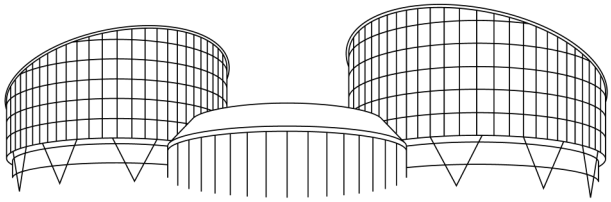

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF SPAS TODOROV v. BULGARIA

(Application no. 38299/05)

JUDGMENT

STRASBOURG

5 November 2009

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 Spas Todorov v. Bulgaria,

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

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 13 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 38299/05) 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 Spas Dimitrov Todorov ("the applicant"), on 13 October 2005.

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

3. On 12 December 2005 the Court decided to communicate the complaints concerning the length of the proceedings and alleged lack of effective remedies in this respect to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1970 and lives in Belozem.

5. On 12 November 1997 the applicant, who had previous convictions for rape and other offences, was arrested, charged with rape and sexual assault and remanded in custody. The charges on which the applicant was later convicted concerned a gang rape by three persons who entered the

home of a woman who lived with her two minor daughters, forced her to leave the house and raped the girls, aged thirteen and sixteen.

6. The preliminary investigation was completed in July 1998. During that stage of the proceedings the investigator held more than twenty interviews with witnesses and the accused, commissioned medical reports and a psychiatric report, conducted searches and collected other evidence.

7. On 31 July 1998 an indictment was submitted to the Plovdiv District Court.

8. In the following two years and two months the District Court invited the parties to ten or twelve hearings, five or six of which were adjourned. Three adjournments were caused by the fact that one of the jurors was absent. That caused a delay of approximately six months. One adjournment was the result of the absence of the lawyer of one of the accused and another adjournment was occasioned by the absence of the civil plaintiff. The authorities also encountered difficulties in locating and summoning some of the witnesses.

9. By judgment of 25 September 2000, the District Court found the applicant guilty as charged and sentenced him to six years' imprisonment. The applicant and the other accused appealed.

10. By judgment of 28 March 2001 the Plovdiv Regional Court quashed the lower court's judgment and remitted the case on the ground that on 26 May and 28 September 1999 the District Court had ruled on the accused persons' appeals against detention in a composition different from that in which it had sat in the criminal case against them. That was considered to be a "significant breach of procedure" that automatically required the quashing of the District Court's judgment in the criminal case and a fresh trial. In reaching that conclusion, the Regional Court referred to the practice of the Supreme Court of Cassation on the matter (see paragraph 30 below).

11. In April 2001 the prosecutor rectified two minor omissions in the indictment.

12. The new trial started with a hearing on 16 July 2001 which was, however, adjourned, because the victims had not been summoned.

13. The hearing listed for 25 January 2002 was adjourned as two of the accused did not appear. One of them had fallen ill and the other had left the country.

14. The hearing listed for 20 February 2002 was adjourned as one of the jurors did not appear.

15. The hearing listed for 9 May 2002 could not proceed because the applicant's lawyer was attending to other business and the applicant had not had the time to seek assistance from other counsel.

16. The hearing listed for 19 June 2002 was adjourned because the applicant's lawyer did not appear and the applicant had not retained counsel. The court appointed counsel for the applicant itself and adjourned the hearing.

17. The court held hearings on 16 and 17 September 2002, 21 and 22 November 2002 and 21 and 24 March 2003. It heard witnesses and the parties' pleadings and admitted other evidence.

18. Throughout the proceedings delays occurred as a result of the fact that the victims and witnesses could not be found at their registered addresses.

19. By judgment of 24 March 2003 the applicant and the other accused were found guilty as charged. The applicant was sentenced to six and a half years' imprisonment.

20. The applicant appealed to the Regional Court.

21. The hearing before the Regional Court listed for 2 October 2003 was adjourned as the civil plaintiff, the victim, was absent.

22. The hearing listed for 2 December 2003 could not proceed as the applicant had fallen ill.

23. On 13 January 2004 the Regional Court held a hearing at which it heard the parties' pleadings.

24. By judgment of 28 May 2004 the Regional Court upheld the District Court's judgment of 24 March 2003.

25. The applicant filed a cassation appeal.

26. The Supreme Court of Cassation heard the case on 25 January 2005. By judgment of 9 May 2005 the Supreme Court of Cassation upheld the lower courts' judgments.

2. The applicant's deprivation of liberty

27. The applicant was arrested and remanded in custody on 12 November 1997. On 25 September 2000 he was convicted and sentenced to a term of imprisonment. His conviction and sentence were quashed on 28 March 2001 and the trial recommenced. The applicant remained in pre-trial custody. In the fresh trial, on 24 March 2003 the applicant was convicted and sentenced to a term of imprisonment.

28. The applicant remained in custody until 2 December 2003, when he was placed under house arrest. He remained under house arrest until the end of the criminal proceedings on 9 May 2005.

B. Relevant domestic law and practice

29. Article 257 § 1 of the Code of Criminal Procedure 1974, as in force at the relevant time, provided that the composition of the trial court must remain unchanged throughout the proceedings. In accordance with the second paragraph of Article 257, if one of the judges or jurors was prevented from sitting, the trial had to recommence.

30. It follows from Article 304 § 1 of the same Code that at the trial stage of the criminal proceedings the detainee's requests for release are examined by the trial court.

31. In a 1998 decision (реш. № 45, 2.02.1998, н.д.. № 732/1997, II н.о.), the Supreme Court of Cassation stated as follows:

> "The modification of the measure of judicial control [(pre-trial detention, house arrest, surety, etc)] in the course of the trial is a procedural act and has to be undertaken by the same composition of the court which had started the examination of the criminal case. The decision to modify the measure must be taken by the court on the basis of a careful assessment of the behaviour of the accused person during the trial ...
>
> Since the jurors [who decided to modify the measure of control in the case at hand] did not participate in the examination of the criminal case, [and were not present] when the accused person and most of the witnesses were heard, they could not form an objective opinion as to the necessity to modify the measure... [It follows that there has been a substantial breach of procedure in that Article 257 § 1 CCP has been violated ...]"

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

32. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

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

33. The Government contested that argument.

34. The period to be taken into consideration began on 12 November 1997 and ended on 9 May 2005. It thus lasted seven years and almost six months for the preliminary investigation and three levels of jurisdiction.

A. Admissibility

35. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

36. 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, in particular, to the complexity of the case and 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)

37. 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, for example, *Valentin Ivanov v. Bulgaria*, no. 76942/01, 26 March 2009 and *Nalbantova v. Bulgaria*, no. 38106/02, 27 September 2007).

38. 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 that the period of seven years and six months was reasonable in the circumstances of the present case.

39. The Court notes, in particular, that in March 2001 the Plovdiv Regional Court undid the fruit of more than two years of trial proceedings (see paragraphs 7-9 above) and ordered a fresh trial. The Court must determine whether the ensuing delay of more than two years was imputable to the authorities.

40. It observes that the District Court's judgment was quashed on the sole ground that it had ruled on the accused persons' appeals against detention in a composition different from that in which it had sat in the criminal case against them. According to the Supreme Court of Cassation's practice, this was considered to be a "significant breach of procedure" that automatically required the quashing of the District Court's judgment in the criminal case and a fresh trial (see paragraphs 10 and 31 above). This practice was apparently based on the provisions of the Code of Criminal Procedure, which require that the same trial court which examines the merits of the criminal charges must also deal with the requests for release submitted by the accused (see paragraphs 30 and 31 above).

41. In the present case, the Regional Court did not notice any change of composition of the District Court at hearings dealing with the criminal charges against the accused. In such circumstances, the fact that the District Court's composition changed unlawfully when it dealt with the appeals against pre-trial detention – a matter unrelated to the admissibility or merits of the criminal charges – could have possibly justified the quashing of the District Court's decisions on pre-trial detention, but not of its judgment on the merits of the criminal charges. Indeed, according to the Bulgarian Supreme Court of Cassation, the reason underlying the rule that the trial court should deal with appeals against detention in the same composition in which it examines the merits of the criminal charge is that changes in the composition would adversely affect the judges' capacity to appraise the need to detain or release the accused (see paragraph 31 above). It has not been stated that the judges' capacity to appraise the merits of the criminal charges would be affected if other judges considered appeals against detention.

42. In spite of these obvious distinctions, the relevant law and established practice, and the Regional Court in the applicant's case, applied a formalistic approach which ascribed automatic consequences to certain types of procedural omissions, without regard to their effect on the proceedings and without consideration of less onerous and less time-consuming possibilities to remedy the omissions.

43. It is incumbent on the respondent State to choose and devise the procedural means most appropriate to secure the enjoyment of all Convention rights, including the right under Article 6 § 1 to a trial within a reasonable time. The Court's task is limited to examining whether the delay of more than two years caused by the fact that the applicant's trial recommenced from the very beginning was imputable to the authorities. In the light of the considerations set out above, the Court finds that that was so, this delay having been unnecessary.

44. Indeed, the Court has already noted in previous cases against Bulgaria that inordinate delays in criminal proceedings were brought about by the unnecessary remittal of cases on excessively formalistic grounds (see *Kitov v. Bulgaria*, no. 37104/97, § 73, 3 April 2003, *Vasilev v. Bulgaria*, no. 59913/00, § 93, 2 February 2006, *Kalpachka v. Bulgaria*, no. 49163/99, § 73, 2 November 2006 and *Karov v. Bulgaria*, no. 45964/99, §§ 62 and 63, 16 November 2006). The present case is another example of this unjustified approach of the Bulgarian courts.

45. The Court further notes that other delays, totalling at least ten months, were also imputable to the authorities (see paragraphs 8 (second and third sentence), 12 and 14 above).

46. Having regard to the above and taking into consideration all other relevant facts, including the overall length of the proceedings and the fact that only very short delays may be considered as imputable to the applicant (see paragraphs 15 and 16 above), the Court considers that in the instant case the length of the criminal proceedings was excessive and failed to meet the "reasonable time" requirement.

47. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

48. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI). In the present case, having regard to its conclusion with regard to the excessive length of the proceedings, the Court considers that the applicant had an arguable claim of a violation of Article 6 § 1.

49. Remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are "effective", within the

meaning of Article 13, if they prevent the alleged violation or its continuation, or provide adequate redress for any violation that has already occurred (see *Kudła*, cited above, § 158).

50. The Court notes that in similar cases against Bulgaria it has found that at the relevant time there was no formal remedy under Bulgarian law that could have prevented the alleged violation or its continuation, or provided adequate redress for any violation that had already occurred (see *Valentin Ivanov v. Bulgaria,* cited above, §§ 34-37*, Osmanov and Yuseinov v. Bulgaria*, nos. 54178/00 and 59901/00, §§ 31-42, 23 September 2004; *Sidjimov v. Bulgaria*, no. 55057/00, §§ 37-43, 27 January 2005; and *Nalbantova*, cited above, §§ 32-36). The Court sees no reason to reach a different conclusion in the present case.

51. Accordingly, there has been a violation of Article 13, in conjunction with Article 6 § 1 of the Convention, on account of the lack of an effective remedy for the excessive length of the criminal proceedings.

III. REMAINING COMPLAINTS

52. The applicant complained under Article 5 §§ 3 and 5 of the Convention that his pre-trial detention and house arrest had been excessively lengthy and that he did not have an enforceable right to compensation in this respect.

53. The Court reiterates that the period to be considered under Article 5 § 3 of the Convention ends on the day on which the charges brought against the applicant were determined by a first-instance court (see, for a detailed explanation of the Court's case-law on the issue, *Solmaz v. Turkey*, no. 27561/02, §§ 23-37, ECHR 2007-... (extracts)).

54. In the present case, the application was introduced with the Court in October 2005, more than six months after 24 March 2003, the date of the applicant's conviction in his second trial, which is the date marking the end of his pre-trial deprivation of liberty falling under Article 5 §§ 1(c) and 3 of the Convention. The complaint under Article 5 § 3 must be rejected, therefore, for failure to observe the six-month time-limit under Article 35 § 1 of the Convention.

55. Furthermore, there not having been a finding by a domestic court or by this Court that the applicant's deprivation of liberty was contrary to one or more of the requirements of Article 5 of the Convention, the Court finds that Article 5 § 5 was not applicable. This part of the application is thus incompatible *ratione materiae* with the provisions of the Convention and must be rejected under its Article 35 §§ 3 and 4.

56. The applicant's complaints under Article 5 §§ 3 and 5 of the Convention must therefore be declared inadmissible.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant claimed 12,000 euros (EUR) in respect of non-pecuniary damage allegedly resulting from the violations of his rights under Articles 6 and 13 of the Convention.

59. The Government did not express an opinion on the matter.

60. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award him EUR 1,200.

B. Costs and expenses

61. The applicant also claimed EUR 3,010 in respect of legal fees for 43 hours of legal work on the case before the Court at the hourly rate of EUR 70. He also claimed EUR 60 in respect of postage and stationary expenses. In support of these claims the applicant submitted a time sheet and a legal fees agreement between him and his lawyers. The applicant requested that the amounts awarded in respect of costs and expenses should be paid directly into the bank account of his legal representatives.

62. The Government did not express an opinion on the matter.

63. According to the Court's case-law, an applicant is entitled to the reimbursement of 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, the Court, taking into consideration in particular the fact that part of the complaints were rejected and the relatively low level of complexity of this case, the Court considers it reasonable to award the sum of EUR 500 covering costs under all heads.

C. Default interest

64. 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. *Declares* the complaints concerning the excessive length of the proceedings and lack of effective remedies in this respect admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,200 (one thousand and two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, both amounts to be converted into Bulgarian levs at the rate applicable at the date of settlement;
   (b) that the sum awarded in respect of costs and expenses, namely EUR 500 (five hundred euros) be paid directly into the bank account of the applicant's representatives;
   (c) 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 5 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President