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

FIFTH SECTION

CASE OF ATANASOV v. BULGARIA

(Application no. 54172/00)

JUDGMENT

STRASBOURG

10 January 2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Atanasov v. Bulgaria,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President*,
Snejana Botoucharova,
Karel Jungwiert,
Volodymyr H. Butkevych,
Margarita Tsatsa-Nikolovska,
Rait Maruste,
Renate Jaeger, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 4 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 54172/00) 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 Angel Nikolov Atanasov who was born in 1968 and lives in Plovdiv ("the applicant"), on 23 July 1999.

2. The applicant, who had been granted legal aid, was represented before the Court by Mr D. Marinov, a lawyer practising in Plovdiv.

3. The respondent Government were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

4. The applicant alleged, in particular, that he was not brought promptly before a judge or other officer authorised by law to exercise judicial power, that there was a lack of justification for his pre-trial detention, that there was a limited scope of judicial review of the lawfulness of his detention, and that his applications for release were decided in violation of the requirement for a speedy decision.

5. In a decision of 23 March 2006 the Court declared the application partly admissible.

6. The parties did not submit further written observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The criminal proceedings against the applicant

7. The applicant is disabled and uses a prosthesis.

8. On 19 March 1999 the applicant become intoxicated in a bar and quarrelled with another customer (the "victim"). After leaving the establishment, he punctured the tires of the victim's car with his knife. The victim and some of his friends chased the applicant, who tried to hide in a small shop. A scuffle ensued, which resulted in the applicant inflicting three stab wounds to the victim in the area of the neck.

9. Later on the same day, 19 March 1999, a preliminary investigation was opened against the applicant for attempted murder. He was charged on the next day.

10. The preliminary investigation concluded sometime in May 1999.

11. On an unspecified date, an indictment for attempted murder was entered against the applicant with the Plovdiv Regional Court.

12. In a judgment of 29 October 1999 the Plovdiv Regional Court found the applicant guilty of attempted murder, sentenced him to six years' imprisonment and ordered him to pay damages to the victim. The court found that the applicant, who was drunk at the time of the events and could not remember everything, had not acted in self-defence when he stabbed the victim three times in the neck because there was insufficient evidence that a direct and imminent threat towards him existed at the time. The applicant appealed against the judgment.

13. In a judgment of 9 March 2000 the Plovdiv Court of Appeals dismissed the applicant's appeal, but found that there were mitigating circumstances and reduced his sentence to four years' imprisonment. On an unspecified date, the applicant filed a cassation appeal.

14. In a judgment of 23 July 2001 the Supreme Court of Cassation quashed the judgment of the second-instance court and remitted the case as it found that the Plovdiv Court of Appeals had insufficiently examined the applicant's claim that he had acted in self defence.

15. In a judgment of an unspecified date, the Plovdiv Court of Appeals again dismissed the applicant's appeal against the first-instance court's judgment, allegedly on similar grounds to those contained in its judgment of 9 March 2000. The applicant did not to file a cassation appeal against the second judgment of the Plovdiv Court of Appeals.

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

16. The applicant was detained sometime on 19 March 1999 and was held overnight.

17. At 10.30 a.m. on 20 March 1999 the applicant was remanded in custody upon a decision of an investigator, which was confirmed later in the day by the public prosecutor's office. The justification for detaining the applicant was:

> "Article 152 § 1 of [the Criminal Code] – a serious intentional offence has been committed".

18. Subsequently, the applicant filed three unsuccessful appeals against his detention.

19. His first appeal was filed with the Plovdiv Regional Court on 29 March 1999. It was examined ten days later on 8 April 1999 when the court dismissed it on the grounds that he had been charged with a serious intentional offence and could obstruct the investigation, because it was still ongoing.

20. Following the conclusion of the preliminary investigation, the applicant filed another appeal against his detention on 4 June 1999 with the public prosecutor's office. The applicant argued that there was no danger that he would abscond, re-offend or obstruct the investigation especially as the latter had already been concluded. In addition, he noted that he was finding the detention difficult because of his disability. The appeal was not processed, so he re-filed it on 14 June 1999 directly with the Plovdiv Regional Court.

21. The applicant's appeal was examined by the Plovdiv Regional Court at a hearing on 2 July 1999 and dismissed it. It found that because he had been charged with a serious offence there were sufficient legal grounds to continue his detention. Furthermore, none of the relevant circumstances, which might entail a re-evaluation of the grounds of his detention, had changed. The applicant appealed against the decision of the Plovdiv Regional Court on 5 July 1999.

22. In a decision of 8 July 1999 the Plovdiv Regional Court, in camera, refused to quash or amend its decision of 2 July 1999 citing similar grounds to those in its challenged decision.

23. In a decision of 28 July 1999 the Plovdiv Court of Appeals, in camera, dismissed the applicant's appeal and upheld the lower court's

decisions. The court found that the continued detention of the applicant was in conformity with the relevant provisions of the Criminal Code and that none of the relevant circumstances, which might entail a re-evaluation of the grounds of his detention, had changed.

24. On 29 September 1999 the applicant filed his third appeal against his detention on grounds similar to those in his appeal of 4 June 1999. The applicant maintained that there had been a change in the relevant circumstances, because he had been detained for more than six months and was finding the detention difficult as a result of his disability. He also challenged the notion that he should be treated as being charged with a serious offence because the evidence obtained during the trial allegedly proved otherwise.

25. The applicant's third appeal was examined on 29 October 1999, when the trial court dismissed it without giving explicit reasons and adopted its judgment finding the applicant guilty of attempted murder.

II. RELEVANT DOMESTIC LAW AND PRACTICE

26. 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, *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)).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

A. Complaint that the applicant was not brought promptly before a judge or other officer authorised by law to exercise judicial power

27. The applicant complained under Article 5 § 3 of the Convention that after he was detained he was not brought promptly before a judge or other officer authorised by law to exercise judicial power, which provides as relevant:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power..."

28. The Government did not submit observations on the admissibility and merits of this complaint.

29. The Court reiterates that in previous judgments which concerned the system of detention pending trial, as it existed in Bulgaria until 1 January 2000, it found that neither investigators before whom the accused persons were brought, nor prosecutors who approved detention orders, could be considered as "officer[s] authorised by law to exercise judicial power" within the meaning of Article 5 § 3 of the Convention (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3299, §§ 144-50; *Nikolova*, cited above, §§ 49-53, and *Shishkov v. Bulgaria*, no. 38822/97, §§ 52-54, ECHR 2003-I (extracts)).

30. The present case likewise concerns detention on remand imposed before 1 January 2000. The applicant's detention on remand was ordered by an investigator and confirmed by a prosecutor (see paragraph 17 above), in accordance with the provisions of the CCP then in force (see paragraph 26 above). However, neither the investigator nor the prosecutor were sufficiently independent and impartial for the purposes of Article 5 § 3 of the Convention, in view of the practical role they played in the investigation and the prosecution, and the prosecutor's potential participation as a party to the criminal proceedings (see paragraph 26 above and the references quoted therein). The Court refers to the analysis of the relevant domestic law contained in its *Nikolova* judgment (cited above – see paragraphs 28, 29 and 49 to 53 of that judgment).

31. Moreover, the Government's failed to present arguments challenging the above findings.

32. It follows that there has been a violation of the applicant's right to be brought before a judge or other officer authorised by law to exercise judicial power within the meaning of Article 5 § 3 of the Convention.

B. Complaint that there was a lack of justification for the applicant's detention on remand

33. The applicant complained that his detention on remand was unjustified because the authorities failed to take into account his lack of a criminal record, that he was disabled and with a good reputation. In the admissibility decision of 23 March 2006 the Court found that this complaint fell to be examined under Article 5 § 3 of the Convention, which provides as relevant:

> "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."

34. The Government did not submit observations on the admissibility and merits of this complaint.

35. The applicant claimed that there had been sufficient evidence before the authorities that he would not abscond or re-offend, namely because he was disabled, had a permanent address and a good reputation, and had been living on welfare. In addition, he lacked a prior criminal record and maintained that his actions at the time of the incident had been out of character as he had been under the influence of alcohol.

36. The Court finds that in the decisions to maintain the applicant's detention on remand the authorities failed to cite any reasons and to assess specific facts and evidence that he might abscond, re-offend or obstruct the investigation (see paragraphs 19, 21-23 and 25 above). Thus, it appears that the authorities applied the defective approach according to which remand in custody was imposed and maintained automatically whenever the charges concerned a serious offence, without analysis *in concreto*, which makes this complaint similar to those in previous cases against Bulgaria where violations were found (see, for example, *Ilijkov*, cited above, §§ 67-87 and *Shishkov*, cited above, §§ 57-67).

37. Moreover, the Government's failed to present arguments challenging the above findings.

38. In view of the above, the Court finds that there has been a violation of Article 5 § 3 of the Convention on account of the authorities' failure to justify the applicant's continued detention.

C. Complaint under Articles 5 § 4 of the Convention

39. The applicant complained under Articles 5 § 4 of the Convention that the domestic courts did not examine all factors relevant to the lawfulness of his detention. In addition, he complained that his applications for release were decided in violation of the requirement for a speedy decision.

Article 5 § 4 of the Convention provides the following:

> "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."

40. The applicant also complained, invoking Article 13 of the Convention, that he did not have at his disposal an effective domestic remedy for his Convention complaints. In the admissibility decision of 23 March 2006 the Court considered that this complaint fell to be examined only under Article 5 § 4 of the Convention, which is a *lex specialis* in relation to the more general requirements of Article 13 (see, among other authorities, *Nikolova*, cited above, § 69 and *M.A. and M.M. v. France* (dec.), no. 39671/98, ECHR 1999-VIII).

41. The Government did not submit observations on the admissibility and merits of this complaint.

42. The applicant noted that when dismissing his applications for release the domestic courts had relied on the seriousness of the offence with which he had been charged and had excluded any examination of whether there was a “reasonable suspicion” against him or of his personality.

43. The Court notes at the outset that this complaint is very similar to those in previous cases against Bulgaria where violations were found (see *Nikolova*, §§ 54-66 and *Ilijkov*, §§ 88-106, both cited above).

44. Likewise, the Court finds that in the present case the domestic courts, when examining the applicant’s appeals against his detention, primarily relied on the seriousness of the charges with which he had been charged to justify his continued detention and failed to cite specific facts and evidence that he might abscond, re-offend or obstruct the investigation (see paragraphs 19, 21-23 and 25 above). Thus, it appears that they relied on the statutory provisions requiring mandatory detention for serious intentional offences and the Supreme Court’s practice which excluded any examination of the question whether there was a “reasonable suspicion” against the detainee and of facts concerning the likelihood of flight or re-offending (see paragraph 26 above).

45. Accordingly, the Court finds that the applicant was denied the guarantees provided for in Article 5 § 4 of the Convention on account of the limited scope of judicial review of the lawfulness of his detention on remand.

Thus, there has been a violation of Article 5 § 4 of the Convention in that respect.

46. In view of the above finding, the Court does not deem it necessary to enquire whether the judicial reviews in response to the applicant’s appeals were all provided speedily (see, *mutatis mutandis*, *Nikolova*, § 65, and *Ilijkov*, § 106, both cited above).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 6,000 euros (EUR) as compensation for the alleged violations of his rights under the Convention.

49. The Government did not submit comments on the applicant's claims for damage.

50. Having regard to the specific circumstances of the present case and the violations found (see paragraphs 32, 38 and 45 above), its case-law in similar cases and deciding on an equitable basis, the Court awards EUR 1,500 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

51. The applicant also claimed EUR 3,250 for 65 hours of legal work by his lawyer in the proceedings before the Court at an hourly rate of EUR 50.

52. The Government did not submit comments on the applicant's claims for costs and expenses.

53. The Court reiterates that according to its case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the instant case, it observes that the applicant failed to present a legal fees agreement with his lawyer or an approved timesheet of the legal work performed before the Court. Nevertheless, having regard to all relevant factors and noting that the applicant was paid EUR 715 in legal aid by the Council of Europe, the Court considers it reasonable to award the sum of EUR 500 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

54. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the applicant not having been promptly brought before a judge or other officer authorised by law to exercise judicial power;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the authorities' failure to justify the applicant's continued detention;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the limited scope and nature of the judicial control of lawfulness of the applicant's detention;

4. *Holds*
(a) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable on the date of settlement :
(i) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
(ii) EUR 500 (five hundred euros) in respect of costs and expenses;
(iii) any tax that may be chargeable to the applicant on the above amounts;
(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;

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

Done in English, and notified in writing on 10 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President