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

FIFTH SECTION

DECISION

Application no. 12808/12
Georgi Panayotov BOGDANOV
against Bulgaria

The European Court of Human Rights (Fifth Section), sitting on 5 November 2020 as a Committee composed of:
Mārtiņš Mits, *President,*
Latif Hüseynov,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*
Having regard to the above application lodged on 22 February 2012,
Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Georgi Panayotov Bogdanov, is a Bulgarian national, who was born in 1972 and lives in Burgas. He was represented before the Court by Ms N. Dobreva, a lawyer practising in Sofia.

2. The Bulgarian Government ("the Government") were represented by their Agent, Ms V. Hristova, of the Ministry of Justice.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties and as established on the basis of publicly available documents, may be summarised as follows.

4. In December 2009 the prosecution authorities in Burgas opened criminal proceedings in relation to a theft of fuel. Several persons, including the applicant, were arrested on 20 August 2010. The applicant was charged with theft and with the participation in a criminal gang.

5. On 22 August 2010 the applicant, together with his alleged accomplices, was brought before the Burgas Regional Court (hereinafter

"the Regional Court"), which ordered the group's detention on remand. It found that a reasonable suspicion existed that they had committed the offences they stood accused of, based on witness testimony and evidence collected during the inspection of the scene of the crime. The Regional Court found further that there was a risk of the accused absconding or reoffending, seeing the thorough preparation of the theft and the good coordination among them. Upon appeal, on 31 August 2010 the Burgas Court of Appeal (hereinafter "the Court of Appeal") upheld that decision.

6. On 16 November 2010 the Regional Court, noting that the applicant's state of health had deteriorated, placed him under house arrest.

7. On 9 March 2011 the Regional Court dismissed a request for release submitted by the applicant. It was of the view that the evidence collected sufficiently established a reasonable suspicion against him. The investigation continued, and there were no further reasons for the applicant's release. In particular, his family's dire financial situation, due to his inability to work, could not outweigh the public interest in his remaining under house arrest.

8. The investigation in the case was completed in June 2011.

9. The Regional Court dismissed a further request for release submitted by the applicant on 15 August 2011. It confirmed the reasonable suspicion against him, noting in addition that a risk of his absconding or reoffending stemmed from the severity of the charges, the punishment he risked and the good coordination of the criminal group he had allegedly belonged to. That decision was upheld on 22 August 2011 by the Court of Appeal.

10. In January 2012 the applicant was indicted. The case was transmitted to the Specialised Criminal Court, competent to try cases of organised crime.

11. On 25 April 2012 that court dismissed a request by the applicant to be released. However, upon appeal, in a decision of 11 May 2012 the Specialised Criminal Court of Appeal ordered the applicant's release on bail, finding that his house arrest was no longer justified. It pointed out, in particular, to the duration of his deprivation of liberty.

12. The applicant paid the bail and was released on 15 May 2012.

13. On 17 September 2013 the Specialised Criminal Court acquitted the applicant. The acquittal was upheld on appeal and became final on 26 September 2014.

14. In 2017 the applicant brought a tort action against the prosecution authorities under section 2, subsection 1(3) of the State and Municipalities Liability for Damage Act 1988 (hereinafter "the 1988 Act"), seeking 120,000 Bulgarian levs (BGN) (the equivalent of 61,380 EUR) in compensation for having been unjustifiably charged with a criminal offence. In his statement of claim he referred to his detention pending trial.

15. The Sofia City Court gave a judgment on 21 April 2020. It awarded the applicant BGN 50,000 (the equivalent of EUR 25,575) in non-pecuniary

damage on account of the unlawful charges against him. It noted in addition that, while charged with a criminal offence, the applicant had been detained on remand for about three months, and after that had been placed under house arrest for about a year and a half; during this period of time he had in particular been unable to work and to provide for his family.

16. The parties have not informed the Court whether an appeal has been submitted against this judgment.

B. Relevant domestic law and practice

17. The relevant domestic law and practice concerning the liability of the State under the 1988 Act have been summarised in *Tsonev v. Bulgaria* (dec.) (no. 9662/13, §§ 29-41, 30 May 2017) and *Kolev v. Bulgaria* (dec.) (no. 69591/14, §§ 12-20, 30 May 2017).

COMPLAINT

18. The applicant complained that his pre-trial detention had been overly lengthy, in breach of Article 5 § 3 of the Convention.

THE LAW

19. The Government argued that the applicant had failed to exhaust the available domestic remedies because he had failed to claim in the proceedings under the 1988 Act that his pre-trial detention had been in breach of Article 5 § 3 of the Convention. They pointed out that in the case of *Kolev* (cited above) the Court had found a claim under the 1988 Act concerning breaches of Article 5 of the Convention, under a provision introduced in 2012, to be an effective remedy. The applicant noted that he had brought proceedings under section 2, subsection 1(3) of the 1988 Act – a provision which did not require of the domestic courts to examine a possible issue under Article 5 § 3 of the Convention.

20. The Court observes that in 2017 the applicant brought a tort action against the State related to the criminal proceedings against him (see paragraph 14 above). In April 2020 the Sofia City Court awarded him BGN 50,000 (EUR 25,575) in non-pecuniary damage, referring to his acquittal and, in particular, to his detention on remand followed by home arrest (see paragraph 15 above). While, indeed, the Sofia City Court did not expressly acknowledge that the applicant's detention had been excessively lengthy, the Court notes that it was open to the applicant to appeal, and he has not indicated having done so (see paragraph 16 above).

21. Accordingly, the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 December 2020.

Martina Keller Deputy Registrar	Mārtiņš Mits President