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

FIRST SECTION

DECISION

Application no. 38838/21
Roderik ABAFFY against Slovakia
and 3 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 16 January 2025 as a Committee composed of:

Georgios A. Serghides*, President*,
Alena Poláčková,
Alain Chablais*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the applications 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") on the dates indicated in the appended table by Mr R. Abaffy, a Slovak national, who was born in 1976 ("the applicant"), and represented by Ms E. Hlaváčová, a lawyer practising in Nitra;

the decision to give notice of the complaints under Article 5 § 3 of the Convention concerning the alleged arbitrariness of the applicant's continued pre-trial detention to the Slovak Government ("the Government") represented by their Agent, Ms M. Bálintová, and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's continued pre-trial detention in connection with the commission of a serious crime of fraud, the alleged insufficient reasoning given by the domestic courts and the lack of consideration of alternative measures.

2. The applicant was arrested on 16 October 2018. On 19 October 2018 the first instance court decided to place him in pre-trial detention based on the reasonable suspicion that he had committed, together with several other persons, a serious crime of fraud. The court found that there was a risk that the applicant would obstruct the proceedings by threatening witnesses or other co-suspects and would continue his criminal activities.

3. The applicant was indicted on 26 August 2019. On 6 September 2019 the domestic courts, while no longer relying on the risk of obstruction of the proceedings, upheld the applicant's pre-trial detention on the basis of the risk of reoffending until his conviction by the first-instance court on 25 May 2021.

4. During this period the applicant lodged repeated requests for release, including consideration of alternative measures, and the present applications concern his requests lodged on 24 August, 30 October, 21 December 2020 and on 23 April 2021. All requests were dismissed by two levels of courts, the final decisions being taken by the Constitutional Court on 27 January, 9 February, 6 May and 21 October 2021 (file nos. III. ÚS 19/2021, IV. ÚS 64/2021, II. ÚS 236/2021 and IV. ÚS 541/2021, respectively).

5. On 27 June 2023 the Constitutional Court dismissed the applicant's constitutional complaint challenging the outcome of the criminal proceedings (file no. II. ÚS 349/2023). The applicant's conviction thus became final.

6. The applicant complained under Article 5 § 3 of the Convention that the domestic courts had given irrelevant and insufficient reasons for his continued detention on remand and that they had failed to consider alternative measures to his detention.

THE COURT'S ASSESSMENT

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

8. The general principles as regards Article 5 § 3 of the Convention have been summarised in the case of *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 84-91, ECHR 2016).

9. The Government objected that the applicant had failed to exhaust the domestic remedies regarding the authorities' obligation to display "special diligence". Referring to the Court's case law regarding the length of civil proceedings (see *Obluk v. Slovakia*, no. 69484/01, §§ 48 and 59-62, 20 June 2006) and the requirement of speediness under Article 5 § 4 of the Convention (see *Alojz v. Slovakia* (dec.), no. 63800/10, §§ 21-22, 21 January 2014), they argued that he had not directed his constitutional complaints against the investigator and the prosecution, thereby failing to challenge the overall length of his pre-trial detention in accordance with the formal requirements.

10. The Court notes that, as in the case of *Štvrtecký v. Slovakia*, no. 55844/12, §§ 44-49, 5 June 2018, the present case concerns the assessment of whether the applicant's pre-trial detention was

excessive or not. This question cannot be assessed in abstract and is linked to the specific features of the case and in particular to the reasons given by the domestic authorities in their decisions on applications for release (see *Buzadji*, cited above, §§ 90-91). The Court's assessment is thus different from when it reviews the reasonableness of the length of civil and criminal proceedings or the speediness of review of lawfulness of pre-trial detention. Having regard to these differences, the particularly strict interpretation and application by the Constitutional Court of the formal rules on the scope of the constitutional complaint cannot be accepted in the present case (see, *mutatis mutandis, Koky and Others v. Slovakia*, no. 13624/03, § 176, 12 June 2012). The Government's objection must therefore be dismissed. However, the complaint under Article 5 § 3 of the Convention is in any event inadmissible on the following grounds.

11. Although the applicant's pre-trial detention lasted in total two years, seven months, and nine days, the decisions challenged before the Court pertain to that part of his pre-trial detention that was based solely on the risk of reoffending and lasted one year, eight months, and eighteen days.

12. The domestic courts found that the risk of reoffending was based on the applicant's two previous convictions for causing damage to another person's property ("*poškodzovanie cudzej veci*") and extortion and on the fact that the applicant had committed the present offence while on parole. They further referred to the crime's serious nature, that it had been committed over a longer period, consisted of several incidents, the applicant's leading role in the whole scheme, and to the fact that the applicant was prevented from continuing the commission of the crime only by keeping him in detention.

13. As far as the applicant argued that the crime of extortion was of a generically different type than the crime of fraud and therefore cannot be referred to as justification of the risk of reoffending, the Constitutional Court held that the systematic classification of the offence of extortion and fraud under different headings of the Criminal Code had not been decisive, as the nature of the individual acts and the similarities of the protected public interests must also be considered. Property was therefore protected also by other public interests, such as personal freedom, life and health or public order (file no. III. ÚS 19/2021). In its subsequent decisions, the Constitutional Court added that, if pre-trial detention was based on the risk of reoffending, this risk stemmed from facts already existing at the time of the commission of the offence and was thus impervious to passage of time (file nos. IV. ÚS 64/2021 and IV. ÚS 541/2021).

14. The domestic courts did not envisage it possible to apply alternative measures, since no exceptional circumstances had been established in the applicant's case (Article 80 § 2 of the Code of Criminal Procedure).

15. While the Court is prepared to agree that the impugned decisions show a certain degree of repetitiveness, it does not share the applicant's view that they contain no specific facts and reference to his personal circumstances and

are therefore general and abstract. The Court notes that previous convictions allowed for a reasonable fear that the accused might commit a new offence (see *Toth v. Austria*, 12 December 1991, § 70, Series A no. 224). Moreover, it is essentially on the basis of the reasons given in the domestic decisions and of the facts established by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Buzadji*, cited above, §§ 89-91).

16. In this regard the Court observes that, apart from the applicant's argument about the irrelevancy of the crime of extortion (see paragraph 13 above), his other arguments were mainly directed at challenging the existence of the reasonable suspicion and the assessment of the evidence (one specific witness testimony) or were presented in the form of a mere contention without any proof (the applicant submitted that he had sufficient financial means and thus did not depend on the commission of crimes to obtain his income) or were purely speculative (due to the COVID-19 pandemic the domestic authorities worked under limited regime that would not allow the applicant to gain access to the information necessary for the further commission of the crime). The facts invoked by the applicant therefore do not appear capable of putting into doubt the existence of the reasons justifying his pre-trial detention (see, *mutatis mutandis*, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II).

17. Furthermore, account must be taken also of the fact that the risk of reoffending cannot be completely negated by the passage of time (see *Süveges v. Hungary*, no. 50255/12, § 99, 5 January 2016) and that according to the domestic law the applicant was entitled to apply for release every three months. The lawfulness of his pre-trial detention was thus subject to multiple reviews.

18. Having regard to the specific circumstances of the case, the applicant's background and personality (see *Clooth v. Belgium*, 12 December 1991, § 40, Series A no. 225) and the lack of seriousness of his arguments in relation to the provisional release (see *Perstner v. Luxembourg*, no. 7446/21, § 43, 16 February 2023) the Court is of the opinion that the domestic courts cannot be reproached for a certain repetitiveness in the wording of their decisions, in particular since the reasons provided persisted during the whole period of the applicant's pre-trial detention (see *Knebl v. the Czech Republic*, no. 20157/05, § 68, 28 October 2010).

19. As regards the obligation on the domestic authorities to display "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §153, ECHR 2000-IV), the applicant submitted that the domestic courts had failed to do so. The Government pointed out that the applicant's detention in the proceedings before the courts lasted from 26 August 2019 until 25 May 2021, i.e. one year, eight months and twenty-nine days (see paragraph 3 above). During this period the courts held several hearings, heard many witnesses and experts, and examined other

evidence. In addition, they also decided on other applications lodged by the applicant and his co-accused, such as a petition to assign the case to a different first-instance court. Given these circumstances, the Court accepts that the domestic authorities proceeded with special diligence (see *Štvrtecký*, cited above, §§ 67-71).

20. In the light of the above, the Court concludes that the applications are 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,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 6 February 2025.

Liv Tigerstedt Deputy Registrar	Georgios A. Serghides President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on
1.	38838/21	Abaffy v. Slovakia	29/07/2021
2.	39024/21	Abaffy v. Slovakia	29/07/2021
3.	45671/21	Abaffy v. Slovakia	08/09/2021
4.	15011/22	Abaffy v. Slovakia	15/03/2022