CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 49438/99
by Stilian Atanasov STAIKOV
against Bulgaria

The European Court of Human Rights (First Section), sitting on 9 December 2004 as a Chamber composed of:

Mr L. LOUCAIDES, *Acting President*,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
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 15 June 1999,

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

The applicant, Mr Stilian Atanasov Staikov, is a Bulgarian national, who was born in 1968 and lives in Shumen. He was represented before the Court by Mrs Z. Kalaidjieva, a lawyer practising in Sofia. The respondent Government were represented by their agent, Mrs M. Dimova, of the Ministry of Justice.

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

A. The particular circumstances of the applicant's case

1. The criminal proceedings against the applicant

On 23 December 1991 the applicant was arrested and charged with the murder, allegedly committed in a cruel manner on 17/18 November 1991, of the eighty-one years' old adoptive mother of his friend, Mr H.

On 14 May 1993 the Varna Regional Court found the applicant guilty and sentenced him to eighteen years' imprisonment. Upon the applicant's appeal, on 10 November 1993 the Supreme Court quashed his conviction and sentence and remanded the case for further investigation.

In its judgment of 10 November 1993 the Supreme Court found, *inter alia*, that the Regional Court had placed excessive reliance on the testimony of one witness, Mr. H., the adoptive son of the victim, had not verified the applicant's statement that at the time of the murder he had been visiting a family of friends and had not collected evidence capable of excluding other possible versions of the facts, including about Mr H. being the possible perpetrator.

On 6 January 1994 the case was transmitted to the investigator. He charged Mr H. with aiding and abetting the applicant.

In May 1995 the investigator concluded his work and reported to the prosecutor. In November 1995 the prosecutor referred the case back to the investigator for additional investigation.

The additional investigation was completed in June 1997 when the case was transmitted to the prosecutor. In July 1997 an indictment against the applicant and Mr H. was submitted to the Varna Regional Court.

In April 1998 the Varna Regional Court terminated the proceedings as it accepted the applicant's request for the recusal of all judges from that court. The case was transmitted to the Bourgas Regional Court. The judge to whom the case was assigned considered that it should be dealt with by the Varna Regional Court and sought a decision on the matter by the Supreme Court of Cassation. In May 1998 the Supreme Court of Cassation decided that the case should be examined by the Varna Regional Court.

In October 1998 the Varna Regional Court referred the case back to the prosecutor as there had been breaches of procedure which affected Mr H.'s defence rights. In January 1999 the prosecutor referred the case to the investigator.

In January 2001 the prosecutor ordered the suspension of the proceedings as Mr H.'s whereabouts were unknown. Upon the applicant's appeal, the suspension order was quashed in May 2001 by the Varna Regional Court which noted that the excessive length of the proceedings violated the applicant's rights and criticised the prosecutor for having suspended the proceedings. The court stated that Mr H. had been heard numerous times, that his statements had been considered unreliable by the Supreme Court in 1993 and that therefore it was unclear why the prosecutor considered that Mr H.'s testimony could prove the charges. The court went on as follows:

> "In these circumstances the prosecution should concentrate their efforts on discovering new evidence to prove the guilt of the two accused persons ... The [applicant's] view that [Mr. H's absence] did not impede or, for that matter, facilitate the investigation is well-founded in the light of the evidence in the case..."

The prosecutor appealed to the Varna Appellate Court against the decision of the Regional Court of May 2001.

In June 2001 the appeal was dismissed. The Appellate Court stated, *inter alia*, that the Regional Court was right in considering that in view of Mr H.'s unreliable statements, the investigation must continue by gathering relevant evidence, without awaiting a possibility to obtain Mr H's testimony.

A fresh indictment was submitted to the Varna Regional Court in 2002. The court held four hearings in 2002 and 2003 and by judgment of 19 February 2003 acquitted the applicant. The prosecutor appealed.

On 20 June 2003 the Varna Appellate Court quashed the Regional Court's judgment and decided on the merits. It found the applicant guilty and sentenced him to 15 years' imprisonment. The applicant appealed.

In January 2004 the case was pending before the Supreme Court of Cassation.

During the relevant period the authorities heard repeatedly about twenty witnesses, appointed several experts and collected other evidence.

According to the applicant, throughout the proceedings his case was discussed in the press, where he was often referred to as the "murderer".

2. The applicant's remand in custody

On 23 December 1991 the applicant was arrested and remanded in custody on murder charges.

On 14 May 1993 he was convicted and sentenced to a term in prison. That conviction and sentence were quashed on 10 November 1993.

After November 1993 the applicant remained in custody. His repeated applications for release on bail were refused by the prosecuting authorities on 21 September 1994, 14 November 1995, 16 December 1995, 8 July 1996

and later unspecified dates. Some of the decisions did not provide reasons and others stated that the applicant's remand in custody was mandatory in view of the gravity of the charges.

On an unspecified date, in a complaint concerning the handling of his case, the applicant made offensive remarks against a prosecutor. On 2 September 1994 he was convicted on account of these remarks and sentenced to six months' imprisonment. On an unspecified date he was convicted on other charges, concerning events before December 1991, and sentenced to short terms of imprisonment. In accordance with the rules on sentencing, he was ordered to serve a nine months' term in prison on account of these convictions. According to the prison authorities, the applicant served that sentence between 18 November 1994 and 18 August 1995. Thereafter he remained in pre-trial detention on the murder charges.

The applicant submitted a number of judicial appeals against his detention. In particular, he filed appeals in June 1997, on 7 November 1997, 24 February 1998, 29 April 1998 and 10 August 1998. Some of the appeals were dismissed with reference to the relevant provisions of the Code of Criminal Procedure. In its decision of 24 February 1998, the Varna Regional Court stated that there were no exceptional circumstances warranting the applicant's release on bail and that there was a danger of the applicant absconding and obstructing the proceedings if released. That was so in view of the gravity of the charges.

On 13 November 1998 the applicant's release on bail was ordered but he was unable to secure the necessary amount. Following an unsuccessful attempt to obtain the reduction of the bail, the applicant posted bail and was released on 17 December 1998.

3. The detention conditions

During the periods when his case was at the investigation stage, the applicant was detained at the premises of the Varna Regional Investigation Service. For the remainder of his detention, when his case was pending before the courts, the applicant was in the Varna prison.

At the relevant time, at the premises of the Investgation Service cells had central heating and were equipped with a toilet. Natural light came through glass tiles secured by metal bars. According to the applicant, the influx of natural light was limited. Inmates slept on plank beds. There were also tables in the cells.

According to the applicant, at times he was detained together with eight other persons in a cell designed for three. The ventilation system only worked for a few hours per day. The applicant also stated that the premises of the Investigation Service had not been designed to offer any possibility of open air exercise and that the applicant had not had access to such activities for many years. He was not allowed to make walks. Visits were only

possible once per month. Food was extremely poor. Inmates often had to take cold showers as warm water was often unavailable.

During the relevant time the applicant had been examined by a doctor on unspecified dates and had been found physically healthy. However, in July 1998 he was diagnosed as suffering from tuberculosis. Reports on his mental health noted that he suffered from depression.

According to the Government, the premises of the Varna Regional Investigation Service were relatively new, from 1982, offered conditions better than those in other detention facilities and were in conformity with the minimum European standards.

In the Varna prison, where the applicant was detained when his case was pending before the courts, cells were similar. The applicant was allowed to exercise 40 minutes per day and to go out for toilet visits during the day.

B. Relevant Domestic Law and Practice

The relevant provisions of the Code of Criminal Procedure and the Bulgarian courts' practice at the relevant time are summarised in the Court's judgments in several similar cases (see, among others, the *Nikolova v. Bulgaria* [GC], no. 31195/96, §§ 25-36, ECHR 1999-II; *Ilijkov v. Bulgaria*, no. 33977/96, §§ 55-62, 26 July 2001; and *Yankov v. Bulgaria*, no. 39084/97, §§ 79-88, ECHR 2003-XII (Extracts)).

COMPLAINTS

1. The applicant complained under Article 3 of the Convention about the conditions of his detention at the premises of the Varna Investigation service and in the Varna prison.

2. He complained under Article 5 § 3 of the Convention that he had not been brought promptly before a judge or other officer authorised by law to exercise judicial power and that his pre-trial detention had been unjustified and unreasonably lengthy. In particular, at the relevant time detention pending trial was imposed automatically on the basis of legal presumptions that did not take into account the concrete circumstances.

3. Referring to Article 5 § 4 of the Convention, the applicant stated that the courts had not exercised effective control on the lawfulness of his detention.

4. The applicant complained under Article 5 § 5 of the Convention that he did not have a right to compensation for his unlawful detention.

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

6. Relying on Article 6 §§ 1 and 2 of the Convention, the applicant complained that the courts were partial and the proceedings unfair in that the courts, having found that the evidence did not establish the applicant's guilt, had not acquitted him but had repeatedly returned the case for further investigation, thus actively assisting the prosecution. Furthermore, since in Bulgarian law compensation for pre-trial detention was only available in case of acquittal, and since such compensation was payable from the respective court's budget, the courts had had incentive to find the applicant guilty or at least give more opportunities to the prosecution to prove their case. The applicant also complained under Article 6 § 2 and Article 8 of the Convention in respect of the alleged prejudicial media coverage of his case.

7. The applicant also raised a general complaint, relying on Articles 5 and 6 of the Convention, in that his case allegedly disclosed a fundamentally flawed system of arrest, detention and criminal procedure, whereby the prosecution, enjoying unlimited trust and assistance by the courts, was the *de facto* master of the proceedings and of the accused person's fate. The accused person was in reality not a party to, but a mere subject of these proceedings. This system amounted to a *de facto* punishment without conviction, a punishment imposed by the prosecution with the assistance of the courts.

THE LAW

1. *Complaint under Article 5 § 3 of the Convention that the applicant was not brought before a judge or other officer authorised by law to exercise judicial power.*

The Court notes that the applicant was arrested in December 1991, whereas the Convention entered into force in respect of Bulgaria on 7 September 1992. The complaint is therefore partly incompatible *ratione temporis* with the provisions of the Convention. In so far as the applicant may be understood as complaining that after 7 September 1992 he had still not been brought before a judge, the Court notes that the applicant was brought before a judge not later than in 1993, when his case was examined by the Varna Regional Court. However, the application to the Court was submitted on 15 June 1999, more than six months thereafter. The remainder of the above complaint was submitted out of the six months' time limit under Article 35 § 1 of the Convention. It follows that the above complaint must be rejected in accordance with Article 35 § 4 of the Convention.

2. Complaint under Article 3 of the Convention of the conditions of detention

Article 3 of the Convention provides:

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

The Government described the conditions in the Varna Investigation Service, emphasising that the cells were equipped with sanitary facilities, had windows, good ventilation and tables. The Government considered that those conditions were in conformity with the relevant standards and were better than those in other detention facilities.

The applicant described the conditions as inhuman and referred to the reports of the 1995 and 1999 visits to Bulgaria of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT"). Although the CPT did not visit Varna, the reports contained general observations about the conditions in Investigation Service detention facilities and prisons.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. Complaints under Article 5 of the Convention concerning the applicant's remand in custody

The applicant stated that his rights under Article 5 §§ 3, 4 and 5 had been violated in that his pre-trial detention had been unjustified and unreasonably lengthy, the courts had not exercised effective control on the lawfulness of his detention and he did not have an effective right to compensation.

Articles 5 of the Convention provides, in so far as relevant:

> "1. 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 ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article ... shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

> 4. 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.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The Government stated that the applicant had been detained on serious charges which warranted his deprivation of liberty. Also, the case had been factually complex and involved evidentiary difficulties. The courts had been impartial and the proceedings fair.

The applicant reiterated his complaints that his case disclosed a fundamentally flawed system of arrest, detention and criminal procedure, whereby the prosecution, enjoying unlimited trust and assistance by the courts, was the *de facto* master of the proceedings and of the accused person's fate. This system allegedly amounted to a *de facto* punishment without conviction, a punishment imposed by the prosecution with the assistance of the courts.

The Court considers, in the light of the parties' submissions, that the complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the above complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

4. Complaint that the criminal proceedings were excessively lengthy

The applicant relied on Article 6 § 1 of the Convention. That provision reads, in so far as relevant:

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

The parties referred to their submissions concerning the length of the applicant's detention.

The Court considers, in the light of the criteria established by its case-law on the question of "reasonable time", and having regard to all the material in its possession, that an examination of the merits of the complaint is required.

5. Remaining complaints

The applicant stated that his rights under Articles 6 §§ 1 and 2 and Article 8 of the Convention had been violated in that the courts had demonstrated partiality and had assisted the prosecution by returning the case for the collection of additional inculpating evidence instead of acquitting him and that the proceedings had been influenced by prejudicial media coverage.

The Court considers that the above complaints fall to be examined under Article 6 § 1 and 2 of the Convention which provide, in so far as relevant:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law..."

The Court notes that that there has been no final judgment determining the criminal charges against the applicant and that the proceedings against him are still pending. It is open to the applicant to raise before the Supreme Court of Cassation any issue related to the alleged partiality of the lower courts and the alleged prejudicial remarks made. The Court cannot speculate about the outcome of the pending proceedings.

In these circumstances the Court finds that the above complaints are premature and that therefore the applicant has not exhausted all domestic remedies within the meaning of Article 35 § 1 of the Convention. This part of the application must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints

that the conditions of his detention were inhuman and degrading;

that his pre-trial detention had been unjustified and unreasonably lengthy,

that the courts had not exercised effective control on the lawfulness of his detention,

that he did not have an effective right to compensation in this respect, and

that the criminal proceedings had lasted too long.

Declares inadmissible the remainder of the application.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
Acting President