



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

FOURTH SECTION

CASE OF HARIS v. SLOVAKIA

(Application no. 14893/02)

JUDGMENT

STRASBOURG

6 September 2007

FINAL

06/12/2007

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 Haris v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 14893/02) 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 Hungarian national, Mr Sándor Haris ("the applicant"), on 15 March 2002.

2. The applicant was represented by Mr J. Tuhovčák, a lawyer practising in Bratislava. The Slovak Government ("the Government") were represented by Ms A. Poláčková, their Agent, who has been succeeded in that function by Ms M. Pirošíková.

3. The applicant complained under Articles 5 and 6 of the Convention about his pre-trial detention and the criminal proceedings against him.

4. On 19 December 2005 the Court decided to give notice of the application to the Government and to invite the Hungarian Government to intervene in the case. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. On 16 May 2006 the Hungarian Government declared that they would not exercise their right under Article 36 § 1 of the Convention and Rule 44 of the Rules of Court to intervene in the proceedings.

THE FACTS

6. The applicant was born in 1970 and lives in Budapest (Hungary). He is a businessman with commercial activities in Hungary and Slovakia.

A. Criminal trial

7. On 30 September 1999 the applicant was charged in Slovakia with the offence of blackmail within the meaning of Article 235 of the Criminal Code. The charge was based on the suspicion that the applicant had participated in an operation that involved posing as police officers, luring two individuals from a restaurant, attacking them with a handgun, wounding and tying one of the victims up, taking him to another place and coercing him into revealing information about two other persons.

8. On 15 November 1999 the applicant appeared before the investigator of his own accord and was arrested (see below).

9. On 19 January 2000 the applicant and four others were committed to stand trial in the Dunajská Streda District Court (*Okresný súd*) on charges related to the above incident.

10. On 3 March and 18 April 2000, respectively, the Dunajská Streda District Court and, on appeal, the Trnava (Slovakia) Regional Court remitted the case to the prosecution service for further investigation.

11. On 24 August 2000 the inquiry in the applicant's case was joined to another inquiry that was being undertaken with respect to a murder allegedly committed by the applicant's co-accused.

12. On 11 September 2000 the applicant was again committed, in the Regional Court, to stand trial on the above charge.

13. On 24 November 2003 the Regional Court ruled that, for reasons of procedural economy, the applicant would be tried in the Dunajská Streda District Court, separately from the other accused. The case was transmitted to the latter court on 29 October 2004.

14. On 14 April 2005 the Supreme Court confirmed, on an application by the Dunajská Streda District Court, that the latter court would try the applicant at first instance.

15. The proceedings are still pending.

B. Detention

16. On 16 November 1999, following his arrest the previous day, the Trnava District Court remanded the applicant in custody under Article 67 § 1 (a) of the Code of Criminal Procedure on the ground that he was a foreign national and that there was a well-founded risk that, if left at liberty, he would escape or go into hiding in order to avoid prosecution. The applicant did not exercise his right of appeal (*sťažnosť*) and the decision became final and binding.

17. On 22 November 1999 the applicant requested release on bail. The request, which was initially granted, was finally dismissed by the Regional Court, on appeal, on 13 January 2000.

18. On 3 March 2000 the Dunajská Streda District Court again granted the applicant bail, but the decision was quashed by the Regional Court, on appeal, on 18 April 2000.

19. The applicant lodged another request for release on 13 July 2000, but made a formal motion to withdraw it on 31 July 2000.

20. On 25 July 2000 the applicant made a separate request for release on bail. The request was dismissed, on appeal, by the Regional Court on 31 October 2000.

21. On 24 November 2000 the prosecution service requested extension of the applicant's detention until 8 June 2001. The extension was authorised, on appeal, by the Regional Court on 11 January 2001.

22. On 20 February 2001 the applicant lodged a request for release on bail with the Dunajská Streda District Court. He resubmitted the request to the Trnava District Court on 7 May 2001 and supplemented the grounds of the request on 28 May 2001. He argued that his detention was unjustified as he had contacted the authorities of his own accord and the fact that he was a non-national could not be held against him discriminatorily.

23. On 31 May 2001 the Trnava District Court dismissed the request. The decision was served on the applicant on 7 June 2001. On the same day the applicant appealed. On 15 June 2001 he supplemented the grounds of appeal.

24. On 28 June 2001 the Regional Court quashed the decision of 31 May 2001 and remitted the case to the Trnava District Court on the ground that the latter had failed to support its decision with proper reasons and to address the applicant's arguments adequately.

25. On 13 September 2001 the Trnava District Court dismissed the applicant's request again. On 18 October 2001 the Regional Court dismissed an appeal by the applicant.

It was observed that the applicant was a non-national and faced a sentence of two to eight years' imprisonment. This, combined with the nature of the subject of the investigation and the stage reached in the proceedings, gave grounds for concern that he might abscond.

The decision of 18 October 2001 was taken in a private session (*neverejné zasadnutie*) and was served on the applicant in writing on 31 October 2001.

26. In the meantime, on 28 May 2001, the prosecution service requested extension of the applicant's detention until 15 November 2001. The extension was authorised by the Trnava District Court on 31 May 2001 and, on appeal, by the Trnava Regional Court on 12 July 2001. A copy of the latter decision was served on the applicant on 26 July 2001. It was held that the grounds for his detention persisted and that, due to its scale, it had not been possible to complete the investigation earlier.

27. On 29 October 2001 the applicant lodged another request for release on bail. In a letter of 7 November 2001 the public prosecution service stated

that, under Article 72 of the Code of Criminal Procedure, the request could not be dealt with as it had been submitted less than fourteen days after the final determination of the applicant's previous request and contained no new relevant information (see paragraph 25 above).

28. On 5 November 2001 the Supreme Court authorised an extension of the applicant's detention until 15 May 2002. There was a strong suspicion against the applicant of involvement in a serious and extensive organised criminal activity. The applicant was a non-national and had no official residence in Slovakia. His release might jeopardise the ongoing and wide-ranging investigation, which could not be completed earlier.

29. In the meantime – on 31 October 2001 – the applicant again requested release, but withdrew the request on 13 February 2002.

30. On 18 February 2002 the applicant applied for release again. His application was dismissed, on appeal, on 10 October 2002.

31. On 13 May 2002 the Supreme Court authorised a further extension of the applicant's detention until 30 September 2002.

32. On 25 July 2002 the applicant requested release and, on the same day, the Trnava District Court informed him that the request could not be examined as his previous request had not been determined yet.

33. On an unspecified date the applicant was released.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

34. The applicant complained that his detention had been arbitrary and too long, that he had neither been tried within a reasonable time nor released pending trial and that the lawfulness of his detention had not been examined adequately and speedily. He relied on Article 5 §§ 1 (c), 3 and 4 of the Convention which, in so far as relevant, provide:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. 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

1. Domestic remedies

(a) Action for damages under the 1969 State Liability Act and protection of his personal integrity under Articles 11 et seq. of the Civil Code

35. In respect of all the Article 5 complaints, the Government submitted that the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, by seeking damages under the 1969 State Liability Act and protection of his personal integrity under Articles 11 et seq. of the Civil Code.

36. The applicant maintained the complaints but expressed no view.

37. The Court recalls that it has previously addressed at length the question of the effectiveness from the point of view of Article 35 § 1 of the Convention of the remedies referred to by the Government in similar situations (see, for example, *Tám v. Slovakia*, (dec.), no. 50213/99, 1 July 2003; *Kučera v. Slovakia*, (dec.), no. 48666/99, 4 November 2003; *König v. Slovakia* (dec.), no. 39753/98, 13 May 2003; *Pavletič v. Slovakia* (dec.), no. 39359/98, 13 May 2003; and, most recently, *Nešták v. Slovakia*, no. 65559/01, §§ 59-65, 27 February 2007). It did not find it established that the possibility of obtaining appropriate redress by making use of these remedies was sufficiently certain in practice and offered reasonable prospects of success as required by the relevant Convention case-law. The Court finds no reasons to depart from this conclusion in the present case.

38. Furthermore, the Court finds it appropriate to point out that the remedies relied on by the Government in the present case are remedies before civil courts, which undoubtedly have no jurisdiction to order release or otherwise directly remedy the impugned state of affairs (see *Pavletič v. Slovakia*, no. 39359/98, §§ 69 and 72, 22 June 2004 and also *Weeks v. the United Kingdom*, judgment of 2 March 1987, Series A no. 114, p. 30, § 61). These remedies are by definition aimed at obtaining compensation and might possibly be of relevance under paragraph 5 of Article 5 of the Convention (see, for example, *Yağcı and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319 A, p. 17, § 44 and *Tomasi v. France*,

judgment of 27 August 1992, Series A no. 241 A, p. 34, § 79) which, however, the applicant did not invoke. The remedies designed specifically for the purpose of remedying directly the situation complained of are those provided for under the Code of Criminal Procedure, which the applicant repeatedly resorted to.

Accordingly, the Government's objection relating to non-exhaustion of the actions under the 1969 State Liability Act and Articles 11 et seq. of the Civil Code must be dismissed.

(b) Complaint under Article 127 of the Constitution

39. The Government further argued that, since 1 January 2002, the applicant had had at his disposal a new remedy, a complaint under Article 127 of the Constitution. As he had made no use of it, his complaints of his detention after the given date and of the length of his detention were inadmissible for non-exhaustion of domestic remedies.

40. The applicant upheld his complaints but expressed no view.

41. The Court observes that on 1 January 2002 a new remedy under Article 127 of the Constitution became available in Slovakia for human-rights complaints (see *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 and 60226/00, ECHR 2002 IX).

By virtue of that provision the Constitutional Court has the power to declare that a person's human rights or freedoms have been violated and to quash the impugned decision, measure or act. If the violation is the result of a failure to act, the Constitutional Court has the power to order the inactive authority to take the necessary action. At the same time it may remit the case to the authority concerned for further proceedings, order such authority to refrain from violating the fundamental rights and freedoms and, where appropriate, order those responsible to restore the situation that existed prior to the violation and to pay the victim appropriate financial compensation (see, for example, *Kontrová v. Slovakia* (dec.), no. 7510/04, 13 June 2006).

This remedy was found applicable to Article 5 issues in the period starting from 1 January 2002 and, in principle, applicants should be required to make use of it in order to comply with the exhaustion of domestic remedies rule pursuant to Article 35 § 1 of the Convention (see *Loyka v. Slovakia* (dec.), no. 62219/00, 4 January 2005).

42. For the sake of completeness, the Court would observe that, given the powers bestowed on the Constitutional Court under Article 127 of the Constitution to grant direct redress of both a preventive and compensatory nature, which are broader and substantially different from the powers of the ordinary courts under the 1969 State Liability Act and Articles 11 et seq. of the Civil Code, the complaint under Article 127 of the Constitution must be distinguished from the remedies analysed above.

43. As for the length of the applicant's detention, specifically, it is to be noted that, although it is not absolutely clear when he was released, he certainly was still detained on 25 July 2002 when he requested release. At that time as well as at the time of the introduction of the application, the new constitutional remedy under Article 127 of the Constitution already existed (see *Andrášik and Others*, cited above). In so far as the application has been substantiated, the Court finds no reasons why the applicant could not have raised his complaint of the length of his detention under that provision (see, *mutatis mutandis*, *Loyka*, cited above).

44. There is no indication that the applicant sought protection before the Constitutional Court of his rights under Article 5 §§ 1, 3 and 4 of the Convention, as regards the lawfulness of his detention and the proceedings in respect of it in the period starting from 1 January 2002 and as regards the length of his detention.

It follows that the relevant part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. Six months

45. The Government objected that the applicant's initial remand in detention and some of the subsequent decisions in respect of his detention and the proceedings leading to such decisions had been given or taken place more than six months before the date of introduction of the application.

46. The applicant maintained his complaints but expressed no view.

47. The Court notes that the applicant was remanded in custody in 1999 (see paragraph 16 above) and that his subsequent continued detention was examined several times in connection with requests for his release and for the extension of his detention (see paragraphs 17, 18, 20, 21 and 26 above) in the period more than six months before the date of introduction of the application on 15 March 2002 (see paragraph 1 above).

48. By virtue of Article 35 § 1 of the Convention, the Court is prevented from examining the decisions (alleged to be in breach of Article 5 § 1 of the Convention) that were taken in the period specified in the preceding paragraph as well as the proceedings (alleged to be in breach of Article 5 § 4 of the Convention) leading to them (see *Mello v. Slovakia* (dec.), no. 67030/01, 21 June 2005, and *Pavlik v. Slovakia*, no. 74827/01, § 85, 30 January 2007).

It follows that the relevant part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

3. *Decision on the applicant's request for release of 20 February 2001*

49. As for the period prior to 1 January 2002 and, at the same time, less than six months before the date of introduction of the application, the Government submitted that the applicant's detention had been lawful and justified.

50. The applicant upheld the complaint but presented no view.

51. The Court considers that the legality of and justification for the applicant's detention in the specified period (see paragraph 49 above) falls to be examined primarily under Article 5 § 1 (c) of the Convention. It observes that, according to the domestic courts (see paragraphs 25, 26 and 28 above), in this period there was a strong suspicion against the applicant of having been involved in serious organised crime. His detention was found to be necessary because there was a concern that he might abscond. The domestic courts based this concern on the fact that the applicant was a non-national, the nature of the charge, the stage of the investigation, and the potential penalty.

Although the brevity of the domestic courts' reasoning and the lack of direct reference to specific facts are not entirely free from criticism, in the circumstances there are insufficient grounds for holding it to be "arbitrary" within the meaning of Article 5 of the Convention (see, for example, *Ambruszkiewicz v. Poland*, no. 38797/03, §§ 32 and 33, 4 May 2006).

In so far as the complaint has been substantiated, the Court finds no indication that the applicant's detention in the given period was incompatible with the guarantees of Article 5 § 1 (c) of the Convention.

It follows that the relevant part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

4. *Proceedings in respect of the applicant's request for release of 20 February 2001*

(a) Aspects other than "speediness"

52. As regards the proceedings in respect of the applicant's request for release of 20 February 2001, the Court observes that it falls to be examined under Article 5 § 4 of the Convention. It reiterates that it is not always necessary that the procedure under that provision be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation (see, among other authorities, *Megyeri v. Germany*, judgment of 12 May 1992, Series A no. 237, pp. 11-12, § 22).

53. It should be noted that in the criminal proceedings against him the applicant was represented by a lawyer. Although he is a Hungarian national, there is no indication that he complained of not being able to understand the language of the proceedings or required linguistic assistance. To the extent

that the complaint has been substantiated, there is nothing to suggest that the proceedings in question fell short of the guarantees contained in Article 5 § 4 of the Convention other than “speediness” (see below).

It follows that the relevant part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) “Speediness”

54. The Government considered that the complaint of the lack of speediness in respect of the proceedings on the applicant's request for release of 20 February 2001 was manifestly ill-founded.

55. The applicant maintained the complaint but expressed no view.

56. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

57. The applicant complained that the proceedings in respect of his request for release of 20 February 2001 had not been “speedy”.

58. The Government pointed out that the applicant had lodged his request for release with the wrong court. Initial delays resulting from this fact could not be imputed to the State. After the resubmission of his request to the right court the proceedings had been swift.

59. According to the Court's case-law concerning Article 5 § 4 of the Convention, a periodic judicial review must, if it is to satisfy the requirements of those provisions, comply with both the substantive and the procedural rules of the national legislation and moreover be conducted in conformity with the aim of Article 5, namely to protect the individual against arbitrariness (see, among other authorities, *Herczegfalvy v. Austria*, judgment of 24 September 1992, Series A no. 244, p. 24, § 75).

Article 5 § 4 of the Convention does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention and for hearing applications for release. Nevertheless, a State which institutes such a system must in principle accord to the detainees the same guarantees on appeal as at first instance (see, among other authorities, *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, p. 23, § 84).

The requirement that a decision be given “speedily” is undeniably one such guarantee; however, in order to determine whether it has been complied with, it is necessary to effect an overall assessment where, as here,

the proceedings were conducted at two levels of jurisdiction (see *Navarra v. France*, judgment of 23 November 1993, Series A no. 273-B, p. 28, § 28).

The period to be taken into account in respect of proceedings under Article 5 § 4 of the Convention begins with the lodging of the application with the domestic authorities and, in the absence of a public pronouncement, ends on the day the decision is communicated to the applicant or to his representative (see, for example, *Koendjibiharie v. the Netherlands*, judgment of 25 October 1990, Series A no. 185-B, p. 40, § 28, and *Singh v. the Czech Republic*, no. 60538/00, § 74, 25 January 2005).

60. In the present case the applicant lodged his request for release on 20 February 2001 with the Dunajská Streda District Court, which is the court in which he had been committed for trial. It is true that the court having jurisdiction to decide matters concerning the applicant's detention at that time was the Trnava District Court and that, by lodging the request with a different court, the applicant created delays. Nevertheless, there is no indication that the Dunajská Streda District Court took any measures in respect of the request, such as, for example, transmitting it to the right court. There does not appear to be any justification for this inactivity.

61. After being resubmitted to the Trnava District Court, the request was examined four times: on 31 May and 13 September 2001 at first instance and on 28 June and 18 October 2001 on appeal. The latter decision was not publicly pronounced. It was served on the applicant in writing, on 31 October 2001. The relevant period ended on that date. It thus lasted more than eight months.

62. In assessing the “speediness” of the proceedings, it should be taken into account that the decision of 31 May 2001 had to be quashed on account of a serious procedural flaw. Until the request for release of 20 February 2001 was finally determined, the applicant was prevented from submitting a new request for release without relying on new facts (see paragraph 27 above) (see *Singh*, cited above, § 76).

63. The foregoing considerations are sufficient to enable the Court to conclude that the proceedings in respect of the applicant's request for release of 20 February 2001 were not “speedy” for the purposes of Article 5 § 4 of the Convention. This conclusion is not altered by the fact that, in the relevant period, the applicant's detention was also examined twice: on 31 May and 12 July 2001, in connection with the request by the prosecution service for its extension in a procedure in which the applicant had no opportunity to participate (see, for example, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3302, § 162).

There has accordingly been a violation of Article 5 § 4 of the Convention on account of the lack of “speedy” proceedings in respect of the applicant's request for release of 20 February 2001.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

64. The applicant also complained that his trial fell short of the guarantees of Article 6 of the Convention.

65. Fairness of proceedings can in principle only be determined once they have been concluded (see, *mutatis mutandis*, *Kuráková v. Slovakia* (dec.), no. 37895/97, 1 February 2001). The present proceedings are still pending.

66. It is further to be noted that the applicant did not challenge the length of his proceedings before the Constitutional Court (see *Andrášik and Others*, cited above).

67. It follows that all the complaints under Article 6 of the Convention must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. The applicant did not submit a claim under Article 41 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaint under Article 5 § 4 of the Convention concerning the alleged lack of “speedy” proceedings in respect of his request for release of 20 February 2001 and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the lack of “speedy” proceedings in respect of the applicant's request for release of 20 February 2001.

Done in English, and notified in writing on 6 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President