

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

SECOND SECTION

CASE OF GÁL v. HUNGARY

(Application no. 62631/11)

JUDGMENT

STRASBOURG

11 March 2014

FINAL

11/06/2014

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



In the case of Gál v. Hungary,

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

Guido Raimondi, *President,*
Işıl Karakaş,
András Sajó,
Nebojša Vučinić,
Helen Keller,
Egidijus Kūris,
Robert Spano, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 11 February 2014,

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

PROCEDURE

1. The case originated in an application (no. 62631/11) against the Republic of Hungary 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 György Gál ("the applicant"), on 3 October 2011.

2. The applicant was represented by Mr D. Ábrahám, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. The applicant alleged, relying on Article 5 §§ 1 (c) and 4 of the Convention, that – while in detention on remand – his motions for evidence had been neglected or not dealt with in due time, therefore his detention had been unduly protracted. He also complained that his right to a fair trial had not been respected, in breach of Article 6 §§ 1 and 3 since his submissions and evidence had been largely disregarded by the domestic court and the criminal proceedings had lasted an unreasonably long time. Moreover, relying on Article 8, he complained of a restriction on maintaining contact with his family members. Furthermore, relying on Article 13, he submitted that there had been a violation of his right to an effective remedy since his appeal against the decision of 21 July 2010 had been rejected before he had introduced his detailed written appeal.

4. On 13 February 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954 and lives in Budapest.

6. On 25 November 2008 the applicant, then a member of the Municipal Council of Budapest VIIth District and chairman of the municipal economic committee, was arrested on charges of aggravated fraud and other crimes. Subsequently, criminal proceedings were initiated against some of the close colleagues and acquaintances of the applicant in the same context.

7. On 27 November 2008 the Pest Central District Court ordered the applicant's detention on remand relying on section 129 (2) b), c), and d) of the Criminal Procedure Code. Defence counsel for the applicant requested the court not to detain him but to order house arrest, if a coercive measure was inevitable. The court however held that there was a danger that the applicant would abscond in the face of the serious charges and by virtue of his contacts abroad. It also noted that further steps of investigation were outstanding, and held that there was a risk of collusion.

On 8 December 2008 the Budapest Regional Court upheld the first-instance decision, adding that the risk of repetition of crime was also real if the applicant were released. The court noted that he had a registered employment and regular income but had committed the alleged criminal acts as a member of a criminal group, over a long period of time, and through the companies founded and operated by him and his associates.

8. On 25 and 27 November 2008 the Central Investigation Prosecutor's Office, for the fear of collusion, restricted the applicant's personal contacts, that is, correspondence and personal contacts with his family members were allowed only under the supervision of the Public Prosecutor's Office. He was authorised to maintain phone contact only with his lawyer.

9. On 22 December 2008 the investigating judge of the Pest Central District Court extended the applicant's detention until 27 March 2008, on the grounds in section 129 (2) b) and c) of the Criminal Procedure Code. The court noted that the applicant was charged with aggravated fraud, corruption and forgery of documents. It observed that the applicant's settled family circumstances did not diminish the risk of absconding given the applicant's network of contacts with influential acquaintances both in Hungary and abroad, his probable dire financial situation following a release and the gravity of the alleged crimes.

The court further noted that the risk of collusion or interference with the investigation was real, finding that there was information ("*adat merült fel arra*") confirming that the applicant, together with an associate, intended to eliminate evidence and incriminating documents, thereby impeding the on-going investigation. This "information" was not however specified.

Nonetheless, the court agreed with defence's argument that the applicant had committed the alleged acts as a member of the municipal assembly so that following the intervening termination of his mandate there was no real risk of repetition of crime.

10. On 14 January 2009 the Budapest Regional Court upheld the first-instance decision but expanded the reasoning to include the risk of reoffending under section 129 (2) d). It noted that the applicant had committed the alleged criminal acts over a longer period of time, in an organised manner and in close cooperation with his associates. It added that the applicant had engaged in the alleged crimes despite his employment and regular income, this revealing a criminal lifestyle.

11. On 24 March 2009 the District Court extended the detention for two further months on the grounds in section 129 (2) b), c) and d) of the Criminal Procedure Code. The justification consisted of the accumulation of evidence against the applicant and the impending severe sentence, his connections and property abroad, the risk that he might attempt to influence witnesses or otherwise obstruct the investigation and the danger of reoffending given the continuous and organised nature of the alleged crimes committed through the companies set up by his associates. This decision was upheld on appeal on 7 April 2009.

12. On 27 March 2009 the applicant requested to have phone contacts with his wife, which was rejected on 7 April 2009. Following a complaint by the applicant, the Chief Prosecutor's Office decided that the prohibition was no longer necessary and authorised phone contacts under the supervision of the Public Prosecutor's Office.

On 6 April 2009 the Central Investigation Prosecutor's Office rejected the applicant's motions to have further evidence taken, notably by appointing a certain real estate valuer, Mr P. The Office was of the view that this was superfluous, especially since Mr P. was ineligible, given that he might have previously been involved in the incriminated transactions. The applicant's appeal was to no avail.

13. The applicant's pre-trial detention was again prolonged at the statutory intervals on 26 May and 26 August 2009, the reasons remaining the same as in the previous decisions.

14. On 3 September 2009 the applicant requested to have contact with his family without the supervision of the Public Prosecutor's Office, which was dismissed by the Central Investigation Prosecutor's Office on 10 September 2009.

15. On 26 November 2009 the Budapest Regional Court held a hearing and extended the applicant's pre-trial detention for two months.

The court referred to numerous pieces of evidence which pointed to his likely involvement in the fraud scheme. To substantiate that the applicant's presence at the trial could only be ensured through the most severe preventive measure, the court noted the risk of absconding. Applying

section 129(2) b) of the Code of Criminal Procedure (see paragraph 27 below), the court observed that the applicant had a network of contacts and property abroad and presumed that the alleged crimes presupposed an important financial background, personal connections and backing from the "underworld", all this constituting "another reason" (*más okból*) for the applicant's detention. As regards the danger of reoffending, the court referred to the applicant's luxurious lifestyle which was likely to be sustained through criminal acts, the organised nature of the alleged crimes and the fact that he continued to receive his allowance from the municipal committee – the framework of the alleged crimes – despite his indictment. The court further observed that it was necessary to maintain the applicant's detention since there was information that he had attempted to obstruct the investigation through influencing the taking of evidence and it was necessary to hinder the exchange of information between the applicant and other persons.

Moreover, the court assessed whether less restrictive measures could have served the same goal, and observed that the applicant's detention was proportionate to the aim of ensuring his presence at trial.

This decision was upheld by the Budapest Court of Appeal on 14 December 2009.

16. As of 3 December 2009 the Central Investigation Prosecutor's Office charged the prison detaining the applicant *(Fővárosi Bv. Intézet)* with the responsibility of determining the length and frequency of family contacts.

From 4 December 2009 onwards no specific restrictions were applied to the applicant. He could receive visits (each lasting maximum 60 minutes) and maintain phone contacts three times a week for 10 minutes and correspond with his family (which he did daily) according to the general, statutory rules.

17. At the hearing of 26 January 2010 the applicant's pre-trial detention was extended once more by the Budapest Regional Court, reiterating the same reasons as in the decision of 26 November 2009. It was observed that the applicant was still member of the Municipal Council. The court further noted, similarly to the order of 26 November 2009 (see paragraph 15 above), that the context of the case was such as representing "another reason" for the applicant's continued detention.

The applicant appealed, referring to the fact that he had voluntarily returned to Hungary from abroad while the investigation had already been on-going and that were no grounds to believe that he would abscond if released. He further pointed out that investigations had been on-going for a long period of time; since the necessary evidence had been gathered and testimonies heard, there was no risk that he would obstruct the investigation.

By its decision of 15 February 2010 the Budapest Court of Appeal upheld the first-instance decision, adding that the public interest in

prosecuting a crime of serious importance outweighed the applicant's individual interest in his liberty.

18. The pre-trial detention was again prolonged on 25 March and 26 May 2010. The court rejected the arguments of the applicant's lawyer to the effect that the results of the investigation did not support a reasonable suspicion against the applicant and the risk of absconding, collusion or reoffending had not been substantiated. It was satisfied that his continued detention was necessary for fear of his absconding, the danger of collusion, and the risk of reoffending, with identical reasons as in the decision of 26 January 2010.

With regard to the decision of 26 May 2010 the applicant appealed, orally, immediately after the pronouncement of the decision. The written decision reached the office of the applicant's lawyer on 30 June 2010; nonetheless he submitted a written elaboration of the appeal with the Court of Appeal on 29 June 2010. The second-instance court, however, had already issued its decision on 28 June 2010.

In reply to the applicant's respective appeals, the second-instance court was satisfied that the pre-trial detention was necessary and could not be substituted by less stringent measures, as suggested. The defence also raised the argument that the applicant had allegedly committed the criminal offences in connection with his position as a member of the Municipal Council, and following the termination of his mandate, he was no longer in a position to reoffend. Moreover, it highlighted that the applicant had returned to Hungary following the arrest of his alleged co-perpetrator, thus there were no grounds to believe that he would have fled. However, the courts were not persuaded by these submissions.

19. On 21 July 2010 the Budapest Regional Court extended the applicant's detention, mentioning the grounds of risk of absconding and danger of collusion, but omitting the reference to the possibility of reoffending. Both the applicant and his lawyer appealed, orally, immediately after the pronouncement of the decision. The second-instance court adopted a decision endorsing the prolongation on 28 July 2010, only on the basis of the oral appeals.

Moreover, the applicant's lawyer lodged a written elaboration of the appeal. This submission reached the court on 29 July 2010.

The written version of the first-instance decision was served on the applicant's lawyer only on 30 July 2010.

20. The 121-page bill of indictment against altogether twenty-five defendants was lodged with the Budapest Regional Court on 9 November 2010. The file relating to the proceedings conducted against the applicant contained investigatory files of some ten thousand pages.

21. On 22 November 2010 the applicant's detention was extended again on the ground of the risk of absconding, corroborated, according to the Regional Court, by the gravity of the charges, the severity of the impending

sentence and his contacts abroad. Nonetheless, the court found that the investigations were closed, the bill of indictment had been preferred and the applicant no longer held a position in the Municipal Council, thus there were no elements to support the suspicion that he would attempt to conceal evidence or connive with witnesses. As it appears from the case-file, no consideration was given to the application of less stringent measures, such as house arrest.

22. On 25 January 2011 the Regional Court ordered the applicant's release on bail, as requested by the applicant, stating that the applicant was a father of five minor children and had allegedly committed the offences in connection with his position at the municipality, which had ceased to exist, and so did his financial and administrative connections. The court set the bail at 100,000,000 Hungarian forints (HUF) (approximately 332,000 euros (EUR)). The applicant appealed, apparently finding the amount excessive, but to no avail.

It appears that the bail measure was not applied, because the applicant was not a situation to pay that amount of money.

23. On 13 May 2011 the applicant was released by an order of the first-instance court and placed under house arrest, with the reasoning that the applicant had a settled family situation and was in charge of his minor children.

However, on the prosecution's appeal, he was detained again as of 17 June 2011 by the decision of the Budapest Court of Appeal. In its decision of 16 June 2011, that court insisted that the interest of securing the applicant's availability for justice outweighed his right to personal liberty and that the continued detention could by no means be regarded as an anticipated punishment. The court was satisfied that the previous reasons justifying the detention on remand were still valid and did not embark on an analysis of the particular circumstances arguing for and against the detention.

24. The applicant's request for release or for a less coercive measure lodged with the Budapest Regional Court was to no avail. The defence stressed the absence of concrete elements underlying the detention and the disregard of the applicant's family conditions. On 7 October 2011 the court rejected his submission, arguing that despite the applicant's family status, the risk of absconding was real.

25. The applicant's detention was finally terminated on 16 December 2011.

26. On 24 February 2012 the applicant was found guilty of fraud, corruption, misappropriation of public funds, abuse of power, and forgery of private documents. He was sentenced to eight years and six months' imprisonment. On 10 October 2012 the Szeged Court of Appeal gave a second-instance judgment. The applicant's appeal is pending before the *Kúria.*

II. RELEVANT DOMESTIC LAW

27. Act no. XIX of 1998 on the Code of Criminal Procedure provides as follows:

Section 43(3)

"A detainee shall be entitled to ...

b) have contact with his relative or ... any other person [by telephone] or in person under supervision, or in writing under control. Contact with a relative may be restricted or banned exclusively in the interest of the success of the criminal proceedings."

Section 129

"(2) Pre-trial detention of a defendant may take place in a procedure related to a criminal offence punishable by imprisonment, and only under the following conditions: ...

b) if, owing to the risk of escaping or absconding, or for other reasons (*más okból*), there is reasonable cause to believe that the presence of the defendant in procedural actions cannot be otherwise ensured,

c) if there is reasonable cause to believe that if left at liberty, the defendant would frustrate, obstruct or jeopardise the taking of evidence, especially by means of influencing or intimidating witnesses, or by the destruction, falsification or secretion of physical evidence or documents, ...

d) if there is reasonable cause to believe that if left at liberty, the defendant would accomplish the attempted or planned criminal offence or commit another criminal offence punishable by imprisonment."

Section 131

"(1) Pre-trial detention ordered prior to filing the indictment may continue up to the decision of the court of first instance during the preparations for the trial, but may never be longer than one month. The pre-trial detention may be extended by the investigating judge by three months at the most on each occasion, but the overall period may still not exceed one year after the order of pre-trial detention. Thereafter, pre-trial detention may be extended by the county court acting as a single judge by two months at the most on each occasion, in compliance with the procedural rules pertaining to investigating judges."

Section 186

"(1) Any person having the right to be present at an investigatory action may forthwith inspect the minutes taken.

(2) The suspect, counsel for the defence and the victim may inspect the expert opinion during the investigation as well, but may only inspect other documents if this does not injure the interests of the investigation.

(3) The suspect and counsel for the defence shall be entitled to receive a copy of the documents they may inspect.

(4) The copy of the documents produced, obtained, filed or attached in the course of the investigation and containing the testimony or personal data of the victim or the witness shall not indicate the personal data of either the victim or the witness. No copy may be issued of the draft decisions of the prosecutor or the investigating authority. No copy may be issued of the documents created in the course of communications between the prosecutor and the investigating authority pursuant to sections 165 and 165/A, except for the documents that contain the legal standpoint of the prosecutor and the investigating authority in relation to the case – including particularly the document containing the prosecutor's instruction concerning the conduct of the investigation, provided that the specific investigation was conducted – provided that this does not interfere with the interests of the investigation."

Section 195

"(1) Anyone affected directly by the dispositions contained in the prosecutor's or investigating authority's decision on the rejection of a complaint [...about] coercive measures ... may file a complaint within eight days following communication of the decision.

(4) ... The complaint against the decision of the prosecutor shall be adjudged by the superior prosecutor, while the complaint against the decision of the investigating authority shall be judged by the prosecutor, within fifteen days of receipt...

(5) [A] the decision admitting or rejecting the complaint is not subject to any further remedy."

Section 211

"(3) At the [court] session, the [prosecution] having submitted the motion [on ordering or prolonging pre-trial detention] shall present the evidence substantiating the motion in writing or orally. Those present shall be granted the opportunity to examine – within the limits set forth in section 186 – the evidence ... . If a notified party does not attend the session but submitted observations in writing, this document shall be presented by the investigating judge."

Section 215

"(1) A decision of the investigating judge may be appealed by all those parties who have been notified thereof. Any appeal against a decision notified by way of oral pronouncement shall be lodged [orally] immediately after the pronouncement.

(5) Regardless of an appeal, the order for a coercive measure entailing the restriction on deprivation of personal freedom may be executed [at once]."

28. Law-Decree no. 11 of 1979 on the Execution of Punishments and Measures provides as follows:

Section 118

"(1) A pre-trial detainee ...

d) may have correspondence with his relatives and – with the approval of the public prosecutor, or after the filing of the bill of indictment, with the approval of the court – with other persons; he may receive one visitor and one parcel at least once a month.

(2) The pre-trial detainee's right of correspondence and right to receive visitors and parcels may – except for contact with his defence counsel – be limited in the interests of the successful completion of the criminal proceedings."

29. Decree no. 6 of 1996. (VII.12.) of the Minister of Justice on the Rules of Enforcement of Imprisonment and Detention on Remand provides as follows:

Section 6

"(1) ... In matters related to his detention, the inmate may ... request the head of the organisational unit concerned or the prison governor to hear him in person, or may address them in writing.

(2) The inmate may file a complaint to the prison governor against a ruling (measure, decision) taken or omitted under subsection (1). Where the decision has been taken by the prison governor ... the complaint shall be adjudged by the National Commander of the Prison Administration."

Section 7

"In matters related to his detention, the inmate may, in addition to the remedies provided under section 6, turn directly to:

a) the penitentiary supervisory public prosecutor, requesting him to hear him in person; ...

b) the Ombudsman, in regard to any alleged violation of human rights sustained during the incarceration; ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

30. The applicant complained that his detention and its prolongations had been unjustified since the courts had failed to produce any concrete elements underlying the necessity of this measure. He relied on Article 5 § 1 and Article 6 §§ 1 and 3 (a) and (b) of the Convention.

The Court considers that this complaint falls to be examined under Article 5 § 3 alone, which reads as follows:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

31. The Government contested that argument.

A. Admissibility

32. 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. The parties' submissions

33. The applicant complained that the decisions prolonging his detention had not been individualised or substantiated the risk of his absconding, collusion or reoffending. Moreover, they had not involved an adequate assessment of the possibility of applying less stringent measures. In his view, they had been no more than blanket decisions to perpetuate his incarceration.

34. The Government submitted that the applicant's pre-trial detention had been based on specific facts related to his case in accordance with section 129 (2) b), c) and d) of the Code of Criminal Procedure, according to which pre-trial detention should be ordered if there was a risk of collusion, repetition of crime, or a danger of the defendant's absconding or for other reasons if it could be assumed that the defendant's presence at the procedural act could not be secured otherwise.

35. The Government argued that, as to the particular grounds of detention on remand, the danger of collusion had been supported by information that the applicant, with the help of his colleague, intended to destroy documentary evidence and coordinate with other suspects concerning the content of their testimonies.

36. As regards the risk of absconding, the judicial authorities had relied on the finding that the applicant had property and contacts abroad as well as considerable financial resources, and that one of his alleged co-perpetrators had been found hiding in a real estate neighbouring the applicant's property abroad. The courts also assumed that the applicant's availability for justice could not be secured otherwise for "other reasons", namely the complex personal and material correlations, the organised commission of the applicant's alleged offences, and the fact that the investigations and unravelling of the network in question had been against the interests of criminal organisations.

37. Concerning the danger of reoffending, the domestic courts pointed out the continuous nature of the alleged crimes and the fact that the applicant kept receiving his allowance from the municipal committee, despite his indictment.

38. Likewise, the possibility of applying less stringent measures had been examined by the courts which had found that pre-empting the

applicant's contacts with his associates had been of paramount importance in order to prevent collusion. House arrest had not been adequate because it would not have prevented those contacts. Moreover, release on bail was also possible following the finding of the courts that there was no danger of the accused's absconding or reoffending.

2. The Court's assessment

39. The Court reiterates that under its case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, 26 January 1993, § 30, Series A no. 254-A).

40. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned 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. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

41. In the present case the applicant's detention on remand lasted from 27 November 2008 until 13 May 2011 when he was placed in house arrest. His subsequent pre-trial detention lasted from 17 June 2011 until 16 December 2011. The period to be taken into consideration is altogether over two years and eleven months.

42. In the first part of the applicant's detention on remand, that is, until the filing of the bill of indictment on 9 November 2010, the authorities held that the organised character of the alleged crime, the magnitude of the sums involved and the applicant's network of contacts amounted to establishing the risk of collusion and reoffending. The courts noted that there was

"information" (see paragraph 9 above) confirming that the applicant, together with an associate, had intended to eliminate evidence and incriminating documents, thereby impeding the on-going investigation; this "information" was, however, not specified. The Court would add at this juncture that the reliance by the courts on elements undisclosed to the suspect is hardly reconcilable with the principle of "equality of arms" generally required in the field of guarantees against arbitrary deprivation of liberty. The Court acknowledges "the need for criminal investigations to be conducted efficiently, which may imply that part of the information collected during them is to be kept secret in order to prevent suspects from tampering with evidence and undermining the course of justice. However, this legitimate goal cannot be pursued at the expense of substantial restrictions on the rights of the defence. Therefore, information which is essential for the assessment of the lawfulness of a detention should be made available in an appropriate manner to the suspect's lawyer" (see *Garcia Alva v. Germany*, no. 23541/94, § 42, 13 February 2001).

In addition, the risk of absconding was demonstrated, according to the courts, by the gravity of the charges and the related severity of the impending sentence, as well as by the applicant's property abroad and the fact that one of the co-accused had fled to a third country.

In this respect the Court reiterates that the risk of reoffending, if convincingly established, may lead the judicial authorities to place and leave a suspect in detention in order to prevent any attempts to commit further offences. It is however necessary, among other conditions, that the danger be a plausible one and the measure appropriate, in the light of the circumstances of the case and in particular the past history and the personality of the person concerned (see *Clooth v. Belgium*, 12 December 1991, § 40, Series A no. 225; and *A.J.P. v. France*, no. 17020/05, § 71, 29 October 2009).

The Court also reiterates, as regards the domestic courts' reliance on the gravity of the charges when finding the risk of absconding, that it has repeatedly held that this reason cannot by itself serve to justify long periods of detention (see, among many other authorities, *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001; *Michta v. Poland*, no. 13425/02, § 49, 4 May 2006).

43. Having regard to its findings below (see paragraphs 44 to 48), the Court considers it unnecessary, in the circumstances of the present case, to address the complaint about the stereotypical reasoning of the orders confirming the applicant's detention in this period (see *Mansur v. Turkey*, 8 June 1995, § 55, Series A no. 319-B) together with the alleged lack of consideration of his individual circumstances (see *Labita v. Italy*, cited above, § 152) and of an in-depth analysis of the evidence against him (see *Stepuleac v. Moldova*, no. 8207/06, § 68, 6 November 2007).

44. As regards the second period of the applicant's pre-trial detention (i.e. subsequent to the termination of the investigation and in particular to the indictment on 9 November 2010), the Court considers that the risk of collusion must be regarded as significantly less relevant once the evidence has been gathered, the investigation terminated and a bill of indictment preferred (see, *mutatis mutandis*, *Szeloch v. Poland*, no. 33079/96, § 93, 22 February 2001). The absence of the risk of collusion was indeed reflected in the domestic court decisions given during this period. Similarly, following the termination of the applicant's mandate at the Municipal Council, the authorities found the risk of reoffending unfounded (see paragraph 19 above). In fact, after 22 November 2010 references were made only to the danger of the applicant's absconding (see paragraph 21 above). In the latter respect, however, the Court is not persuaded by the Government's arguments.

45. The Court observes in this respect that the applicant's detention on remand was terminated and his house arrest ordered as of 13 May 2011. Nonetheless, on appeal by the Prosecutor's Office, he was detained again by the decision of the second-instance court from 17 June 2011 until 16 December 2011. The Court notes in particular that in the decision of 16 June 2011 no heed was paid to the applicant's personal circumstances rendering his fleeing implausible, such as his family background (see *Neumeister v. Austria*, 27 June 1968, § 10, Series A no. 8). Nor did the authorities give any reason for not countering the risk of the applicant's potential absconding by a measure less stringent than pre-trial detention, such as house arrest. Even more striking is the lack of any assessment or reasoning in this regard, in the face of the fact that release on bail had already been considered on 25 January 2011 (see paragraph 22 above) and the applicant had actually been released into house arrest on 13 May 2011.

In that connection the Court also points out that the Regional Court fixed the amount of the bail at HUF 100,000,000 (approximately EUR 332,000). There is no evidence that before deciding on that sum the domestic court made any effort to determine what would be an appropriate amount of bail in the circumstances, for example by requiring the applicant to furnish information on his financial standing.

The Court further observes that the courts repeatedly made reference to "another reason" for the applicant's continued detention (see paragraphs 15 and 17 above). This reason consisted of elements, the combined effect of which made it plausible that the crime, which the applicant had allegedly committed, was part of activities with complex ramifications and potential connections to the "underworld". In applying this consideration, the courts relied on section 129(2) b) of the Code of Criminal Procedure (see paragraph 27 above). However, for the Court, this reasoning, which borders on speculation in the absence of ascertainable information concerning the actual situation, sits uncomfortably with the letter of the law, which requires

in this hypothesis that a reason "other" than that of absconding should necessitate the continued detention, in order to secure the suspect's availability to justice. In the Court's eyes, however, the reasons invoked by the courts can hardly be construed to demonstrate such a reason, distinct from the risk of absconding.

46. The Court is of the view that, in the particular circumstances of the present case – that is, after bail had been considered, the investigation terminated and, especially, the indictment preferred – the justification for the applicant's continued detention may call for a stricter scrutiny from the perspective of Article 5 § 3 of the Convention (see, in the context of Article 5 § 1, *Darvas v. Hungary*, no. 19547/07, § 28, 11 January 2011).

47. However, in the present case, the Court finds it difficult to see how the requisite scrutiny was exercised by the authorities in a situation where the applicant, already exempted from the most stringent coercive measure, was again subjected to a deprivation of liberty, and this without the judges giving any particular reasons for this measure, notably with regard to any new development in the case. In the Court's view, the absence of developments could not have automatically resulted in the applicant's continued detention (see paragraph 23 above).

48. The Court finds that, at that advanced stage of the proceedings and after a lengthy period of detention, the decision to go back on the decision to secure the applicant's availability for justice by house arrest would have required serious reasons, which have not been adduced by the Government. Consequently, the Court cannot but conclude that the applicant's pre-trial, in particular in the second phase, was maintained in breach of Article 5 § 3 of the Convention.

Consequently, there has been a violation of that provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. Relying on Article 6 § 1, the applicant also complained that the length of the criminal proceedings conducted against him was incompatible with the "reasonable time" requirement of that provision.

The Court notes that the case has been pending for some five years and one month so far. During this period, three court instances have dealt with the case, which is rather complicated. The Court considers that, in the face of the complexity of the case and the number of suspects, the overall length of the proceedings has not yet exceeded a reasonable time, and no particular delay or inactivity imputable to the authorities can be observed throughout the proceedings.

This complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

50. The applicant further complained that the restrictions on visits, correspondence and phone calls from his family amounted to a breach of his right to respect for family life, enshrined in Article 8 of the Convention.

The Government argued that the applicant should have complained about this to the competent prosecution authorities under section 195 of the Code of Criminal Procedure, a remedy potentially capable of redressing the impugned situation. The applicant submitted that he had done so, but in vain.

The Court considers that it is not necessary to decide on the efficiency and exhaustion of the remedy referred to by the Government since this complaint is in any event inadmissible for the following reasons. The Court observes that from his arrest until December 2009, that is, for some thirteen months, the applicant's correspondence and visits were subject to supervision by the prosecution authorities and that he could maintain phone contact only with his lawyer. These measures were justified domestically by the risk of collusion.

The Court considers that the impugned restrictions, the lawfulness of which has not been disputed, pursued the legitimate aim of prevention of crime, and were necessary in a democratic society in order to secure, in an uncorrupted form, outstanding evidence potentially incriminating the applicant. At that time, the investigation into a serious fraud case was still underway, the bill of indictment not having been preferred yet.

As to the subsequent period, the Court notes that no specific restrictions were applied to the applicant any longer. He could receive visits (each lasting maximum 60 minutes) and maintain phone contacts three times a week for 10 minutes and correspond with his family (which he did daily) according to the general, statutory rules (see paragraph 16 above).

The Court is satisfied that the measures complained of were not disproportionate, since the applicant was first allowed to receive visits and letters from his family, albeit under prosecutorial supervision, and then could exercise his contact rights within the statutory rules, themselves not unreasonable.

This complaint is likewise manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

51. The applicant also complained that he had not had an effective remedy, as required by Article 13 of the Convention, concerning his detention – in that, on 28 July 2010, the competent second-instance court had decided on the prolongation before the written version of his appeal reached the bench.

The Government did not submit observations on the merits of this complaint.

The Court observes that any appeal against a decision about the pre-trial detention communicated by way of a pronouncement shall be lodged

immediately after the pronouncement (see section 215 (1) of the Code of Criminal Procedure, quoted in paragraph 27 above), that is, in oral proceedings. In the particular case, both the applicant and his lawyer made an oral appeal in application of this rule and the second instance court decided solely on the basis of these appeals (see paragraph 19 above).

Without taking a position on the appropriateness of the requirement to appeal immediately after the decision in question, the Court considers that, in view of its findings under Article 5 § 3 of the Convention (see paragraph 48 above), in the present case it is not necessary to examine separately either the admissibility or the merits of this complaint.

52. Lastly, the applicant complained that by denying some of his motions to have further evidence taken (see paragraph 12 above) the courts frustrated his right to a fair hearing, in breach of Article 6 § 1 of the Convention.

The Court observes that the criminal proceedings against the applicant are still pending before the *Kúria*. Therefore, the complaints about the fairness of the case are premature and must be rejected under Article 35 §§ 1 and 4 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 applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

55. The Government contested this claim.

56. The Court considers that the applicant must have suffered some non-pecuniary damage and awards him EUR 3,100 in that respect.

B. Costs and expenses

57. The applicant made no costs claim.

C. Default interest

58. 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 complaint concerning Article 5 § 3 admissible;

2. *Declares* inadmissible the complaints about the length and the fairness of the proceedings (Article 6 § 1) and about the family contacts (Article 8);

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds* that it is not necessary to examine separately either the admissibility or the merits of the applicant's complaint under Article 13 concerning his detention;

5. *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, EUR 3,100 (three thousand one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President