CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 70843/01
by Kostadin Stoyanov BALABANOV
against Bulgaria

The European Court of Human Rights (First Section), sitting on 5 January 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 23 April 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Kostadin Stoyanov Balabanov, is a Bulgarian national who was born in 1949 and lives in Pazardjik. He is represented before the Court by Mr V. Stoyanov, a lawyer practising in Pazardzhik.

A. The circumstances of the case

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

Prior to the events at issue the applicant had several convictions and served several prison sentences. He also spent several periods of pre-trial detention in relation to different proceedings against him. The applicant was thus deprived of his liberty between January and November 1990, between May 1991 and August 1993, between 25 November and 7 December 1993, and between May 1994 and an unspecified date in 2002, 2003 or 2004.

In 1993 the Sofia District Prosecutor's Office opened file no. 22277/93 in relation to several preliminary inquiries concerning thefts and other offences allegedly committed by the applicant.

The case was assigned to an investigator, who opened file no. 161/93. It appears that the case also had another number – 78/93.

Until 1998 the investigation under files nos. 161/93 and 78/93 did not result in an indictment or other decision being taken.

In 1998 the investigator's file was assigned a new number – 429/98.

On an unspecified date it was established that almost the entire case-file, which consisted of thirty-two volumes, had been lost. Efforts were made to reconstruct the case-file, as far as possible.

On 9 April 1999 the Sofia District Prosecutor's Office terminated the investigation on unknown grounds.

That decision was quashed by the Sofia City Prosecutor's Office on 8 July 1999.

The decision of 8 July 1999 also contained instructions to the investigator as to the necessary investigative steps.

Thereafter, the investigation file carried number 337/99 and, later, no. 259/01.

As of 2002, the proceedings were still pending at the investigation stage.

B. Relevant domestic law

Under the State Responsibility for Damage Act, a person who has remained in prison in excess of the statutory maximum period of pre-trial detention or in excess of the lawful period of his imprisonment sentence (owing to erroneous calculation of periods of pre-trial-detention to be deducted or other adjustments of the period to be served), may claim

damages by bringing an action against the state institutions responsible (section 2 § 1 of the Act, Decision No. 1144 of 20.06.2003 in case no. 904/2002, Supreme Court of Cassation – IV, Decision No. 19 of 22.03.2002 in case no. 12/2002 of the Burgas Appellate Court).

In principle, an action may be brought only after the quashing of the detention order or after other relevant decision by the prosecuting authorities or the courts determining that the detention had been unlawful. However, in some cases the courts examining a claim for damages under the Act have accepted implicitly that they had the power to assess the lawfulness of the impugned acts.

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).

COMPLAINTS

The applicant complains under Article 3 of the Convention that the conditions of his detention were inhuman. In support of that allegation the applicant stated that he was held under a high security regime and that conditions in prisons in Bulgaria were generally bad.

The applicant complains under Article 5 § 1 of the Convention that part of his detention was unlawful as the authorities had failed to take into account certain periods of pre-trial detention.

He also complains, relying on Articles 3, 6 and 13 of the Convention that the criminal proceedings against him, which started in 1993 under prosecutor's file no. 22277/93, lasted unreasonably long. He submits that the resulting anguish amounted to inhuman and degrading treatment.

THE LAW

1. The applicant complains under Article 3 of the Convention of the conditions of his detention. Article 3 of the Convention provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Court observes that the applicant, who is legally represented, has not substantiated his complaint. He has not stated whether or not his complaint concerns all the periods spent by him in prison or only certain periods in

particular places of detention. He has not provided any information whatsoever about the actual conditions in which he was held.

Having regard to the above, even assuming that the applicant did not have any effective remedy under Bulgarian law in respect of the conditions of his detention and that, therefore, in the particular circumstances Article 35 § 1 of the Convention did not require the exhaustion of any such domestic remedies, the Court finds that the complaint concerning the conditions of the applicant's detention is unsubstantiated and therefore manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

2. The applicant complains under Article 5 § 1 of the Convention that part of his detention was unlawful as the authorities failed to deduct certain periods spent by him in pre-trial detention. Article 5 § 1 of the Convention, in so far as relevant, 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:
>
> (a) the lawful detention of a person after conviction by a competent court ...
>
> (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..."

The Court notes that the applicant has not brought an action for damages under the State Responsibility for Damage Act.

At all events, leaving open the question of the exhaustion of domestic remedies (regard being had to the fact that an action under the Act would normally be possible only if the relevant detention decisions had been quashed - see above, Relevant Domestic Law and Practice), the Court notes that the complaint under Article 5 is also unsubstantiated, the applicant not having indicated with sufficient clarity the grounds on which he was deprived of his liberty, the exact periods of detention and the precise reasons why he considers that he had been detained longer than the lawful period. The applicant has not even stated whether he was released in 2002, 2003 or 2004 and has not indicated the period during which he was detained unlawfully in his view. He has thus failed to establish even a *prima facie* case under Article 5 of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with its Article 35 § 4.

3. The applicant complains, relying on Articles 3, 6 and 13 of the Convention of the length of his detention, the resulting anguish and the alleged lack of effective remedies in this respect.

The Court considers that the complaints fall to be examined under Article 6 § 1 of the Convention (length) and Article 13 of the Convention (effective remedies in respect of the length of the proceedings). Those provisions read, in so far as relevant.

> Article 6 § 1
>
> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."
>
> Article 13
>
> "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."

The Court notes that while the applicant was apparently a party to numerous proceedings, his complaints only concern criminal proceedings which started in 1993 under prosecutor's file no. 22277/93, later transformed into investigation files 161/93 and 78/93, later changed to file no. 429/98 and then files nos. 337/99 and 259/01.

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.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the length of the criminal proceedings against him (Article 6 § 1) and the alleged lack of effective remedies in this respect (Article 13);

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President