



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

FORMER FIFTH SECTION

CASE OF ZDRAVKO PETROV v. BULGARIA

(Application no. 20024/04)

JUDGMENT

STRASBOURG

23 June 2011

FINAL

23/09/2011

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

In the case of Zdravko Petrov v. Bulgaria,

The European Court of Human Rights (Former 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 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 20024/04) 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 Zdravko Ivanov Petrov (“the applicant”), on 22 May 2004.

2. The Bulgarian Government (“the Government”) were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. The applicant alleged, in particular, that he had not had a fair trial, because the defence had not been allowed to test decisive evidence against him, and that there had been interference with his right to apply to the Court, because he had unjustifiably been refused copies of documents in support of his application.

4. On 3 February 2009 the Court (Fifth Section) declared the application partly inadmissible and decided to give the Government notice of the complaints concerning the alleged hindrance of the applicant’s right to apply to the Court and the alleged unfairness of the criminal proceedings against him. On 1 February 2011 the Court changed the composition of its Sections (Rule 25 § 1 of the Rules of Court), but this case remained with the Chamber constituted within the former Fifth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and is currently serving a life sentence in Belene Prison.

1. The applicant's arrest and the investigation against him

6. On 24 May 1999 the applicant was arrested by the police in Ruse on suspicion of murder.

7. He did not have a lawyer until 25 May 1999. On that day, at his request, Ms M.D. was appointed as his counsel and took part in the pre-trial proceedings. Subsequently, the applicant found out that after his arrest Ms M.D. had handed over to the prosecuting authorities a mobile phone, bank notes and other items which he had given her earlier and which allegedly incriminated him.

8. On 25 May 1999 the applicant was charged and interviewed.

9. The investigation against the applicant continued until May 2000. He was additionally charged with being an accessory to murder, theft, armed robbery, abduction, unlawful possession of firearms, rape and causing bodily harm (to his former girlfriend, Ms G.Y., in February 1999). In the course of the investigation, the charges were modified on several occasions.

10. On 11 February 2000 the applicant was allowed to examine the results of the investigation and study the evidence collected.

11. On 19 May 2000 an indictment against the applicant and his alleged accomplice, Mr P.R., was filed with the Ruse Regional Court, and the applicant was brought to trial. During the ensuing proceedings he was represented by different court-appointed counsel.

2. Conviction of the applicant by the Ruse Regional Court

(a) In respect of the bodily harm caused to Ms G.Y.

12. In the course of the pre-trial investigation, Ms G.Y. had been interviewed by the investigator on 26 and 27 July and 9 August 1999. Neither the applicant nor his counsel had attended those interviews; it is unclear whether they had been informed of them in advance, and there is no indication that they had requested to be present at them. Ms G.Y. was later called as a witness at the applicant's trial. She appeared, along with a number of other witnesses, at a trial session that took place on 6 July 2000. The applicant and his counsel were both present. When it came to Ms G.Y.'s turn to testify, the prosecution requested that the trial continue in private. Counsel for all accused, including the applicant, agreed, and the

court ordered that the public and the other witnesses be removed from the courtroom. It reminded Ms G.Y. of her duty to speak the truth. She declared that she fully maintained the statements that she had made at her interviews during the pre-trial investigation, and asked the court to read them out, because it would be too painful for her to retell the events one more time. All parties, including the applicant's counsel, expressly declared that they did not object to that, and the Ruse Regional Court, by reference to Article 279 of the Code of Criminal Procedure (see paragraph 27 below), ordered that the statements be read out. After the reading of each of the three statements, Ms G.Y. declared that she fully stood by them. According to the trial record, after that the court, noting that the working time had come to an end, adjourned the case for the next morning, when the trial continued with the examination of other witnesses. The applicant asserted that at that point he had shouted indignantly, so as to bring his wish to cross-examine Ms G.Y. to the court's attention, but that the court had ignored his utterance and had had Ms G.Y. whisked out of the courtroom. However, the trial record contains no mention of the applicant's utterance, or of any request to cross-examine Ms G.Y. There is no indication that the applicant or his counsel later requested rectification of the record.

13. On 6 October 2000 the Ruse Regional Court gave its judgment. It convicted the applicant of causing bodily harm to Ms G.Y., finding that he had hit her and broken her jawbone after a drunken sexual game, during which he had also used a knife to make small cuts on intimate parts of her body. Under Bulgarian law, the injury suffered by her (broken jawbone) amounted to bodily harm of medium severity. The court's findings of fact were based on Ms G.Y.'s statements and also on the following: statements of other witnesses who had testified about Ms G.Y.'s relationship with the applicant and what she had told them of his hitting her; records of the inspection of Ms G.Y.'s flat, where the applicant had on a previous occasion fired a machine gun; reports of medical experts who had examined Ms G.Y. and who had also testified about the applicant's state of mind at the time; and a number of items of physical evidence – including the machine gun and the knife used by the applicant.

(b) In respect of the remaining charges

14. The Ruse Regional Court also convicted the applicant of a number of other offences: murder, being an accessory to murder, theft, armed robbery, abduction and illegal possession of firearms. In that respect the judgment was based on the testimony of numerous witnesses, statements made by Mr P.R., expert opinions and other evidence. It was also based on the applicant's statements made on 25 May 1999 and afterwards in the course of the investigation, even though his testimony at the trial had differed in content.

15. In describing the facts of the case, the Ruse Regional Court noted that on one occasion the applicant had planned to rob the house of a Mr K.D., but had broken into another house by mistake, where he had shot dead one of the inhabitants.

16. The court acquitted the applicant of a rape charge, mentioning that he might in fact have had intercourse with the victim after she had died.

17. The Regional Court determined separate punishments for each of the offences – life imprisonment without parole for each of four murders and different terms of imprisonment for the remaining offences (four years’ imprisonment for the bodily harm caused to Ms G.Y.) – and then imposed, as a cumulative punishment, the most severe one, namely life imprisonment without parole. Mr P.R. received the same sentence. He and the applicant were ordered to reimburse the costs of the proceedings.

18. The trial against the applicant and Mr P.R. was widely covered by the media in Ruse. According to the applicant, many of the publications had assumed that he was guilty even before the Ruse Regional Court’s judgment. He contended that they had been based on statements that he was guilty which had been made by the prosecuting authorities and the police.

3. Judgment of the Veliko Tarnovo Court of Appeal

19. On 14 May 2001 the applicant appealed against the Ruse Regional Court’s judgment, arguing that the court had misinterpreted the evidence and had conducted the trial in a “tendentious” manner. Furthermore, he argued that the court had breached the relevant procedural rules, because, among other things:

(a) the defence had not had an opportunity to examine Ms G.Y. because she had refused to testify at the trial and had thus *de facto* refused to answer questions;

(b) the court had taken into account statements made by the applicant and Mr P.R. during the pre-trial proceedings, made on the basis of the initial charges brought against the two of them which had later been modified; furthermore, the applicant’s statements at that stage had been made under psychological and physical pressure;

(c) the applicant had not been given copies of documents contained in the case file; and

(d) the indictment against the applicant had not contained a list of all the evidence to be produced and there had been an error in a date indicated in it.

Furthermore, the applicant contended that the Ruse Regional Court had *de facto* convicted him of an attempted robbery of Mr K.D.’s house, without there having been a charge to that effect.

20. In a judgment of 11 December 2001 the Veliko Tarnovo Court of Appeal dismissed the appeal. It found that the Ruse Regional Court’s findings had been adequately reasoned and based on the evidence. It

dismissed the applicant's allegations that the Ruse Regional Court had breached the procedural rules, finding, in particular:

(a) that the conviction for bodily harm caused to Ms G.Y. had not been based exclusively on her testimony given during the investigation, but also on the statements of other witnesses, and on other evidence which corroborated Ms G.Y.'s statements, and that the lower court had properly applied Article 279 of the Code of Criminal Procedure (see paragraph 27 below) and ordered the reading of Ms G.Y.'s statements;

(b) that the applicant and Mr P.R. had been questioned in relation to particular events, and that the subsequent modifications and clarifications of the charges against them had not affected the validity of their statements. The applicant had been expressly advised that his statements could be used as evidence in court. Furthermore, his counsel had attended the interviews at issue and there was no indication whatsoever of psychological or physical pressure having been brought to bear on the applicant;

(c) that the applicant had been given an adequate opportunity to study the case file before the beginning of the trial; moreover, during the trial he had been provided with copies of the necessary documents and had been able to use them; and

(d) that even though the indictment had not contained a list of all of the evidence, the applicant had been aware of the evidence gathered as he had previously been given an opportunity to study the case file. Furthermore, the typing error in a date mentioned in the indictment could not have confused him to such an extent as to hamper his defence, because he had been aware from other documents what the date at issue had been.

In addition, the Veliko Tarnovo Court of Appeal found that the Ruse Regional Court had indeed stated in its reasoning that the applicant had attempted to rob the house of Mr K.D. That had been inappropriate. Accordingly, the Court of Appeal amended the Regional Court's reasoning in that regard.

4. Judgment of the Supreme Court of Cassation

21. On an unspecified date the applicant appealed on points of law, reiterating the arguments raised before the Veliko Tarnovo Court of Appeal. In addition, he argued that Ms M.D., who had been his lawyer during the preliminary investigation, had not been able to defend his interests because she had handed over to the prosecuting authorities items which he had given her earlier. On that basis, he contended that she had not been lawfully appointed as his counsel.

22. In a judgment of 27 November 2003 the Supreme Court of Cassation dismissed the applicant's allegations that there had been procedural violations, upholding the Veliko Tarnovo Court of Appeal's reasoning. In addition, as regards the applicant's argument concerning Ms M.D., it noted that she had been appointed in accordance with the law, that the applicant

had expressly stated that he wished her to represent him, and that he had not complained about any of her actions as his counsel.

5. Request for documents from the Ruse Regional Court

23. When he lodged his initial application with the Court, the applicant did not provide many of the necessary supporting documents.

24. In October 2004 he asked the Ruse Regional Court to provide him unspecified documents from the case file of the criminal proceedings against him, in order to support his application. In a letter of 26 October 2004 that court informed the applicant that the copies at issue would only be provided:

“... if there is an application, duly lodged and registered in the European Court of Human Rights, and it has been proven that they are necessary, [that is] specifically requested by the Court’s Registry in relation to proceedings concerning that application’s admissibility.”

25. When the Government were given notice of the application, the Court requested the parties “to provide all documents related to the course of the proceedings”. The applicant submitted some additional documents, but failed to submit a copy of the Veliko Tarnovo Court of Appeal’s judgment of 14 May 2001. At his request, the Court made a copy of that judgment, which had been sent by Mr P.R., the applicant’s co-accused in the same trial, in his own application to the Court (no. 27795/03), and joined it to the present case.

II. RELEVANT DOMESTIC LAW

26. The Bulgarian Code of Criminal Procedure of 1974, in force at the relevant time, enshrined, in different provisions, the principles of adversarial proceedings and equality of arms. It also guaranteed the principle of immediacy, that is, that the courts were to base their decisions on evidence which they had gathered in person.

27. Article 279 of the Code provided for an exception to the principle of immediacy. It allowed the statement of a witness made during a pre-trial investigation to be read out in court if the witness, *inter alia*, appeared but refused to testify at trial. Where the statement had been made before a judge, pursuant to Article 210a of the Code (see the next paragraph), there was no requirement for the court examining the case to obtain the consent of the parties (Article 279 § 1). Such consent was, on the other hand, required where the statement to be read out had been made during the pre-trial stage before a prosecutor or an investigator (Article 279 § 3). However, if that statement had been made before the introduction on 1 January 2000 of the possibility to conduct pre-trial interviews in the presence of the judge (see the next paragraph), it could be read out without the consent of the parties

(paragraph 249 of the transitional and concluding provisions of the 1999 Act for the amendment of the Code of Criminal Procedure).

28. The possibility to interview a witness before a judge, in cases where the witness would not be able to attend the trial due to illness, absence or other reasons, or where his testimony was of “exceptional importance for the establishment of objective truth”, was provided for in Article 210a of the Code. The provision was inserted with effect from 1 January 2000 with the aim of creating a possibility to use evidence collected at the pre-trial stage of the proceedings, while at the same time conforming to the principle of immediacy. Article 210a § 2 specifically provided that the investigator or prosecutor in charge of the interview had to ensure the witness’s presence and “a possibility” for the accused and his counsel to take part in the interview.

THE LAW

I. COMPLAINTS UNDER ARTICLE 6 OF THE CONVENTION

29. Relying on Article 3, Article 6 §§ 1, 2 and 3, and Article 14 of the Convention, the applicant raised numerous complaints related to the fairness of the criminal proceedings against him:

(a) He complained that the defence had not been given the opportunity to examine Ms G.Y.

(b) Regarding the preliminary investigation, he complained that he had not had a lawyer for twenty-four hours after his arrest and that Ms M.D. had not been lawfully appointed as his counsel as she had acted against his interests and had handed over items of his to the prosecution. Furthermore, he complained that during the investigation the charges against him had been modified and that as a result he had not been aware of them, and that the indictment against him had not enumerated all relevant pieces of evidence against him and had contained technical errors.

(c) Regarding the proceedings before the Ruse Regional Court, the applicant complained that two of the members of the judicial panel had not been impartial; that the court had taken into account unlawful evidence – namely his statements made during the investigation under threat and physical pressure and Mr P.R.’s statements made during the same period; and that it had not allowed him to examine the case file and to have copies of documents. Furthermore, he complained that in describing a robbery committed by him the Regional Court had *de facto* convicted him of having planned another robbery, that of Mr K.D.’s house, and that, although he had been acquitted of the charge of rape, he had *de facto* been convicted of

sexual assault, because the Ruse Regional Court had mentioned that he might have had sexual intercourse with the victim after her death and because the court had failed partially to exempt him from the obligation to pay costs for the trial in so far as those costs related to this issue.

The applicant further complained that the media coverage of the trial had presented him as guilty before he had been convicted and had thus influenced the Ruse Regional Court's judgment.

(d) The applicant complained that the Veliko Tarnovo Court of Appeal had failed to gather evidence requested by him, and that that court and the Supreme Court of Cassation had failed to examine all of his arguments.

(e) Lastly, he complained that he had wished to be represented by lawyers of his choice before the Ruse Regional Court and the Supreme Court of Cassation but had been forced to accept court-appointed lawyers. He also complained that the domestic courts had erroneously assessed the evidence and had reached the wrong conclusions.

30. As regards the complaint that the defence had not been given an opportunity to question Ms G.Y., the Government pointed out that the Code of Criminal Procedure contained clear rules concerning the examination of witnesses and that at all stages of the proceedings the applicant had been represented by counsel. The Government did not address separately each of the applicant's remaining complaints under Article 6 of the Convention, but argued that those complaints were "arbitrary" and that there was "not even an indirect link" between the applicant's allegations and the materials presented before the Court. They submitted that the rights of the defence had been guaranteed by domestic law and respected in the applicant's case.

31. The Court considers that the complaints fall to be examined under Article 6 of the Convention, which, in so far as relevant, reads:

"1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...

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

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

...”

A. Alleged violation of Article 6 §§ 1 and 3 (d) on account of the lack of opportunity for the defence to examine Ms G.Y.

32. The applicant complained, firstly, that the defence had not been given an opportunity to examine his former girlfriend, Ms G.Y., whom he had been accused of having assaulted. She had been interviewed during the pre-trial investigation and her statements had been read out in the courtroom, where she had refused to testify (see paragraphs 12-13 above).

33. The Court observes that, as a general rule, it is for the national courts to assess the evidence before them. The Court’s task under the Convention is not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, among many other authorities, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 50, *Reports of Judgments and Decisions* 1997-III, and *Solakov v. “the former Yugoslav Republic of Macedonia”*, no. 47023/99, § 57, ECHR 2001-X).

34. All evidence in criminal proceedings must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. This does not mean, however, that in order to be used as evidence statements of witnesses should always be made at a public hearing in court: to use as evidence statements obtained at the pre-trial stage is not in itself inconsistent with Article 6 §§ 1 and 3 (d), provided that the rights of the defence have been respected. As a rule, these rights require that an accused should be given an adequate and proper opportunity to challenge and question a witness against him, either when he or she makes his or her statements or at a later stage (see, among many other authorities, *Unterpertinger v. Austria*, 24 November 1986, § 31, Series A no. 110). In particular, the rights of the defence are restricted to an extent that is incompatible with the requirements of Article 6 if the conviction is based solely, or in a decisive manner, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial (see, among other authorities, *Van Mechelen and Others*, cited above, § 55, and *A.M. v. Italy*, no. 37019/97, § 25, ECHR 1999-IX).

35. In applying those principles to criminal proceedings concerning sexual abuse, which are often conceived as an ordeal by the victim, the Court must have regard to their special features. It accepts that in such cases

certain measures may be taken for the purpose of protecting the victim, provided that they can be reconciled with an adequate and effective exercise of the rights of the defence (see *P.S. v. Germany*, no. 33900/96, § 28, 20 December 2001; *S.N. v. Sweden*, no. 34209/96, § 47, ECHR 2002-V; and *Accardi and Others v. Italy* (dec.), no. 30598/02, ECHR 2005-II).

36. In regard to the circumstances of the present case, the Court agrees that the testimony of Ms G.Y. was of decisive importance, because there were no eyewitnesses to the assault on her. She was thus the only person who was able to provide relevant details and identity of the assailant, the remaining evidence showing only that she had been injured and what her relationship with the applicant had been (see paragraph 13 above). Therefore, the applicant should have been able to examine her or have her examined.

37. He alleged that he had not been able to do so. However, the Court notes that Ms G.Y. was called and appeared as a witness at the applicant's trial. At the witness stand she declared that she fully maintained the statements that she had made at her interviews during the pre-trial investigation, and asked the court to read them out, because it would be too painful for her to retell the events one more time. All parties, including the applicant's counsel, expressly declared that they did not object to that, and the trial court, by reference to Article 279 of the Code of Criminal Procedure, ordered that the statements be read out. After the reading of each of the three statements, Ms G.Y. declared that she fully stood by them (see paragraphs 12 and 27 above). In view of the circumstances surrounding the purported offence committed by the applicant against Ms G.Y. (see paragraphs 9 and 13 above), it could be argued that that manner of proceeding was not in itself contrary to Article 6 §§ 1 and 3 (d) of the Convention. Criminal proceedings should be organised in such a way that the interests of victims or witnesses are not unjustifiably imperilled and this may require striking a fair balance between the interests of the defence and those witnesses or victims called upon to testify (see *Oyston v. the United Kingdom* (dec.), no. 42011/98, 22 January 2002). However, the Court does not find it necessary to take a firm stance on that point. It notes that, even though that manner of proceeding was allowed under the rules of criminal procedure (see paragraph 27 above), it was open to the defence to oppose it, if they considered that it would render the applicant's trial unfair. However, the applicant's counsel expressly said that he did not object to it. For the purposes of Article 6 § 3 (d), the applicant must be identified with the counsel who acted on his behalf (see *Kamasinski v. Austria*, 19 December 1989, § 91, Series A no. 168). Neither the letter nor the spirit of Article 6 § 3 (d) prevent such a waiver (see *Vozhigov v. Russia*, no. 5953/02, § 57, 26 April 2007). In any event, the use statements obtained at the pre-trial stage as evidence is not in itself inconsistent with Article 6 §§ 1 and 3 (d),

provided that the rights of the defence have been respected (see paragraph 34 above).

38. On that latter point, the Court observes the following. According to the trial record, after the reading of the statements the trial court, noting that the working time had ended, adjourned the case for the next morning, when the trial continued with the examination of other witnesses. The applicant asserted that at that point he had shouted indignantly, in order to bring his wish to cross-examine Ms G.Y. to the court's attention, but that the court had ignored his utterance and had had Ms G.Y. whisked out of the courtroom. However, the trial record contains no mention of the applicant's utterance, or of any request to cross-examine Ms G.Y. There is no indication that the record's accuracy was challenged by the applicant or his counsel (see paragraph 12 *in fine* above). Therefore, in the absence of proof to the contrary, the Court will assume that it accurately reflects the procedural steps taken at the applicant's trial (see *Andandonskiy v. Russia*, no. 24015/02, § 46, 28 September 2006). It does not appear from the record, and the applicant failed to demonstrate, that he or his counsel made a clear and unambiguous request to be allowed to cross-examine Ms G.Y. (compare, *mutatis mutandis*, with *S. v. Austria*, no. 12262/86, Commission decision of 8 September 1988, unreported, and contrast, *mutatis mutandis*, *Hulki Güneş v. Turkey*, no. 28490/95, § 95, ECHR 2003-VII (extracts), and *Kaste and Mathisen v. Norway*, nos. 18885/04 and 21166/04, § 51, ECHR 2006-XIII). It is not apparent that such a request would have been turned down (contrast, *mutatis mutandis*, *S.N. v. Sweden*, cited above, § 48), or would have proved futile. It should be noted in that connection that Ms G.Y. did not try to rely on a privilege allowing her to remain silent, but confirmed, four consecutive times, that she fully stood by her statements made during the pre-trial investigation (contrast *Lucà v. Italy*, no. 33354/96, §§ 13, 15 and 43, ECHR 2001-II, and *Kaste and Mathisen*, cited above, §§ 10-12 and 50-51). It can therefore be concluded that the applicant, who was legally represented (contrast *Bonev v. Bulgaria*, no. 60018/00, § 41, 8 June 2006, and *Khametshin v. Russia*, no. 18487/03, §§ 39-40, 4 March 2010), can reasonably be regarded as having waived his right to examine Ms G.Y. or have her examined (see *Andandonskiy*, cited above, § 54). The Court does not consider that that waiver ran counter to any important public interest (see *Khametshin*, cited above, § 42).

39. Therefore, in so far as the proceedings concerned the offence against Ms G.Y., the applicant was not denied a fair trial.

B. Complaints that the Ruse Regional Court was not impartial and that it based its judgment on unlawfully obtained evidence

40. The applicant complained also that the Ruse Regional Court had not been impartial.

41. The Court has doubts as to whether the applicant's general allegations in his appeals in the domestic proceedings that the Ruse Regional Court had conducted the trial in a "tendentious" manner (see paragraph 19 *in limine* above) amounted to raising the issue of impartiality before the higher national courts and whether, thus, the applicant exhausted the available domestic remedies, as required under Article 35 § 1 of the Convention. However, even assuming that he did effectively raise this issue, the Court would make the following observations.

42. In so far as the complaint of a lack of impartiality concerns the alleged bias of two of the judicial panel's members, the applicant could have requested their recusal. He failed to do that. Therefore, he failed to exhaust a domestic remedy that was available to him, as there is no indication that it would have been ineffective. Furthermore, in so far as the applicant complains that the judges who examined his case had been influenced by publications in the media, the Court considers that those allegations are speculative and unproven (see, *mutatis mutandis*, *Ninn-Hansen v. Denmark* (dec.), no. 28972/95, ECHR 1999-V).

43. The applicant also complained that the Ruse Regional Court's judgment was based on unlawfully obtained evidence, namely his statements made during the investigation, allegedly under psychological and physical pressure. However, the Court agrees with the domestic courts' findings that these allegations have remained unproven (see paragraph 20 above). Furthermore, as noted by them (*ibid.*), the statements at issue were made in the presence of the applicant's counsel, who could have objected to any undue pressure or threat on the part of the police or the prosecutors.

C. Complaints related to the applicant's right to be presumed innocent

44. Under this head, the applicant complained, firstly, that in describing a robbery committed by him and finding that he had in fact planned to rob another house, that of Mr K.D. (see paragraph 15 above), the Ruse Regional Court had *de facto* convicted him of planning another robbery. However, the Court is satisfied that even if this could have been problematic, the Veliko Tarnovo Court of Appeal remedied the situation by finding the lower court's wording inappropriate and amending it (see paragraph 20 above).

45. Secondly, the applicant argued that there had been a breach of his right to be presumed innocent, because even though he had been acquitted of a rape charge, the Ruse Regional Court had stated that he might have had sexual intercourse with the victim after her death and had not exempted him from paying the relevant part of the proceedings' costs (see paragraphs 16-17 above). However, the Court notes that the Regional Court's remark as to the possible sexual intercourse after the victim's death did not imply any specific offence on the part of the applicant, and that in making the disputed

order in respect of the proceedings' costs the Regional Court did not express doubt as to the applicant's innocence. In any event, the applicant failed to raise those issues in his ensuing appeals in the domestic proceedings (see paragraphs 19 and 21 above).

46. Thirdly, the applicant complained that his right to be presumed innocent had been breached by the media who had covered his trial and who had allegedly assumed that he had been guilty even before his conviction (see paragraph 18 above). The Court notes that the State cannot be held responsible for the actions of the media and that this part of the complaint is therefore incompatible *ratione personae* with the provisions of the Convention. As to the allegation that the publications at issue were based on statements from the authorities concerning the applicant's guilt, the Court notes that this is a mere unproven supposition (see, *mutatis mutandis*, *Craxi v. Italy* (no. 1), no. 34896/97, § 105, 5 December 2002).

D. Complaints concerning the legal assistance provided to the applicant

47. The applicant complained that for the first twenty-four hours after his arrest on 24 May 1999 he had not been represented by counsel. However, the Court refers to the statement of the Ruse Regional Court that its judgment was based on the applicant's statements made on 25 May 1999 and subsequent to that date, when he already had counsel (see paragraph 14 above and also, *mutatis mutandis*, *Hovanesian v. Bulgaria*, no. 31814/03, § 37, 21 December 2010). Therefore, it does not appear that the authorities acted in breach of Article 6 § 3 (c) of the Convention or that the applicant's defence was irretrievably prejudiced by the failure to provide him with counsel in the initial period (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008). It is true that in the case of *Dayanan v. Turkey* (no. 7377/03, §§ 31-33, ECHR 2009-...) the Court found that it is problematic to deprive a pre-trial detainee of legal assistance even if during the relevant period he or she does not make any statements that are later used to convict him or her. However, that conclusion was based on the fact that at the relevant time Turkish law expressly and systematically barred certain categories of accused from having access to a lawyer during the entire period of their pre-trial detention, which could have a serious impact on their defence (*ibid.*, and see also, *mutatis mutandis*, *Başar v. Turkey* (dec.), no. 17880/07, 5 April 2011). In the present case, by contrast, there were no legislative restrictions on access to legal assistance during pre-trial detention, and the applicant was able to obtain the assistance of counsel one day after his arrest. The Court further notes that according to the 1974 Code of Criminal Procedure, as in force at the relevant time, statements made before the formal institution of criminal proceedings were not considered as part of the material in the case (see *Hovanesian*, cited above, §§ 19 and 37).

48. The applicant also submitted that Ms M.D. had not been lawfully appointed to serve as his counsel during the preliminary investigation because she had acted against his interests in handing over items of his to the prosecution (see paragraph 7 above).

49. However the Court notes, as did the Supreme Court of Cassation (see paragraph 22 above), that the applicant did not complain in relation to any of Ms M.D.'s actions as his counsel and did not argue that the legal assistance that she had provided to him during the preliminary investigation had been inadequate. Furthermore, the Court does not take the view that Ms M.D. did, as the applicant alleged, act in a manner that should have alerted the authorities that it would be inappropriate for her to serve as his counsel, given his express wish to be represented by her. According to his own account, she did not, for instance, disclose to the authorities facts which the applicant had confided in her as his counsel, which would have represented a grave betrayal of his trust. Rather, she merely handed over objects that he had given to her. Thus, the Court sees no reason to depart from the Supreme Court of Cassation's conclusion that Ms M.D.'s appointment to serve as counsel for the applicant did not mean that he had been inadequately represented during the preliminary investigation.

50. The applicant also complained that he had not been allowed to be represented by lawyers of his choice, but had had to accept court-appointed counsel. However, the Court notes that this allegation is general in nature and has remained unproven.

E. Complaints under Article 6 § 3 (a) and (b)

51. The applicant complained that during the investigation the charges against him had been modified on several occasions. However, the Court does not find a modification of the charges in the course of the investigation problematic in light of the applicant's rights under Article 6 § 3 (a) and (b) of the Convention to be informed of the accusations against him and to have adequate time and facilities to prepare his defence. It observes that the applicant must have become aware of the exact charges against him, at the latest, when the indictment against him was filed with the Ruse Regional Court (see paragraph 11 above). After that, the charges were not amended and the applicant was able to organise his defence. He was therefore afforded the guarantees of Article 6 § 3 (a) and (b) of the Convention.

52. As to the complaints that the indictment against the applicant did not contain a list of the relevant evidence and had a technical error in it, and that during the proceedings before the Ruse Regional Court the applicant had not been allowed to study the case file and to have copies of certain documents, the Court sees no reason to depart from the findings of the domestic courts (see paragraphs 20 and 22 above), which it finds adequate and sufficient. Furthermore, it notes that throughout the proceedings the

applicant was assisted by counsel (see paragraph 11 above), who were also entitled to study the case file and copy documents. Therefore, the Court does not consider that the applicant's right to have adequate facilities to prepare his defence was unduly restricted.

F. Remaining complaints under Article 6

53. The applicant also complained that the Veliko Tarnovo Court of Appeal failed to collect evidence requested by him. However, this complaint is general and abstract, as the applicant failed to specify what information he had sought and had been unable to establish.

54. The same is true in respect of the applicant's complaint that the Veliko Tarnovo Court of Appeal and the Supreme Court of Cassation had failed to respond to all arguments raised by him, the particular arguments in question not being specified. Furthermore, the Court observes that, in fact, the two domestic courts examined the applicant's appeals in detail and responded to his main arguments (see paragraphs 20 and 22 above).

55. The remainder of the applicant's complaints under Article 6 essentially relate to the outcome of the proceedings and the manner in which the domestic courts assessed and interpreted the evidence in the case. However, the Court has on numerous occasions held that it is not a court of fourth instance and that it is in the first place for domestic courts to interpret the evidence and apply domestic law. The Court's jurisdiction is limited to ensuring that the decisions of those courts are not flawed by arbitrariness or otherwise manifestly unreasonable (see, among many other authorities, *Patsuria v. Georgia*, no. 30779/04, § 86, 6 November 2007). In the case at hand, the Court sees no reason to find that the domestic courts' judgments fell foul of these criteria.

G. Conclusion

56. In view of the above considerations, the Court concludes that the criminal proceedings against the applicant were not unfair on the grounds examined above.

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

II. COMPLAINT UNDER ARTICLE 34 OF THE CONVENTION

58. The applicant also complained under Article 34 of the Convention that the Ruse Regional Court had refused to provide him with copies of certain documents in support of his application to the Court.

59. Article 34 of the Convention reads:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

60. The Government took the view that the Ruse Regional Court’s refusal had not been final and that the applicant could have requested the documents again, showing, as that court had required, that he had lodged an application with the Court.

61. The Court observes that Article 34 of the Convention imposes an obligation on the Contracting States not to hinder the right of individual petition. While the obligation imposed is of a procedural nature, distinguishable from the substantive rights set out in the Convention and its Protocols, it flows from the very essence of this procedural right that it is open to individuals to complain of its alleged infringements in Convention proceedings. The undertaking not to hinder the effective exercise of the right of individual application precludes any interference with the individual’s right to present and pursue his complaint before the Court effectively (see, among other authorities, *Poleshchuk v. Russia*, no. 60776/00, § 27, 7 October 2004, and *Boicenco v. Moldova*, no. 41088/05, § 157, 11 July 2006).

62. In the present case, the applicant failed to support his initial application to the Court with all necessary documents (see paragraph 23 above). Even after the Government were given notice of the application and the parties were requested to provide the relevant documents related to the criminal proceedings against the applicant, the applicant was unable to provide a copy of the Veliko Tarnovo Court of Appeal’s judgment of 14 May 2001, which, in fact, the Court received from another applicant (see paragraph 25 above).

63. The Court notes that the applicant advised the authorities that he was requesting copies of the documents relating to his own criminal trial in connection with his application, which at that time was already pending (see paragraphs 1 and 24 above). In those circumstances, the Court sees no justification for their refusal to provide him with copies of these documents, or for their insistence for proof that they had been specifically requested by the Court’s Registry. Nor does it consider that, once he had informed the authorities about his complaint to the Court and that he needed the documents in issue to support his application, the applicant should have been required, as argued by the Government (see paragraph 60 above), to apply on numerous occasions to receive them or establish to the authorities’ satisfaction that they were necessary for the Strasbourg proceedings. Therefore, the Court concludes that the authorities interfered unjustifiably with the applicant’s right of individual petition and thus failed to comply

with their obligation under Article 34 of the Convention not to hinder the effective exercise of this right.

64. Accordingly, there has been a breach of that provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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.”

66. The applicant did not submit a claim for just satisfaction in proper form. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 6 of the Convention inadmissible;
2. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

Done in English, and notified in writing on 23 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President