CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 67030/01
by Ivan MELLO and Karol MELLO
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 21 June 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 13 November 2000,

Having deliberated, decides as follows:

THE FACTS

The first applicant, Mr Ivan Mello, was a Slovakian national who was born in 1971 and lived in Prievidza. On 15 June 2002 he died in a traffic accident. In a letter of 28 June 2002 the late first applicant's wife, Mrs Nataša Mellová, informed the Court that she wished to pursue the application in his stead. In the same letter the second applicant, Mr Karol Mello, who is the brother of the first applicant, expressed his wish to have the facts of the case reviewed in his own name. The second applicant who was born in 1969 and lives in Prievidza is a Slovakian national. The

applicants are represented before the Court by Mr P. Schmidl, a lawyer practising in Bratislava.

The facts of the case, as submitted by the applicants, may be summarised as follows.

1. Criminal proceedings and detention on remand

On 7 April 1999 the Trenčín Regional Office of Investigation (*Krajský úrad vyšetrovania*) charged the applicants with blackmail. The following day the applicants were arrested.

On 9 April 1999 the Trenčín District Court (*Okresný súd*) ordered the applicants' detention. Referring to "the seriousness of the charges", "the personalities of the applicants", "the organised nature of their offences" and the fact that they were suspected of having also committed other crimes, the District Court concluded that there was a strong case against the applicants. There was moreover a well-founded suspicion that, if at liberty, they would abscond, intimidate witnesses and continue their criminal activity within the meaning of letters (a), (b) and (c) of Article 67 § 1 of the Code of Criminal Procedure.

The applicants' complaints (*sťažnosť*) against the charges and detention were dismissed in May and June 1999 respectively.

On 23 August 1999 the Trenčín District Court dismissed the applicants' request for release pending trial. It held that there was still "strong suspicion" of their having committed the offences as charged and referred to "the nature of the offences" in question, the fact that the applicants were members of a criminal syndicate and were at the same time under investigation for other crimes and the fact that one of the witnesses had to go into hiding fearing the applicants' retaliation. On 26 October 1999 the Trenčín Regional Court dismissed the first applicant's complaint against this decision.

In the meantime, on 25 August 1999, the Trenčín Regional Office of Investigation charged the first applicant with another count of blackmail. On 17 September 1999 the Trenčín Regional Prosecutor dismissed his complaint against the charge as unfounded. The criminal proceedings concerning the charge of 7 April 1999 and that of 25 August 1999 were later joined in one set.

On 27 September 1999 the Trenčín Regional Office of Investigation charged the first applicant with obstruction of justice on the ground that, while in detention, he had been smuggling out secret messages with instructions to witnesses and other persons. On 6 December 1999 the Trenčín Regional Prosecutor dismissed the first applicant's complaint against this charge as unfounded.

On 5 October 1999 the Trenčín District Court authorised an extension of the applicants' detention until 8 April 2000. It found that "the reasons for which the applicants had been remanded still exist". It had not been possible

to complete the investigation within the statutory six months' time-limit and it was necessary to obtain further evidence.

On 29 February 2000 the Trenčín District Court authorised a further extension of the applicants' detention until 30 June 2000. It held that the well-founded suspicion against the applicants had not been rebutted and the reasons for their detention still persisted. For objective reasons it had not been possible to complete the investigation by 8 April 2000 and yet further evidence had to be obtained. Releasing the applicants could prevent or hinder the proper course of justice.

On 29 March and 2 May 2000 both applicants were charged with, respectively, another count of blackmail and robbery. On 16 and 18 May 2000 the Trnava Regional Prosecutor dismissed the applicants' complaint against these charges as unfounded.

In February, March and May 2000 the applicants addressed several requests for release to the Trenčín District Court, the Trenčín Regional Court and the Trenčín Regional Prosecutor. The requests were transmitted to the District Court which dismissed them on 26 May 2000. It found that, while this in no way prejudged the merits of the case, the testimonies of L. and G. provided a solid basis for the suspicions against the applicants. The applicants were charged with serious offences committed in an organised fashion over a long period. They were currently under investigation for other offences. Moreover, prior to his arrest, the first applicant had attempted to flee and was later sending secret messages from detention. The reasons for keeping the applicants in detention thus still persisted.

The applicants challenged the decision of 26 May 2000 by a complaint to the Trenčín Regional Court. They argued *inter alia* that the said decision did not comply with the requirements of Article 134 of the Code of Criminal Procedure in that it lacked proper reasoning and contained no reference to any concrete facts and evidence.

On 27 June 2000 the Trenčín Regional Court dismissed the applicants' complaint and upheld the decision of 26 May 2000. If considered that the District Court had duly addressed the applicants' arguments and that their grounds of appeal were unfounded.

On 27 June and 13 October 2000 the Trenčín District Court authorised an extension of the applicants' detention until, respectively, 30 October and 30 November 2000. It held that "the reasons for detention, as established at the time of the applicants' remand, still exist. The evidence obtained has not rebutted the suspicion against them. For objective reasons it has not been possible to complete the investigation earlier and releasing the applicants could prevent or hinder the proper course of justice."

In November 2000 the Trenčín Regional Prosecutor indicted the applicants to stand trial in the Prievidza District Court on charges of conspiracy, extortion and obstruction of justice. The indictment was directed against 6 other accused and comprised 10 separate counts.

On 9 October 2000 the applicants again petitioned for release. On 14 December 2000 the Prievidza District Court dismissed the petition. "Having examined the case-file", the District Court found that "there still exists a well-founded suspicion against the applicants." Given the severity of the potential sentence, there was concern that the applicants could flee. The first applicant was also accused of sending secret messages from detention, thus giving rise to the suspicion that, if at liberty, he would obstruct the course of justice. The first applicant had four previous convictions and was currently also standing trial on charges of extortion and illegal possession of firearms and explosives. The second applicant was facing another indictment for causing bodily harm. The Regional Court concluded that there continued to be grounds for keeping the applicants in detention.

The applicants challenged the decision of 14 December 2000 by means of a complaint. They argued again that, contrary to Article 134 § 2 of the Code of Criminal Procedure, the said decision failed to specify on which concrete facts and evidence it was based. They further strongly challenged the credibility of witness L., agued that the first applicant had not tried to evade his arrest and maintained that the smuggling of secret messages had not yet been proven in court.

On 23 February 2001 the Trenčín Regional Court dismissed the applicants' complaint as unfounded and upheld the decision of 14 December 2000.

In the meantime, on 4 February 2001, the Supreme Court (*Najvyšší súd*) authorised a further extension of the applicants' detention until 8 April 2002. It later extended the detention until 25 August 2002.

On 5 February 2001 the Trenčín Regional Prosecutor indicted the applicants in the Trenčín Regional Court to stand trial on further charges of robbery and illegal possession of firearms and explosives.

On 4 April 2001 the Supreme Court ruled that the indictments against the applicants for conspiracy, blackmail, and illegal possession of firearms and explosives would be transferred for determination to the Trnava District Court, as the court of first instance. It did so observing that the whole criminal bench of the Prievidza District Court was disqualified from dealing with the case and that that court lacked logistic facilities for trying it.

On 22 and 28 May 2001 the first applicant lodged unsuccessful petitions for release with, respectively, the Supreme Court and the Trnava District Court. On 2 July 2001 the second applicant also unsuccessfully requested that the Trnava District Court release him.

On 1 June 2001 the Trnava District Court transmitted the indictment against the first applicant for conspiracy, blackmail and illegal possession of firearms and explosives for determination to the Trenčín Regional Court, as the court of first instance. It observed that the first applicant was being tried in the latter court for robbery and considered that it was in the interest of

justice to have all of the charges against him determined by one court. On 16 August 2001 the Trenčín Regional Court rejected the referral and requested that the Supreme Court determine which court was competent to deal with the indictment for conspiracy, blackmail and illegal possession of firearms and explosives at first instance. On 25 September 2001 the Supreme Court ruled that the matter fell to be determined by the Trnava District Court.

On 10 October 2001 the second applicant again unsuccessfully requested that he be released.

On 18 January 2002 the applicants were released. Following the first applicant's death, the proceedings against him were discontinued. The proceedings against the second applicant are still pending.

2. Constitutional complaint

At an unspecified date the first applicant's widow and the second applicant lodged a complaint with the Constitutional Court under Article 127 of the Constitution. They alleged a violation of the applicants' rights to a hearing without unjustified delay under Article 48 § 2 of the Constitution and to a hearing within a reasonable time-limit under Article 6 § 1 of the Convention in their above proceedings before the Trnava District Court.

On 7 May 2003 the Constitutional Court declared the complaint admissible in so far as it had been brought by the second applicant. It appears that the part of the complaint which concerned the first applicant was declared inadmissible.

On 20 August 2003 the Constitutional Court found that there had been a violation of the second applicant's constitutional and Convention rights and ordered that the District Court proceed with the matter and pay the second applicant an equivalent of approximately 1,000 euros in non-pecuniary damages. Observing *inter alia* that the case-file and related documents comprised almost 6,000 pages, the Constitutional Court accepted that the matter was factually, legally and procedurally complicated. There was however no indication that the second applicant had himself impeded the course of the proceedings. As to the conduct of the District Court, there were several procedural flaws including an unjustified referral of the case to the Trenčín Regional Court. Furthermore, there was unjustified delay between 16 May 2001 and January 2002.

3. The alleged interference with the applicants' right to be presumed innocent

The applicants' criminal proceedings received wide media coverage. According to them the police directly and indirectly leaked information to the media and orchestrated a campaign against them. This also involved

accusations of having committed serious offences for which the applicants have never been charged.

COMPLAINTS

1. The applicants complained under Article 5 of the Convention that they had been detained on remand arbitrarily, unlawfully and without justification. They further complained that, in general, their detention was too lengthy and that, in particular, if counted together, the total duration of their detention in connection with the various criminal proceedings against them exceeded the maximum time permitted by law. The applicants further complained that their requests for release had not been determined speedily and that the decisions in their respect lacked sufficiently concrete and otherwise appropriate reasoning.

2. Relying on Article 6 § 1 of the Convention the applicants further complained that the criminal proceedings against them had lacked the guarantees of a "fair trial" within a "reasonable time". As to the length of the proceedings the applicants maintained that the first applicant had received no compensation at all and that the second applicant had not received full compensation in that the Constitutional Court had reviewed only a part of the proceedings and had made an unacceptably low award in respect of non-pecuniary damage.

3. In connection with the facts of the case the applicants also alleged a violation of their right under Article 6 § 2 of the Convention to be presumed innocent.

THE LAW

1. The applicants complained that their detention was incompatible with the provision of Article 5 of the Convention, the relevant part of which stipulates that:

> "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 ... 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) In so far as the first applicant's complaint concerns the legality of his remand in detention, the Court observes that the he was remanded in April 1999 and that his complaint against detention was dismissed in June 1999. The Court further observes that the application was introduced in November 2000, i.e. outside the six months' time-limit pursuant to Article 35 §1 of Convention.

It follows that the first applicant's complaint under Article 5 § 1 of the Convention is introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) The Court further finds that the remaining issues raised by the first applicant in reliance on Article 5 of the Convention in respect of his continued detention on remand and, in particular, its length fall to be examined under paragraph 3 of that Article (see, *mutatis mutandis*, *Scott v. Spain*, no. 21335/93, § 61, ECHR 1996-VI and *Punzelt v. the Czech Republic* (dec.), no. 31315/96, 4 May 1999).

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

(c) To the extent the first applicant may be understood as complaining that the decisions of 9 April and June 1999 concerning his remand in detention, of 23 August and 26 October 1999 concerning his request for release and of 5 October 1999 and 29 February 2000 concerning the extension of his detention and the procedures leading to these decisions were incompatible with the guarantees afforded under Article 5 § 4 of the Convention, the Court observes that these decisions were taken more than six months prior to the introduction of the application in November 2000.

It follows that the relevant part of the first applicant's complaint under Article 5 § 4 of the Convention is introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(d) In so far as the first applicant contests under Article 5 § 4 of the Convention the procedures and their outcome in respect of his request for release subsequent to 13 May 2000, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with

Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

(e) The Court further observes that the second applicant was released from detention on 10 October 2001. No later decisions in respect of his detention have been submitted. The second applicant expressed the wish to have the facts of the case reviewed in the letter of 28 June 2002, i.e. outside the six months' time-limit pursuant to Article 35 §1 of Convention.

It follows that the second applicant's complaints under Article 5 of the Convention are introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. The applicants further complained that they had not received a fair hearing within a reasonable time contrary to Article 6 § 1 of the Convention, the relevant part of which provides that:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair... hearing within a reasonable time by [a] ... tribunal..."

(a) As to the complaint of the unfairness of the proceedings against the first applicant, the Court observes that, following his death, the proceedings were discontinued. The Court further notes that in the proceedings complained of no decisions were given on the merits of the charges against the first applicant. In the light of the above, the Court has found no appearance of a violation of his right to a fair hearing pursuant to Article 6 § 1 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.

(b) As regards the second applicant's complaint as to the unfairness of the proceedings, the Court observes that these proceedings are still pending.

It follows that this complaint is premature and must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(c) In so far as the applicants complain of the length of their proceedings, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The applicants finally complained of a violation of their right to be presumed innocent pursuant to Article 6 § 2 of the Convention which reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

Inasmuch as this part of the application has been substantiated, the Court has found no indication of a violation of the applicants' right to be presumed innocent within the meaning of Article 6 § 2 of the Convention.

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

For these reasons, the Court unanimously

Decides to adjourn the examination of the first applicant's complaint under Article 5 § 3 of the Convention, the first applicant's complaint under Article 5 § 4 of the Convention in respect of his requests for release subsequent to 13 May 2000 and the applicants' complaint under Article 6 § 1 of the Convention concerning the length of the proceedings;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President