FIFTH SECTION

# CASE OF SPASOV v. BULGARIA

*(Application no. 51796/99)*

JUDGMENT

STRASBOURG

16 November 2006

*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 Spasov v. Bulgaria,**

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,
Having deliberated in private on 23 October 2006,

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

# PROCEDURE

1. The case originated in an application (no. 51796/99) 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 Mr Veselin Petrov Spasov, a Bulgarian national who was born in 1969 and lives in Plovdiv ("the applicant"), on 17 June 1999.

2. The applicant was represented by Mr D. Marinov, a lawyer practising in Plovdiv.

3. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotzeva, of the Ministry of Justice.

4. The applicant alleged that his detention was excessively lengthy and unjustified. In addition, he claimed that the domestic courts failed to effectively examine the appeals against his detention and that they did not consider all factors relevant to the lawfulness of his detention.

5. By a decision of 29 September 2005 the Court declared the application partly admissible.

6. The applicant, but not the Government, submitted further written observations on the merits (Rule 59 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

### A. The criminal proceedings

#### *1. The preliminary investigation*

7. On 5 February 1997 a murder was committed in the village of Markovo. A preliminary investigation against an unknown perpetrator was opened on the same day.

8. On 23 July 1997 another individual, Mr K., was arrested on unrelated charges. He later confessed to having committed the murder on 5 February 1997 and to having shot the victim, but claimed to have been incited to do so by the applicant.

9. On 6 August 1997 the home of the applicant was searched by the police.

10. The applicant was questioned as a witness on 8 August 1997. He admitted to having been present at the time of the murder, but denied that he had incited Mr K. and claimed to have run away fearing that he might also be killed.

11. On 11 August 1997 Mr K. was charged with the murder of 5 February 1997 and for unlawful possession of firearms.

12. Mr K. gave detailed statements to the investigation in the presence of his lawyer and claimed, *inter alia*, that it was the applicant who had known the victim, had indicated him as a possible target for a robbery and had insisted that they shoot him in order to avoid subsequent identification.

13. On 15 October 1997 the applicant was arrested, detained on remand and charged with being an accomplice to the murder with an avaricious intent and for inciting Mr K. to commit the offence.

14. Throughout the criminal proceedings the applicant was represented by counsel. He maintained his innocence, contested the version of events presented by Mr K. and claimed that the latter was solely responsible for the murder.

15. On an unspecified date an indictment was filed against the applicant for being an accomplice to the murder of 5 February 1997 with an avaricious intent.

#### *2. The first hearing of the case*

16. Three hearings were conducted before the Plovdiv Regional Court between 4 February 1998 and 28 September 1998. On the latter date, the

court remitted the case to the investigation stage as it found that the offence should be reclassified as a robbery accompanied by murder, which required additional investigative procedures to be performed. No such were subsequently conducted.

17. On 28 December 1998 the charges against the applicant were amended and on 5 January 1999 a revised indictment was filed against him and Mr K. for attempted robbery accompanied by murder.

*3. The second hearing of the case*

18. Seven hearings were conducted before the Plovdiv Regional Court between 22 March 1999 and 1 February 2000.

19. In a judgment of 1 February 2000 the Plovdiv Regional Court found the applicant and his co-accused guilty of attempted robbery accompanied by murder, sentenced each of them to seventeen years' imprisonment and ordered them to pay damages to the victim's family.

20. Following an appeal by the applicant, on 13 June 2000 the Plovdiv Court of Appeals quashed the lower court's judgment and, for reasons not indicated by the parties, remitted the case to the investigation stage.

21. On 26 October 2000 a revised indictment was filed against the applicant and Mr K. for attempted robbery through use of force which resulted in murder.

*4. The third hearing of the case*

22. The Plovdiv Regional Court started rehearing the case on 13 February 2001 and conducted a total of five hearings until 9 July 2001. The victim's family joined the proceedings as civil claimants on 1 March 2001.

23. In a judgment of 9 July 2001 the Plovdiv Regional Court found the applicant guilty of being an accomplice to attempted robbery resulting in murder and sentenced him to seventeen years' imprisonment. Mr K. was also found guilty of attempted robbery resulting in murder, as well as for unlawful possession of firearms, and was sentenced to fifteen years and six months' imprisonment. They were also ordered to pay damages to the victim's family.

24. On 6 August 2001 the applicant appealed against the judgment of the Plovdiv Regional Court. Mr K. did not appeal against the said judgment.

25. In a judgment of 4 January 2002 the Plovdiv Court of Appeals upheld the lower court's judgment, but decreased the sentence of the applicant to fifteen years and six months' imprisonment.

26. On 29 January 2002 the applicant filed a cassation appeal.

27. In a final judgment of 14 May 2002 the Supreme Court of Cassation upheld the lower courts' judgments.

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

28. On 15 October 1997 the applicant was arrested and detained on remand under an order of an investigator, which was confirmed by a prosecutor later on the same day.

29. The parties did not provide details about the first year and a half of the applicant's detention.

30. On 15 April 1999 the applicant appealed against his detention, claiming, *inter alia*, that it was no longer justified. The applicant maintained that there was no danger of him absconding and argued that if that was his intention he would already have done so as he had had sufficient forewarning that the authorities were actively investigating the murder. Purportedly, he had had ample time to abscond, if that had been his intention, between the time of the arrest of Mr K., the search of his home on 6 August 1997 and his arrest on 15 October 1997. Separately, the applicant maintained that there was no danger of him obstructing the investigation or re-offending.

31. The appeal was scheduled to be heard by the Plovdiv Regional Court on 3 May 1999 but the applicant withdrew his appeal at the start of the hearing on that day purportedly in order not to delay the criminal proceedings in which a hearing had been scheduled for 14 May 1999.

32. On 20 May 1999 a new appeal was filed by the applicant against his detention citing grounds similar to those in his previous appeal. On 31 May 1999 the applicant's father passed away and he informed the court on 1 June 1999 of the additional circumstances for consideration when assessing the grounds of his appeal. A hearing of the appeal was set for 6 June 1999, but was then postponed for 8 June 1999. The applicant claimed, which the Government did not refute, that the courts failed to rule on his appeal.

33. On 15 July 1999 the applicant filed another appeal against his detention in which he reiterated his previous arguments and complained of a violation of Article 5 §§ 3 and 4 of the Convention. A hearing date was set for 22 July 1999. The applicant claimed, which the Government did not refute, that the courts failed to rule on his appeal.

34. On 1 February 2000 the applicant was convicted and sentenced to a term of imprisonment. Following an appeal by the applicant, the judgment was quashed on 13 June 2000 and the case was remitted to the investigation stage. The rehearing of the case started on 13 February 2001.

35. On 18 April 2001 the applicant filed a new appeal against his detention on grounds similar to those in his appeal of 15 July 1999.

36. On 25 April 2001 the Plovdiv Regional Court dismissed the appeal on unspecified grounds.

37. On 2 May 2001 the applicant appealed against the decision to the Plovdiv Court of Appeals. He argued, *inter alia*, that there could no longer be any danger that he might abscond, re-offend or hamper the investigation.

38. On an unspecified date the Plovdiv Court of Appeals dismissed the applicant's appeal. The applicant contended, which the Government did not challenge, that the court relied on the seriousness of the offences with which he had been charged to justify his continued detention.

39. On 9 July 2001 the applicant was convicted and sentenced to a term of imprisonment. The sentence was upheld on appeal and became final on 14 May 2002.

40. The Government did not provide copies of the relevant documents concerning the applicant's appeals.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Grounds for detention

41. The relevant provisions of the Code of Criminal Procedure (the "CCP") and the Bulgarian courts' practice before 1 January 2000 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, §§ 55-59, 26 July 2001; and *Yankov v. Bulgaria*, no. 39084/97, §§ 79-88, ECHR 2003-XII (extracts)).

42. As of 1 January 2000 the legal regime of detention under the CCP was amended with the aim to ensure compliance with the Convention (TR 1-02 Supreme Court of Cassation). The effected amendments and the resulting practice of the Bulgarian courts are summarised in the Court's judgments in the cases of *Dobrev v. Bulgaria* (no. 55389/00, §§ 32-35, 10 August 2006) and *Yordanov v. Bulgaria* (no. 56856/00, §§ 21-24, 10 August 2006).

### B. Scope of judicial control on pre-trial detention

43. On the basis of the relevant law before 1 January 2000, when ruling on appeals against pre-trial detention of a person charged with having committed a "serious" offence, the domestic courts generally disregarded facts and arguments concerning the existence or absence of a danger of the accused person's absconding or committing offences and stated that every person accused of having committed a serious offence must be remanded in custody unless exceptional circumstances dictated otherwise (see decisions of the domestic authorities criticised by the Court in the cases of *Nikolova* and *Ilijkov*, both cited above, and *Zaprianov v. Bulgaria*, no. 41171/98, 30 September 2004).

44. In June 2002, interpreting the amended provisions on pre-trial detention, the Supreme Court of Cassation stated that when examining an

appeal against pre-trial detention the courts' task was not only to verify whether the initial decision on remand in custody had been lawful but also to establish whether continued detention was still lawful and justified. In such proceedings the courts had to examine all available evidence on all relevant aspects, including the amount of the recognisance as the case may be (TR 1-02 Supreme Court of Cassation).

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

45. The applicant complained that his detention was excessively lengthy and unjustified.

The relevant part of Article 5 § 3 of the Convention reads as follows:

> "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."

46. The Government maintained that the grounds for the applicant's continued detention were sufficient and relevant, and that the proceedings were not unreasonably delayed.

47. They also argued that the investigation authorities, and subsequently the courts, had taken into account the existence of the requisite factual grounds for imposing and maintaining the applicant's detention. In particular, the existence of sufficient evidence that he had committed the offence and the lack of prerequisites excluding the probability that he might abscond, re-offend or hamper the investigation.

48. Lastly, the Government maintained that at all times the judicial authorities considered all the relevant circumstances while respecting the presumption of innocence towards the applicant and contended that the extremely grave offence with which he had been charged should also be taken into consideration.

49. The applicant replied that the authorities never examined carefully the question whether or not there was a real danger of him absconding, re-offending or obstructing the investigation. He also considered that the period of detention was excessive in view of the unjustified delays in the proceedings caused by the authorities.

50. The Court observes that the applicant was arrested on 15 October 1997 and was detained on remand until 1 February 2000, when the Plovdiv Regional Court sentenced him to seventeen years' imprisonment (see paragraphs 13, 19, 28 and 34 above). This first period of detention lasted two years, three months and eighteen days.

51. From 1 February 2000 to 13 June 2000 (see paragraphs 19, 20 and 34 above), the applicant's deprivation of liberty was based on Article 5 § 1 (a) of the Convention as "the lawful detention of a person after conviction by a competent court" and cannot therefore be taken into account for the purposes of Article 5 § 3 of the Convention, a provision which only concerns the length of detention within the meaning of Article 5 § 1 (c) of the Convention (see, for example, *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, p. 14, § 36 and *Iliev v. Bulgaria*, no. 48870/99, § 36, 22 December 2004).

52. However, on 13 June 2000 the Plovdiv Court of Appeals quashed the lower court's judgment and remitted the case to the investigation stage (see paragraphs 20 and 34 above). Subsequent to that date the applicant was again deprived of his liberty under Article 5 § 1 (c) of the Convention. This second period of detention on remand lasted until 9 July 2001, when the applicant was found guilty for the second time by the Plovdiv Regional Court (see paragraphs 23 and 39 above), which is a further one year and twenty-six days.

53. In view of the above, the Court recognises that the overall duration of applicant's detention on remand which falls under Article 5 § 1 (c) of the Convention and which must therefore be taken into account for the purposes of Article 5 § 3 of the Convention was three years, four months and fourteen days.

54. In respect of the justification of the applicant's continued detention on remand, the Court observes that following the applicant's arrest on 15 October 1997 the authorities did not consider themselves obliged to re-evaluate the need to continue his detention and to justify it on the basis of specific facts and evidence about the possible danger that he might abscond, re-offend or obstruct the investigation. 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 v. Bulgaria*, no. 38822/97, §§ 57-67, ECHR 2003-I).

55. In addition, the Court notes that there were delays in the criminal proceedings attributable to the authorities which contributed to the excessiveness of the applicant's length of detention. In particular, the case was remitted twice to the investigation stage by the courts due to improper legal classification of the actions of the accused and for amending the charges and indictments against them (see paragraphs 16- 21 above).

56. In view of the above, the Court finds that the applicant's right to trial within a reasonable time or to release pending trial was violated on account of the excessive length of, and lack of justification for, the applicant's continued detention on remand for a period of almost three years and five

months. Thus, there has been a violation of Article 5 § 3 of the Convention in that respect.

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

57. The applicant complained that the domestic courts did not examine all factors relevant to the lawfulness of his detention. He claimed that the domestic courts failed to examine his appeals of 20 May and 15 July 1999 and that his appeal of 15 April 1999 was not decided speedily as it had not been examined for more than nineteen days before he withdrew it on 3 May 1999. Lastly, relying on Article 13 of the Convention, the applicant complained that he did not have at his disposal an effective domestic remedy for his complaints under Article 5 of the Convention.

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 and his release ordered if the detention is not lawful."

58. The Government made no separate observations on this complaint. In their submissions under Article 5 § 3 of the Convention, they stated that the courts had taken into account the existence of the requisite factual grounds for maintaining the applicant's detention. In particular, they claimed that the existence of sufficient evidence that he had committed the offence and the lack of prerequisites excluding the probability that he might abscond, re-offend or hamper the investigation had been taken into consideration.

59. The applicant reiterated his complaints and argued that the courts failed to effectively rule on his appeals of 20 May 1999, 1 June 1999, 15 July 1999 and 18 April 2001. Accordingly, he considered that the guarantee envisaged under Article 5 § 4 of the Convention of the right of judicial control on the lawfulness of his continued detention was breached by the domestic courts' failure to rule on the said appeals and to respect the presumption of innocence.

60. The Court notes, at the outset, that the applicant complains, invoking Article 13 of the Convention, that he did not have at his disposal an effective domestic remedy for his Convention complaints under Article 5 of the Convention. It finds, however, that in the context of the complaints raised under the said article this should be understood to refer to the applicant's inability to challenge his detention under Article 5 § 4 of the Convention. In addition, the Court recalls that Article 5 § 4 provides a *lex specialis* in relation to the more general requirements of Article 13 (see, among other authorities, *M.A. and M.M. v. France* (dec.), no. 39671/98, ECHR 1999 VIII). Accordingly, the Court must examine the applicant's complaints under Article 5 § 4 of the Convention.

61. The Court reiterates that arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the lawfulness, in the sense of the Convention, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements set out in domestic law, but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Nikolova*, cited above, § 58).

62. In the present case, the Court finds that the Government failed to challenge the applicant's assertion and to provide evidence that the appeals of 20 May and 15 July 1999 were ever examined by the domestic courts, let alone on what grounds they were dismissed (see paragraphs 32-33 above).

63. Regarding the appeal of 18 April 2001, the Court notes that the Government did not challenge the applicant's assertions that the courts primarily relied on the "seriousness" of the charges with which he had been charged to justify his continued detention. Moreover, they failed to present copies of the relevant decisions concerning the examination of this appeal (see paragraphs 35-38 above).

64. Considering the above, 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, or lack, of judicial review of the lawfulness of his detention on remand. Thus, there has been a violation of the said provision in that respect.

65. In view of this 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).

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 4,000 euros (EUR) in respect of non-pecuniary damage. He claimed that he had felt anguish having been unjustifiably deprived of his liberty for a considerable peri□□ of time and without the possibility to effectively challenge his detention in court.

68. The Government did not submit comments on the applicant's claims in respect of non-pecuniary damage.

69. The Court, noting its finding of violations of Article 5 §§ 3 and 4 of the Convention (see paragraphs 56 and 64 above) and deciding on an equitable basis, awards the applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

### B. Costs and expenses

70. The applicant claimed EUR 3,600 for legal work by his lawyer before the domestic courts. The applicant also sought EUR 3,800 for 76 hours of legal work by his lawyer before the Court at the hourly rate of EUR 50, which included translation and other unspecified expenses. The total amount thus sought was EUR 7,400.

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

72. 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 both before the domestic courts and the Court. In addition, he did not present any invoices for translation costs, postal or other receipts. Nevertheless, having regard to all relevant factors and noting that the applicant was paid EUR 701 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

73. 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 excessive length of, and lack of justification for, the applicant's continued detention on remand;

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the limited scope, or lack, of judicial review of the lawfulness of the applicant's detention on remand;

3. *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 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;

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

Done in English, and notified in writing on 16 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President