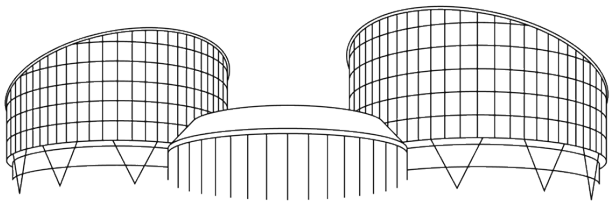

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF DIMITAR VASILEV v. BULGARIA

(Application no. 10302/05)

JUDGMENT

STRASBOURG

10 April 2012

This judgment is final but it may be subject to editorial revision.

In the case of Dimitar Vasilev v. Bulgaria,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

George Nicolaou, *President,*
Zdravka Kalaydjieva,
Vincent A. de Gaetano, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 20 March 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 10302/05) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Dimitar Velkov Vasilev ("the applicant"), on 2 March 2005.

2. The applicant was represented by Mrs S. Stefanova and Mr M. Ekimdzhiev, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms N. Nikolova, of the Ministry of Justice.

3. On 4 February 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1982 and is currently serving a prison sentence in Plovdiv Prison.

A. The length of the 2001-2007 criminal proceedings against the applicant

5. On 14 September 2001 the applicant was questioned before a judge as a suspect of a theft and an attempted theft, committed in complicity with another person. He confessed into both offences. On an unspecified date charges were brought against him.

6. On 29 April 2002 additional theft charges were brought against the applicant.

7. In November 2002 the Plovdiv district public prosecutor's office submitted an indictment with the Plovdiv District Court against the applicant and two other individuals.

8. In the period between May 2003 and June 2004 the District Court conducted five hearings, two of which were adjourned because of the absence of the applicant's lawyer and the others due to absent witnesses.

9. On 7 June 2004 the District Court convicted the applicant as charged and sentenced him to two years' imprisonment.

10. Upon appeal, on 27 December 2004 the Plovdiv Regional Court quashed the sentence for procedural violations and remitted the case to the District Court.

11. After the remittal, in the period between June 2005 and March 2007 the District Court held eleven hearings. Two hearings were adjourned because of the absence of the applicant's lawyer, three because of the absence of a co-defendant and five – because of the absence of witnesses.

12. At a hearing held on 28 March 2007 the District Court approved a plea bargain agreement between the defendants and the prosecuting authorities and discontinued the proceedings. The applicant was punished by one year and six months' imprisonment.

B. The applicant's pre-trial detention in the context of other criminal proceedings

13. In February 2004 the applicant was placed in pre-trial detention in connection with an investigation into robbery and fraud, both committed during the suspension periods of three other convictions. On 23 April 2004 his case was brought to court. The applicant was convicted and sentenced to six years' imprisonment, the final judgment being delivered on 23 February 2007 by the Supreme Court of Cassation.

14. During these proceedings, the applicant made several unsuccessful requests for release.

15. On 5 October 2004 he requested to be released and asked the court to commission a psychiatric expert's report in order to prove the deterioration of his mental state. The District Court dismissed his evidentiary request as unsubstantiated and on 19 October 2004 upheld his detention. Upon appeal, on 26 October 2004 the Regional Court, sitting in private, upheld the decision of the District Court.

16. At hearings held on 19 January and 30 March 2005 the applicant made further requests for release, arguing, *inter alia*, that he used to be a drug addict and had mental problems. The District Court dismissed the requests. On 7 April 2005 he appealed against the dismissal of his request of 30 March 2005. On 5 May 2005 the Plovdiv Regional Court, sitting in private, dismissed his appeal.

17. The courts relied on the gravity of the charges against the applicant and his previous convictions, which justified the suspicion that he might abscond or re-offend; the lack of new circumstances warranting his release and the diligent conduct of the proceedings. They also found that the applicant's mental problems could be treated in prison.

C. Conditions of detention

18. The applicant was detained in Plovdiv Prison from April 2004 until an unspecified date in 2007, when he was moved to Sofia Prison. He submitted that the conditions in Plovdiv Prison had been inhuman and degrading.

D. Correspondence of the applicant and contacts with his counsel

19. The applicant submitted an envelope bearing a post stamp of 2005 addressed by him to his lawyer. It was stamped as having been monitored by the administration of Plovdiv Prison.

20. According to the applicant, he received all the letters from his lawyer opened and read by the prison administration. He had to hand to the prison administration the letters addressed to his lawyer in open envelopes, in conformity with the prison rules.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. The relevant domestic law and practice concerning compensation for unlawful detention are set out in the Court's judgment in the case of *Bochev v. Bulgaria*, no. 73481/01, § 37, 13 November 2008.

22. The relevant domestic law and practice concerning prisoners' correspondence are set out in the Court's judgment in the case of *Iliev and Others v. Bulgaria*, nos. 4473/02 and 34138/04, §§ 25-31, 10 February 2011.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

23. The applicant complained under Articles 6 § 1 and 13 of the Convention that the length of the 2001-2007 proceedings had been incompatible with the "reasonable time" requirement and that he had not had any effective domestic remedies in that respect.

Article 6 § 1 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..."

Article 13 reads:

> "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."

24. The Government disagreed, arguing that the applicant had been responsible for most of the delays.

25. The period to be taken into consideration began on 14 September 2001, when the applicant was questioned as a suspect; it ended on 28 March 2007, when the District Court approved the plea-bargain agreement and discontinued the proceedings (see paragraphs 5 and 12 above). It thus lasted five years six months and fourteen days for two levels of jurisdiction.

A. Admissibility

26. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

27. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

28. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, among many others, *Filipov v. Bulgaria*, no. 40495/04, §§ 34-39, 10 June 2010, and *Doron v. Bulgaria*, no. 39034/04, §§ 40-45, 14 October 2010. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. In particular, the applicant's case does not appear to have been particularly complex although it involved three defendants. Furthermore, although the investigation against the applicant was concluded rather speedily (see paragraphs 5-7 above), the Court notes a number of delays at the judicial stage, which were attributable to the authorities, such as a delay of about a year because of the remittal of the case due to procedural breaches, and repeated adjournments because of absent witnesses or co-accused (see paragraphs 8-11 above). Even if four of

the hearings were adjourned because the applicant's lawyer did not attend, in view of the overall length of the proceedings and the number of hearings (ibid.), the delay thus caused does not appear to be significant.

29. In view of the above, having regard to the overall duration of the proceedings and the delays attributable to the authorities, the Court considers that in the instant case the length of the proceedings failed to meet the "reasonable time" requirement.

30. As regards the existence of effective remedies capable of preventing the violation of Article 6 § 1 or its continuation, or providing adequate redress, the Court has found that there are no acceleratory or compensatory remedies in respect of excessive delays which have occurred during the judicial stage of criminal proceedings in Bulgaria (see *Dimitrov and Hamanov v. Bulgaria*, nos. 48059/06 and 2708/09, §§ 92-96, 10 May 2011). Accordingly, it considers that the applicant did not have effective remedies under domestic law in respect of the excessive length of the proceedings.

31. It follows that there have been violations of Articles 6 § 1 and 13 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

32. The applicant alleged that the domestic courts had failed to rule speedily on his request for release of 30 March 2005. He relied on Article 5 § 4 of the Convention, which 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 and his release ordered if the detention is not lawful."

33. The Government stated that the domestic courts had examined promptly the applicant's requests for release.

A. Admissibility

34. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

35. The Court reiterates that Article 5 § 4 guarantees the right to a speedy judicial decision concerning the lawfulness of detention (see *Dobrev v. Bulgaria*, no. 55389/00, § 90, 10 August 2006, with further references). In the present case, on 30 March 2005 the applicant made a request for release which was dismissed by the District Court. On 7 April 2005 he appealed to the Regional Court, which examined his appeal after twenty-eight days, on 5 May 2005 (see paragraph 16 above). The Court considers this period to be

in breach of the requirement for a speedy decision under Article 5 § 4 of the Convention (see *Kadem v. Malta*, no. 55263/00, §§ 43-45, 9 January 2003, where the Court found a period of seventeen days for examining an appeal against detention to be too long; and *Rehbock v. Slovenia*, no. 29462/95, §§ 82-86, ECHR 2000-XII, where two periods of twenty-three days were considered excessive).

36. It follows that in respect of the applicant's application for release of 30 March 2005 there has been a violation of his right to a speedy judicial decision concerning the lawfulness of detention in breach of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

37. The applicant complained that he had not had an enforceable right to compensation for the breach of Article 5 § 4 of the Convention found in his case. He relied on Article 13 of the Convention.

38. Having regard to the nature and the substance of this complaint, the Court considers that its proper legal characterisation is Article 5 § 5, which provides:

> "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."

39. The Government made no submissions in relation to this complaint.

A. Admissibility

40. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

41. The Court notes its finding of a breach of Article 5 § 4 of the Convention (see paragraph 36 above) and considers that paragraph 5 of that provision is applicable and required the availability in Bulgarian law of an enforceable right to compensation in the applicant's case (see *Bochev*, cited above, § 76).

42. It observes that the failure of domestic courts to examine speedily an accused's request for release is not among the cases for which the State and Municipalities Responsibility for Damage Act provides for compensation (see *Bochev*, cited above, §§ 37 and 77). Nor does it appear that an enforceable right to compensation was available to the applicant under any other provision of the Bulgarian law.

43. There has therefore been a violation of Article 5 § 5 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLES 8 AND 13 OF THE CONVENTION

44. The applicant complained that the prison authorities in Plovdiv Prison had monitored the correspondence between him and his lawyer and that he had not had any effective domestic remedies in this respect. He relied on Articles 8 and 13 of the Convention.

Article 8 reads:

> "1. Everyone has the right to respect for his ... correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 13 reads:

> "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."

45. The Government stated that unjustified monitoring of correspondence by the administration fell within the scope of the State and Municipalities Responsibility for Damage Act, and argued that the applicant had failed to exhaust the available domestic remedies. They further stated that by opening the applicant's letters the prison administration had only checked the physical contents of the envelopes, which was justified in the public interest.

A. Admissibility

46. The Court has already found that the State and Municipalities Responsibility for Damage Act was not an effective remedy in cases of unjustified monitoring of prisoners' correspondence (see *Iliev and Others*, cited above, §§ 77-78). It sees no reason to depart from this conclusion. Accordingly, the Government's preliminary objection must be dismissed.

47. The Court also considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

48. The Court notes that the systematic opening of the applicant's letters was acknowledged by the Government in their observations in the present case (see paragraph 45 above). It further notes that it has frequently found violations of Article 8 of the Convention in Bulgarian cases concerning indiscriminate opening by the authorities of prisoners' correspondence with

their lawyers (see, among many others, *Radkov v. Bulgaria*, no. 27795/03, §§ 20-22, 22 April 2010, and *Konstantin Popov v. Bulgaria*, no. 15035/03, § 17, 25 June 2009).

49. It has also found that the monitoring of prisoners' correspondence had not resulted from one individual decision taken by the authorities but directly from the application of the relevant legislation in the relevant period. However, it has concluded that there was no violation of Article 13 of the Convention because this provision does not guarantee a remedy allowing a Contracting State's primary legislation to be challenged before a national authority (see *Konstantin Popov*, § 23, cited above, and *Petrov v. Bulgaria*, no. 15197/02, § 65, 22 May 2008).

50. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach different conclusions in the present case. There has therefore been a violation of Article 8 and no violation of Article 13 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. The applicant also complained, relying on Articles 3, 13 and 5 § 4 of the Convention, that the conditions in which had been detained in Plovdiv Prison had been humiliating and that he had not had effective remedies in this respect, that the scope of the domestic courts' review of his requests for release from pre-trial detention had been too narrow, that the domestic courts had dismissed his request for evidence relevant to his health condition, and that the Plovdiv Regional Court had examined his appeal in private.

52. 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.

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

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

55. The applicant claimed non-pecuniary damage as follows: 15,000 euros (EUR) in respect of the breach of Article 6; EUR 10,000 in respect of Article 5 § 4; EUR 10,000 in respect of Article 8; and EUR 3,000 in respect of Article 13 of the Convention.

56. The Government contested this claim.

57. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the breaches of his rights found in the case. Taking into account all the circumstances of the case, and deciding on an equitable basis, the Court awards him EUR 1,600 under this head.

B. Costs and expenses

58. The applicant sought EUR 7,360 for 92 hours of legal work undertaken by his lawyers in the proceedings before the Court at the hourly rate of EUR 80. In support of this claim, he presented a contract and a time sheet. He further claimed EUR 130 for postage and copying expenses but did not present any invoices or receipts in support of his claim. He requested that any award made by the Court under this head be made payable to his lawyers, Ms S. Stefanova and Mr M. Ekimdzhiev.

59. The Government considered that the claims were excessive.

60. According to the Court's case-law, applicants are entitled to the reimbursement of their costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, including to the fact that part of the applicant's complaints were rejected and also to the applicant's failure to provide all necessary documents, such as invoices or receipts for postage or office expenses, the Court finds it reasonable to award the sum of EUR 1,000. This sum is to be paid into the bank account of the applicant's representatives, Ms S. Stefanova and Mr M. Ekimdzhiev.

C. Default interest

61. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaints concerning (a) the excessive length of the criminal proceedings against the applicant and the lack of an effective remedy in that respect, (b) the failure of the domestic courts to examine speedily the applicant's request for release of 30 March 2005 and the lack of compensation in that respect, and (c) the interference with his correspondence by the prison administration and the lack of an effective remedy in that respect;

2. *Declares* the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and of Article 13, in conjunction with Article 6 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

5. *Holds* that there has been a violation of Article 5 § 5 of the Convention;

6. *Holds* that there has been a violation of Article 8 of the Convention;

7. *Holds* that there has been no violation of Article 13 in conjunction with Article 8 of the Convention;

8. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the applicant's representatives, Ms S. Stefanova and Mr M. Ekimdzhiev;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	George Nicolaou
Deputy Registrar	President