



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

FIFTH SECTION

CASE OF NALBANTSKI v. BULGARIA

(Application no. 30943/04)

JUDGMENT

STRASBOURG

10 February 2011

FINAL

10/05/2011

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

In the case of Nalbantski v. Bulgaria,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 6 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 30943/04) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Bulgarian national, Mr Lyubomir Dinchev Nalbantski (“the applicant”), on 30 July 2004.

2. The applicant was represented by Mr M. Ekimdzhev and Ms K. Boncheva, lawyers practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicant alleged, in particular, that the criminal charges against him had not been determined within a reasonable time, that he had not had effective remedies in that respect, and that the prohibition on him leaving Bulgaria had been unlawful and unjustified.

4. On 31 March 2009 the President of the Fifth 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 § 3 of the Convention, as in force before 1 June 2010).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Shumen. At the relevant time he was an officer in the Bulgarian Army.

6. On an unspecified date in 1989-91 he was charged with stealing instruments and technical equipment belonging to individuals with whom he was acquainted. On 30 July 1991 he was indicted.

7. On 28 October 1991 he was convicted and sentenced to two years' imprisonment, suspended.

8. On 30 October 1991 the former Supreme Court (*Върховен съд*) quashed his conviction and sentence and referred the case back to the prosecuting authorities for additional investigation (реш. № 360 от 30 декември 1991 г. по н. д. № 369/1991 г., ВС, военна колегия).

9. It seems that the case remained dormant until 2001.

10. On 6 June 2001, following a request by the prosecuting authorities, the migration authorities decided to prohibit the applicant from leaving the territory of Bulgaria and requested that he surrender his international passport. They relied on section 75(3) of the 1998 Bulgarian Identity Papers Act (see paragraph 24 below). On 22 August 2001 the applicant surrendered his passport. He did not seek judicial review of the decision.

11. After that the applicant was indicted and put on trial. On 20 March 2002 the Varna Military Court (*Варненски военен съд*) found him guilty of theft and sentenced him to two years' imprisonment, suspended for four years. It noted that the stolen items had been found in the applicant's cellar and recognised by their owners, and held that the applicant's assertion that he had bought the items was not credible. Lastly, the court found that even though the applicant had been on night duty at the time when one of the thefts had been committed, he did not have an alibi, because his barracks were close to the building where the theft had taken place, he had come to work by car, and had not been seen by his colleagues for several hours.

12. On an appeal by the applicant, on 5 June 2002 the Military Court of Appeal (*Военноапелативен съд*) reversed the Varna Military Court judgment and acquitted the applicant.

13. On an appeal by the prosecution, on 10 February 2003 the Supreme Court of Cassation (*Върховен касационен съд*) quashed the Military Court of Appeal judgment and remitted the case (реш. № 636 от 10 февруари 2003 г. по н. д. № 546/2002 г., ВКС, II н. о.).

14. On 20 April 2003 the Military Court of Appeal upheld the applicant's conviction and sentence.

15. On an appeal by the applicant, on 23 February 2004 the Supreme Court of Cassation upheld the Military Court of Appeal judgment (реш. № 42 от 23 февруари 2004 г. по н. д. № 657/2003 г., ВКС, I н. о.). It noted that all the applicant's evidentiary requests had been allowed and that the charges against him had been sufficiently established on the basis of the available evidence.

16. On 13 October 2004 the Shumen Regional Directorate of Internal Affairs, having received the applicant's criminal record, decided to take away his international passport until he had been rehabilitated. It relied on

section 76(2) of the 1998 Bulgarian Identity Papers Act (see paragraph 25 below). The applicant did not seek judicial review of the decision.

II. RELEVANT DOMESTIC AND EUROPEAN UNION LAW

A. The Constitution

17. Article 35 § 1 of the 1991 Constitution provides that “[e]veryone shall have the right to ... leave the country” and that this right “may be subject to restrictions provided for by act of Parliament, in the interest of national security, for the protection of public health and the rights and freedoms of others.”

B. The Code of Criminal Procedure

18. An amendment to the 1974 Code of Criminal Procedure that entered into force in June 2003 introduced the possibility for accused persons to request that their case be brought for trial if the investigation had not been completed within two years in cases concerning serious offences and one year in all other cases (new Article 239a). On 29 April 2006 it was superseded by similarly worded provisions, Articles 368 and 369 of the 2005 Code of Criminal Procedure, which were, however, repealed with effect from 28 May 2010. In a decision of 28 September 2010 (реш. № 10 от 28 септември 2010 г., по к. д. № 10/ 2010 г., обн., ДВ, бр. 80 от 12 октомври 2010 г.) the Constitutional Court rejected a challenge to the repealing legislation.

19. In October 1994 a new provision, Article 147 § 3, was added to the 1974 Code. Under that Article, the imposition of preventive measures, such as detention, house arrest or bail, on individuals charged with an offence punishable by more than three years' imprisonment automatically triggered a prohibition on their leaving Bulgaria. Under Article 146 § 1 of the Code, at least one of the above preventive measures had to be imposed on any person charged with a publicly prosecutable offence.

20. On 1 January 2000 Article 147 § 3 was repealed and replaced by the new Article 153a. It provided, in paragraph 1, that the public prosecutor could prohibit an individual accused of an offence committed with intent and punishable by imprisonment to leave Bulgaria without permission. Under Article 153a § 2, the prosecutor had to rule on a request for such permission within three days of its lodging. His or her refusal to grant permission was subject to judicial review (Article 153a § 3). The court had to examine the application in private and rule immediately by means of a final decision (Article 153a § 4). At the trial stage, the prosecutor's powers in that respect were taken over by the trial court (Article 153a § 5). The

Supreme Court of Cassation has held that a trial court's decisions under Article 153a § 5 are subject to appeal to a higher court (реш. № 129 от 8 май 2003 г. по н. д. № 780/2002 г., ВКС, I н. о.).

21. On 29 April 2006 Article 153a of the 1972 Code was superseded by Article 68 of the 2005 Code. It repeats its text almost verbatim, but also provides, in paragraph 5, that the court may, in addition to quashing the prosecutor's refusal to grant permission for travel, set aside the travel ban as a whole, provided that there is no risk of the accused fleeing abroad. Paragraph 6 specifies that the court's decisions on such matters during the trial stage are subject to appeal to a higher court.

C. The Code of Administrative Procedure

22. Article 6 § 2 of the Code of Administrative Procedure, which came into force on 12 July 2006, provides that an administrative decision and its enforcement must not infringe rights and legitimate interests more than the minimum necessary for achieving the aim sought to be realised. Article 6 § 5 provides that administrative authorities must refrain from acting in a way that causes damage which is out of proportion to the aim sought to be realised.

D. The 1998 Bulgarian Identity Papers Act

23. Section 33(1) of the 1998 Bulgarian Identity Papers Act (*Закон за българските документи за самоличност*) (in October 2009 the Act's title was changed to Bulgarian Personal Papers Act – *Закон за българските лични документи*) (“the 1998 Act”) provides that any Bulgarian citizen has the right to leave the country and return to it with a passport or an equivalent document. Under section 33(3), that right cannot be subject to restrictions unless they are provided for by law and are necessary for the protection of national security, public order, health, or the rights and freedoms of others.

24. Section 75(3) of the Act, as in force until October 2009, provided that individuals the prosecuting authorities had barred from travelling abroad could not leave the country and were to have their international passports taken away. The Supreme Administrative Court has consistently held that the prosecuting authorities' decision to impose a travel ban was binding on the migration authorities and that the proper way of challenging such a ban was to seek permission to travel under Article 153a § 2 of the 1974 Code of Criminal Procedure (see paragraph 20 above); the granting of such permission would constitute grounds for the migration authorities to allow the person concerned to travel (реш. № 8385 от 29 декември 2000 г. по адм. д. № 3483/2000 г., ВАС, III о.; реш. № 6134 от 25 юли 2001 г. по адм. д. № 3226/2001 г., ВАС, V о.; реш. № 805 от 30 януари 2002 г.

по адм. д. № 8371/2001 г., ВАС, V о.; реш. № 4275 от 30 април 2002 г. по адм. д. № 2556/2002 г., ВАС, V о.; реш. № 10796 от 29 ноември 2002 г. по адм. д. № 4904/2002 г., ВАС, V о.; реш. № 11074 от 9 декември 2002 г. по адм. д. № 8178/2002 г., ВАС, петчленен състав; реш. № 37 от 6 януари 2003 г. по адм. д. № 9139/2002 г., ВАС, V о.; реш. № 2397 от 7 март 2006 г. по адм. д. № 9311/2005 г., ВАС, V о.; реш. № 11764 от 27 ноември 2006 г. по адм. д. № 5838/2006 г., ВАС, V о.).

25. Section 76(2) of the Act provided that a Bulgarian national who had been convicted of a wilful publicly prosecutable offence and had not been rehabilitated (see paragraphs 30 and 31 below) could be barred from leaving the country and have his or her international passport taken away. On 1 October 2009 Parliament repealed it, on the basis of a bill introduced by the Council of Ministers on 21 August 2009. The explanatory notes to the bill made reference to Directive 2004/38/EC (see paragraph 28 below). The repealing Act came into force on 20 October 2009. In its ensuing case-law the Supreme Administrative Court held that the repeal did not automatically invalidate travel bans imposed before it had come into force (реш. № 13819 от 17 ноември 2009 г. по адм. д. № 6999/2007 г., ВАС, III о.; реш. № 15106 от 10 декември 2009 г. по адм. д. № 7052/2009 г., ВАС, V о.; реш. № 10449 от 13 август 2010 г. по адм. д. № 1609/2010 г., ВАС, VII о.). The matter was settled with the adoption of paragraph 5 of the transitional and concluding provisions of an Act for the Amendment of the 1998 Act. It came into force on 10 April 2010 and specified that within three months of its entry into force all measures imposed under section 76(2) would cease to have effect.

26. Decisions under the above provisions were subject to judicial review (section 79). In its almost constant case-law under section 76(2) between 2000 and 2010, the Supreme Administrative Court held that the courts did not have jurisdiction to review the manner in which the authorities had exercised their discretionary power to assess the need for such measures, and could verify only whether the prerequisites under section 76(2) – conviction and lack of rehabilitation – were in place (реш. № 7074 от 22 ноември 2000 г. по адм. д. № 1067/2000 г., ВАС, III о.; реш. № 4244 от 29 юни 2000 г. по адм. д. № 2634/2000 г., ВАС, III о.; реш. № 4987 от 20 юли 2000 г. по адм. д. № 2922/2000 г., ВАС, III о.; реш. № 7727 от 17 октомври 2001 г. по адм. д. № 1760/2001 г., ВАС, V о.; реш. № 5030 от 29 юни 2001 г. по адм. д. № 3512/2001 г., ВАС, V о.; реш. № 7172 от 28 септември 2001 г. по адм. д. № 7968/2000 г., ВАС, III о.; реш. № 9375 от 7 декември 2001 г. по адм. д. № 6604/2001 г., ВАС, V о.; реш. № 9663 от 31 октомври 2002 г. по адм. д. № 4315/2002 г., ВАС, петчленен състав; реш. № 10819 от 2 декември 2002 г. по адм. д. № 6100/2002 г., ВАС V о.; реш. № 4086 от 24 април 2003 г. по адм. д. № 1587/2003 г., ВАС, петчленен състав; реш. № 8729 от 2 октомври 2003 г. по адм. д. № 4354/2003 г., ВАС, петчленен състав; реш. № 6360

от 6 юли 2004 г. по адм. д. № 10646/2003 г., ВАС, V о.; реш. № 3167 от 11 април 2005 г. по адм. д. № 8361/2004 г., ВАС, V о.; реш. № 9883 от 11 ноември 2005 г. по адм. д. № 3562/2005 г., ВАС, V о.; реш. № 1203 от 1 февруари 2006 г. по адм. д. № 7226/2005 г., ВАС, V о.; реш. № 7840 от 12 юли 2006 г. по адм. д. № 1722/2006 г., ВАС, V о.; реш. № 5721 от 6 юни 2007 г. по адм. д. № 2389/2007 г., ВАС, V о.; реш. № 11504 от 21 ноември 2007 г. по адм. д. № 8005/2007 г., ВАС, V о.; реш. № 435 от 14 януари 2008 г. по адм. д. № 9455/2007 г., ВАС, V о.; реш. № 11568 от 3 ноември 2008 г. по адм. д. № 8430/2008 г., ВАС, V о.; реш. № 7099 от 1 юни 2009 г. по адм. д. № 14157/2008 г., ВАС, V о.; реш. № 15106 от 10 декември 2009 г. по адм. д. № 7052/2009 г., ВАС, V о.; реш. № 16059 от 28 декември 2009 г. по адм. д. № 7840/2009 г., ВАС, V о.; реш. № 16147 от 29 декември 2009 г. по адм. д. № 7284/2009 г., ВАС, V о.; реш. № 5535 от 28 април 2010 г. по адм. д. № 16321/2009 г., ВАС, VII о.; реш. № 8688 от 25 юни 2010 г. по адм. д. № 939/2010 г., ВАС, VII о.). In two judgments in 2000 and 2001 the Supreme Administrative held that, while having discretion in the matter, the authorities could not just rely on the fact of the conviction, but had to in addition give specific reasons for their decision to prohibit the persons concerned from leaving the country (реш. № 4488 от 7 юли 2000 г. по адм. д. № 2613/2000 г., ВАС, III о.; реш. № 8727 от 20 ноември 2001 г. по адм. д. № 6533/2001 г., ВАС, петчленен състав). Very recently, in August 2010, in a case in which the majority of the panel examining a case maintained the view that the authorities' discretion to impose such measures was unreviewable, a judge dissented, saying that in view of the requirements of Directive 2004/38/EC (see paragraph 28 below), such measures should be subjected to a strict proportionality assessment, in line with the principles developed by the European Court of Justice. She also expressed the opinion that section 76(2) ran counter to Article 27 of that Directive (реш. № 10449 от 13 август 2010 г. по адм. д. № 1609/2010 г., ВАС, VII о., особено мнение на съдия С. Янкулова).

27. In the end of 2006 Parliament added two new subsections to section 23 of the 1998 Act. They came into force on 1 January 2007, the date of accession of Bulgaria to the European Union. New subsection 2 provides that every Bulgarian citizen has the right to leave the country to travel to another Member State with an identity card. Under subsection 3, that right is not subject to restrictions other than those provided for by law in the interests of national security, public safety, public order, the protection of health, or the rights and freedoms of others. In a judgment of 9 March 2009 (реш. № 3116 от 9 март 2009 г. по адм. д. № 10475/ 2008 г., ВАС, V о.), the Supreme Administrative Court overruled a lower court, which had held that, to impose a travel ban under section 76(2) of the Act (see paragraph 25 above), the authorities had to provide a specific justification meeting the requirements of section 23(3),

which reflected those of Article 27 § 1 of Directive 2004/38/EC (see paragraph 28 below). The Supreme Administrative Court held that the two prerequisites laid down in section 76(2) amounted to sufficient justification for the purposes of section 23(3).

E. Directive 2004/38/EC

28. The chief instrument currently governing the free movement within the European Union of individuals who are nationals of a member State is Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. Article 27 of the Directive provides, in so far as relevant:

“1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted. ...”

29. In a judgment of 24 March 2010 (реш. № 3909 от 24 март 2010 г. по адм. д. № 13704/2009 г., BAC, VII о.) the Supreme Administrative Court held that a travel ban imposed under section 76(3) of the 1998 Act – which provided that individuals who owed judicially established debts of more than a certain amount could be barred from leaving the country – was in breach of the above provision, which, in spite of not being transposed at the time of the ban, was directly applicable in Bulgaria and had precedence over domestic-law rules which ran against it.

F. Rehabilitation of convicted offenders

30. Under Article 86 § 1 (1) of the 1968 Criminal Code, an individual who has been given a suspended sentence and does not commit another offence during the probationary period is automatically rehabilitated. However, automatic rehabilitation is not possible if the person concerned has already been rehabilitated for an offence committed during adulthood (Article 86 § 2).

31. Apart from automatic rehabilitation, a convicted individual can benefit from judicial rehabilitation. Such rehabilitation may be granted by the court which convicted him or her, if the sentence has been served more than three years previously and the individual concerned has not committed another offence punishable with imprisonment, has shown good behaviour and, in the case of offences committed with intent, has made good any damage done (Article 87 § 1). The latter requirement may be disregarded by the court if there is good reason (Article 87 § 2).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

32. The applicant complained that the criminal proceedings against him had been excessively lengthy. He relied on Article 6 § 1 of the Convention, which provides, in so far as relevant:

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

33. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

34. It is not entirely clear when the proceedings against the applicant started. It is however clear that he learned about the charges against him not later than 30 July 1991 (see paragraph 6 above). However, the period to be taken into consideration did not begin to run until 7 September 1992, when the Convention came into force in respect of Bulgaria. The end point was 23 February 2004, when the Supreme Court of Cassation upheld the applicant's conviction (see paragraph 15 above). Accordingly, the period to be taken into consideration lasted slightly less than eleven and a half years.

35. The reasonableness of that period must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law: the complexity of the case and the conduct of the applicant and of the relevant authorities (see, as a recent authority, *Yankov and Manchev v. Bulgaria*, nos. 27207/04 and 15614/05, § 20, 22 October 2009). Regard must also be had to the stage which the proceedings had reached on 7 September 1992 (see, among other authorities, *Rachevi v. Bulgaria*, no. 47877/99, § 70, 23 September 2004).

36. The parties presented arguments as to the way in which those criteria should apply in the present case.

37. The Court does not consider that the case was complex. Nor does it appear that the applicant's conduct was at the origin of any delays. The

major source of delay was the lack of any activity in the case between October 1991 and 2001 (see paragraph 9 above). The Government have not provided any explanation for that gap (see, *mutatis mutandis*, *Yankov and Manchev*, cited above, §§ 21 and 25).

38. The Court concludes that the charges against the applicant were not determined within a “reasonable time”, in breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

39. The applicants complained that they did not have effective remedies in respect of the excessive length of the proceedings against them. They relied on Article 13 of the Convention, which provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

40. The Government did not comment on this complaint.

41. The applicant submitted that Bulgarian law did not envisage any remedies in respect of the excessive length of criminal proceedings.

42. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

43. Article 13 guarantees an effective remedy in respect of an arguable complaint of a breach of the requirement of Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, §§ 146-57, ECHR 2000-XI). A remedy is effective if it prevents the alleged violation or its continuation or provides adequate redress for any breach that has already occurred (*ibid.*, § 158, and *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

44. Having regard to its conclusion in paragraph 38 above, the Court is satisfied that the applicant's complaint was arguable.

45. The Court has previously found that until June 2003 Bulgarian law did not provide any remedies allowing those accused in criminal proceedings to expedite the determination of the charges against them (see *Yankov and Manchev*, cited above, § 32, with further references). It is true that with the adoption of Article 239a of the 1974 Code of Criminal Procedure in June 2003 it became possible for an accused to request that his or her case be brought for trial if the preliminary investigation had not been completed within a certain time-limit (see paragraph 18 above). However, that remedy was not available to the applicant, because at the time when it was introduced the proceedings against him were already pending before the Supreme Court of Cassation (see paragraphs 14 and 15 above).

46. As regards compensatory remedies, the Court has not found it established that there exists an avenue under Bulgarian law allowing the accused to obtain damages or other redress in respect of the excessive length of criminal proceedings against them (see *Yankov and Manchev*, cited above, § 33, with further references).

47. There has therefore been a violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4

48. The applicant complained about the travel bans which had been imposed on him. He relied on Article 2 of Protocol No. 4, which provides, in so far as relevant:

“... 2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of [that right] other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. ...”

A. Admissibility

49. The Government submitted that the applicant had failed to exhaust domestic remedies. There was no indication that the applicant had sought permission to travel abroad after the imposition of the travel ban on 6 June 2001, as possible under Article 153a § 2 of the 1974 Code of Criminal Procedure. That procedure was fast and effective, envisaging even judicial review of the prosecutor's decision to refuse such permission.

50. The applicant argued that the remedy suggested by the Government was not effective. Article 153a of the 1974 Code of Criminal Procedure did not allow judicial review of the travel ban as such. The possibility to seek permission to travel on specific occasions was not effective, because the court would examine an application of judicial review of the prosecutor's refusal to grant such permission in private, after receiving the prosecutor's observations inviting it to dismiss the application, to which the applicant would not be able to reply. Moreover, section 75(3) of the 1998 Act did not make provision for varying a travel ban and temporarily giving back a seized international passport. The possibility to directly seek judicial review of the measure under section 75(3) was not effective because the Supreme Administrative Court's position was that it was a necessary consequence of the imposition of a travel ban under Article 153a § 1 of the 1974 Code.

51. The applicant submitted that the possibility to seek judicial review of a measure under section 76(2) of the 1998 Act was not effective either,

because the courts would refuse to review whether the authorities had properly exercised their discretion to impose such ban.

52. The Court observes that the applicant was subjected to three measures restricting his ability to leave Bulgaria. The first was the automatic prohibition on travel under Article 147 § 3 of the 1974 Code of Criminal Procedure (see paragraph 19 above), the second was the travel ban imposed on 6 June 2001 under section 75(3) of the 1998 Act (see paragraphs 10 and 24 above), and the third was the decision of 13 October 2004 to take away his international passport under section 76(2) of the same Act (see paragraphs 16 and 25 above). Those measures were distinct and were based on different legal provisions. The Court therefore will examine separately the admissibility of the complaint with regard to each of them.

53. The first travel ban flowed directly from the wording of Article 147 § 3 of the 1974 Code. However, that provision was repealed with effect from 1 January 2000 (see paragraph 20 *in limine* above), which means that after that the applicant was not prohibited from leaving the country. His complaint in respect of that ban, raised on 30 July 2004, is therefore inadmissible for failure to comply with the six-month time-limit under Article 35 § 1 of the Convention and must be rejected in accordance with Article 35 § 4.

54. The second ban was imposed by the migration authorities on 6 June 2001 pursuant to a request by the prosecuting authorities and was apparently based on a travel ban which the latter had imposed shortly before that under Article 153a § 1 of the 1974 Code of Criminal Procedure (see paragraphs 10, 20 and 24 above). The possibility of seeking judicial review of the migration authorities' decision cannot be regarded as effective or offering a reasonable chance of success, because the domestic courts were of the view that the prosecuting authorities' decision to impose a travel ban was binding on the migration authorities and that the proper way of challenging a travel ban was by seeking permission to travel under Article 153a § 2 of the 1974 Code of Criminal Procedure (see paragraph 24 above). Moreover, under Article 153a §§ 2-5, the applicant was not able to challenge the ban as such, but merely seek permission to travel on specific occasions. The possibility to seek the lifting of the ban as a whole came up only with the entry into force of Article 68 of the 2005 Code of Criminal Procedure (see paragraph 21 above), after the criminal proceedings against the applicant had come to an end. However, in so far as the requests for permission to travel on specific occasions – which could be made at any time without restriction – were capable of relieving the effect which the ban had on the applicant, they could be regarded as remedies against it. The salient question is whether they were effective. At the pre-trial phase the applicant could have sought such permission from the prosecuting authorities, and at the trial phase from the courts dealing with his case. There is no indication that he tried to avail himself of that opportunity and was rebuffed (see, *mutatis mutandis*,

Fedorov and Fedorova v. Russia, no. 31008/02, §§ 44-46, 13 October 2005, and *Hristov v. Bulgaria* (dec.), no. 32461/02, 3 April 2006). His allegations concerning the procedure's shortcomings thus appear speculative (see, *mutatis mutandis*, *Belchev v. Bulgaria* (dec.), no. 39270/98, 6 February 2003; *Pekov v. Bulgaria*, no. 50358/99, § 91, 30 March 2006; and *Sabeva v. Bulgaria*, no. 44290/07, § 65, 10 June 2010). There was nothing in the text of Article 153a of the 1974 Code to suggest that the proceedings for judicial review of a refusal by the prosecutor to grant such permission would be tainted by unfairness or otherwise ineffective. The Court is furthermore unable to accept the applicant's argument that the granting of such permission would not have allowed him to travel abroad because it would not have led to the variation of the measure imposed under section 75(3) of the 1998 Act. As evident from the Supreme Administrative Court's case-law, the granting of such permission constituted grounds to vary the measure imposed by the migration authorities under section 75(3) (see paragraph 24 above).

55. In view of the above, the Government's objection in respect of the travel ban imposed on 6 June 2001 and lasting until the final determination of the criminal charges against the applicant on 23 February 2004 must be allowed and that part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

56. By contrast, the Court observes that the Government did not point to any remedies allowing the applicant to challenge effectively the decision of 13 October 2004 to take away his international passport (see paragraph 16 above). It is true that that decision could have been challenged by way of judicial review. However, under the Supreme Administrative Court's almost constant case-law under section 76(2) of the 1998 Act, the courts did not have jurisdiction to examine the manner in which the authorities had exercised their discretionary power to assess the need for measures restricting the possibility to travel abroad, and could verify only whether the prerequisites under section 76(2) – conviction and lack of rehabilitation – were in place (see paragraph 26 above). It does not therefore seem that the opportunity to seek judicial review was an effective remedy that offered a reasonable prospect of success (see, *mutatis mutandis*, *Ignatov v. Bulgaria*, no. 50/02, § 52 *in fine*, 2 July 2009).

57. It follows that the Government's non-exhaustion objection in respect of the measure imposed on 13 October 2004 cannot be upheld. The Court further considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

58. The Government submitted that a travel ban imposed during judicial criminal proceedings sought to ensure the accused's presence and thus the smooth progress of such proceedings. At the relevant time the imposition of such measures was governed by Article 153a § 1 of the 1974 Code of Criminal Procedure, which allowed them only in respect of persons accused of offences committed with intent and punishable by imprisonment. They were not mandatory, but decided by the relevant prosecutor on the basis of his or her assessment of the risk of the accused's fleeing abroad. They were not absolute either, as the accused could at any time seek permission to travel.

59. The applicant submitted that the travel bans imposed on him had amounted to restrictions of his right to leave his own country. While initially in line with the applicable rules of domestic law, after 1 January 2007, when Bulgaria joined the European Union, the measure imposed on 13 October 2004 had become unlawful, because it did not meet the requirements of Article 27 of Directive 2004/38/EC, which had precedence over section 76(2) of the 1998 Act. Moreover, the manner in which the Supreme Administrative Court approached the exercise of the authorities' powers in that domain showed a complete lack of safeguards against arbitrariness. The aim of the October 2004 measure had been unclear. It could not be considered proportionate because it had been automatic and not based on any specific reasons, and could not have been properly reviewed by the courts.

60. The Court observes that Article 2 § 2 of Protocol No. 4 guarantees to any person the right to leave any country for any other country of the person's choice to which he or she may be admitted. Any measure restricting that right must meet the requirements of paragraph 3 of that Article (see, as a recent authority, *Gochev v. Bulgaria*, no. 34383/03, § 44, 26 November 2009, with further references).

61. The decision to take away the applicant's international passport clearly amounted to such a measure (see *M. v. Germany*, no. 10307/83, Commission decision of 6 March 1984, Decisions and Reports (DR) 37, p. 113; *Peltonen v. Finland*, no. 19583/92, Commission decision of 20 February 1995, DR 80-A, p. 38; *Baumann v. France*, no. 33592/96, §§ 62 and 63, ECHR 2001-V; *Napijalo v. Croatia*, no. 66485/01, § 69, 13 November 2003; and *Ignatov*, cited above, § 33). It must therefore be examined whether it was “in accordance with law”, pursued one or more of the legitimate aims set out in Article 2 § 3 of Protocol No. 4 and whether it was “necessary in a democratic society” to achieve such an aim.

62. The measure was based on the express terms of section 76(2) of the 1998 Act (see paragraphs 16 and 25 above). The applicant conceded that until 1 January 2007 it had had a legal basis, and the Court sees no reason to

hold otherwise. However, the applicant maintained that after that date, on which Bulgaria joined the European Union, the legal basis for the measure had become problematic, because section 76(2) ran against Article 27 of Directive 2004/38/EC (see paragraph 28 above). The Court notes that since Bulgaria's accession to the Union, the Bulgarian courts have had several occasions to rule on the interplay between that Directive and section 76 of the 1998 Act (see paragraphs 26 *in fine*, 27 *in fine* and 29 above), and that in October 2009 section 76(2) was repealed by reference to the Directive (see paragraph 25 above). The Court, for its part, does not find it necessary to determine whether the measure against the applicant was “accordance with law”, as, for the reasons which follow, it considers that it was incompatible with Article 2 of Protocol No. 4 in other respects (see, *mutatis mutandis*, *Funke v. France*, 25 February 1993, § 51, Series A no. 256-A; *Crémieux v. France*, 25 February 1993, § 34, Series A no. 256-B; *Mialhe v. France* (no. 1), 25 February 1993, § 32, Series A no. 256-C; *Matheron v. France*, no. 57752/00, § 32, 29 March 2005; and *Petrov v. Bulgaria*, no. 15197/02, § 41, 22 May 2008).

63. The Court is prepared to accept that the measure, which sought to restrict a convicted and not yet rehabilitated offender from travelling abroad, pursued the legitimate aims of maintenance of public order and prevention of crime (see, *mutatis mutandis*, *M. v. Germany*, cited above, at p. 118).

64. The chief point in issue seems to be whether the ban was “necessary in a democratic society” in terms of achieving those aims. On that point, the Court observes that under Article 2 §§ 2 and 3 of Protocol No. 4 the authorities are under an obligation to ensure that a restriction of an individual's right to leave his or her country is, from the outset and throughout its duration, justified and proportionate. That assessment should normally be subject to review by the courts, since they offer the best guarantees of independence, impartiality and lawfulness of the procedures. The scope of their review should enable them to take account of all the factors involved (see *Gochev*, cited above, § 50, with further references).

65. The Court considers that in certain cases restrictions on the ability of convicted offenders to travel abroad may be justified, for instance by the need to prevent them from re-engaging in criminal conduct. It has countenanced much more serious restrictions on the freedom of movement of individuals suspected of being members of the Mafia, even in the absence of a criminal conviction (see *Raimondo v. Italy*, 22 February 1994, § 39, Series A no. 281-A, and *Labita v. Italy* [GC], no. 26772/95, § 195, ECHR 2000-IV). It has allowed such restrictions in respect of an individual who was a danger to society and who had been found guilty of a violent offence (see *Villa v. Italy*, no. 19675/06, §§ 45-50, 20 April 2010). In exceptional cases, it has found justified even preventive detention of individuals who have been convicted of criminal offences and have already served their

prison sentences (see *Eriksen v. Norway*, 27 May 1997, §§ 76-87, *Reports of Judgments and Decisions* 1997-III). However, such restrictions can be justified in a given case only if there are clear indications of a genuine public interest which outweigh the individual's right to freedom of movement (see, *mutatis mutandis*, *Hajibeyli v. Azerbaijan*, no. 16528/05, § 63 *in fine*, 10 July 2008). They must be based on concrete elements which are truly indicative of the continued existence of the risk that such measures seek to forestall (see, *mutatis mutandis*, *Labita*, cited above, § 196).

66. In the instant case, the authorities, apart from referring to the applicant's conviction and lack of rehabilitation, did not give any reasons for taking away his international passport, and apparently did not consider it necessary to examine his individual situation or explain the need to impose such a measure on him (see paragraph 16 above). They thus failed to carry out the requisite assessment of the proportionality of the restriction of the applicant's right to travel abroad and provide sufficient justification for it. That situation could not have been subsequently corrected in judicial review proceedings (see *Gochev*, cited above, § 54). As already noted in relation to exhaustion of domestic remedies, under the Supreme Administrative Court's almost constant case-law under section 76(2) of the 1998 Act between 2000 and 2010, the courts were not competent to examine the manner in which the authorities had exercised their discretionary power to assess the need for measures restricting travel abroad, and could verify only whether the prerequisites under section 76(2) – conviction and lack of rehabilitation – were in place (see paragraph 26 above). However, in this Court's view, the mere fact that an individual has been criminally convicted and has not yet been rehabilitated cannot justify the imposition of restrictions on his or her freedom to leave his or her country. Such a general and almost automatic restriction cannot be regarded as warranted.

67. There has therefore been a violation of Article 2 of Protocol No. 4.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

68. The applicant complained under Article 6 of the Convention that he had been convicted in spite of being innocent of the offence charged against him.

69. The Court has consistently observed that it is not a court of appeal from the national courts and that it is not its function to deal with errors of fact or law allegedly committed by them (see, as a recent authority, *Stoyanova-Tsakova v. Bulgaria*, no. 17967/03, § 26, 25 June 2009, with further references). There is nothing to indicate that the judgments convicting the applicant were arbitrary.

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicant claimed 12,700 euros (EUR) in respect of the non-pecuniary damage caused by the excessive length of the criminal proceedings against him, and EUR 3,000 in respect of the non-pecuniary due to the lack of effective remedies in that respect. He further claimed EUR 5,000 in respect of the travel bans imposed on him.

73. The Government submitted that the claims were exorbitant. In their view, any award under this head should not exceed those in similar cases against Bulgaria.

74. The Court considers that the applicant must have suffered certain non-pecuniary damage as a result of the excessive length of the proceedings against him and the lack of effective remedies in that respect. It further observes that no justification whatsoever was put forward for the measure restricting the applicant's freedom of movement from 13 October 2004 onwards (contrast *Gochev*, cited above, § 62). Taking into account the particular circumstances and the awards made in similar cases, and ruling on an equitable basis, as required under Article 41, the Court awards the applicant EUR 6,500, plus any tax that may be chargeable.

B. Costs and expenses

75. The applicant sought reimbursement of EUR 1,680 incurred in lawyers' fees for the proceedings before the Court and EUR 192.82 for other expenses, such as translation of documents, postage, office materials and photocopying. He requested that EUR 1,000 of the lawyers' fees be made payable to him, and the remaining EUR 680 to one of his legal representatives, Ms K. Boncheva. He requested that EUR 25 of the other expenses be paid directly to him and EUR 167.82 be made payable to his lawyers. He submitted a fee agreement with his lawyers, a time sheet, a contract for translation services, and receipts certifying the payment of fees for the photocopying of documents at the Varna Regional Military Court.

76. The Government disputed the hourly rate charged by the applicant's lawyers. They also said that postal and translation expenses should be allowed only in so far as they were supported by documents.

77. According to the Court's case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and reasonable as to quantum. Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see, as a recent authority, *Šilih v. Slovenia* [GC], no. 71463/01, § 226, 9 April 2009). In the present case, having regard to the documents in its possession and the above criteria, and noting that part of the application was declared inadmissible, the Court considers it appropriate to award EUR 1,400 in respect of the legal fees incurred by the applicant, payable as follows: EUR 1,000 to the applicant and EUR 400 to the applicant's legal representative, Ms K. Boncheva. As regards the other expenses, the Court notes that some of them are not supported by documents. Having regard to the documents in its possession, it considers it appropriate to award the applicant EUR 165 under this head, payable as follows: EUR 25 to the applicant himself, and EUR 140 to the applicant's legal representatives, Mr M. Ekimdzhev and Ms K. Boncheva. To all of those amounts is to be added any tax that may be chargeable to the applicant.

C. Default interest

78. 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 concerning the length of the criminal proceedings against the applicant, the alleged lack of effective remedies in that respect, and the travel prevention measure imposed on the applicant on 13 October 2004 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the criminal proceedings against the applicant;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 2 of Protocol No. 4;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian leva at the rate applicable on the date of settlement:

- (i) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 1,565 (one thousand five hundred and sixty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, payable as follows: EUR 1,025 (one thousand and twenty-five euros) to the applicant himself; EUR 400 (four hundred euros) to the applicant's legal representative, Ms K. Boncheva; and EUR 140 (one hundred and forty euros) to the applicant's legal representatives, Mr M. Ekimdzhiev and Ms K. Boncheva;
- (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;

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

Done in English, and notified in writing on 10 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President