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. 62544/00
by Petar Hristov VASILEV
against Bulgaria

The European Court of Human Rights (First Section), sitting on 9 June 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 8 June 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Petar Hristov Vasilev, is a Bulgarian national who was born in 1967 and lives in Varna.

A. The circumstances of the case

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

1. The criminal proceedings against the applicant

(a) The first criminal proceedings

On 2 March 1997 the applicant was charged as an accomplice to a car theft. On 14 August 1997 the preliminary investigation against the applicant was terminated due to lack of evidence of his participation in the theft.

(b) The second criminal proceedings

On 13 February 1999 the applicant was charged with extortion. On 18 November 1999 the preliminary investigation against the applicant was terminated due to lack of evidence that he had perpetrated the offence.

(c) The third criminal proceedings

On 18 March 1999 a truck containing kitchen appliances was stolen while it was parked in a residential neighbourhood. A couple of hours later, acting on a tip-off, the police apprehended the applicant, who gave flight, and an accomplice while they were unloading the kitchen appliances from the stolen truck.

On 19 March 1999 the applicant was charged, *inter alia*, with grand larceny, which constituted a serious intentional offence. The charges against the applicant were amended on 14 and 29 April 1999.

The Prosecutor's Office entered an indictment against the applicant with the Varna Regional Court sometime around 7 July 1999. The applicant was apparently charged that in collusion with other persons, his co-accused and an unidentified third individual who escaped arrest, attempted to commit grand larceny of the kitchen appliances and to steal the truck.

The Varna Regional Court started hearing the case on 9 February 2000.

On 29 May 2000 the applicant petitioned the President of the Varna Regional Court to remove the presiding judge, because she was allegedly delaying the proceedings and had dismissed the appeals against his detention without citing specific evidence in support of her decisions. The request was dismissed by the trial court on 30 May 2000 as unsubstantiated.

At a hearing on 15 June 2000 the applicant petitioned the trial court to recuse the prosecutor because he was allegedly biased as a result of having attended the same school as his wife. The court dismissed his request on the same day as unsubstantiated.

By judgment of 28 November 2000 the applicant was found guilty by the Varna Regional Court of larceny of large value (Article 195 § 2 of the Criminal Code) in respect of the kitchen appliances. The charges of grand larceny, theft of the truck and collusion were dismissed as unproven. In reaching its decision, the court relied on numerous witnesses' statements, fingerprint analyses and experts' opinions. The defendants' alibis were analysed in detail and were dismissed as contradictory and as unsupported by other credible evidence gathered in the course of the proceedings. The applicant was sentenced to five years' imprisonment and a previous sentence against him of two years' imprisonment, which had been suspended, was also enforced. The time spent by the applicant in pre-trial detention was deducted from the sentence to be served.

On an unspecified date the applicant appealed against this judgment. The grounds for the applicant's appeal were that the judgment of the Varna Regional Court had been unlawful, unsubstantiated and unjust, that the sentence imposed had been unfair and that it should be quashed or reduced. The applicant also claimed that the court had failed to gather and assess sufficient evidence proving his guilt, that it had unfairly refused to accept his alibi and that the investigative procedure identifying his car at the scene of the crime had been wrongly conducted.

By judgment of 28 August 2001 the Varna Appellate Court upheld the lower court's judgment. In reaching its decision the court examined in detail the arguments of the applicant, and his co-accused, and found them to be unsubstantiated and in contradiction with the other credible evidence gathered in the proceedings. It also found that the sentence imposed on the applicant was fair and just, considering the offence for which he had been found guilty.

On an unspecified date the applicant filed a cassation appeal against this judgment. The grounds for the applicant's appeal were that there were serious procedural violations which had led to the lower courts' delivering unfair judgments against him. The applicant also claimed that the court had failed to gather and assess sufficient evidence proving his guilt and that the investigative procedure identifying his car at the scene of the crime had been wrongly conducted. He sought the Supreme Court of Cassation to quash the lower courts' judgments or to reduce his sentence. The applicant did not apparently cite as a ground for his appeal the fact that the Varna Regional Court might have been biased against him because in the course of the proceedings it had also ruled on his appeals against his detention. Such an argument was only raised by his co-accused.

By final judgment of 8 April 2002 the Supreme Court of Cassation upheld the lower court's judgment. In reaching its decision it examined in detail the arguments of the applicant, and those of his co-accused, and found them to be unsubstantiated and in contradiction with the other credible evidence in the case. It also considered the sentence imposed on the applicant to be fair and just. The court did find that there might have been certain irregularities in the way that the investigative procedure for identifying the applicant's car had been conducted, but did not consider it material to the outcome of the proceedings nor to the sentences imposed.

The applicant allegedly received a copy of the judgment on 13 November 2002.

2. The applicant's detention and his appeals against it

(a) In the context of the first criminal proceedings

The applicant was detained on remand on 2 March 1997. On 1 April 1997 he was freed and a restrictive measure was imposed on him not to leave his place of residence without the approval of the Prosecutor's Office. The latter was lifted on 14 August 1997 when the preliminary investigation against the applicant was terminated.

(b) In the context of the second criminal proceedings

The applicant was detained on remand on 13 February 1999. On 1 March 1999 he was freed on bail, which was lifted on 18 November 1999 when the preliminary investigation against the applicant was terminated.

(c) In the context of the third criminal proceedings

The applicant was arrested on 18 March 1999 on suspicion of having committed grand larceny.

When he was charged with the offence on 19 March 1999 the applicant was detained on remand under an order issue by an investigator and confirmed by the Prosecutor's Office. The reason given for detaining the applicant was that he had committed this offence soon after being released on bail on 1 March 1999 in the context of the second criminal proceedings.

When the charges against the applicant were amended by an investigator on 14 April 1999 no specific grounds were given for continuing his detention.

On an unspecified date the applicant filed his first appeal against his detention, which the Varna Regional Court examined at a hearing on 26 April 1999. The court dismissed it as it found that the applicant's detention was mandatory insofar as he was charged with a serious intentional offence and that there was a risk that he might abscond or re-offend given his past criminal record, the existence of a suspended sentence

against him which would be enforced if he was found guilty in these proceedings and the fact that he had re-offended soon after being released on bail in the context of the second criminal proceedings.

When the charges against the applicant were amended by an investigator on 29 April 1999 no specific grounds were given for continuing his detention.

Between July 1999 and October 2000 the applicant appealed another seven times against his detention.

The second appeal, dated 19 July 1999 and followed up by a second request of 3 September 1999, was dismissed by a decision of the Varna Regional Court on 24 September 1999, which was upheld on 11 October 1999 by the Varna Appellate Court. The courts found that the applicant's detention was mandatory as he was charged with a serious intentional offence, that he had re-offended soon after being released on bail in the context of the second criminal proceedings and that there was a risk that he might abscond or re-offend again.

In his third appeal, dated 1 and 10 December 1999, the applicant claimed that there was insufficient evidence that he was guilty, that there was a change in the circumstances regarding his detention inasmuch as his health had deteriorated and his family was having grave financial difficulties without him. By decision of 15 December 1999 the Varna Regional Court dismissed, in camera, his appeal, which was later upheld by the Varna Appellate Court on 27 December 1999. The courts found that there were no new circumstances requiring a reassessment of the need to continue the applicant's detention, because he had failed to substantiate his assertions regarding his deteriorating health and the dire financial condition of his family.

At a hearing on 6 March 2000 the applicant's counsel again appealed against his detention claiming that his family's situation had worsened and that his health was deteriorating. The Varna Regional Court dismissed the appeal on the same day, which upon further appeal was upheld by the Varna Appellate Court on 20 March 2000. The courts considered that the applicant's assertions did not introduce any new facts or circumstances warranting a reassessment of the grounds of his detention. In addition, they considered that the applicant's detention was mandatory because he was charged with a serious intentional offence and that in such cases there was a statutory presumption that he might abscond or re-offend.

In his fifth appeal, dated 26 April 2000 but apparently filed on 2 May 2000, the applicant claimed that the courts had previously failed to assess and indicate any specific evidence that he might abscond or re-offend in order to justify his continued detention. He claimed that they had simply relied on the nature of the offence with which he was charged with and had considered that detention was mandatory in such cases. Apparently the Varna Regional Court did not immediately examine the applicant's appeal,

so on 29 May 2000 the applicant complained to the President of the Varna Regional Court and asked that the presiding judge in his case be recused. Both requests of the applicant were examined and dismissed by the trial court, in camera, on 30 May 2000. The Varna Regional Court considered that the applicant had once again failed to present any new evidence or to indicate new circumstances warranting a reassessment of the grounds for his detention. At a hearing on 15 June 2000 the applicant's counsel reiterated his appeal against his detention citing the previous grounds for his request. The Varna Regional Court dismissed the appeal on the same day as it considered that the applicant's assertions did not constitute new facts warranting a reassessment of the grounds for his detention. The applicant appealed against both decisions on 16 June 2000, but on 26 June 2000 the Varna Appellate Court upheld the decisions of the lower court on similar grounds.

On an unspecified date in October 2000 the applicant filed his seventh appeal against his detention. He claimed that the length of the detention itself, which at that time was over 19 months, was in contravention with the aims and purposes of the measure to detain a defendant on remand. He claimed that there was no longer evidence that he might abscond, re-offend or hinder the investigation and objected to the courts' reliance on the seriousness of the offence as the primary ground for refusing his appeals against his detention. It is not clear whether the courts examined this appeal of the applicant.

3. The proceedings under the State Responsibility for Damages Act

On an unspecified date in 2001 the applicant initiated an action under the State Responsibility for Damages Act. He sought damages in the amount of 10,000 Bulgarian Levs for the allegedly unlawful detentions in the context of the first and second criminal proceedings against him and for the pain and suffering caused as a result of having been unjustly accused of committing those offences.

By judgment of 6 January 2003 the Varna District Court found in favour of the applicant and ordered the Prosecutor's Office to pay the applicant damages in the amount of 3,888.56 Bulgarian Levs, plus interest, in respect of the two periods of detention and for having brought charges against him which were later dropped due to lack of evidence.

On 28 January 2003 the Prosecutor's Office appealed against this judgment. It argued that neither of the detentions were found by any authority or court to have been unlawful at their relevant times and that the mere fact that it later transpired, in both cases, that the charges against the applicant could not be proven and the preliminary investigations against him had been terminated did not attract the liability of the Prosecutor's Office under the State Responsibility for Damages Act. Similarly, it argued that it was not liable for opening preliminary proceedings against

individuals which were later terminated due to lack of sufficient evidence to indict them.

The Varna Regional Court agreed with the Prosecutor's Office and by final judgment of 28 August 2003 quashed the lower court's judgment and dismissed the applicant's claims. It found that the detentions were, at the relevant time, imposed in accordance with the law, were never subsequently found to be unlawful and, therefore, the Prosecutor's Office was not liable for damages stemming there from under the State Responsibility for Damages Act. Similarly, it found that the Prosecutor's Office was not liable for damages caused as a result of terminating preliminary investigations against individuals due to lack of sufficient evidence to indict them.

B. Relevant domestic law and practice

1. Grounds for pre-trial detention

(a) before 1 January 2000

At the relevant time and until the reform of the Code of Criminal Procedure of 1 January 2000 detention pending trial was mandatory in cases where the charges concerned a serious intentional offence. Detention could only be dispensed with, as interpreted by the Supreme Court, when it was clear and beyond doubt that any danger of absconding or re-offending was objectively excluded, for example, if the accused was seriously ill, elderly, or already detained on other grounds, such as serving a sentence. The legal grounds for detention pending trial under Bulgarian law have been summarised in *Kuibishev v. Bulgaria* (dec.) (no. 39271/98, 19 December 2002).

(b) since 1 January 2000

As of that date the legal regime of detention under the Code of Criminal Procedure was amended with the aim to ensure compliance with the Convention (TR 1-02 Supreme Court of Cassation).

The relevant part of the amended Article 152 provides:

> "(1) Detention pending trial shall be ordered [in cases concerning] offences punishable by imprisonment ... , where the material in the case discloses a real danger that the accused person may abscond or commit an offence.
>
> (2) In the following circumstances it shall be considered that [such] a danger exists, unless established otherwise on the basis of the evidence in the case:
>
> 1. in cases of special recidivism or repetition;

2. where the charges concern a serious offence and the accused person has a previous conviction for a serious offence and a non-suspended sentence of not less than one year imprisonment;

3. where the charges concern an offence punishable by not less than ten years' imprisonment or a heavier punishment.

(3) Detention shall be replaced by a more lenient measure of control where there is no longer a danger that the accused person may abscond or commit an offence."

It appears that divergent interpretations of the above provisions were observed in the initial period of their application, upon their entry into force on 1 January 2000.

In June 2002 the Supreme Court of Cassation clarified that the amended Article 152 excluded any possibility of a mandatory detention. In all cases the existence of a reasonable suspicion against the accused and of a real danger of him absconding or committing an offence had to be established by the authorities. The presumption under paragraph 2 of Article 152 was only a starting point of analysis and did not shift the burden of proof to the accused (TR 1-02 Supreme Court of Cassation).

2. The State Responsibility for Damages Act

The State Responsibility for Damages Act of 1988 provides that the State is liable for damage caused to private persons by the organs of the investigation, the prosecution and the courts for unlawful pre-trial detention, if the detention order has been set aside for lack of lawful grounds. The relevant domestic law and practice has been summarised in *Mitev v. Bulgaria* (no. 40063/98, §§ 84-88, 22 December 2004).

3. Cassation appeals

Article 218a § 1 (a) of the Bulgarian Code of Civil Procedure provides that a cassation appeal can be filed against all judgments of second-instance courts, with only a few exceptions, such as against judgments in civil actions with a value of the claim under 5,000 Bulgarian Levs.

COMPLAINTS

In his initial submissions to the Court of 8 June 2000 in respect of the third criminal proceedings:

1. The applicant complains under Article 5 § 3 of the Convention that when he was arrested on 18 March 1999 he was not brought promptly before a judge or other officer authorised by law to exercise judicial power.

2. The applicant complains under Article 5 § 1 (c) that he was detained unlawfully. He submits that the evidence against him was not sufficient to lead to the conclusion that he was guilty of an offence. In addition, he contends that there was no evidence that he would abscond, re-offend or hamper the investigation.

3. The applicant complains 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 claims that there was a violation of the requirement for a speedy decision and a fair hearing under Article 5 § 4 of the Convention, because (1) the courts denied him the right to participate in the hearings and (2) the court which ruled on some of his appeals was the same one that was hearing the case against him.

4. The applicant complains under Article 6 § 1 of the Convention in respect of the length of the criminal proceedings against him.

In additional submissions to the Court of 10 September 2001 in respect of the third criminal proceedings:

5. The applicant complains, relying on Article 6 of the Convention, that the he was denied a fair trial because the Varna Regional Court was not impartial as one of the judges had previously ruled on some of his appeals against his detention.

In additional submissions to the Court of 27 November 2002 in respect of the third criminal proceedings:

6. The applicant complains under Article 6 § 2 of the Convention that he was denied a fair trial because the presumption of innocence was not adhered to by the courts, as they constantly acted unfavourably towards him and accepted as credible only evidence which incriminated him.

7. The applicant complains under Article 7 of the Convention that the actions for which he was found guilty did not constitute an offence.

In additional submissions to the Court of 6 November 2003 in respect of the proceedings under the State Responsibility for Damages Act:

8. The applicant complains, relying on Article 6 of the Convention, that in the proceedings under the State Responsibility for Damages Act he was denied a fair trial because the first-instance court awarded him damages, but the second instance quashed that judgment. The applicant also complaints, in conjunction with Article 13 of the Convention, that he had no effective remedy to appeal against the judgment of the second-instance court because the Code of Civil Procedure was amended in the meantime and a higher threshold requirement for claims above 25,000 Bulgarian Levs was

introduced for filing cassation appeals thereby allegedly denying him the opportunity, due to the low value of his claim, to file a cassation appeal to a third-instance court.

9. The applicant complains under Article 14 of the Convention that he was discriminated against in the proceedings because he was allegedly a convicted offender.

10. The applicant complains under Article 5 § 5 of the Convention that in the proceedings under the State Responsibility for Damages Act he was denied the right to compensation for being a victim of arrest or detention in contravention of the provisions of Article 5.

THE LAW

A. Complaints under Article 5 § 4 of the Convention in the context of the third criminal proceedings and relating to the appeals' proceedings dating from December 1999 onwards

The relevant part of Article 5 § 4 of the Convention 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 ..."

1. Scope and nature of the judicial control of lawfulness

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.

2. Compliance with the requirement for a speedy decision in respect of the applicant's appeals of 1 December 1999 and 2 May 2000

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.

3. Participation by the applicant in the court hearings in response to his appeals of 1 December 1999 and 2 May 2000

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.

4. Right to have the appeal of October 2000 examined by a court

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. 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 were 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 complaints concerning (1) the scope and nature of the judicial control of lawfulness performed by the domestic courts in the appeals' proceedings dating from December 1999 onwards; (2) the speediness of the domestic decisions in response to the applicant's appeals of 1 December 1999 and 2 May 2000; (3) the right of participation of the applicant in the court hearings in response to his appeals of 1 December 1999 and 2 May 2000; and, (4) the right to have the appeal of October 2000 examined by a court;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President