CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32461/02
by Ivan Angelov HRISTOV
against Bulgaria

The European Court of Human Rights (Fifth Section), sitting on 3 April 2006 as a Chamber composed of:

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having regard to the above application lodged on 21 August 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ivan Angelov Hristov, is a Bulgarian national who was born in 1938 and lives in Pleven.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. The first set of criminal proceedings against the applicant

On 13 September 1995 the prosecution authorities opened a preliminary investigation against the applicant for providing banking services (collecting money deposits) without a licence, an offence punishable under Article 252 of the Criminal Code ("the CC"). On 6 October 1995 the applicant was charged with the above offence and bailed.

On 16 December 1996 the Pleven Investigative Service prohibited the applicant from leaving the country and seized his passport.

On 9 February 1998 the investigator in charge transmitted the case to the Pleven District Prosecutor's Office, which remitted it for additional investigation on 25 February 1998. Thereafter the case file was transferred several times on undisclosed grounds as follows: on 22 December 1998 to the Pleven Regional Prosecutor's Office, on 4 January 1999 to the Supreme Prosecutor's Office, on 4 February 1999 to the Pleven Regional Prosecutor's Office and on 16 April 1999 to the Pleven Investigative Service.

On an unspecified date in 1999 the applicant requested that he be issued with a new passport. The Passport Service of the Pleven Regional Police Department refused on the ground that the applicant was prohibited from leaving the country.

On 3 June 1999 the applicant complained to the Appellate Prosecutor's Office about the excessive length of the proceedings. The Pleven Regional Prosecutor's Office refused to send the case file until February 2000. On 10 February 2000 the Appellate Prosecutor's Office ordered that the investigation be continued under the supervision of the Pleven District Prosecutor's Office.

On 26 November 2001 the investigator in charge of the case transmitted the case file to the Pleven Regional Prosecutor's Office and suggested that the criminal proceedings against the applicant be terminated. He stated that the applicant's activity had not been of the category that required a banking licence and, moreover, that Article 252 of the CC criminalized the above offence since 4 June 1995, whereas the applicant had been officially warned and had not carried out the impugned activity after that date.

On 9 July, 2 August and 16 September 2002 the applicant filed complaints with the Pleven District, the Pleven Regional and the Supreme Prosecutors' Offices. He complained about the length of proceedings and the lack of any investigation. He furthermore requested that the prohibition against him leaving the country be lifted, as it impeded his attending business forums abroad. These complaints were transmitted to the Pleven Regional Prosecutor's Office which apparently did not reply.

On 25 March 2004 the applicant filed a motion with the Pleven Regional Court under Article 239a of the Code of Criminal Procedure requesting that his case be examined on the merits by a court or, alternatively, that the proceedings be terminated.

On 15 April 2004 the Pleven Regional Court instructed the Pleven Regional Prosecutor's Office to either prepare an indictment against the applicant or to terminate the proceedings. As the Regional Prosecutor's Office failed to comply with this instruction within the statutory time-limit of two months, on 26 August 2004 the Pleven Regional Court terminated the proceedings against the applicant. This decision entered into force on 20 September 2004.

Following that, on 5 November 2004, the applicant requested the Pleven Regional Prosecutor's Office to lift the prohibition against him leaving the country. On 18 November 2004 the Prosecutor's Office granted the applicant's request and set aside the above restriction.

2. The second set of criminal proceedings against the applicant

In a letter dated 3 June 2003 the applicant introduced complaints related to another set of criminal proceedings against him.

(a) The course of the criminal proceedings

On 8 April 1997 the prosecution authorities opened criminal proceedings against the applicant for obtaining large-scale unlawful gain (a credit from a bank) through the use of falsified documents, an offence under Article 212 § 3 of the CC. On 16 June 1997 the applicant was charged with the above offence and detained. On 21 July 1997 the applicant was given bail.

On unspecified dates the charges were amended to include also forgery committed in an official capacity (an offence under Article 310 of the CC), drawing-up of a false document in an official capacity (an offence under Article 311 of the CC), large-scale fraud (an offence under Article 211 of the CC) committed in respect of a business partner and making a false declaration for the purpose of avoiding payment of taxes (an offence under Article 313 § 2 of the CC).

On 10 April 1999 the applicant complained to the Pleven Regional Prosecutor's Office that the investigation had been protracted.

He received no reply and on 3 June 1999 filed a complaint with the Appellate Prosecutor's Office which, on 10 February 2000, refused to order the withdrawal of the prosecutor in charge of the investigation.

On 26 January 2000 the Pleven Regional Prosecutor's Office terminated the proceedings in respect of all charges, with the exception of two – large-scale fraud and false declaration given before the customs' authorities (offences under Articles 211 and 313 § 1 of the CC). The same day the prosecutor prepared an indictment against the applicant which was to be submitted to the Pleven District Court.

On 17 October 2003 the applicant filed complaints with the Pleven Regional and the Supreme Cassation Prosecutors' Offices, the Chief Prosecutor and the Pleven Regional Investigative Service about the excessive length of the preliminary investigation.

On 28 October 2003 the Pleven Investigative Service informed the applicant that the investigation had been completed on 18 February 1998 and that since then the case had been pending before the relevant prosecutor. However, this information turned out to be incorrect as the case had in fact been remitted to the Pleven Investigative Service on 22 May 2003. The applicant was informed about it on 8 December 2003.

On 25 March 2004 the applicant filed a motion with the Pleven Regional Court under Article 239a of the CCP requesting that his case be examined on the merits by a court or, alternatively, that the proceedings be terminated.

On 5 November 2004 the Pleven Regional Prosecutor's Office terminated the criminal proceedings for fraud against the applicant on the ground that the charges had not been proven. In a final decision of 7 January 2005 the Pleven District Court affirmed.

It is not clear what happened with the charges for false declaration under Article 313 § 1 of the CC.

(b) The applicant's detention and treatment in hospital

On 16 June 1997 the applicant was remanded in custody. On 18 July 1997 the applicant felt unwell and his left limbs were temporarily paralysed. He was immediately transferred to a hospital and placed in the Toxicology Department in order to be guarded by the same policeman as another detainee who was undergoing a treatment there. According to the applicant, he had been chained to his bed for five days.

On 21 July 1997 the Pleven Regional Prosecutor's Office ordered the applicant's transfer to the Neurology Department of the Pleven Medical University Hospital, revoked the detention order and bailed him. The applicant was treated there until 12 August 1997 when he was discharged. He was finally diagnosed with neurasthenic neurosis and pseudo paresis.

On 23 January 1998 the applicant was admitted to the Psychiatric Clinic of the Pleven Medical University. According to the applicant, he was kept

there against his will and under lock and key pursuant to a prosecutor's order.

The applicant was discharged from the clinic on 3 February 1998 and taken into custody. He was detained until 27 February 1998 when he was released on bail.

3. The third set of criminal proceedings against the applicant

In a letter of 29 August 2003 the applicant introduced complaints about another set of criminal proceedings.

On an unspecified date in 1995 the prosecution authorities initiated criminal proceedings for theft against the applicant. On an unspecified date he was indicted.

On 30 November 1995 the applicant was detained on remand pursuant to an order of the Pleven District Prosecutor's Office of 28 November 1995. He was released on 13 December 1995.

On 16 December 1998 the Pleven District Court acquitted the applicant. This judgment entered into force on 16 January 1999.

B. Relevant domestic law

1. Article 239a of the Code of Criminal Procedure

In June 2003 an amendment to the Code of Criminal Procedure, the new Article 239a, introduced the possibility for an accused person to have his case examined by a trial court if the investigation has not been completed within the statutory time-limit (two years in investigations concerning serious crimes and one year in all other investigations). The prosecutor in charge of the case is then obliged to either terminate the proceedings or submit an indictment in court. Failure to do so within two months results in the termination of the criminal proceedings by the competent court (Article 239a §§ 4 and 6 of the CCP).

2. Prohibition against leaving the country in the course of pending criminal proceedings

Under Article 147 § 3 of the CCP, as in force until 1 January 2000, a person charged with an offence punishable by more than three years' imprisonment was prohibited from leaving the country without authorisation by a prosecutor or a court.

Since the amendments in the CCP of 1 January 2000 a prosecutor may impose a prohibition against leaving the country without authorisation on a person charged with a wilful offence punishable with imprisonment or a heavier punishment (Article 153a § 1). Requests for authorisation should be examined within three days by a prosecutor and refusals are amenable to appeal before the competent first-instance court (Article 153a §§ 2-4).

COMPLAINTS

A. In respect of the first set of criminal proceedings

1. The applicant complained under Article 6 § 1 of the Convention about the length of the criminal proceedings.

2. The applicant complained that his passport was seized and that he had been prevented from leaving the country during a lengthy period.

3. Relying on Article 6 § 3 (a) and (d) the applicant complained that he was not informed about the unfolding of the criminal proceedings and did not participate in the questioning of witnesses against him or on his behalf.

4. The applicant complained under Article 7 of the Convention that he was charged for an activity which he had performed a year before it became punishable under Article 252 of the Criminal Code.

B. In respect of the second set of criminal proceedings

1. The applicant complained under Article 3 that he was subjected to torture and inhuman treatment during his stay in the Toxicology Department in 1997 and in the Psychiatric Clinic in 1998.

2. Relying on Article 5 § 1 of the Convention the applicant complained about his unlawful detention and forced medical treatment.

3. The applicant complained under Article 6 § 1 of the Convention about the excessive length of the criminal proceedings against him.

C. In respect of the third set of criminal proceedings

The applicant complained that on 30 November 1995 he was arrested in a demonstrative way in the city centre in the presence of hundreds of other citizens, which seriously traumatized him and harmed his reputation. He furthermore complained that his detention was not ordered by a judge.

THE LAW

A. Complaint under Article 6 § 1 of the Convention about the length of the first and the second sets of criminal proceedings against the applicant

The relevant part of Article 6 § 1 of the Convention provides:

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

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

B. Complaint that the applicant was prevented from leaving the country

The Court considers that this complaint falls to be examined under Article 2 of Protocol No. 4, the relevant parts of which provide:

> "2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of these rights 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."

1. Existence of an interference

The Court is competent *ratione temporis* to examine the period after 4 November 2000, the date on which Protocol No. 4 came into force in respect of Bulgaria. Following that date and until the ban was lifted on 18 November 2004, the applicant's freedom of movement was restricted for a period of four years and fourteen days.

The ban imposed on the applicant undoubtedly constituted an interference with his right to leave the country.

The Court reiterates that in order to comply with Article 2 of Protocol No. 4 such a restriction should be "in accordance with the law", pursue one or more of the legitimate aims contemplated in paragraph 3 of the same Article and be "necessary in a democratic society" (see *Fedorov and Fedorova v. Russia*, no. 31008/02, § 36, 13 October 2005).

2. Lawfulness and purpose of the interference

This ban was based on the provisions of the Code of Criminal Procedure (Article 147 § 3 until 1 January 2000 and Article 153a afterwards). Its purpose was to secure the applicant's presence in the country during the criminal proceedings against him. Consequently, it served the prevention of crime and was thus covered by Article 2 § 3 of Protocol No. 4 (see *Schmid v. Austria*, no. 10670/83, Commission decision of 9 July 1985, Decisions and Reports 44; and *Fedorov and Fedorova*, cited above, § 37).

3. The proportionality of the interference

The Court observes that the applicant was charged with an offence punishable with imprisonment. It is not in itself questionable that the State

may apply various preventive measures restricting the liberty of an accused in order to ensure the efficient conduct of a criminal prosecution, including a deprivation of liberty (see *Fedorov and Fedorova*, cited above, § 41). A travel ban is a far less severe restriction on the liberty of movement than deprivation of liberty or prohibition to leave one's place of residence.

It is true that the applicant alleges that the criminal proceedings against him never moved beyond the preliminary investigation stage and were practically dormant for many years. That is undisputedly relevant in the assessment of the restriction's proportionality to its aim – the efficient conduct of the criminal proceedings.

The Court observes, however, that the ban imposed on the applicant was not absolute and that he was able to leave the country, provided that he received prior authorisation by a prosecutor. Notwithstanding his alleged wish to participate in business forums abroad, on no occasion did the applicant make use of the possibility to request authorisation to attend them. Accordingly, no refusal had ever been made. After 1 January 2000 a prosecutor's refusal to grant authorisation was amenable to appeal to a court.

Furthermore, the Court considers that the circumstances of the present case are different from those in a number of cases against Italy (see *Luordo v. Italy*, no. 32190/96, § 96, ECHR 2003-IX; *Goffi v. Italy*, no. 55984/00, § 20, 24 March 2005; and *Bassani v. Italy*, no. 47778/99, § 24, 11 December 2003), where the Court found disproportionate a restriction on the freedom of movement. These cases concerned a prohibition against leaving one's place of residence – a more onerous restriction than a prohibition against leaving the country. Furthermore, the impugned measures had been imposed in bankruptcy, not in criminal proceedings, and lasted much longer – between thirteen and twenty-four years.

In sum, taking into account the above circumstances, the Court considers that the restriction on the applicant's freedom of movement was not disproportionate. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. The remainder of the applicant's complaints

The Court has examined the remainder of the applicant's complaints as submitted by him. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of the first and the second set of criminal proceedings against him (September 1995 – September 2004 and April 1997 – January 2005, respectively);

Declares the remainder of the application inadmissible.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President