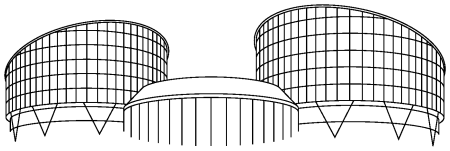

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF LAKATOS v. HUNGARY

(Application no. 21786/15)

JUDGMENT

STRASBOURG

26 June 2018

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 Lakatos v. Hungary,

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

Ganna Yudkivska, *President,*
Paulo Pinto de Albuquerque,
Faris Vehabović,
Carlo Ranzoni,
Georges Ravarani,
Marko Bošnjak,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 29 May 2018,

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

PROCEDURE

1. The case originated in an application (no. 21786/15) against 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 Péter Lakatos ("the applicant"), on 24 April 2015.

2. The applicant was represented by Mr G.T. Takács, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Justice.

3. The applicant complained in particular that his detention on remand had lasted an unreasonably long time. He relied on Article 5 § 3 of the Convention.

4. On 10 April 2017 the application was communicated to the Government. The Court furthermore decided to inform the parties that it was considering the suitability of applying a pilot judgment procedure in the case (see *Broniowski v. Poland* [GC], 31443/96, §§ 189-194 and the operative part, ECHR 2004-V, and *Hutten-Czapska v. Poland* [GC], no. 35014/97, ECHR 2006-VII, §§ 231-239 and the operative part) and requested the parties' observations on the matter.

5. On 29 June 2017, under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court, the President of the Section granted the Hungarian Helsinki Committee and the Human Rights Litigation Foundation leave to intervene jointly as a third party in the proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1986 and lives in Gyál.

7. On 26 February 2011 the Pest Central District Court remanded the applicant in custody under Article 129 § 2 (b) and (c) of the Code of Criminal Procedure, on suspicion of aggravated murder within the meaning of Article 166 § 1 of the Criminal Code. It summarised the suspicions against him, referred to police reports, an autopsy report, the victim's medical documents, examinations of various exhibits and witness testimonies, and concluded that there was a reasonable suspicion that the applicant had poisoned the victim on 8 April 2010. The court found it established that there was a need for the applicant's detention, because otherwise he would tamper with evidence by exerting pressure on the witnesses, as evidenced by his previous conduct whereby he had threatened them. It dismissed an argument by the applicant that he had committed the criminal offence more than a year before, thus the prosecutor's office had erred in stating that he could tamper with evidence or influence witnesses. The court also held that the applicant's "unclear" financial situation and the severity of the possible punishment demonstrated that there was a risk of his absconding. The court gave no consideration to an application by the applicant's lawyer for the applicant to be placed under house arrest.

8. An appeal against that decision was dismissed on 3 March 2011.

9. On 21 March 2011 the Buda Central District Court extended the applicant's pre-trial detention until 26 May 2011. It noted again that because of the severity of the possible punishment and the fact that the applicant had neither a permanent address nor a regular income, there were grounds to believe that he would abscond. The court held that there was a risk of his interfering with the investigation if he were to threaten the witnesses or destroy physical evidence.

10. The applicant appealed, arguing that the conditions for pre-trial detention had not been fulfilled because there was no risk of his absconding or influencing witnesses. He argued that his well-established personal circumstances – the fact that he lived with his common-law wife and two children, his parents, and his brother's family – and the fact that he had no criminal record excluded the risk of his absconding. He further submitted that he had cooperated with the investigating authorities. Alternatively, the applicant requested that he be released and placed under house arrest.

11. The first-instance decision was upheld on appeal by the Budapest Regional Court on 15 April 2011, and the court's reasoning was that the public interest in the applicant being detained was more important than his interest in his right to liberty being respected.

12. On 23 May 2011 the Buda Central District Court extended the applicant's detention until 26 August 2011. The court maintained its previous reasons justifying the need for his detention. It emphasised that there was a risk of his absconding, owing to the severity of the possible punishment and the fact that he had no declared employment and had previously not been reachable at his permanent address. It added that, if released, the applicant might influence the witnesses or destroy evidence.

13. On 22 June 2011 the Budapest Regional Court upheld that decision.

14. On 24 August 2011 the Buda Central District Court extended the applicant's detention until 26 November 2011 under Article 129 § 2 (b) (risk of absconding) and (c) (risk of collusion) of the Code of Criminal Procedure. As regards the risk of absconding, the court found that although the applicant had previously not been reachable at his permanent address and had only had temporary jobs, his temporary residence had been known and he had no criminal record. However, given the seriousness of the potential punishment and his "unstable" financial circumstances, his presence at the proceedings could only be ensured through the most restrictive measure. As regards the risk of collusion, the court dismissed an argument by the applicant's lawyer that the prosecution authorities should have questioned all the witnesses by that stage of the proceedings. It held that although the majority of the witnesses had been heard, further questioning could still be necessary.

15. On 26 August 2011 the Budapest Regional Court upheld the lower court's decision under Article 129 § 2 (b) and (c) of the Code of Criminal Procedure.

16. Subsequently, the applicant's pre-trial detention was extended on a number of occasions. In particular, on 23 November 2011 the Buda Central District Court extended his detention until 26 February 2012. The court found that he had failed to attach a "hosting declaration" (*befogadó nyilatkozat*) and a declaration of his host's financial capacity to his application to be placed under house arrest. According to the court, although the investigation was about to conclude, based on previous witness testimonies, there was a risk that the applicant would intimidate witnesses. It also held that this last reason could justify the applicant being detained until the closure of the investigation. That decision was upheld on appeal by the Budapest Regional Court on 1 December 2011. Although by that time the applicant had submitted a hosting declaration, the appeal court objected to his release for the reason that he had not provided a declaration of his host's financial capacity.

17. Furthermore, on 24 February 2012 the Budapest High Court held that the unclarified financial situation of the applicant and the seriousness of the crime substantiated the risk of his absconding. It also found, without giving further reasoning, that there were still grounds to believe that at that stage of the proceedings the applicant would influence the witnesses. In an

appeal, the applicant argued that the investigating authorities had implemented no procedural measures, the proceedings had been unreasonably lengthy, and previously he had always been reachable at his temporary residence. As regards the risk of his influencing witnesses, the applicant submitted that no such risk could be established two years after the alleged criminal offence. On 8 March 2012 the Budapest Court of Appeal dismissed the applicant's appeal, stating that the investigation was being conducted in a timely manner and witness testimonies had previously evidenced that the applicant had tried to exert pressure on the witnesses.

18. On 25 April 2012 the applicant's pre-trial detention was extended by the Budapest High Court until 26 June 2012. The court maintained that, under Article 129 § 2 (b) of the Code of Criminal Procedure, his detention was still necessary because of the risk of his absconding. It considered that the applicant had no "financial or essential" ties counterbalancing the risk of him escaping an eventual serious punishment. Although he had family ties, a child who was a minor, and a relative willing to give assurances to provide for him if he were released, given the seriousness of the charges, the gravity of the possible punishment and his unstable financial circumstances, there was a real risk that he would abscond. However, the court did not find that the risk of collusion (Article 129 § 2 (c) of the Code of Criminal Procedure) was substantiated, since there was no way to influence any of the investigative measures which the prosecution had relied on. In particular, the witness who the investigating authorities still intended to hear was unlikely to testify, given the fact that he was ill and unreachable. The court also considered that although it was likely that the applicant's acquaintances and relatives had tried to influence witnesses in the two years following the commission of the crime, there was no reliable information that this had actually taken place, and a hypothetical risk of further attempts to do so could not substantiate the risk of collusion.

19. That decision was upheld on appeal on 7 May 2012.

20. On 22 June 2012 the applicant's pre-trial detention was extended until 26 August 2012. The court agreed with the applicant's argument that his unsettled personal circumstances could not be relied on to justify his detention after the passing of a lengthy period of time following his arrest. It nonetheless held that, in the absence of any financial ties, his family ties could not counterbalance the risk of his absconding, also having regard to the severity to the potential punishment.

21. That decision was upheld on appeal by the Budapest Court of Appeal on 28 June 2012, and an appeal by the applicant to the effect that less restrictive measures could be applied in his case was dismissed.

22. The Budapest High Court extended the applicant's pre-trial detention on 21 August 2012, reiterating the same arguments as before. It dismissed the applicant's arguments that no investigative measure had been implemented for a considerable period of time. It also found that the hosting

declaration of the applicant's family member, the fact that he was raising a child who was a minor, and the fact that his legal residence had also been clarified were irrelevant, and did not diminish the risk of his absconding. The second-instance court upheld the decision on 24 August 2012.

23. On 24 October 2012 the applicant's pre-trial detention was extended again for a month under Article 129 § 2 (b) of the Code of Criminal Procedure. However, the Budapest High Court expressed doubts as to whether there was enough evidence to conclude that there was a reasonable suspicion that the applicant had committed the crime. It dismissed an argument by the prosecutor's office that the applicant would hinder the investigation. It considered that, irrespective of the seriousness of the charges, it appeared that there was less risk of his absconding, since he was raising two children who were minors and he had no criminal record. On appeal, the Budapest Court of Appeal upheld the first-instance judgment but extended the applicant's detention by two months.

24. On 21 December 2012 the applicant's detention was extended; the Budapest High Court again referred to the fact that, at the time of his arrest, the applicant had been unreachable at his permanent address and had been earning a living from temporary jobs, which, taken together with the severity of the potential punishment, substantiated the risk of his absconding. The decision was upheld on appeal on 10 January 2013.

25. On 22 February 2013 the Budapest High Court released the applicant from pre-trial detention and placed him on bail under house arrest. According to that decision, besides the suspicion against the applicant, the only grounds for restricting his liberty were the risk of his absconding, given the gravity of the offence, and this in itself could not justify his continued pre-trial detention. On appeal, the Budapest Court of Appeal reversed the first-instance decision and placed the applicant in detention on 28 March 2013. It noted that, given the seriousness of the offence, there was a danger of his absconding, irrespective of his family ties.

26. On 23 April 2013 the Budapest High Court released the applicant from detention upon his giving an undertaking not to leave his place of residence. Relying on the Court's case-law, the High Court found that pre-trial detention could only serve as a measure of last resort, and the applicant's continued detention would only serve as an anticipated punishment. The decision was overturned by the Budapest Court of Appeal on 26 April 2016, and the applicant was placed in detention for the same reasons as those given before.

27. On 17 June 2013 the Budapest Chief Public Prosecutor's Office preferred a bill of indictment.

28. On 25 June 2013 the Budapest High Court extended the applicant's detention until the date of the first-instance court's judgment, under Article 129 § 2 (b) of the Code of Criminal Procedure (risk of absconding), for essentially the same reasons as those given before.

29. On 28 January the applicant applied for release, but the application was dismissed on 18 February by the Budapest High Court on the grounds that, given the gravity of the offence and the complexity of the case, pre-trial detention did not constitute an anticipated punishment. That decision was upheld on appeal by the Budapest Court of Appeal on 18 February 2014. A further application by the applicant of 18 April 2014 was dismissed on 8 April 2014 (the dismissal was upheld by the second-instance court on 24 April 2014) on the grounds that the applicant had not relied on new circumstances warranting his release.

30. The applicant's detention was reviewed on 16 July 2014 by the Budapest Court of Appeal. It held that the gravity of the offence, the applicant's lack of financial resources and essential ties, and the fact that he had only notified the authorities of his place of residence once he had been placed in detention substantiated the risk of his absconding.

31. On appeal, that decision was upheld by the *Kúria* on 24 September 2014, which endorsed the reasons given by the lower court. The *Kúria* also found that the applicant's pre-trial detention was both necessary and proportionate, and no less restrictive measure would be sufficient to ensure the purpose of the criminal proceedings.

32. On 29 October 2014 the applicant was found guilty of aggravated murder and sentenced to eighteen years' imprisonment by the Budapest High Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

33. The relevant parts of the Code of Criminal Procedure (Act no. XIX of 1998) provide as follows:

Article 129

"(2) Pre-trial detention of a defendant may take place in proceedings related to a criminal offence punishable by imprisonment, provided that:

(a) the defendant has escaped, or has attempted to escape, or has absconded from the court, or the prosecutor or the investigating authority, or other proceedings have been initiated against the defendant for the commission of an intentional criminal offence also punishable by imprisonment,

(b) if, owing to the risk of [the defendant] escaping or absconding, or for other reasons, there is reasonable cause to believe that the defendant's presence during 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 obtaining of evidence, especially by means of influencing or intimidating witnesses, or by the destruction, falsification or concealment 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."

Article 130

"(2) Instead of pre-trial detention, the court may impose [on a defendant]: an obligation not to leave a certain area; house arrest; or a restraining order."

Article 131

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

Article 133

"(1) The court shall examine an application to terminate pre-trial detention on the merits, and deliver a reasoned decision on that application. Repeated applications may be rejected by the court without substantial justification, unless the defendant or defence counsel relies on new circumstances."

Article 136

"(1) The court, the prosecutor and the investigating authority shall take all necessary steps to reduce a term of pre-trial detention by as much as possible. If the defendant is held in pre-trial detention, an extraordinary procedure shall be conducted."

Article 186

"(2) The suspect, defence counsel or victim may inspect any expert opinion prepared during the investigation, but may only inspect other documents if this would not be contrary to the interests of the investigation."

Article 193

"(1) After the conclusion of an investigation, the prosecutor or (unless the prosecutor allows otherwise) the investigating authority shall hand over the investigation file to the suspect and defence counsel in a room designated for that purpose. The suspect and defence counsel shall be permitted to inspect all the documents – with the exception of those treated as confidential – that may serve as the basis for pressing charges."

Article 210

"(1) The investigating judge shall hold a hearing if the application relates to the following:

(a) the [first] ordering of a coercive measure involving the restriction or deprivation of a person's liberty ...

(b) the extension of pre-trial detention or house arrest, if new circumstances [as opposed to previous decisions] have been proposed [by the prosecution] to justify the extension of the measure ..."

Article 211

"(1a) [As in force since 1 July 2015] If the application concerns the ordering of pre-trial detention, copies of all investigation documents relied on in the application shall be attached to the application sent to the suspect and his/her defence counsel. If the application concerns the extension of pre-trial detention, copies of all investigation documents produced since the last decision on pre-trial detention shall be attached to the application sent to the suspect and his/her defence counsel.

...

(3) At the [court] hearing, the [prosecution], having submitted the application [for pre-trial detention or for extending pre-trial detention] shall present the evidence substantiating the application in writing or orally. Those present shall be given the opportunity to examine the evidence, within the limits set out in Article 186 ... If a notified party does not attend the hearing but has submitted observations in writing, this document shall be presented by the investigating judge.

(4) The investigating judge shall examine whether the statutory requirements related to the application have been met, whether there are any obstacles to the criminal proceedings, and whether the application is substantiated beyond reasonable doubt. In the cases specified in Article 210 § 1 (a) to (d), this examination shall also extend to the personal circumstances of the suspect."

Article 214

"(1) Unless otherwise provided for in this Act, the investigating judge shall deliver a ruling with an explanation of the reasons [for the decision] within three days of the application being submitted, [a ruling] in which he accepts or rejects the application either wholly or in part. The explanation shall include the substance of the application, a brief description, and a classification of the criminal offence underlying the procedure, and shall state whether the statutory requirements related to the application have or have not been met. If the investigating judge rejects the application, it may not be repeated on identical grounds."

Article 215

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

...

(5) Regardless of an appeal, an order for a coercive measure involving the restriction or deprivation of a person's liberty may be executed [immediately]."

34. On 4 May 2011 the Head of the Criminal Division of the Supreme Court issued Opinion No. BKv. 93 on the interpretation and application of the relevant provision of the Code of Criminal Procedure governing access to investigation files in *habeas corpus* proceedings. The opinion pointed out that: "in the reasoning of the decision on pre-trial detention, the investigating judge gives an account of the general preconditions for pre-trial detention, and gives reasons as to which special grounds for pre-trial detention he or she has found to be established, based on which data. The reasoning of the decision should elaborate on the factual and legal

arguments of the defence and the judicial assessment of those arguments ... When assessing the special grounds for pre-trial detention, the court must display special diligence. It must have due regard to the fact that any proposition that a certain event might occur in the future can only be based on factual grounds. The term 'reasonable grounds to believe' refers to events in the future that are predictable, possible, conceivable, that are likely to happen, based on the available facts and circumstances. The severity of the criminal offence – and the prospective punishment – is only relevant when taken together with the special circumstances of the case ... The severity of the criminal offence does not in itself constitute grounds for pre-trial detention. It is not sufficient to refer to the application of the prosecutor's office in the reasoning of the decision, the courts should give account of the reasonable suspicion against the suspect, the special grounds for pre-trial detention, and any doubt concerning the well-founded nature of the prosecutor's application. The court must also elaborate on the personal circumstances of the suspect and what conclusions can be drawn from those circumstances. In compliance with the adversarial nature of the proceedings, the reasoning should establish the facts serving as the basis of each special ground for pre-trial detention, and should present the factual and legal arguments of the defence submitted in response to the application of the prosecutor, and should elaborate on the judicial assessment of those arguments."

35. The statistical data available on the website of the Chief Public Prosecutor's Office[1] as regards the application of preventive measures – including remand in custody, the obligation not to leave a certain area, and house arrest – can be summarised as follows:

	Prosecution application for remand in custody	Decisions on remand in custody	Decisions on obligation not to leave a certain area	Decisions on house arrest
2009	5,665	5,591	97	57
2010	6,355	5,885	136	97
2011	6,245	5,712	168	104
2012	5,861	5,334	140	141
2013	6,673	6,098	169	148
2014	5,319	4,836	120	114
2015	5,075	4,453	154	162
2016	4,846	4,199	168	198

1. Available at: http://ugyeszseg.hu/pdf/statisztika/Buntetojogi_szakterulet_2016.pdf

36. On 29 May 2017 the *Kúria* issued a report entitled "Summary of the assessment of the jurisprudence concerning measures restricting personal liberty", providing an analysis of the decisions of lower courts in pre-trial detention proceedings. The report contains the following recommendations:

> "To avoid the shortcomings of previous practice, in each case it must be assessed whether a less restrictive measure could serve the same aims. Pre-trial detention could only be ordered if house arrest [or] the obligation not to leave a certain area cannot be envisaged by the court. Similarly, house arrest should only be ordered if the obligation not to leave a certain area cannot sufficiently achieve the same purpose. This assessment is especially important following the presentation of the indictment or the first-instance judgment.
>
> Regard must always be had to the courts' obligation under Article 136 § (1) of the Code of Criminal Procedure to reduce the length of pre-trial detention to the minimum possible.
>
> ...
>
> In every case, courts must have regard to the submissions of the suspect and the defence, even if they are not decisive in the decision. It is not enough to make reference to them, sufficient reasons must be given as to why the court did not find them well-founded...
>
> The fact that the suspect has fled or absconded cannot be relied upon to substantiate the special grounds for pre-trial detention under both Article 129 § 2 (a) of the Code of Criminal Code and Article 129 § 2 (b). If the suspect has already escaped or fled, it cannot be held that, for the same reasons, the risk of absconding also exists.
>
> If the decision is based on Article 129 § [2] (a) of the Code of Criminal Procedure, the reasoning must contain [reference to] the time when the new criminal proceedings were instituted against the suspect, the authority conducting the proceedings, the case number, and the criminal offence which is the subject of the case.
>
> As regards the risk of [a person] fleeing and absconding dealt with in Article 129 § 2, it is not sufficient to refer to the severity of the prospective punishment, it is also necessary to establish the scale of the penalty.
>
> ... the court must also describe, besides the severity of the prospective punishment, which personal circumstances of the suspect lead it to conclude that a risk of the suspect escaping or absconding existed.
>
> In a decision based on Article 129 § 2 (c), it is not sufficient to rely on [a proposition] that the suspect would frustrate, obstruct or jeopardise the obtaining of evidence, this presumption must also be substantiated with fact. This is particularly true for restrictive measures maintained following the first-instance judgment, that is [following] the evidence having been obtained.
>
> The factual basis of the risk of reoffending – the special grounds for pre-trial detention contained in Article 129 § 2 (d) – must be contained in the decision. It is not sufficient to mention that the criminal offence is of a repetitive nature. A criminal record can be grounds to conclude that there is a risk of reoffending, nonetheless it is relevant to note how many times [offences were committed], which criminal offences [were committed], when the suspect was the subject of criminal proceedings, and what the resulting punishment was...

The decisions based on the prosecution's application must also elaborate on the factual and legal arguments of the suspect and the defence and on the judicial opinion on those arguments. In the event that the defence has requested the application of a less restrictive measure, it must also be mentioned why the court does not find [such measures] applicable."

III. RELEVANT DOCUMENTS OF THE COUNCIL OF EUROPE

37. On 29 September 2006 the Committee of Ministers adopted Recommendation Rec(2006)13 to member States on the use of remand in custody, the conditions in which it is applied, and the provision of safeguards against abuse. The relevant parts read as follows:

"General principles

3. [1] In view of both the presumption of innocence and the presumption in favour of liberty, the remand in custody of persons suspected of an offence shall be the exception rather than the norm.

[2] There shall not be a mandatory requirement that persons suspected of an offence (or particular classes of such persons) be remanded in custody.

[3] In individual cases, remand in custody shall only be used when strictly necessary and as a measure of last resort; it shall not be used for punitive reasons.

4. In order to avoid inappropriate use of remand in custody the widest possible range of alternative, less restrictive measures relating to the conduct of a suspected offender shall be made available.

5. Remand prisoners shall be subject to conditions appropriate to their legal status; this entails the absence of restrictions other than those necessary for the administration of justice, the security of the institution, the safety of prisoners and staff and the protection of the rights of others and in particular the fulfilment of the requirements of the European Prison Rules and the other rules set out in Part III of the present text.

II. The use of remand in custody

Justification

6. Remand in custody shall generally be available only in respect of persons suspected of committing offences that are imprisonable.

7. A person may only be remanded in custody where all of the following four conditions are satisfied:

a. there is reasonable suspicion that he or she committed an offence; and b. there are substantial reasons for believing that, if released, he or she would either (i) abscond, or (ii) commit a serious offence, or (iii) interfere with the course of justice, or (iv) pose a serious threat to public order; and c. there is no possibility of using alternative measures to address the concerns referred to in b.; and d. this is a step taken as part of the criminal justice process.

8. [1] In order to establish whether the concerns referred to in Rule 7b. exist, or continue to do so, as well as whether they could be satisfactorily allayed through the use of alternative measures, objective criteria shall be applied by the judicial authorities responsible for determining whether suspected offenders shall be

remanded in custody or, where this has already happened, whether such remand shall be extended.

[2] The burden of establishing that a substantial risk exists and that it cannot be allayed shall lie on the prosecution or investigating judge.

9. [1] The determination of any risk shall be based on the individual circumstances of the case, but particular consideration shall be given to:

a. the nature and seriousness of the alleged offence; b. the penalty likely to be incurred in the event of conviction; c. the age, health, character, antecedents and personal and social circumstances of the person concerned, and in particular his or her community ties; and d. the conduct of the person concerned, especially how he or she has fulfilled any obligations that may have been imposed on him or her in the course of previous criminal proceedings.

[2] The fact that the person concerned is not a national of, or has no other links with, the state where the offence is supposed to have been committed shall not in itself be sufficient to conclude that there is a risk of flight.

10. Wherever possible remand in custody should be avoided in the case of suspected offenders who have the primary responsibility for the care of infants.

11. In deciding whether remand in custody shall be continued, it shall be borne in mind that particular evidence which may once have previously made the use of such a measure seem appropriate, or the use of alternative measures seem inappropriate, may be rendered less compelling with the passage of time.

12. A breach of alternative measures may be subject to a sanction but shall not automatically justify subjecting someone to remand in custody. In such cases the replacement of alternative measures by remand in custody shall require specific motivation.

Judicial authorisation

13. The responsibility for remanding someone in custody, authorising its continuation and imposing alternative measures shall be discharged by a judicial authority.

...

Duration

22. [1] Remand in custody shall only ever be continued so long as all the conditions in Rules 6 and 7 are fulfilled.

[2] In any case its duration shall not exceed, nor normally be disproportionate to, the penalty that may be imposed for the offence concerned.

[3] In no case shall remand in custody breach the right of a detained person to be tried within a reasonable time.

23. Any specification of a maximum period of remand in custody shall not lead to a failure to consider at regular intervals the actual need for its continuation in the particular circumstances of a given case.

24. [1] It is the responsibility of the prosecuting authority or the investigating judicial authority to act with due diligence in the conduct of an investigation and to ensure that the existence of matters supporting remand in custody is kept under continuous review."

38. On 1 October 2015 the Parliamentary Assembly adopted Resolution no. 2077 entitled "Abuse of pre-trial detention in States Parties to the European Convention on Human Rights", in which it called on all States Parties to the Convention to:

> "12.1. implement measures aimed at reducing pre-trial detention, including the following:
>
> 12.1.1. raising awareness among judges and prosecutors of the legal limits placed on pre-trial detention by national law and the European Convention on Human Rights and of the negative consequences of pre-trial detention on detainees, their families and on society as a whole;
>
> 12.1.2. ensuring that decisions on pre-trial detention are taken by more senior judges or by collegiate courts and that judges do not suffer negative consequences for refusing pre-trial detention in accordance with the law;
>
> 12.1.3. ensuring greater equality of arms between the prosecution and the defence, including by allowing defence lawyers unfettered access to detainees, by granting them access to the investigation file ahead of the decision imposing or prolonging pre-trial detention, and by providing sufficient funding for legal aid, including for proceedings related to pre-trial detention;
>
> ..."

39. On 2 December 2011 the Committee of Ministers adopted Resolution CM/ResDH(2011)222 on the execution of judgments of the European Court of Human Rights in four cases against Hungary concerning the length of detention on remand. According to information provided by the Government, following amendments to the Code of Criminal Procedure which had entered into force on 1 July 2003, domestic courts were to give detailed reasons for remanding a person in custody. In addition, the risk that an accused person might abscond was no longer to be deduced from the seriousness of the alleged crime alone. Moreover, following further amendments to the Code of Criminal Procedure which had entered into force on 1 May 2006, courts were only to remand a person in custody as a last resort, while taking into account the principle of proportionality.

40. In its decision of CM/Del/Dec(2017)1288/H46-16 of 7 June 2017 concerning prison overcrowding in Hungary, the Committee of Ministers "noted with interest the further extension of the application of "reintegration custody", the facilitation of and increase in the use of house arrest, and the slight decrease in the number of defendants placed in pre-trial detention; and it strongly encouraged the authorities to further pursue their efforts in this regard and to find all possible means "to encourage prosecutors and judges to use as widely as possible alternatives to detention...".

THE LAW

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

41. The applicant complained that his pre-trial detention had been repeatedly extended without a reasonable suspicion of his having committed a crime and with the courts applying only formulaic reasoning and failing to take into account his personal circumstances. Furthermore, his detention had exceeded a reasonable length, since the domestic authorities had failed to display diligence in conducting the proceedings. He relied on Article 5 § 3 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."

A. Admissibility

42. The Court notes that the application 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

43. The applicant indicated that the domestic courts had failed to conduct the proceedings with the special diligence required when a defendant was in pre-trial detention. In particular, there had been inactive periods in the proceedings when the investigating authorities had not implemented any measures. As a result, he had been in pre-trial detention for three years and eight months in respect of a criminal offence which could not in any way be considered complex.

44. In the proceedings before the Court, the applicant claimed that there had been no reasonable suspicion that he had committed an offence, and the prosecutor's office had failed to provide the requisite evidence in this respect. Furthermore, the domestic authorities had not substantiated with any proof that either he or his family members had tried to influence witnesses. The applicant further contended that the domestic authorities had erroneously relied on his being unreachable at his registered permanent address, his lack of regular income, and the gravity of the alleged criminal offence in order to establish a risk of his absconding.

45. In the applicant's view, his detention had been repeatedly extended, with brief, abstract and almost identical formulations being given in terms of reasoning, and in the absence of any individual examination.

46. He further submitted that the decisions of the domestic courts had not reflected any consideration of the defence's arguments concerning less restrictive measures on the basis of personal circumstances.

47. The Government submitted that the applicant's pre-trial detention had been in full compliance with the requirements of the relevant domestic law, and had been based on relevant and sufficient reasons. In particular, the pre-trial detention had lasted only as long as had been absolutely necessary.

48. In their view, there was no doubt that throughout the period of the applicant's pre-trial detention both a reasonable suspicion that he had committed the offence in question and special grounds for pre-trial detention had existed.

49. The domestic authorities had paid due attention to the particular circumstances of the case, the applicant's personal situation and the defence counsel's submissions.

50. The Government maintained that the domestic authorities had had grounds for holding the applicant in custody, given that the investigation had been on-going and further evidence had had to be collected. In relation to this point, the Government stressed that the domestic courts had found that a less restrictive measure would be insufficient to ensure the proper conduct of the proceedings.

51. The Government also noted that the applicant's pre-trial detention had been justified by the risk that he would influence witnesses or reoffend, as evidenced by the parallel investigation initiated against him for attempted murder.

52. Lastly, the Government submitted that the authorities had displayed due diligence in handling the applicant's case, and there had been no periods of inaction attributable to them. Thus, the length of the coercive measures had not exceeded the period that was absolutely necessary.

2. The Court's assessment

(a) General principles

53. The Court reiterates that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. The requirement for the judicial officer to give relevant and sufficient reasons for the detention – in addition to the persistence of reasonable suspicion – applies already at the time of the first decision ordering detention on remand, that is to say "promptly" after the arrest (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 87 and 102, ECHR 2016 (extracts)). Furthermore, when deciding whether a person should be released or detained, the authorities are obliged to consider alternative

measures of ensuring his appearance at trial (see, for example, *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012).

54. Justifications which have been deemed "relevant" and "sufficient" reasons in the Court's case-law have included such grounds as the danger of absconding, the risk of pressure being brought to bear on witnesses or of evidence being tampered with, the risk of collusion, the risk of reoffending, the risk of causing public disorder and the need to protect the detainee (see, for instance, *Ara Harutyunyan v. Armenia*, no. 629/11, § 50, 20 October 2016, with further references).

55. The presumption is always in favour of release. The national judicial authorities must, with respect for the principle of the presumption of innocence, examine all the facts militating for or against the existence of the above-mentioned requirement of public interest or justifying a departure from the rule in Article 5, and must set them out in their decisions on applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated 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 (see, among other authorities, *Buzadji*, cited above, §§ 89 and 91). Arguments for and against release must not be "general and abstract" (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX (extracts)). Where the law provides for a presumption in respect of factors relevant to the grounds for continued detention, the existence of the specific facts outweighing the rule of respect for individual liberty must be convincingly demonstrated (see *Ilijkov v. Bulgaria*, no. 33977/96, § 84 *in fine*, 26 July 2001).

(b) Application of these principles to the present case

56. The Court observes that the applicant was remanded in custody on 26 February 2011 and convicted at the first level of jurisdiction on 29 October 2014. He thus remained in pre-trial detention within the meaning of Article 5 § 1 (c) of the Convention for three years and eight months. Even taking into account that the case concerned the suspicion of murder, the Court does not consider this period short in absolute terms (compare and contrast *Gábor Nagy v. Hungary (no. 2)*, no. 73999/14, § 66, 11 April 2017, and *Doronin v. Ukraine*, no. 16505/02, § 61, 19 February 2009).

57. The Court notes that the reasonable suspicion on which the domestic courts based their decisions to extend the applicant's pre-trial detention arose as a result of extensive material gathered during the investigation. It also accepts that the suspicion that the applicant had committed murder may have persisted throughout the period of his pre-trial detention, but reiterates that the existence of reasonable suspicion cannot on its own justify pre-trial detention, and must be supported by additional grounds (see *Gábor Nagy (no. 2)*, cited above, § 67). Thus, it will examine whether the other grounds

relied on by the judicial authorities justified the applicant's deprivation of liberty.

58. When justifying the need to detain the applicant during the criminal proceedings against him, the domestic judicial authorities reasoned that he might abscond or interfere with the administration of justice by, *inter alia*, putting pressure on witnesses. They referred to an incident when the applicant had allegedly threatened witnesses to discourage them from testifying (see paragraph 7 above). When extending the applicant's detention during the initial phase of the investigation (see paragraphs 9, 14, 17, 12, and 16 above), the courts still relied on the risk of the applicant obstructing the investigation, stating, without further explanation, that, based on the witness testimonies, there were grounds to believe that he would influence the witnesses.

59. The Court reiterates in this respect that it was for the domestic courts to demonstrate that a substantial risk of collusion existed and continued to exist during the entire period of the applicant's detention. The courts should have analysed other pertinent factors, such as the progress of the investigation or judicial proceedings, the applicant's character, his behaviour before and after his arrest, and any other specific justifications for the fear that he might abuse his liberty by carrying out acts aimed at the falsification or destruction of evidence or the manipulation of witnesses (see *Mikhail Grishin v. Russia*, no. 14807/08, § 148, 24 July 2012).

60. The decision of 26 February 2011 of the Pest Central District Court referred to the fact that the applicant had attempted to threaten witnesses to keep them from testifying. However, for more than a year following his arrest, the domestic authorities failed to provide any clarification as to how this event allowed them to draw an inference that the applicant would interfere with justice if left at liberty. In any event, it appears that the domestic authorities had sufficient time to take statements from witnesses in a manner which could have excluded any doubt as to their veracity, and which would have eliminated the need to continue depriving the applicant of his liberty on that basis. The Court also notes that while the decision of 25 April 2012 of the Budapest High Court explained that there were no investigative measures that could possibly be influenced by the applicant, it does not appear that any assessment was made as to the progress of the proceedings or the applicant's conduct during this initial phase of the criminal investigation.

61. The Court further observes that as of 25 April 2012 the domestic courts relied only on the risk of the applicant's absconding.

62. As regards this risk, the Court reiterates that it should be assessed with reference to various factors, especially those relating to the character of the person involved, his morals, his home, his occupation, his assets, his family ties and all kinds of links with the country in which he is being prosecuted. Although the seriousness of the charges or severity of the

sentence faced is relevant in the assessment of the risk of an accused absconding or reoffending, it cannot by itself serve to justify long periods of pre-trial detention (see *Gábor Nagy (no. 2)*, cited above, § 70).

63. In addition to citing the seriousness of the charges as a reason for the extension of the applicant's pre-trial detention, in the present case, the domestic authorities considered that the applicant might abscond owing to his lack of employment and his being unreachable at his registered permanent place of residence at the time of his arrest. The Court might accept these grounds as relevant. However, it cannot find them decisive, given that the judicial decisions authorising the applicant's detention remained silent as to why those risks could not be offset by any other means of ensuring his appearance at trial.

64. The Court further notes in this regard that the domestic courts refused to consider the hosting declaration signed by a person who had agreed to vouch for the applicant. Without referring to the applicable rules of criminal procedure, they also relied on the applicant's failure to submit documents concerning that person's financial situation (see paragraph 16 above).The Court finds such an argument unconvincing.

65. Moreover, on two occasions the Budapest High Court ordered the applicant's continued detention under house arrest, yet both detention orders were quashed by the Budapest Court of Appeal (see paragraphs 25 and 26 above), which found again that the applicant could abscond. The higher court therefore ordered that his continued detention take place in a prison facility. It did not explain the reasons why it disagreed with the first-instance court as to the absence of reasons to detain him.

66. Accordingly, the Court cannot establish that the authorities gave proper consideration to the possibility of ensuring the applicant's attendance by the use of other "preventive measures" – measures which are expressly provided for in Hungarian law to ensure the proper conduct of criminal proceedings, such as release on bail or house arrest, as requested by the applicant.

67. In addition to the above-mentioned problems, the Court considers that the reasons relied on by the domestic courts for ordering and extending the applicant's detention were stereotyped and abstract. Their decisions relied on grounds for detention without any attempt to show how those grounds applied specifically to the particular circumstances of the applicant's case (see *Buzadji*, cited above, § 122).

68. Lastly, the Court cannot but note that it took the authorities over three and a half years (from 26 February 2011 until 29 October 2014) to proceed from the applicant's arrest to the first-instance judgment.

69. In the light of all of the above factors, the Court considers that there were no relevant and sufficient reasons to extend the applicant's detention pending trial for three years and eight months. It follows that, in the present case, there has been a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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."

71. The applicant did not submit a claim for just satisfaction.

72. The Court therefore makes no award in this regard and finds no exceptional circumstances which would warrant a different conclusion (see, *a contrario*, *Nagmetov v. Russia* [GC], no. 35589/08, § 92, 30 March 2017).

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

73. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

74. The Court reiterates that a judgment in which it finds a breach of the Convention imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, general measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress as far as possible its effects. It is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order to discharge its obligation under Article 46 of the Convention. However, with a view to helping the respondent State to fulfil that obligation, the Court may seek to indicate the type of general measures that might be taken in order to put an end to the situation it has found to exist (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, §§ 158-59, ECHR 2014; *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 254-55, ECHR 2012; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 148, 17 September 2009; and *Broniowski*, cited above, § 194).

A. The parties' submissions as to the suitability of the pilot-judgment procedure

75. The Government considered it unnecessary for the Court to embark on a pilot procedure, given that the facts of the present case had not raised structural, systematic problems. Although, admittedly, domestic courts

ordered pre-trial detention in a large number of cases, which had resulted in there being some 3,600 detainees in pre-trial detention at present, the Court had only found a violation of Article 5 § 3 in a few cases, and this had been due to individual errors rather than structural problems.

76. The applicant did not comment on this issue.

77. The interveners jointly relied on two arguments, namely the widespread practice of the domestic courts which they asserted was incompatible with Article 5 § 3 of the Convention, and the deficiencies in the legal system, for arguing that there was a systematic problem in Hungary as regards the extension of pre-trial detention.

78. As regards the practice of the Hungarian courts, they argued that, in general, pre-trial detention lasted for an excessive period of time and was based on formulaic, repetitive and abstract court decisions which did not take into account the individual circumstances of defendants. Furthermore, domestic courts gave no consideration to alternative less restrictive measures, and the equality of arms was not respected in the proceedings leading to pre-trial detention.

79. The interveners also submitted that in about 90% of cases the courts upheld applications by the prosecutor's office. They referred to a report published by the *Kúria* on 29 May 2017 stating that, in a number of cases, court decisions were entirely based on applications by the prosecutor's office and failed to react to the arguments of the defence counsel, including applications for less restrictive coercive measures. According to the report of the *Kúria*, in general, this was coupled with a frequent lack of reasoning.

80. The interveners further submitted that the domestic courts failed to substantiate specific grounds for ordering pre-trial detention. As evidenced by research conducted by the Hungarian Helsinki Committee in 2013-2014, covering the cases of 116 defendants, the risk of absconding was often established solely or primarily on the basis of the gravity of the offence and the prospective punishment, and the risk of interfering with the course of justice on the basis of very abstract arguments. On certain occasions, a lack of regular income served as the only basis for ordering pre-trial detention, and the risk of reoffending was established with reference to convictions that had taken place long before the on-going criminal proceedings. Furthermore, according to the *Kúria*'s report, the risk of collusion was often referred to without specific reasons for that risk being mentioned.

81. The interveners also pointed to certain alleged deficiencies in the Hungarian legislation, in particular the 2013 amendment to the Code of Criminal Procedure which abolished the four-year time-limit on pre-trial detention in cases involving the most serious offences.

82. Moreover, they submitted that excessive pre-trial detention had given rise to a number of similar applications before the Court, and would continue to give rise to such applications unless tangible change was effected at national level.

83. The interveners acknowledged that since 2014 there had been a decrease in the number of persons in pre-trial detention, but emphasised that nonetheless a large number of people were still affected by the problem, since about 20% of the total prison population were pre-trial detainees.

B. The Court's assessment

84. The Court reiterates that in the context of systemic or structural violations, the potential inflow of future cases is an important consideration in terms of preventing the accumulation of repetitive cases on the Court's list, which hinders effective processing of other cases giving rise to violations, sometimes serious, of the rights it is responsible for safeguarding. A systemic or structural problem stems or results not just from an isolated incident or a particular turn of events in individual cases, but from defective legislation, when actions and omissions based thereon have given rise, or may give rise, to repetitive applications (see *Gülmez v. Turkey*, no. 16330/02, § 60, 20 May 2008; *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, § 148, 27 November 2007; and *Hutten-Czapska*, cited above, §§ 235-37).

85. The Court notes that since the adoption of the Committee of Ministers' Resolution in 2011 in respect of the execution of four cases against Hungary concerning the length of detention on remand, in a number of similar cases in recent years it has held that the reasons relied upon by the domestic courts in their decisions to extend pre-trial detention were not relevant and sufficient to justify an applicant's continued detention, and that the authorities had failed to envisage the possibility of imposing other preventive measures expressly foreseen by the Hungarian law to secure the proper conduct of criminal proceedings (see, among many other examples, *Bandur v. Hungary*, no. 50130/12, § 67, 5 July 2016; *Gál v. Hungary*, no. 62631/11, § 47, 11 March 2014; *Baksza v. Hungary*, no. 59196/08, § 38, 23 April 2013; and *Hagyó v. Hungary*, no. 52624/10, §§ 56 and 58, 23 April 2013). Similar conclusions were reached in the *Kúria*'s report of 29 May 2017 (see paragraphs 79 and 80 above).

86. The Court further notes that approximately sixty applications raising an issue under Article 5 § 3 of the Convention are currently pending before it in respect of Hungary. The Court observes that while the number of pending cases demonstrates that the violation of the applicant's right under Article 5 § 3 of the Convention was not prompted by an isolated incident, it must not be overlooked that the cases have accumulated on the Court's docket over a period of more than five years.

87. It is also true, as submitted by the third-party interveners, that while the relevant provisions of the domestic law define detention as the most extreme preventive measure, it appears that it is applied most frequently by the domestic courts (see paragraphs 35 and 83 above). Nonetheless, the

Court considers that the large number of pre-trial detainees in comparison with persons subject to other types of restrictive measures does not necessarily reflect a practice incompatible with the Convention.

88. The Court further acknowledges that the respondent State has already taken certain steps to remedy the problems related to pre-trial detention. The Court welcomes the efforts made by the Hungarian authorities aimed at bringing Hungarian legislation into compliance with the Convention requirements (see paragraph 39 above). It also takes into account the relevant streamlining of domestic practice prepared by the *Kúria* (see paragraph 36 above).

89. Given these circumstances (see paragraphs 86 to 88 above), the Court does not find it necessary to engage in a pilot-judgment procedure at this stage.

90. That being said, the Court has no reason to doubt that the present judgment would be complemented by general measures aimed at raising the awareness of national authorities and developing their capacity in line with the Recommendations of the Committee of Ministers CM/Rec (2006)13 of 29 September 2006, the recommendations of the Parliamentary Assembly summed up in Resolution no. 2077 (2015) adopted on 1 October 2015, the Committee of Ministers' decision CM/Del/Dec(2017)1288/H46-16 of 7 June 2017 (see paragraph 40 above), and also the *Kúria*'s report of 29 May 2017 (see paragraph 36 above).

91. Should the efforts made by the Government to tackle the underlying Convention problem prove to be insufficient, the Court may reassess the need to apply the pilot-judgment procedure to this type of cases (see *Rutkowski and Others v. Poland*, nos. 72287/10 and 2 others, §§ 203‑06, 219 *et passim*, 7 July 2015; *Gazsó v. Hungary*, no. 48322/12, §§ 32-33 and 35, 16 July 2015, and *Novruk and Others v. Russia*, nos. 31039/11 and 4 others, § 135, 15 March 2016).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

Done in English, and notified in writing on 26 June 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	Ganna Yudkivska President