such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.

- Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3. Indeed, the prohibition of torture and inhuman or degrading treatment or punishment is a value of civilisation closely bound up with respect for human dignity.

- In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions that are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured.

- Even the absence of an intention to humiliate or debase a detainee by placing him or her in poor conditions, while being a factor to be taken into account, does not conclusively rule out a finding of a violation of Article 3 of the Convention. Indeed, it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties.

- When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant. The length of the period during which a person is detained in the particular conditions also has to be considered.

(b) Application of the case-law principles in the present case

95. The applicant in the present case was detained on remand on grounds that initially included that under Article 71 § 1 (b) of the CCP, to prevent him from interfering with the course of justice. In view of it being for that purpose, it took place under an ordinary regime (as opposed to the mitigated regime) under sections 35-37 of the Detention Act (see paragraphs 7 and 55 above).

96. The core of the applicant's complaint relates to the amount of time that he was confined to his cell while being held under the said regime, in correlation with any opportunities for in-cell or out-of-cell activities. On that point, having regard to the purpose served by that type of detention (see, for example, paragraph 48 above), there were limitations on the applicant' out-of-cell movement and contact with other inmates (see paragraph 55 above). As a practical consequence, the only out-of-cell activity allowed to the applicant was a daily outdoor period and an approximately weekly opportunity to see the prison chaplain. In other words, no other out-of-cell

activity was available to him (the above-mentioned opportunity to use a gym on six occasions within a single period of about one month overall playing no significant role).

97. The facts alleged by the applicant are not contested by the Government and consonant with the findings in the CPT's report on its 2018 visit to Slovakia. The latter predates the applicant's detention which took place from 28 October 2019 to 14 May 2021. However, the applicant's description of the conditions in which he was detained on remand at BBP corresponds largely to the findings of the report. Recognising that, where there was a potential risk of collusion, the provision of organised activities in remand prisons posed particular challenges, the CPT nevertheless found it unacceptable to leave prisoners to their own devices for months and even years on end. In that regard – and specifically concerning the standard regime of detention on remand in BBP – it was a matter of serious concern for remand prisoners held under that regime to be locked up in their cells for about twenty-three hours on most days in enforced idleness with no activity in which to engage other than one hour of outdoor exercise, reading books, watching television and access to a gym once a week (see paragraph 63 of the report cited at paragraph 62 above). Moreover, the CPT noted that the outdoor periods afforded to standard-regime remand prisoners in BBP took place in outdoor yards located on rooftops and surrounded by high concrete walls that obstructed any outside view.

98. Being aware that its role is conceptually different from that assigned to the CPT (see *Muršić*, cited above, § 113), the Court nevertheless acknowledges with concern the seriousness of this critique which, as stated above, largely pertains to the applicant's situation. However, in the assessment of his complaint under Article 3 of the Convention, the Court must take account of the cumulative effects of the conditions of his detention, along with his specific allegations and the length of the period during which he was detained in the conditions in question.

99. From that perspective, the Court notes that the applicant was held alone at all times in a cell with a surface area of 8.02 square metres (see paragraph 15 above), which exceeds the minimum standard of 6 square metres of living space for a single-occupancy cell promoted by the CPT (see *Muršić*, cited above, § 51 *in fine*). There is accordingly no issue of lack of personal space in this case.

100. The Court has also held that, in cases where a detainee has more than 4 square metres of personal space at his disposal in multi-occupancy accommodation in prison – and therefore where similarly as in the present case no issue arises with regard to the question of personal space – other aspects pertaining to the physical detention conditions shall remain relevant for the Court's assessment of the adequacy of conditions of that applicant's detention under Article 3 of the Convention (see *Muršić*, cited above, § 140).

101. The fact that the applicant in the present case disposed of sufficient personal space in his cell distinguishes his situation from such in which an inmate's period for outdoor exercise was limited to a similar extent as in the applicant's case and a violation of their rights under Article 3 was found (see, for example, *Orchowski v. Poland*, no. 17885/04, § 131, 22 October 2009, *Gladkiy v. Russia*, no. 3242/03, §§ 66-69, 21 December 2010, *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, §§ 86-88, 27 January 2011 and *Tunis v. Estonia*, no. 429/12, §§ 45-46, 19 December 2013), and also from such in which inmates were detained in a more relaxed regime in respect of time spent out-of-cell than the applicant in the present case with no violation of their Article 3 rights having been found (see, for example, *Ciupercescu v. Romania (no. 3)*, nos. 41995/14 and 50276/15, §§ 78 and 80, 7 January 2020 and *Bechi v. Romania*, no. 45709/20, § 51, 25 June 2024).

102. At this point the Court finds it appropriate to point out that even though the applicant was held in his cell alone, for most of the time this was at his own request (see paragraph 15 above).

103. The Court is mindful that, in addition to personal space, other aspects of detention remain relevant for the Court's assessment of the adequacy of an applicant's conditions of detention under Article 3 of the Convention (see, for example, *Moiseyev v. Russia*, no. 62936/00, §§ 124-25, 9 October 2008 and *İlerde and Others v. Türkiye*, nos. 35614/19 and 10 others, § 196, 5 December 2023). However, on the specific facts of the present case, the applicant does not complain of them (see paragraph 67 above), or domestic remedies were not exhausted in their regard (see paragraph 87 above and also *Tunis* (cited above, §§ 36 and 46 *in fine*).

104. As regards the nature of the treatment to which the applicant was exposed, however, the Court finds it indicative that on four specific occasions when he was interviewed by the PPS and the PCGS, the applicant who himself is a lawyer and also benefited from legal advice indicated that he had no complaint to make (see paragraphs 27, 29, 30, 32 and 33 above). His explanations in the proceedings before the Court for this course of action (see paragraph 66 above) indicate no fear or other circumstance that might have prevented him from raising such matters at the national level at the given time.

105. The applicant's detention on remand under the ordinary regime came to an end when the grounds for detaining him under Article 71 § 1 (b) of the CCP in order to prevent him from interfering with the course of justice were dropped (see paragraph 7 above). By that time, his detention under the contested regime had lasted for more than one year and four months - which, although significant, was a shorter period than was the case in, for example, *Moiseyev* (cited above, § 125), *Orchowski* (cited above, § 133) and *Skachkov v. Russia* (no. 25432/05, §§ 50 and 54, 7 October 2010), where a violation of Article 3 was found in otherwise somewhat similar circumstances. The duration of the applicant's detention under the contested regime in the present

case was likewise shorter than that in similar circumstances in *Maslák (no. 2)* (cited above, §§ 189 and 192) where Article 3 was found to be inapplicable. On the other hand, if a violation of an inmate's Article 3 rights was found in relation to a shorter period of detention than that of the applicant, the underlying situation had been much more severe than his (see, for example, *Kehayov v. Bulgaria*, no. 41035/98, §§ 69-74, 18 January 2005).

106. The Court is aware that, with reference to a certain point in time of the duration of the applicant's detention, the Constitutional Court retrospectively found that it had lacked adequate grounds (see paragraphs 9 et seq. above). The lack of justification for the applicant's detention as such is, however, primarily a matter to be considered under Article 5 of the Convention, as it was at the national level, and this is beyond the scope of the present case.

107. In sum, in so far as the matters complained of are within its competence, the Court finds that it has not been established that the conditions of the applicant's detention have amounted to ill-treatment within the meaning of Article 3 of the Convention.

108. There has accordingly been no violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

109. Lastly, the applicant complained that, on account of the fact that his detention had been imposed for the purpose of preventing him from interfering with the course of justice, he had been discriminated against in that the conditions of his detention with regard to the size of his cell and the amount of time for which he had been confined to it, the amount of time allowed for his outdoor periods, the conditions in which such outdoor periods had been spent and the lack of any possibility for him to engage in any in-cell or other out-of-cell activities had been stricter than those of inmates remanded in custody on other grounds as well as of those serving prison sentences.

In that regard, he relied on Article 14 of the Convention, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

110. The Government pointed out that the applicant's detention had served a particular aim – to prevent him from interfering with the course of justice – and argued that, in view of its being justified by that specific aim, the applicant was not in a situation relevantly similar to that of inmates remanded in custody on other grounds and of those detained for the purposes of serving a prison sentence. Moreover, in so far as the conditions of the applicant's detention had been impacted by the COVID-19 health and safety

measures, such measures had been uniform for all inmates, irrespective of the grounds on which they had been detained.

111. The applicant reiterated his complaint, pointing to a multitude of differences between detention for the purpose of prevention of interference with the course of justice and other detention regimes as laid out in the pertaining legislation, and relying on the Court's findings in its judgment in the case of *Laduna* (cited above).

112. The Court for its part notes at the outset the scope of the present complaint (see paragraph 109 above), in view of its decision in respect of the relevant part of the Government's preliminary objections (see paragraphs 82, 83 and 87 above). Within the framework of the present case, the applicant's complaint is to be examined in conjunction with that under Article 3 of the Convention (see paragraph 89 above). The matters subject to its review under those provisions are accordingly different from those assessed in *Laduna* (cited above, § 39) under Article 14, in conjunction with Article 8 of the Convention (such as visiting rights, the possibility of watching television and having a private radio receiver and arrangements for having hot water and preparing hot drinks in the cell). In that regard, the Court observes that no position has been taken by the applicant as regard the Government's argument that he was not in a situation relevantly similar to that of other inmates with whom he sought comparison.

113. Furthermore, having regard to the tenor of the applicants' complaint, the Court reiterates that the Convention does not provide for the institution of an *actio popularis* and that its task is not normally to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to, or affected, the applicant gave rise to a violation of the Convention. Accordingly, in order to be able to lodge an application in accordance with Article 34, an individual must be able to show that he was "directly affected" by the measure complained of. This is indispensable for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings (see *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015, with further references).

114. In sum, in so far as the complaint has been substantiated and the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the applicant's rights under Article 14 of the Convention.

Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 3 of the Convention with regard to the size of the applicant's cell and the amount of time for which he was confined to it, the amount of time allowed for his outdoor periods, the conditions in which such outdoor periods were spent and the lack of any possibility for him to engage in any in-cell or other out-of-cell activities admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention.

Done in English, and notified in writing on 12 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić President