



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

FIRST SECTION

CASE OF EMIL HRISTOV v. BULGARIA

(Application no. 52389/99)

JUDGMENT

STRASBOURG

20 October 2005

FINAL

20/01/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.]

In the case of Emil Hristov v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOCHAROVA,

Mr A. KOVLER, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 29 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 52389/99) 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 Emil Iosifov Hristov (“the applicant”), on 9 August 1999.

2. The applicant was represented by Mr M. Ekimdjiev, a lawyer practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agent, Mrs M. Dimova, of the Ministry of Justice.

3. On 24 February 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. The Government did not submit observations on the admissibility and merits of the application.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE****A. The criminal proceedings**

5. The applicant was born in 1974 and lives in Kurdzhali.

6. On 20 June 1999 the applicant, while driving his car, was involved in a traffic accident with another car.

7. Subsequently, the driver of the other car filed a complaint with the police, claiming that the applicant had made him sign a note for 3,000 German Marks (approximately EUR 1,538) for a non-existent debt. He maintained that the applicant had forced him into signing the document by threatening him verbally, with a firearm and by inflicting a light bodily injury.

8. On 25 June 1999 the applicant was arrested, charged with extortion accompanied with a light bodily injury and using a firearm, and placed in pre-trial detention. The offence carried a possible sentence of two to eight years' imprisonment.

9. It is unclear how long the preliminary investigation lasted and when an indictment against the applicant was submitted to the courts.

10. On 13 September 1999 the applicant's defence counsel requested to be provided access to the evidence against the applicant. On an unspecified date the judge-rapporteur of the Pazardzhik Regional Court dismissed the request for access to the evidence prior to the court hearings.

11. The first court hearing was held on 6 October 1999.

12. By judgment of 4 November 1999 the Pazardzhik Regional Court found the applicant guilty of extortion accompanied with a light bodily injury and using a firearm. He was sentenced to three years' imprisonment, suspended, and fined 3,000 Bulgarian Levs (BGN : approximately EUR 1,538). The applicant was also ordered to pay BGN 3,000 (approximately EUR 1,538) in damages to the victim. Finally, the court ordered his release on bail of BGN 500 (approximately EUR 256), which he apparently paid and was released on the same day.

13. There are no indications that the applicant appealed against the judgment.

B. The applicant's pre-trial detention

14. The applicant was in pre-trial detention between 25 June 1999 and 4 November 1999 for a total period of four months and nine days.

15. Following his arrest on 25 June 1999 the applicant was placed in pre-trial detention by decision of an investigator from the Regional Investigation Division, approved by the Pazardzhik Prosecutor's Office later in the day. The motives for imposing the pre-trial detention were the

“social severity of the crime, the personality of the offender, the high probability that he would abscond, re-offend or obstruct the investigation”.

16. The applicant filed six appeals against his detention.

17. On 28 June 1999 the applicant filed his first appeal against the detention. He maintained that it was unlawful, because of the alleged lack of

evidence that he had committed the offence, that he would abscond, re-offend or obstruct the investigation. He stated that he did not have a criminal record, that he had a permanent address and that all the evidence in the case had already been collected.

18. On 9 July 1999, which was eleven days after the filing date, the Pazardzhik Regional Court examined the applicant's appeal. At the hearing the representative of the Prosecutor's Office challenged the applicant's assertions. She considered the applicant's failure to report the traffic accident as an indication that he sought to hide the event, and therefore to hinder the investigation, and stated that there were still investigative procedures to be conducted in the case. By decision of the same day the Pazardzhik Regional Court dismissed the applicant's appeal. It did not consider the fact that the applicant had a permanent address as sufficient proof that there was no risk that he might abscond. The court noted that he had been charged with a serious crime and, essentially on this basis, concluded that there was a risk that he might abscond, obstruct the investigation or re-offend.

19. The applicant filed further appeals against his detention on 12 July, 22 July and 2 August 1999, citing similar grounds. The applicant also noted that the case was progressing, that all the evidence had been collected and that there was no possibility for him to hamper the investigation. The aforementioned appeals were all dismissed by the Pazardzhik Regional Court on 19 July, 30 July and 6 August 1999, respectively, with wording similar to that in its decision of 9 July 1999.

20. On 8 September 1999 the applicant filed another appeal against his detention. He reiterated most of the previously given grounds, but also claimed an alleged violation of his rights under the Convention and presented evidence that his medical condition had deteriorated while in detention, namely that his chronic gastritis had become inflamed.

21. On 13 September 1999 the judge-rapporteur dismissed the appeal citing lack of new grounds for changing the terms of the detention. The applicant appealed. However, the Pazardzhik Regional Court did not transfer the court file together with the appeal to the Plovdiv Appeals Court.

22. On 23 September 1999 the applicant complained of the delay to the Supreme Judicial Council, the Inspectorate of the Ministry of Justice and the President of the Pazardzhik Regional Court. On the same day the applicant also filed a request with the Plovdiv Appeals Court asking it to demand, on its own motion, the case file from the Pazardzhik Regional Court so that it could rule on the appeal.

23. On 28 September 1999 the Plovdiv Appeals Court informed the Pazardzhik Regional Court that it should rule on the applicant's appeal and if it dismisses it, to forward the case file to it.

24. Albeit the specific instructions, on 30 September 1999 the judge-rapporteur of the Pazardzhik Regional Court refused to forward the

case file to the Plovdiv Appeals Court. He maintained that his refusal to forward the file could not be challenged and that he had already ruled on the appeal on 13 September 1999.

25. On 11 October 1999 the applicant filed his sixth appeal against the detention. The court allegedly refused to rule on it until the next court hearing on 4 November 1999, which was twenty four days after the date of filing.

26. On 4 November 1999 the Pazardzhik Regional Court delivered its judgment (see paragraph 12 above).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Power to order pre-trial detention

27. At the relevant time and until the reform of the Code of Criminal Procedure of 1 January 2000 an arrested person was brought before an investigator who decided whether or not the accused should be placed in pre-trial detention. The investigator's decision was subject to approval by a prosecutor. The role of investigators and prosecutors under Bulgarian law has been summarised in paragraphs 25-29 of the Court's judgment in the case of *Nikolova v. Bulgaria* ([GC], no. 31195/96, ECHR 1999-II).

B. Grounds for pre-trial detention

28. According to the practice of the Supreme Court, Article 152 § 1 of the Code of Criminal Procedure required that a person charged with a serious wilful offence had to be placed in pre-trial detention. Under Article 152 § 2 of the Code of Criminal Procedure an exception was only possible where it was clear beyond doubt that any danger of absconding or re-offending was objectively excluded since, for example, the accused was seriously ill. The detainee bore the burden to prove the existence of such exceptional circumstances.

29. Article 93 (7) of the Criminal Code provides that a “serious offence” is one punishable by more than five years' imprisonment.

C. Appeals against detention before the trial

30. Article 152a of the Code of Criminal Procedure, as in force at the relevant time, provided as follows:

“(1) The detainee shall be immediately provided with a possibility of filing an appeal with the competent court against the [imposition of detention]. [The appeal must be filed] not later than seven days after the [imposition of detention]. The court shall consider the appeal in an open hearing to which the [detainee] shall be

summoned. The hearing shall take place not later than three days after the receipt of the appeal at the court.

(2) The appeal shall be filed through the organ which has ordered the detention

(3) The court[’s ruling shall not be] subject to appeal ...”

31. On the basis of the relevant law before 1 January 2000, the Supreme Court has stated that it is not open to the courts, when examining an appeal against pre-trial detention, to inquire whether there exists sufficient evidence to support the charges against the detainee. The courts must only examine the lawfulness of the detention order under domestic law (Decision no. 24 of 23 May 1995 in case no. 268/95, I Chamber, Bulletin 1995, p. 149).

D. Appeals against detention at the trial stage of the proceedings

32. According to Article 304 § 1 of the Code of Criminal Procedure at the trial stage of the criminal proceedings the detainee’s requests for release are examined by the trial court. It follows from Article 304 §§ 1 and 2 that these requests may be examined in private or at an oral hearing. The law does not require the trial court to decide within a particular time-limit.

33. The trial court’s decision as regards a request for release is subject to appeal to the higher court (Article 344 § 3). The appeal must be lodged within a seven days’ time-limit (Article 345) with the trial court (Article 348 § 4 in conjunction with Article 317 as in force at the relevant time). According to Article 347, after having received the appeal, the trial court, sitting in private, shall decide whether there exist grounds to annul or alter its decision. If it does not find a reason to do so the trial court shall transmit the appeal to the higher court.

34. Article 348 provides that the appeals court may examine the appeal in private or, if it considers it necessary, at an oral hearing. The law does not require the appeals court to decide within a particular time-limit.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 (c) OF THE CONVENTION

35. The applicant complained that he was detained unlawfully and that the evidence against him at the time of his arrest was not sufficient to lead to the conclusion that he was guilty of an offence as required in Article 5 § 1 (c) of the Convention. In particular, he claimed that the

authorities relied solely on the complaint filed by the driver of the other vehicle and disregarded the fact that he had a personal interest in making allegations against the applicant.

36. The relevant part of Article 5 § 1 of the Convention reads as follows:

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;”

Admissibility

37. The Court notes that the applicant's detention fell within the ambit of Article 5 § 1 (c) of the Convention, as it was imposed for the purpose of bringing him before the competent legal authority on suspicion of having committed an offence. There is nothing to indicate that the formalities required by domestic law were not observed.

38. As regards the alleged lack of reasonable suspicion, the Court recalls that the standard imposed by Article 5 § 1 (c) of the Convention does not presuppose the existence of sufficient evidence to bring charges, or find guilt, at the time of arrest. Facts which raise a suspicion need not be of the same level as those necessary to bring a charge (see *O'Hara v. the United Kingdom*, no. 37555/97, § 36, ECHR 2001-X).

39. In the present case, the Court considers that the authorities had sufficient information at the time of arrest to ground a “reasonable” suspicion against the applicant, namely an apparently comprehensive complaint filed by the victim. The applicant's assertions, on the other hand, that the version of events presented by the victim was untrustworthy and unreliable, have not been substantiated (see paragraphs 7 and 35 above).

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

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

41. The applicant complained under Article 5 § 3 of the Convention that when he was arrested on 25 June 1999 he was not brought promptly before a judge or other officer authorised by law to exercise judicial power.

42. The relevant part of Article 5 § 3 of the Convention reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power...”

43. The Government did not submit observations on the admissibility and merits of the complaint.

44. The applicant reiterated his complaint and referred to its similarity to previous cases against Bulgaria, where the Court had found a violation as until 1 January 2000 detention pending trial was ordered by a prosecutor or an investigator, who could not be regarded as “judge[s]” or “other officer[s]” exercising judicial function (see *Asenov and Others v. Bulgaria*, judgement of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII and *Nikolova*, cited above).

A. Admissibility

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

B. Merits

46. The Court recalls that in previous judgments which concerned the system of detention pending trial, as it existed in Bulgaria until 1 January 2000, it found that neither investigators before whom the accused persons were brought, nor prosecutors who approved detention orders, could be considered as “officer[s] authorised by law to exercise judicial power” within the meaning of Article 5 § 3 of the Convention (see *Asenov and Others*, cited above, §§ 144-50; *Nikolova*, cited above, §§ 49-53, and *Shishkov v. Bulgaria*, no. 38822/97, §§ 52-54, ECHR 2003-I (extracts)).

47. The present case likewise concerns pre-trial detention imposed before 1 January 2000. The applicant's pre-trial detention was ordered by an investigator and confirmed by a prosecutor (see paragraph 15 above), in accordance with the provisions of the Code of Criminal Procedure then in force (see paragraph 27 above). However, neither the investigator, nor the prosecutor were sufficiently independent and impartial for the purposes of Article 5 § 3 of the Convention, in view of the practical role they played in the investigation and the prosecution and the prosecutor's potential participation as a party to the criminal proceedings (see paragraph 27 above). The Court refers to the analysis of the relevant domestic law contained in its *Nikolova* judgment (cited above – see paragraphs 28, 29 and 49-53 of that judgment).

48. It follows that there has been a violation of the applicant's right to be brought before a judge or other officer authorised by law to exercise judicial power within the meaning of Article 5 § 3 of the Convention.

III ALLEGED VIOLATIONS OF ARTICLE 5 § 4 OF THE CONVENTION

49. The applicant complained under Article 5 § 4 of the Convention that the courts did not examine all factors relevant to the lawfulness of his detention. In addition, the applicant claimed that his appeals of 28 June 1999 and 11 October 1999 were decided in violation of the requirement for a speedy decision and that the courts did not hear his appeal of 8 September 1999. The applicant also invoked Article 13 of the Convention, stating that he did not have an effective remedy in respect of the alleged violations of Article 5 of the Convention.

50. The Court recalls, at the outset, that Article 5 § 4 of the Convention provides a *lex specialis* in relation to the more general requirements of Article 13 (see, among other authorities, *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1865, § 126 and *M.A. and M.M. v. France* (dec.), no. 39671/98, ECHR 1999-VIII).

51. The complaints must therefore be examined under Article 5 § 4 of the Convention, which provides:

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

52. The Government did not submit observations on the admissibility and merits of these complaints.

53. The applicant reiterated his complaints and referred to their similarity to those in previous cases against Bulgaria, where the Court found a violation when the domestic courts primarily relied on the seriousness of the offence to justify a continuation of the period of detention and disregarded the detainees' arguments concerning the alleged lack of danger of absconding, re-offending or hampering the investigation (see *Nikolova*, cited above, and *Ilijkov v. Bulgaria*, no. 33977/96, 26 July 2001).

A. Admissibility

54. The Court considers that the above complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and notes that they are not inadmissible on any other grounds. The complaints must therefore be declared admissible.

B. Merits

55. The Court must firstly examine whether in the appeals filed against his detention the applicant benefited from a judicial review of a scope satisfying the requirements of Article 5 § 4 of the Convention.

56. In this connection, the Court reiterates that arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the lawfulness, in the sense of the Convention, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements set out in domestic law, but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Nikolova*, cited above, § 58).

57. While Article 5 § 4 of the Convention does not impose an obligation on a judge examining an appeal against detention to address every argument contained in the appellant's submissions, its guarantees would be deprived of their substance if the judge could treat as irrelevant, or disregard, particular facts invoked by the detainee which could cast doubt on the existence of the conditions essential for the "lawfulness", in the sense of the Convention, of the deprivation of liberty (see *Nikolova*, cited above, § 61).

58. In the case at hand, when examining the applicant's applications for release, the courts apparently relied on the Supreme Court's practice and, as in the *Nikolova* case, due to the shift of the burden of proof under Article 152 of the Code of Criminal Procedure they disregarded as irrelevant the applicant's arguments concerning the alleged lack of danger of absconding, collusion and committing crimes (see paragraphs 18-21 above). However, the Court considers that his arguments that he had no criminal record, that he had a permanent address and that he could not hamper the investigation, because of the advanced stage of the proceedings and the completed collection of all the relevant evidence, were not frivolous and merited examination.

59. It follows, that, insofar as the domestic courts disregarded as irrelevant the applicant's arguments concerning the alleged lack of danger of absconding, collusion and committing crimes, they failed to provide judicial control over the applicant's detention on remand of the scope required by Article 5 § 4 of the Convention. There has, therefore, been a violation of that provision.

60. In view of this finding, the Court does not deem it necessary to inquire whether these defective judicial reviews were provided speedily nor whether all of them resulted in a final judicial decision (see *Nikolova*, cited above, § 65 and *Ilikov*, cited above, § 106).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed EUR 3,800 as compensation in respect of non-pecuniary damage. He emphasised that he had felt despair and lack of prospects having been faced with the authorities repeated refusals to adequately assess the grounds for his continued detention.

63. The Government did not reply.

64. The Court, having regard to awards made in similar cases (see *Mihov v. Bulgaria*, no. 35519/97, §§ 106-108, 31 July 2003 and *Ilijkov*, cited above, §§ 120-124), on an equitable basis awards to the applicant the sum of EUR 500 for non-pecuniary damage.

B. Costs and expenses

65. The applicant also claimed (a) EUR 770 for 11 hours of legal work by his lawyer before the domestic courts, at the hourly rate of EUR 70, (b) EUR 2,030 for 29 hours of legal work in relation to the proceedings before the Court, at the same hourly rate, and (c) EUR 283 for translation, photocopying, postal and travel expenses of his lawyer. The total amount claimed was thus EUR 3,083. He submitted a fees' agreement between him and his lawyer and a time-sheet. The applicant requested that the costs and expenses incurred should be paid directly to his lawyer, Mr M. Ekimdjiev.

66. The Government did not comment.

67. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court awards the sum of EUR 1,000 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

68. 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 applicant being promptly brought before a judge or other officer authorised by law to exercise judicial power, the scope of judicial review of his continued detention, the speed in examining his appeals and whether his appeal of 8 September 1999 was examined by a court admissible;
2. *Declares* the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final according to 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 500 (five hundred euros) in respect of non-pecuniary damage, payable to the applicant himself;
 - (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses, payable into the bank account of the applicant's lawyer in Bulgaria;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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 20 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President