



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

THIRD SECTION

**CASE OF MASLÁK AND OTHERS v. SLOVAKIA**

*(Application no. 11037/12)*

JUDGMENT

STRASBOURG

16 July 2015

**FINAL**

**16/10/2015**

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





**In the case of Maslák and Others v. Slovakia,**

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

Josep Casadevall, *President*,

Luis López Guerra,

Ján Šikuta,

Kristina Pardalos,

Johannes Silvis,

Valeriu Grițco,

Branko Lubarda, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 23 June 2015,

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

**PROCEDURE**

1. The case originated in an application (no. 11037/12) 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 three Slovak nationals, Mr Miroslav Maslák (“the first applicant”), Mr Tomáš Ďuriš (“the second applicant”) and Mr Vladimír Haviar (“the third applicant”), on 18 February, 6 March and 16 July 2012 (see paragraph 31 below).

2. The applicants were 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. Relying on Article 5 §§ 4 and 5 of the Convention, the applicants alleged that they had been denied (i) a speedy procedure for the review of the lawfulness of their pre-trial detention, and (ii) an enforceable right to compensation for the alleged breach of the “speediness” requirement in relation to their requests for release of 2 and 10 May 2010 and December 2010 (as amended in January 2011) and their interlocutory appeal against the detention order of 4 April 2011.

4. On 25 June 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 first applicant was born in 1979, while the second and third applicants were born in 1984 and 1983, respectively. They all habitually reside in Pružina.

#### **A. Background**

6. Since 2007 the applicants have been facing multiple charges mainly concerning alleged violent offences, against a background of organised crime. In the context of their prosecution on these charges, they were arrested, remanded, released, and re-arrested and re-remanded several times.

7. A part of the present application directly relates to three of their unsuccessful requests for release from detention following their arrest on 1 April 2010 on a charge of perjury. These requests and the underlying procedures are described in chronological order in sections B. to D. below.

8. The applicants' term of detention following the arrest of 1 April 2010 ended with their release on 1 April 2011, subsequent to which, on the same day, they were again arrested and later remanded in detention pending trial on a charge of extortion. The remainder of the application directly concerns their interlocutory appeal against the remand order following that arrest and, together with the underlying procedure, it is described below in section E.

#### **B. Request for release of 2 May 2010**

9. On 2 May 2010 the first applicant made a submission requesting release. It was received at the Považská Bystrica District Court on 11 May 2010 and the applicant amended it by means of a further submission, which reached the District Court on 19 May 2010.

10. On 21 May 2010 the District Court heard the first applicant. In the course of the questioning he challenged the judge in charge of the case on grounds of bias, alleging that there had been an arbitrary interference with the organisation of the workload at the District Court, as a result of which the case had not been assigned to the lawful judge.

11. At the conclusion of the questioning on the same day, that is to say on 21 May 2010, the District Court dismissed the challenge. Immediately afterwards the first applicant used his right to state on the record that he wished to appeal against the decision on his challenge and he submitted his grounds for appeal on 24 May 2010. That appeal was dismissed by the Trenčín Regional Court on 10 June 2010, the decision being served on the first applicant on 21 June 2010.

12. The first applicant's request for release was then dismissed by the District Court on 25 June 2010 and, following his interlocutory appeal, by the Regional Court on 20 July 2010, the latter decision being served on the applicant on 26 July 2010.

13. On 27 September 2010 the first applicant lodged a complaint under Article 127 of the Constitution with the Constitutional Court, arguing that the examination of his request for release had not been speedy, that its dismissal had been arbitrary, and that it had not been determined by the lawful judge.

14. On 4 October 2011 the Constitutional Court declared the complaint inadmissible. As for the length of the proceedings in the first applicant's request for release, the Constitutional Court recapitulated the course of those proceedings and found that the complaint was manifestly ill-founded as regards both the part of the proceedings that took place before the District Court and the part that took place before the Regional Court. The remaining complaints were partly out of time and partly manifestly ill-founded.

The Constitutional Court's decision was served on the first applicant on 23 November 2011.

### **C. Request for release of 10 May 2010**

15. On 10 May 2010 the second applicant and the third applicant also requested release and offered to pledge under Article 80 of the Code of Criminal Procedure that, if released, they would live in accordance with the law. Their request was filed with the Považská Bystrica District Office of the Public Prosecution Service ("the PPS") which was responsible for dealing with it in the first instance.

16. Finding no reasons for acceding to it, on 17 May 2010 the PPS transmitted the request to the District Court for a judicial determination. The case file was received at the District Court on 21 May 2010. Having established that the case file was incomplete, the District Court asked the PPS for a complete version of it on 27 May 2010, which was submitted to the District Court on 2 June 2010. Meanwhile, on 27 May 2010, the applicants waived their right to be heard in person by the District Court.

17. The request was dismissed by the District Court on 3 June 2010 and, following the applicants' interlocutory appeal of 16 June 2010, by the Regional Court on 15 July 2010.

The former decision was served on the applicants and two of their three lawyers on 9 June 2010. On 8 July 2010, by means of telephone inquiry in response to the impossibility of having it served on the third lawyer, the District Court established that the third lawyer had stopped representing the applicants, explaining the failure to inform the court accordingly by the fact that he had been on holiday.

The latter decision was served on the applicants and on the lawyer of one of them on 2 August 2010. It was served on the other applicant's lawyer on 9 August 2010.

18. On 30 September 2010 the second applicant and the third applicant lodged a constitutional complaint, directing it against the District Court and the Regional Court, and alleging a violation of their rights under Article 5 §§ 3 and 4 of the Convention (and their constitutional equivalents) to a speedy review of the lawfulness of their detention by an impartial tribunal established by law and to release pending trial.

19. On 9 November 2011 the Constitutional Court declared the complaint inadmissible.

As for the length of the proceedings in the applicants' request for release, the Constitutional Court recapitulated the course of those proceedings and observed that some delays had been caused by the failure of the authorities to submit a complete case file to the District Court and by the above-mentioned failure of one of the applicants' representatives to inform the court of the termination of his mandate, which had resulted in repeated and eventually futile attempts to serve the written copy of the District Court's decision on him.

The Constitutional Court concluded that neither before the District Court nor the Regional Court had the length of proceedings been incompatible with the speediness requirement of Article 5 § 4 of the Convention.

The remaining complaints were inadmissible partly because they were a *res iudicata* by virtue of a previous decision of the Constitutional Court and partly because they were manifestly ill-founded.

The Constitutional Court's decision was served on the second applicant and the third applicant on 19 December 2011.

#### **D. Request for release of December 2010 (as amended in January 2011)**

20. On 22 December 2010 the applicants lodged a fresh request for release. In response, the District Court informed them in a letter of 3 January 2011 that – without the submission of new relevant information – under the applicable statute a new request for release could be lodged at the earliest thirty days after the final determination of the previous request. As the applicants' request of 22 December 2010 contained no such new information in relation to their previous request – which had only been dismissed with final effect on 16 December 2010 – it could not be entertained.

21. The first applicant amended his request by means of a further submission received at the District Court on 20 January 2011 while the second applicant and the third applicant did so by a submission received on 31 January 2011.

22. The request was dismissed by the District Court on 7 February 2011 and, following the applicants' interlocutory appeal, by the Regional Court on 23 February 2011, the latter decision being served on the applicants on 2 March 2011.

23. On 31 March 2011 the applicants lodged a constitutional complaint, alleging *inter alia* a violation of their rights under Article 5 §§ 3 and 4 of the Convention.

24. On 14 June 2011 the Constitutional Court declared the complaint inadmissible. It recapitulated the course of those proceedings and observed that – since the applicants' request contained no new relevant information in relation to their previous request – the courts were prevented by law from examining it. The periods under consideration had therefore not commenced on 22 December 2010, as claimed by the applicants, but only on 20 and 31 January 2011, when they had amended the original request. From that perspective, the length of the impugned proceedings was acceptable.

The Constitutional Court's decision was served on the applicants on 18 August 2011.

#### **E. Remand in detention following arrest on 1 April 2011**

25. Following their arrest on 1 April 2011 (see paragraph 8 above), the applicants were remanded in detention pending trial on a charge of extortion by the District Court's order of 4 April 2011.

26. On 14 April 2011 the applicants challenged the detention order by means of an interlocutory appeal, which the Regional Court dismissed on 21 April 2011, its decision being served on the applicants on 19 May 2011.

27. On 15 June 2011 the applicants challenged these decisions before the Constitutional Court, alleging *inter alia* a violation of their rights under Article 5 §§ 1 and 4 of the Convention, including the right to a speedy review of the lawfulness of their detention upon their interlocutory appeal against the detention order of 4 April 2011.

28. On 13 December 2011 the Constitutional Court declared the complaint inadmissible as manifestly ill-founded.

The decision was served on the applicants on 16 January 2012.

29. Meanwhile, on 27 September 2011, the applicants were indicted to stand trial on the charge in question and, on 15 November 2011, they were released from detention.

The proceedings on the merits appear to be still pending.

## THE LAW

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

30. The applicants complained that, upon their requests for release of 2 and 10 May 2010 and December 2010 (as amended in January 2011), and their interlocutory appeal against the detention order of 4 April 2011, the lawfulness of their detention had not been decided speedily.

31. The complaint in respect of the proceedings on the requests for release of 2 and 10 May 2010 were expressed in an application form dated 6 March 2012, send to the Court by fax on that date and by post on 8 March 2012. The fax submission was received at the Court on the same day while the posted submission was received on 13 March 2012.

The complaint concerning the proceedings on the request for release of December 2010 (as amended in January 2011) was expressed in an application form dated 18 February 2012, send to the Court by fax on that date and by post on 22 February 2012. The fax submission was received at the Court on the same day while the posted submission was received on 22 February 2012.

The complaint concerning the proceedings in the interlocutory appeal against the detention order of 4 April 2011 was expressed in an application form dated 16 July 2012, send to the Court by fax on that date and by post on 17 July 2012. The fax submission was received at the Court on the same day while the posted submission was received on 20 July 2012.

32. In the respective application form, unlike with regard to the requests for release, with regard to the interlocutory appeal against the detention order the applicants also directed their complaint against the ensuing proceedings before the Constitutional Court (see paragraph 27 above).

33. As to all of these complaints, they alleged a violation of Article 5 § 4 of the Convention, which reads as follows:

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

#### A. Admissibility

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

## B. Merits

### 1. Parties' arguments

35. The Government opposed the complaints referring to the assessment of the relevant facts by the Constitutional Court in its decisions of 14 June, 4 October, 9 November and 13 December 2011 (see paragraphs 14, 19, 24 and 28 above).

In particular, they emphasised that, as concluded by the Constitutional Court, the length of the impugned proceedings had been influenced by factors external to the courts involved, in the case of the request for release of 2 May 2010 by the first applicant's challenge of bias (see paragraphs 10 and 11 above), in the case of the request for release of 10 May 2010 by the case file's having been submitted to the court incomplete and by the failure of one of the applicants' lawyers to inform the court of the termination of his mandate (see paragraphs 16, 17 and 19 above), and in the case of the request for release of December 2010 (as amended in January 2011) by the fact that that request had been submitted before the expiry of the statutory time-limit preventing the examination of a new request unless it contained relevant new information compared to the previous request (see paragraphs 20 and 24 above).

36. The applicants disagreed and reiterated their complaints, arguing that the length of the proceedings before the Constitutional Court should also be taken into account for the assessment of the "speediness" of the contested proceedings.

### 2. The Court's assessment

37. 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).

38. It notes that, as regards the commencement of the periods under consideration, there has been a dispute between the parties in relation to the request for release of December 2010 (as amended in January 2011).

In that regard, the Court observes that, as the applicants were informed by the District Court on 3 January 2011, their request had been filed (22 December 2010) before the expiry of the statutory thirty-day period after the determination of their previous request for release with final effect (16 December 2010). It notes that, in such circumstances, the applicant's request could only be examined on the merits had it contained new relevant

information compared to the previous request. In the present case, it was established at the national level that the applicants' request of 22 December 2010 contained no such information and that, therefore, it could not be examined. In view of the subsidiary nature of its review, and in so far as the application has been substantiated, the Court accepts that position. It follows that the applicants' subsequent submissions of 20 and 31 January 2011, although nominally amendments to the request of 22 December 2010, were in fact new requests (see paragraphs 21 and 24 above) and that the period under the Court's consideration commenced from those dates.

In sum, the periods under consideration commenced on 2 and 10 May 2010, 20 and 31 January 2011, and 14 April 2011.

39. As to the time when the periods under the Court's consideration ended, the Court notes that, as regards the three requests for release, in the original application forms the applicants only contested the proceedings before the ordinary courts. In other words, their complaints were not aimed at the length of the ensuing proceedings before the Constitutional Court (see paragraphs 31 and 32 above). Extending the factual scope of their complaint in the observations in reply to those of the Government (see paragraph 36 above) would thus be outside the six-month time limit under Article 35 § 1 of the Convention.

The Court also notes that, as to the applicants' interlocutory appeal against the detention order of 4 April 2011, they contested the proceedings including their follow-up phase before the Constitutional Court from the outset and that the applicability of the guarantee of "speediness" under Article 5 § 4 of the Convention to constitutional proceedings in Slovakia was examined and confirmed in the Court's judgment in the case of *Kormoš v. Slovakia* (no. 46092/06, §§ 81 *et seq.*, 8 November 2011).

The periods under the Court's consideration therefore ended with the service on the applicants of the final decision of the ordinary courts on 26 July and 2 August 2010 and 2 March 2011 (see paragraphs 12, 17 and 22 above) (see *Karlin v. Slovakia*, no. 41238/05, § 97, 28 June 2011, with further references) and with the applicants' release on 15 November 2011 (see paragraph 29 above) (see *Kormoš*, cited above, § 94).

40. The periods under consideration therefore lasted: (i) eighty-four days for two levels of ordinary jurisdiction, (ii) eighty-three days for two levels of ordinary jurisdiction, (iii) forty days (for the first applicant) and thirty days (for the second applicant and the third applicant) for two levels of ordinary jurisdiction, and (iv) 212 days for one level of ordinary jurisdiction and the Constitutional Court.

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

42. As to the conduct of the applicants, in so far as the Government referred to the first applicant's challenge of bias in the proceedings on his request for release of 2 May 2010, the Court does not discern any significant protraction of the proceedings attributable to the applicant. However, it notes that it took from 24 May until 21 June 2010 to examine his appeal against the decision dismissing his challenge to be examined and for the decision on that appeal to be served on him (see paragraph 11 above).

On the other hand, the Court accepts that delays imputable to the second applicant and the third applicant were caused between 9 June and 8 July 2010 by one of their lawyers who had failed to inform the court of the termination of his mandate and had contributed to the difficulties in serving a copy of the decision of 3 June 2010 on him (see paragraphs 17 and 19 above).

43. As to the conduct of the authorities, in response to the Government's argument, the Court notes in particular that any delays caused in the proceedings on the request for release of 10 May 2010 by the failure to submit the case-file to the court in its entirety cannot be attributed to the applicants but are rather due to the State.

44. 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 delays of about one month in the proceedings on their request for release of 10 May 2010 being attributable to the second applicant and the third applicant, the foregoing considerations are sufficient to enable the Court to conclude that on all four counts, the lawfulness of the applicants' 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

45. The applicants complained that they had been denied an enforceable right to compensation in respect of the violation of their rights under Article 5 § 4 of the Convention alleged above, contrary to the requirements to Article 5 § 5 of the Convention, which reads as follows:

"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

46. 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

47. The Government considered that Article 127 of the Constitution provided the applicants 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 applicants' rights under Article 5 § 4 of the Convention, it would undoubtedly have awarded them just satisfaction as required under its Article 5 § 5.

48. In reply, the applicants submitted that their complaints to the Constitutional Court had been unsuccessful and that they had no other way of obtaining compensation.

49. 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).

50. 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 applicants had or now have an enforceable right to compensation for the breach of Article 5 § 4 of the Convention.

51. The Court observes first of all that the applicants' complaint under Article 127 of the Constitution in that regard were unsuccessful on the substance (see paragraphs 14, 19, 24 and 28 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.

52. The foregoing considerations are sufficient to enable the Court to conclude that neither before nor after a finding by the European Court have the applicants had an enforceable right to compensation for the violation of their 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*, cited above, § 177; *Osváthová*, cited above, § 84; *Michalák*, cited above, § 207; and *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

53. 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**

54. The applicants each claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

55. The Government contested the claim as overstated.

56. The Court awards each of the applicants EUR 6,500, plus any tax that may be chargeable, in respect of non-pecuniary damage.

### **B. Costs and expenses**

57. The applicants also claimed EUR 2,000 each for legal costs and administrative and postal expenses incurred before the domestic courts and the Court.

In support of that claim, they each submitted bills from their lawyer for EUR 1,916 for representation before the Constitutional Court and the Court, indicating that the fees charged to them individually had been reduced by one third in view of the fact that legal assistance had been provided to them jointly. In addition, they submitted bills showing that they had jointly spent EUR 63.70 for postage in the proceedings before the Court.

58. The Government contested the claim in respect of legal costs for being overstated and pointed out that only EUR 63.70 had been documented in terms of postal expenses, while any administrative expenses had not been documented at all.

59. 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).

60. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award each of the applicants the sum of EUR 1,500, plus any tax chargeable to the given applicant, covering costs under all heads.

### **C. Default interest**

61. 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 each of the applicants, 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 6,500 (six thousand five hundred 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 applicants, 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli  
Deputy Registrar

Josep Casadevall  
President