SECOND SECTION

CASE OF DARVAS v. HUNGARY

(Application no. 19547/07)

JUDGMENT

STRASBOURG

11 January 2011

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 **Darvas** v. Hungary,

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

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Danutė Jočienė,
András Sajó,
Nona Tsotsoria,
Işıl Karakaş,
Kristina Pardalos, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 7 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 19547/07) 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 Milán **Darvas** ("the applicant"), on 24 April 2007.

2. The applicant was represented by Mr A. Kádár, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr L. Höltzl, Agent, Ministry of Public Administration and Justice.

3. The applicant alleged that his pre-trial detentions were unjustified. He relied on Article 5 §§ 1 (c), 3 and 4 of the Convention.

4. On 31 March 2010 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1985 and lives in Ajka.

6. On 5 December 2004 the applicant was arrested on charges of drug abuse. On 7 December 2004 the Veszprém District Court held a hearing and ordered his house arrest. On appeal, on 15 December 2004 the Veszprém County Regional Court changed this decision and ordered the applicant's pre-trial detention for fear of collusion and reoffending. However, on 13 April 2005 he was released.

7. In another case, on 20 May 2005 the applicant was arrested on charges of aggravated drug trafficking, essentially because substantial amounts of various drugs and packaging material had been found in a garage of which he had been the tenant. On 22 May 2005 his pre-trial

detention was ordered at a court hearing, for fear of collusion with members of the presumed drug network. His detention was subsequently prolonged at the statutory intervals in decisions which included rather stereotypical references to the risks of his absconding and collusion without any detailed reasoning in regard to his individual circumstances or the evidence obtained against him.

8. On 9 February 2006 the applicant made a request for release on bail, pledging a substantial sum of money as a security. On 16 February 2006 the request was rejected. His appeal was dismissed on 24 February 2006.

9. On 12 June 2006 the investigation was terminated.

10. On 19 July 2006 the Komárom-Esztergom County Regional Court prolonged the applicant's detention until 22 August 2006. 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. It was satisfied that his continued detention was necessary for fear of his absconding and could not be substituted by home arrest as suggested. It held that there was a well-grounded suspicion that the applicant had participated in the storage and dispatch of drugs which constituted an offence punishable with very severe sanctions. On 27 July 2006 the Győr Court of Appeal dismissed the applicant's appeal, holding that the potential sanctions justified the fear of the applicant's absconding.

11. On 10 August 2006 a bill of indictment was preferred concerning twenty-one defendants, including the applicant. It combined the facts of the two criminal proceedings outlined above. The applicant was charged with complicity in aggravated drug trafficking.

12. On 21 August 2006 the Győr-Moson-Sopron County Regional Court prolonged the applicant's pre-trial detention. The court held that the sanction which the applicant was potentially facing entailed the danger of his absconding.

13. The applicant's lawyer appealed, arguing that no specific reasons, as required by the Court's case-law, had been given for the applicant's continued detention. In particular, he maintained that nothing in the case file supported the applicant's involvement in selling drugs. In the light of the jurisprudence of the courts, no such sanction was, in his view, to be envisaged as automatically justifying detention for fear of absconding. To refute this point, the lawyer submitted that the applicant's personal circumstances were decent: he was being supported by his family with which he had good relations and he had been fulfilling his educational and professional duties diligently before his arrest. The lawyer proposed that the applicant's detention be replaced by house arrest.

14. On 21 September 2006 the Court of Appeal dismissed the appeal, observing that part of the offences with which the applicant was charged was punishable with very severe sanctions including life imprisonment, which justified the fear of absconding.

15. On 22 November 2006 the applicant again requested his release on bail. On 30 November 2006 he was released on bail and his house arrest was ordered. This measure was lifted on 21 May 2007.

16. On 29 April 2008 the applicant was found guilty of the charge relating to the offence for which he had been arrested on 5 December 2004, and acquitted in respect of the remainder of the charges.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

17. The applicant complained that he had been detained on remand in breach of Article 5 § 1 of the Convention, the relevant parts of which read as follows:

"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; ..."

18. Not disputing that the applicant's complaint as such may be examined under Article 5 § 1, the Government contested that there had been a breach of that provision.

A. Admissibility

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

B. Merits

20. The Government submitted that the applicant's pre-trial detention had been repeatedly prolonged for fear of absconding and collusion. After the investigation had been concluded and the bill of indictment preferred, the latter risk had diminished to some extent but the risk of absconding had persisted and warranted the applicant's continued pre-trial detention. The danger of absconding had only diminished by the consignment of a significant sum of money as a surety for his release on bail on 30 November 2006, when his release on bail had been ordered accordingly.

21. They emphasised that the applicant's first request for release on bail had been submitted on 9 February 2006, that is, before the conclusion of the investigation, when the risk of collusion had still been significant and therefore release on bail had not been an adequate alternative to detention on remand. Subsequently, the prolongation of his detention on remand had not been automatic but done with due regard to the individual circumstances of his case.

22. The applicant submitted in particular that, as the investigation progressed, the reasonable suspicion against him should have become more substantiated – which, however, had not been the case. His individual circumstances, rendering his absconding implausible, had not been duly considered; and the prolongations of his detention had taken place in a rather automatic manner. This was particularly striking after the conclusion of the investigation and the applicant's indictment, when the danger of collusion had virtually lost relevance.

Nevertheless, his arguments, presented with a view to being placed under house arrest rather than in pre-trial detention, had remained largely unanswered by the courts. Although between the termination of the investigation and his actual release, nothing changed in his circumstances in the context of the danger of his absconding, he was only released on 30 November 2006 against the consignment of a large sum of money as bail.

23. The Court observes that a person may be deprived of his liberty only for the purposes specified in Article 5 § 1. A person may be detained within the meaning of Article 5 § 1 (c) only in the context of criminal proceedings, for the purpose of bringing him before the competent legal authority on suspicion of his having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so (cf. *Ječius v. Lithuania*, no. 34578/97, § 50, ECHR 2000-IX).

24. It reiterates that the formal "lawfulness" of detention under domestic law is the primary but not always the decisive element in assessing the justification of deprivation of liberty. It must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see *Khudoyorov v. Russia*, no. 6847/02, § 137, ECHR 2005-X (extracts)), the notion of arbitrariness in the context of Article 5 varying to a certain extent, depending on the type of detention involved (*Mooren v. Germany* [GC], no. 11364/03, § 77 *in fine*, ECHR 2009-...).

25. Concerning the first part of the applicant's second pre-trial detention, that is, from 20 May 2005 until 10 August 2006 at the latest, the Court observes that the applicant was detained on remand on charges of aggravated drug trafficking, which constituted a reasonable suspicion in the circumstances, for fear of absconding and collusion. It is satisfied that this measure can be considered devoid of arbitrariness, given in particular the risk that the applicant might have interfered with the investigation before the activities of the presumed drug trafficking network were unravelled. It therefore considers that this measure was in principle justified for the purposes of Article 5 § 1 (c) of the Convention. Having regard to its findings below (see paragraphs 26 to 29), the Court considers it unnecessary, in the circumstances of the present case, to address the issues potentially raised by the rather stereotypical reasoning of the orders confirming the applicant's detention in this period (cf. *Mansur v. Turkey*, 8 June 1995, § 55, Series A no. 319-B) together with the alleged lack of consideration of his individual circumstances (cf. *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV) and of an in-depth analysis of the evidence against him (cf. *Stepuleac v. Moldova*, no. 8207/06, § 68, 6 November 2007).

26. As regards the second part of the applicant's second pre-trial detention (i.e. subsequent to the termination of the investigation and in particular to the indictment on 10 August 2006, and until 30 November 2006), 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 (cf. mutatis mutandis, *Szeloch v. Poland*, no. 33079/96, § 93, 22 February 2001). The absence of the risk of collusion was reflected in the domestic court decisions given during this period, in which references were made only to the danger of the applicant's absconding. In the latter respect, however, the Court is not persuaded by the Government's arguments.

27. The Court notes in particular that the courts paid little attention to the applicant's personal circumstances rendering his fleeing implausible, such as his family background (cf.

Neumeister v. Austria, 27 June 1968, § 10, Series A no. 8). Instead, they insisted on the danger of the applicant's absconding, reiterating the sole consideration related to the potential imposition of a very severe sanction (cf. *Letellier v. France*, 26 June 1991, § 43, Series A no. 207), without however indicating in any manner how the results of the investigation had substantiated this eventuality (cf. *Stepuleac*, loc. cit.). The Court notes in this connection that the applicant was eventually acquitted of those charges which would have potentially entailed life imprisonment (see paragraph 14 above). Nor did the authorities give any reason for not countering the risk of the applicant's absconding by a measure less stringent than pre-trial detention, such as house arrest, as proposed by the applicant's lawyer (cf. *Ambruszkiewicz v. Poland*, no. 38797/03, §§ 32, 33, 4 May 2006). While it is true that the applicant was eventually released on bail on 30 November 2006, the Court considers that the domestic authorities should already have embarked on a more thorough examination of his situation, once the investigation had been terminated on 12 June or at the latest after the indictment on 10 August 2006 and, moreover, should have shown a more proactive attitude in balancing the arguments for and against his continued detention, especially in view of the fact that bail had been offered as early as on 9 February 2006 (see paragraph 8 above).

28. The Court is of the view that, in the particular circumstances of the present case – that is, after bail had been offered, 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 § 1 of the Convention. At this stage, the judge deciding on pre-trial detention should have sufficient information so as to make reasonable and reasoned decisions concerning the necessity of deprivation of liberty. The reasoning of the decision ordering detention is therefore a relevant factor in determining whether a person's detention must be considered as arbitrary (see *Mooren*, cited above, § 79). The Court considers that, in that rather advanced phase of the proceedings, the mere fact that the authorities adopted formally valid decisions prolonging the applicant's detention with reference to the danger of absconding did not as such suffice to secure protection from arbitrariness, notably because the underlying reasons were not supported by adequate factual elements (see, *mutatis mutandis*, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 71, ECHR 2003-IX (extracts)). The Court would further reiterate that formally valid detention orders do not necessarily fulfil the requirements of Article 5 § 1 if not underpinned by sufficient reasons (see, *mutatis mutandis*, *Gajcsi v. Hungary*, no. 34503/03, §§ 18-21, 3 October 2006).

29. For the Court, the manner in which the question of prolongation of the detention was dealt with by the courts – which had little or no regard to the particular elements of the case and the personal circumstances of the applicant, and did not consider less intrusive means of intervention or provide convincing reasons for the assumption that the applicant would abscond – effectively deprived this period of the applicant's detention of the justification required for the purposes of Article 5 § 1 (c) of the Convention. It follows that there has been a violation of Article 5 § 1 of the Convention.

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

30. Concerning the overall length of the applicant's second pre-trial detention, the Court considers that this complaint falls within the ambit of Article 5 § 3 of the Convention which provides as follows:

“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.”

31. The Court observes that this detention lasted from 20 May 2005 until 30 November 2006, that is, for one year, six months and eleven days. Although in view of such lengthy a detention, this complaint should also be declared admissible, the Court would note that its duration cannot be considered unreasonable in itself in the circumstances, given that the authorities' task was to unravel the activities of a drug-trafficking network including numerous suspects. For the Court, nothing indicates that the authorities did not exercise special diligence in the handling of the case (cf. *Toth v. Austria*, 12 December 1991, § 77, Series A no. 224; *Van der Tang v. Spain*, 13 July 1995, § 75, Series A no. 321). In any event, given the finding of a violation of Article 5 § 1 (c) (see paragraph 29 above), the Court considers that it is not necessary to examine this complaint separately.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. As regards the applicant's first pre-trial detention which ended on 13 April 2005, the Court observes that the application was introduced only on 24 April 2007, i.e. more than six months later than that date. It follows that this part of the application must be rejected as out of time, pursuant to Article 35 §§ 1 and 4 of the Convention.

33. The applicant also invoked Article 5 § 4 of the Convention which provides as follows:

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

34. The Court notes that the applicant's second pre-trial detention was ordered and prolonged by courts and reviewed at the statutory intervals. In the absence of any appearance of procedural arbitrariness, it is satisfied that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 4,350 euros (EUR) in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage.

37. The Government contested these claims.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have suffered some non-pecuniary damage and considers it appropriate to award the full sum claimed, i.e. EUR 5,000.

B. Costs and expenses

39. The applicant also claimed EUR 4,900 for the costs and expenses incurred before the Court, which corresponds to 37 hours of work, charged at an hourly rate of EUR 130, spent by his lawyer on the case, and EUR 90 of clerical costs.

40. The Government contested this claim.

41. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,500 covering costs under all heads.

C. Default interest

42. The Court considers it appropriate that the default interest 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 complaints under Article 5 §§ 1 and 3 concerning the applicant's second pre-trial detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that it is not necessary to examine the applicant's complaint under Article 5 § 3 of the Convention;

4. *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, the following amounts, to be converted into Hungarian forints at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Françoise Tulkens
Registrar President

DARVAS v. HUNGARY JUDGMENT