



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

THIRD SECTION

CASE OF MASLÁK v. SLOVAKIA

(Application no. 15259/11)

JUDGMENT

STRASBOURG

28 April 2015

FINAL

28/07/2015

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

In the case of Maslák v. Slovakia,

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

Josep Casadevall, *President*,

Luis López Guerra,

Ján Šikuta,

Dragoljub Popović,

Kristina Pardalos,

Johannes Silvis,

Valeriu Grițco, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 7 April 2015,

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

PROCEDURE

1. The case originated in an application (no. 15259/11) 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 Miroslav Maslák (“the applicant”), on 26 February 2011.

2. The applicant was represented by Mr R. Toman, a lawyer practising in Bratislava. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged, in particular, that following his request for release from pre-trial detention of May 2009, the lawfulness of his detention had not been decided speedily and that he had been denied an enforceable right to compensation in that respect.

4. On 2 April 2014 the above-mentioned complaints were communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1979 and habitually resides in Pružina.

A. Applicant's prosecution and detention

6. Between 29 October 2007 and 12 March 2009 the applicant was charged with a number of offences, mainly of a violent nature and with an organised crime background.

7. On 27 September 2008 he was arrested in the context of his prosecution on these charges, and subsequently remanded in custody pending trial. At the time of his request for release, which forms the subject matter of this application and is described in detail below, his detention was authorised by the Special Court (*Špeciálny súd*) until 27 September 2009.

8. After the events complained of, the applicant was released on 1 April 2010. However, the criminal proceedings against him appear to be still pending.

B. Request for release

1. Submissions constituting request

9. By a submission dated 20 May 2009, addressed to the Office of Special Prosecutions (*Úrad Špeciálnej prokuratúry* - “the OSP”), and received by its addressee on 26 May 2009, the applicant requested release.

He relied on a recent judgment of the Constitutional Court (*Ústavný súd*) concerning the status of the Special Court (see *Fruni v. Slovakia*, no. 8014/07, §§ 11-15 and 68-89, 21 June 2011), argued that his detention on the authority of the Special Court had been unlawful, and maintained that his detention had in any event been unwarranted.

10. By a submission dated 21 May 2009, the applicant addressed a similar request to the Office of the Prosecutor General (*Generálna prokuratúra* - “the OPG”), where it was received on 25 May 2009.

11. Lastly, by a submission dated 21 May 2009, addressed to the Special Court and received there on 29 May 2009, the applicant requested release on similar grounds and offered a formal pledge that, if released, he would live in accordance with the law.

12. By law, all three submissions fell to be examined at first instance by the OSP. Those made to the OPG and the Special Court were therefore transmitted to the OSP on 26 May and 3 June 2009, respectively.

13. As the OSP did not grant the request formulated in the three submissions, they fell to be judicially examined by the Special Court, to which they were transmitted on 2 and 3 June 2009, respectively.

2. Challenge to first-instance judge for alleged bias

14. By way of a submission dated 23 May 2009, which was received by the Special Court on 29 May 2009, the applicant expressed objections to the handling of his case by the Special Court judge who was handling his

detention case at first-instance, which the Special Court interpreted as a challenge to the judge on the grounds of bias.

15. On 2 June 2009 the challenge was dismissed. On 10 June 2009 the decision was served on the applicant and on 11 June 2009 he lodged an interlocutory appeal (*sťažnosť*), which was dismissed by the Supreme Court (*Najvyšší súd*) on 24 June 2009. The case file was returned to the Special Court on 1 July 2009.

3. *First-instance decision on request for release*

16. On 1 July 2009 the Special Court ordered that the request be examined in the framework of a public session (*verejné zasadnutie*) to be held on 13 July 2009.

17. On 8 July 2009 the Special Court was informed that the applicant's lawyer had been struck off the list of counsel and thus could no longer represent him. In response, on 9 July 2009 the Special Court enquired of the investigator whether the applicant had been asked to appoint a new lawyer and, if so, whether he had actually done so. Later on the same day, the investigator asked the applicant to appoint a lawyer within three days, failing which a lawyer would be appointed for him by the court.

18. On 13 July 2009 the applicant was heard before the Special Court. He submitted that it was his intention to appoint a lawyer, that the three-day timescale allowed him for that purpose had been unrealistically short, and that he disagreed with having a lawyer appointed for him by court.

19. In the circumstances – as legal representation was mandatory – the public session scheduled for later on 13 July 2009 had to be cancelled.

20. Nevertheless, on the same day, that is on 13 July 2009, the applicant also made a written submission containing his arguments and waiving his right to have the request for release examined in a public session.

21. On 16 July 2009 the Special Court appointed a lawyer for the applicant and dismissed the applicant's request for release.

The written version of the decision to dismiss the applicant's request for release was served on his court-appointed lawyer on 21 July 2009, on his subsequently appointed lawyer of choice on 27 July 2009, and on the applicant himself on 30 July 2009.

In it, the Special Court recapitulated the procedural history and the applicable statutory provisions. In addition, it observed that the Constitutional Court's judgment referred to by the applicant (see paragraph 9 above) had not yet been published in the Collection of Laws. Its rulings had thus not entered into force yet and the Special Court's status was not compromised for the time being. Moreover, the Special Court explained in detail why it considered the applicant's detention necessary and why his release in return for a pledge of lawful conduct was not acceptable.

4. Interlocutory appeal and challenge to Supreme Court for alleged bias

22. By way of an interlocutory appeal lodged by both the applicant's lawyer and the applicant himself, the applicant challenged the decision of 16 July 2009 to dismiss his request for release.

The appeal lodged by his lawyer was dated 23 July 2009, was addressed to the Special Court, reached its addressee on 27 July 2009, and was transmitted to the Supreme Court on 31 July 2009.

The applicant's own appeal was dated 2 August 2009, was addressed directly to the Supreme Court, and was received there on 5 August 2009.

23. At the same time as lodging the appeal, the applicant challenged the entire criminal-law bench of the Supreme Court on grounds of bias, once again relying on the Constitutional Court's judgment mentioned above (see paragraph 9).

24. On 13 August 2009 the Supreme Court dismissed the challenge. Prior to this decision, all the Supreme Court judges concerned had been asked to state a position in respect of the challenge and a special chamber had been appointed to rule on it.

25. On 25 August 2009, sitting in private (*neverejné zasadnutie*), the Supreme Court dismissed the applicant's interlocutory appeal against the decision of 16 July 2009.

The Supreme Court's decision was served on the applicant on 2 September 2009.

5. Final domestic decision

26. On 4 November 2009 the applicant filed a complaint under Article 127 of the Constitution (Constitutional Law no. 460/1992 Coll., as amended) with the Constitutional Court. The complaint was directed against the Specialised Criminal Court (*Špecializovaný trestný súd*), which had by then come into being as the legal successor to the Special Court, and also against the Supreme Court and the OSP.

27. Relying on Article 5 §§ 3 and 4 of the Convention and its constitutional equivalents, he argued that his request for release had not been determined by an independent tribunal, that its dismissal had not been supported by adequate reasoning, that he had arbitrarily been denied his right to release pending trial, and that his request had not been determined "speedily".

28. In terms of relief, the applicant requested that the decisions of 16 July and 25 August 2009 be quashed, that his release be ordered, and that he be awarded 21,000 euros (EUR) by way of compensation for non-pecuniary damage, plus reimbursement of his legal costs.

29. On 17 June 2010 the Constitutional Court declared the complaint inadmissible for being in essence manifestly ill-founded.

30. As to the complaint about the alleged failure to achieve a speedy determination of the applicant's request, the Constitutional Court observed, in particular, that the delay in serving the Special Court's decision of 16 July 2009 on his lawyer of choice and the applicant himself (see paragraph 20 above) was due to the facts that the lawyer of the applicant's choice had only announced his appointment to the police, that this information had accordingly had to be transmitted to the court, which had taken some time, and that the prosecution service had failed to inform the court that, at the given time, the applicant had been transferred to a prison other than the one known to the court, as a consequence of which the decision had been sent to a wrong address and had had to be sent again.

31. Examining separately the proceedings before the Special Court and the Supreme Court and the involvement of the OSP, the Constitutional Court concluded that, taking into account all the circumstances, there had been no delays attributable to the authorities that had reached a constitutionally relevant threshold. From that perspective, the Constitutional Court considered that any delays resulting from the applicant's challenges alleging bias had been imputable to him and that the relevance of the delays in serving the Special Court's decision of 16 July 2009 on the applicant (on 30 July 2009) – which had been due to a lack of coordination among the authorities concerned – had been diminished by the service of that decision on the lawyer of the applicant's choice on 27 July 2009.

The written version of the Constitutional Court's decision was served on the applicant on 26 August 2010.

THE LAW

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

32. The applicant complained that, following his request for release of May 2009, the lawfulness of his detention had not been decided speedily, as provided in Article 5 § 4 of the Convention, which reads:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

A. Admissibility

33. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Parties' arguments

34. In response, the Government relied on the Constitutional Court's decision of 17 June 2010 (see paragraphs 29 *et seq.* above) and pointed out that the length of the proceedings in respect of the applicant's request had been significantly influenced by his two challenges of bias and the fact that his lawyer had been struck off the list of counsel, none of which was attributable to the State. At the same time, the Government emphasised the authorities' prompt response to the applicant's loss of legal representation.

35. The applicant submitted that the relevant period had commenced on 26 May 2009, when his request for release reached the OSP, and ended on 2 September 2009, when the Supreme Court's decision was served on him. The Constitutional Court had rejected his complaint as manifestly ill-founded and there had been no other avenue open to him for asserting his rights.

2. The Court's assessment

36. The Court summarised its case-law relevant to the issue at hand for example in the cases of *Mooren v. Germany* [GC] (no. 11364/03, § 106, ECHR 2009-...); *Štetiar and Šutek v. Slovakia* (nos. 20271/06 and 17517/07, § 128, 23 November 2010); *Gál v. Slovakia* (no. 45426/06, § 62, 30 November 2010); *Michalko v. Slovakia* (no. 35377/05, § 167, 21 December 2010); and *Osváthová v. Slovakia* (no. 15684/05, § 69, 21 December 2010).

37. In the present case, as submitted by the applicant and not disputed by the Government, his request for release was lodged on 26 May 2009. The decision on his interlocutory appeal against the first-instance dismissal of his request was not pronounced publicly and was served on the applicant on 2 September 2009.

38. The period under consideration thus commenced on 26 May 2009 and ended on 2 September 2009 (see *Karlin v. Slovakia*, no. 41238/05, § 97, 28 June 2011, with further references), that is to say after three months and eight days, or in other words 98 days, within which period the applicant's request for release was examined by the OSP and two levels of courts.

39. It has not been argued by the Government – and neither has the Court found anything to justify the conclusion – that the case concerning the applicant's detention was of any particular complexity *per se*.

40. As to the conduct of the applicant, it should be noted that his request was based partly on the Constitutional Court's judgment concerning the

status of the Special Court and that he reiterated this argument in his second challenge of bias. In addition, he lodged a further challenge of bias and some delays resulted from the complications with his legal representation.

41. As to the conduct of the authorities, the Court notes that it took eight days to have the Special Court's decision of 2 June 2009 on the applicant's first challenge of bias served on him, thirteen days to decide on his interlocutory appeal of 11 June 2009 against that decision, and seven days to have the Supreme Court's decision of 24 June 2009 concerning that appeal served on the applicant. It should also be noted that, after intervening relatively promptly in the matter of the applicant's legal representation, it took the District Court from 16 July 2009 until 21, 27, and 30 July respectively to have its decision served on the applicant's court-appointed lawyer, his lawyer of choice, and the applicant himself. As has been recognised by the Constitutional Court, the delays regarding service on the latter two individuals were attributable to a lack of coordination between the authorities involved.

42. Regard being had to the Court's case-law on the subject (see the summary in *Štetiar and Šutek* (cited above, § 131); *Gál* (cited above, § 69); *Michalko* (cited above, § 171), and *Osváthová* (cited above, § 77)), and despite some delays being attributable to the applicant, the foregoing considerations are sufficient to enable the Court to conclude that the lawfulness of the applicant's detention was not decided speedily.

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

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

43. The applicant also complained that he had been denied an enforceable right to compensation in respect of the alleged violation of his aforementioned right under Article 5 § 4, contrary to the requirements of Article 5 § 5 of the Convention, which reads:

"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

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

B. Merits

45. The Government considered that Article 127 of the Constitution provided the applicant with a right compatible with the requirements of Article 5 § 5 of the Convention. In that regard, they submitted that, had the Constitutional Court found a violation of the applicant's rights under Article 5 § 4 of the Convention, it would undoubtedly have awarded him just satisfaction as required under its Article 5 § 5.

46. The applicant disagreed and reiterated his complaint.

47. The Court reiterates that Article 5 § 5 of the Convention is complied with 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. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions (see *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X, and also *Pavletić v. Slovakia*, no. 39359/98, § 95, 22 June 2004).

48. In the present case the Court has found a violation of Article 5 § 4 of the Convention.

It must therefore establish whether or not the applicant had or now has an enforceable right to compensation for the breach of Article 5 § 4 of the Convention.

49. The Court observes first of all that the applicant's complaint under Article 127 of the Constitution in that regard was unsuccessful on the substance (see paragraphs 29 *et seq.* above) (see *Boris Popov v. Russia*, no. 23284/04, § 84, 28 October 2010). At the same time, the domestic legislation makes no provision for making a compensation claim in a domestic court on the basis of findings reached by the European Court.

50. The foregoing considerations are sufficient to enable the Court to conclude that neither before nor after a finding by the European Court has the applicant had an enforceable right to compensation for the violation of his rights under Article 5 § 4 of the Convention (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 67, Series A no. 145-B; *Michalko v. Slovakia*, cited above, § 177; *Osváthová v. Slovakia*, cited above, § 84; *Michalák v. Slovakia*, cited above, § 207; and see *Karlin*, cited above, § 107).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

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

53. The Government contested the claim as being overstated.

54. The Court accepts that the applicant suffered non-pecuniary damage and considers that, despite the applicant's own contribution to the length of the proceedings in his request for release, the amount claimed should be awarded in full.

It therefore awards the applicant EUR 5,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

55. The applicant also claimed EUR 2,500 for the costs and expenses incurred before the domestic courts and the Court, that amount – after rounding up – consisting of EUR 2,349.92 for legal fees, EUR 100 for administrative expenses, and EUR 50 for postal expenses. The applicant submitted copies of itemised bills from his lawyer to support the claim in respect of the legal fees.

56. The Government accepted that the applicant had incurred some costs before the Constitutional Court. However, they objected that the claims concerning administrative and postal expenses were not supported by evidence.

57. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

58. 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 1,500, plus any tax that may be chargeable to the applicant, covering costs under all heads.

C. Default interest

59. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
4. *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:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Josep Casadevall
President