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

FIFTH SECTION

CASE OF SVETOSLAV DIMITROV v. BULGARIA

(Application no. 55861/00)

JUDGMENT

STRASBOURG

7 February 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 Svetoslav Dimitrov v. Bulgaria,

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

Peer Lorenzen, *President,*
Snejana Botoucharova,
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Rait Maruste,
Renate Jaeger, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 15 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 55861/00) 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 Svetoslav Dimitrov Dimitrov ("the applicant") who was born in 1972 and lives in Hisar, on 9 November 1999.

2. The applicant, who had been granted legal aid, was represented by Ms E. Nedeva and Mr I. Dimov, lawyers 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 had been unlawfully deprived of his liberty between 12 May 1999 and 4 February 2000, that the domestic legislation did not afford him the right to challenge before a court of law the lawfulness and grounds of that detention, and that he lacked an enforceable right to compensation for being a victim of an arrest or detention in breach of Article 5 of the Convention.

5. In a decision of 9 May 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 applicant's convictions

1. Case no. 14/95

7. In a judgment of 14 September 1995 the Karlovo District Court found the applicant guilty of theft and sentenced him to one year's imprisonment, suspended for a period of three years. No appeal was lodged and the judgment became final.

2. Case no. 88/96

8. In a judgment of 21 May 1997 the Karlovo District Court found the applicant guilty of theft and sentenced him to one year's imprisonment. As the conviction concerned an offence committed during the three-year operational period of the applicant's sentence in case no. 14/95, the court also ordered the applicant to serve the suspended sentence of one year's imprisonment. No appeal was lodged and the judgment became final.

3. Case no. 50/97

9. In a judgment of 16 February 1999 the Plovdiv District Court found the applicant guilty of theft. Combining the applicant's sentence for this offence with his sentence of one year's imprisonment in case no. 88/96, the court sentenced him to a total of three years and two months' imprisonment for both offences.

10. The court also ruled as follows:

> "On the basis of Article 25 § 2 of the Criminal Code [the court] deducts [from the sentence to be served] the period, during which [the applicant] was detained, calculated from 7 June 1996 to 27 December 1998".

11. No appeal was lodged by either the applicant or the public prosecutor's office and the judgment became final.

B. Periods of the applicant's deprivation of liberty

1. Detentions during the period from 1996 to 1998

12. On 7 June 1996 the applicant was arrested and remanded in custody in connection with case no. 50/97.

13. On an unspecified date towards the end of 1998 the applicant appealed against his continued remand in custody in that case.

14. A report from Plovdiv Prison dated 16 December 1998, which detailed the different periods of the applicant's deprivation of liberty up to that point, was presented to the Plovdiv District Court. The said periods were indicated to have been the following:

(a) in case no. 14/95 – the one-year prison sentence had been served between 1 August 1997 and 10 April 1998, which included days the applicant had worked towards reducing his prison sentence;

(b) in case no. 88/96 – the applicant was still serving the one-year prison sentence that had begun on 10 April 1998 and at the date of the report had effectively served eleven months and fifteen days, which included days he had worked towards reducing his prison sentence; and

(c) in case no. 50/97 – the applicant had been remanded in custody from 7 June 1996 until 1 August 1997, whereafter Plovdiv Prison considered his detention on remand to have been suspended.

15. In a decision of 17 December 1998 in case no. 50/97 the Plovdiv District Court revoked the order for the applicant's continued remand in custody in that case and granted him bail. Release was made conditional on the applicant providing a recognizance and subject to there being no other grounds for his continued deprivation of liberty.

16. The applicant deposited the monetary guarantee on 21 December 1998 and was released on 27 December 1998.

17. The applicant obtained a certificate from Plovdiv Prison dated 7 April 1999, which indicated that between 7 June 1996 and 27 December 1998 he had accumulated the equivalent of three years, two months and two days of time served, which included days he had worked towards reducing his sentences. The different periods of the applicant's deprivation of liberty were noted to have been the following:

(a) in case no. 14/95 – the one-year prison sentence had been served between 1 August 1997 and 10 April 1998, which included days he had worked towards reducing his prison sentence;

(b) in case no. 88/96 – the one-year prison sentence had been served between 10 April 1998 and 27 December 1998, which included days he had worked towards reducing his prison sentence; and

(c) in case no. 50/97 – the applicant had been remanded in custody between 7 June 1996 and 1 August 1997, whereafter Plovdiv Prison considered his detention on remand to have been suspended.

2. The applicant's recall to prison from 12 May 1999 to 4 February 2000

18. In a letter of 29 April 1999 the Plovdiv district public prosecutor's office informed Hisar police station and Plovdiv Prison that the applicant

had to be recalled to prison to serve the outstanding part of his sentence in case no. 50/97. The reasoning of the district public prosecutor's office was that the period during which the applicant had been serving his sentence of imprisonment in case no. 14/95 could not count as a remand in custody in case no. 50/97.

19. On 12 May 1999 the applicant was detained under an order issued by the district public prosecutor's office to serve the outstanding part of his sentence in case no. 50/97.

20. On an unspecified date the applicant appealed to the Plovdiv regional public prosecutor's office against the decision of the district public prosecutor's office. He argued that there was no outstanding prison term for him to serve as a result of the time he had spent remanded in custody in case no. 50/97 combined with his sentence in case no. 88/96, which had both expressly been deducted by the trial court from the time to be effectively served.

21. In a letter of 25 May 1999, the regional public prosecutor's office dismissed the applicant's appeal, stating, *inter alia*:

> "There is a sentence in criminal case no. 14/95 ..., which was not combined with the sentence in criminal case no. 50/97."

22. The applicant appealed further.

23. In a decision of 4 November 1999 the Supreme Cassation Public Prosecutor's Office dismissed the applicant's appeal. In its reasoning, it stated:

> "Correctly ... the prosecutor from the Plovdiv district public prosecutor's office took into account the period of the remand in custody of the [applicant] in case no. 50/97 ... [as being] only from 7 June 1996 to 1 August 1997, because subsequently he had started to serve a sentence of 'imprisonment'."

24. In the meantime, on an unspecified date the applicant requested the Plovdiv District Court to interpret, under Article 373 § 1 (1) of the Code of Criminal Procedure of 1974 ("CCP"), its judgment of 16 February 1999 in case no. 50/97. He argued, *inter alia*, that he had been remanded in custody during the whole period between 7 June 1996 and 27 December 1998. He further maintained that this period of two years, six months and twenty days plus the sentence of one year's imprisonment in case no. 88/96, which the applicant had already served, meant that he had effectively served the whole sentence of three years and two months' imprisonment in case no. 50/97. The public prosecutor's office meanwhile, apparently relying on a report prepared by Plovdiv Prison that the applicant's remand in custody in case no. 50/97 had been suspended on 1 August 1997, considered, *inter alia*, that the applicant still had to serve a year of the sentence imposed by the court in case no. 50/97.

25. A hearing was held in the presence of all the parties on 26 July 1999. In a decision of the same day the Plovdiv District Court dismissed the

applicant's request for interpretation of the judgment of 16 February 1999 as it considered it to be clear. It found, *inter alia*, that its judgment quite unequivocally indicated that the whole period of the applicant's remand in custody between 7 June 1996 and 27 December 1998 should be deducted from his sentence of three years and two months' imprisonment. In this respect it stated the following:

> "Accordingly, the will of the court is to deduct THE WHOLE OF THE ABOVE STATED PERIOD [*emphasis added by the Plovdiv District Court*], i.e. the period during which the measure for securing the [applicant's] appearance before the court in the present case was a 'remand in custody', and not [just] a part thereof."

26. The Plovdiv District Court also found that it was not competent to rule on the lawfulness of the decision of the public prosecutor's office to seek execution of the part of the sentence it claimed was still outstanding.

27. The applicant was released on 4 February 2000 after serving the remaining part of the sentence which the public prosecutor's office had alleged was outstanding in case no. 50/97.

C. Proceedings under the State and Municipalities Responsibility for Damage Act 1988

28. On 11 November 1999 the applicant brought an action under the State and Municipalities Responsibility for Damage Act 1988 (the "SMRDA", which was renamed in 2006) against the public prosecutor's office and the Ministry of Justice.

29. He contended that he had been unlawfully deprived of his liberty since 12 May 1999 because he had had no outstanding prison term to serve. He sought compensation for the non-pecuniary damage he had allegedly suffered as a result.

30. In a judgment of 28 January 2002, the Plovdiv Regional Court established, *inter alia*, the following:

> "... the [applicant] was remanded in custody in case no. 50/97 from 7 June 1996 to 1 August 1997. From 1 August 1997 to 10 April 1998 [he] served his sentence in case no. 14/95 ... This sentence cannot, by virtue of Articles 23-25 of the Criminal Code, be combined [with the other sentences] and it was served separately. From 10 April 1998 to 27 December 1998 the [applicant] served his sentence in case no. 88/96. This sentence was combined with the sentence in case no. 50/97 and therefore under Article 25 § 3 of the Criminal Code the [trial] court when delivering its judgment in case no. 50/97 should have deducted the whole period of the sentence [which had been] served. It should [also] have deducted the whole period of the remand in custody from 7 June 1996 to 1 August 1997 on the basis of Article 59 § 1 of the Criminal Code. These two periods amount to two years, two months and twelve days. When the [trial] court wrote in its judgment that it was deducting the time during which [the applicant] had been detained, calculated from 7 June 1996 to 27 December 1998, it in practice wrongly included the time during which he had been serving his sentence [in case no. 14/95] – from 1 August 1997 to 10 April 1998. [Accordingly,] from the sentence of three years and two months [the trial court] deducted three years

> and two months, being the period between 7 June 1996 and 27 December 1998 and it [thereby] transpired that the [applicant] had no time left to serve. The [trial] court made this mistake in spite [of the fact that] the case file contained information from Plovdiv Prison [detailing] the periods served by the [applicant]. In its decision [of 26 July 1999] dismissing the request to interpret its judgment, the [trial] court stated that its intention had been to deduct the whole period from 7 June 1996 to 27 December 1998, i.e. the period during which the [applicant] was remanded in custody and not [just] a part thereof. This shows that the [trial] court was misguided [in thinking] that [the applicant was remanded in custody in case no. 50/97 throughout] this entire period. Thus, with this judgment, one year of the [applicant's] sentence was pardoned, because only two years and two months should have been deducted. In spite of this, the public prosecutor's office did not appeal against the judgment and it became final ... After [the judgment] became final, it became binding on the public prosecutor's office under Article 372 § 1 of the [CCP] which should have implemented it instead of attempting to correct the [existing] mistake by interpreting the intention of the [trial] court. In the period between 12 May 1999 and 4 February 2000, including from 12 May 1999 to 11 November 1999, the date the present action was brought, the [applicant] unlawfully served a sentence of imprisonment, which if the mistake had not been made he [would] have served lawfully."

31. In spite of the above conclusion, the Regional Court found that the applicant had failed to prove conclusively that he had suffered any non-pecuniary damage as a result of having been deprived of his liberty between 12 May 1999 and 11 November 1999. It therefore dismissed his action and ordered him to pay the resulting court fees. The applicant appealed against that judgment on an unspecified date.

32. In a judgment of 29 April 2002, the Plovdiv Court of Appeal dismissed the applicant's appeal and upheld the lower court's findings. The reasons for its decision were, *inter alia*, the following:

> "Irrespective of the wrongful deduction of the time during which the [applicant] was serving his sentence ... in case no. 14/95, when sentencing the applicant to three years and two months' imprisonment the [trial] court deducted two years, five months and twenty days. This was the period between 7 June 1996 and 27 December 1998. The remaining [period] was eight months and ten days, which the applicant had to serve in view of the delivered final judgment ... in case no. 50/97 of the Plovdiv District Court."

33. The applicant filed a cassation appeal on an unspecified date.

34. In a final judgment of 20 October 2003 the Supreme Court of Cassation dismissed the applicant's appeal and upheld the lower courts' findings. In its reasoning, it indicated, *inter alia*, the following:

> "In the reasons [for its decision of 26 July 1999, the Plovdiv District Court] stated that the intention of the [trial] court had been to deduct from the so determined combined sentence the period during which the [applicant] was remanded in custody. With this clarification it became clearer what the intention of the [trial] court had been. The Plovdiv public prosecutor's office made a justified assessment that the period stated in the judgment to be deducted, namely from 7 June 1996 to 27 December 1998, included a period of one year when the [applicant] served a sentence of 'deprivation of liberty' under the judgment in case no. 14/95 ..., which

sentence was not combined with [the sentence] in case no. 50/97 ..., and therefore was to be served separately. After deducting the period during which the [applicant] had served this first sentence the public prosecutor's office rightly established that not all the sentence in case no. 50/97 ... had been served and the [applicant] was recalled to prison on 12 May 1999 to serve the remaining part of the sentence. There is no indication that he was detained in prison for a period longer than [required] for serving the sentence imposed. Accordingly, the contention that he suffered damage as a result is unfounded. The incorrect indication in the judgment of the period of [remand in custody] to be deducted does not change the stated intention [of the trial court] in respect of the length of the sentence of 'imprisonment'."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Execution of sentences

35. The Code of Criminal Procedure (1974) did not contain express provisions establishing a procedure to be followed in cases where there was a dispute as to whether a person had effectively served a prison sentence or not.

36. Article 373 § 1 (1) of the CCP provided that the court which had imposed the sentence would rule on all difficulties or uncertainties relating to the interpretation of its judgment. That did not include, however, issues concerning the execution of sentences and, in particular, the lawfulness of a continuing detention.

37. In general, the authority responsible for supervising the lawfulness of the execution of sentences was the competent public prosecutor (Article 375 § 2 of the CCP, section 118 of the Judiciary Act 1994 and section 4(1) of the Execution of Sentences Act). In particular, the public prosecutor was under a duty to order the release of every imprisoned person whom he or she found to have been unlawfully deprived of his or her liberty (section 119(7)(1) of the Judiciary Act of 1994). An appeal to a higher ranking public prosecutor's office lay against the decisions of a public prosecutor.

38. The Code of Criminal Procedure (1974) was replaced in 2006 by a new code of the same name, while the Judiciary Act 1994 was replaced by a new act of the same name in 2007.

B. Working in prison

39. Prisoners may work during their time in prison, whereby two days of employment are counted as them having served three days of their sentences of imprisonment (sections 65 and 103 of the Execution of Sentences Act).

C. State and Municipalities Responsibility for Damage Act 1988

40. The relevant parts of section 2 of the SMRDA provide:

> "The State shall be liable for damage caused to [private persons] by the organs of ... the investigation, the public prosecution, the courts ... for:
>
> 1. unlawful detention ..., if [the detention order] has been set aside for lack of lawful grounds;
>
> ...
>
> 6. execution of an imposed sentence in excess of the set term or amount."

41. Compensation awarded under the Act comprises all pecuniary and non-pecuniary damage which is the direct and proximate result of the illegal act or omission (section 4). The aggrieved person must lodge an "action ... against the [entity] ... whose illegal orders, acts or omissions have caused the alleged damage" (section 7). Compensation for damage caused from cases coming within sections 1 and 2 of the Act can only be sought under the Act and not under the general rules of tort (section 8 (1)).

42. The liability of the investigating and prosecuting authorities may arise only in the exhaustively listed instances set forth in section 2(2) of the Act and not under the general rules of tort (решение № 1370 от 16.XII.1992 г. по гр.д. № 1181/92 г., IV г.о. and Тълкувателно решение № 3 от 22.04.2005 г. по т. гр. д. № 3/2004 г., ОСГК на ВКС). No reported cases have been identified of successful claims being made for damage stemming from acts of the investigating or prosecuting authorities which fall outside the list in section 2.

43. The reported case-law under section 2(1) and (6) of the Act is scant. In two judgments the Supreme Court of Cassation held that State liability arose where a detainee was remanded in custody or imprisoned for a period exceeding the final prison term subsequently imposed by the court of last instance (реш. № 1662 от 21 януари 1994 г. по гр. д. № 306/93 г., IV г. о. на ВС и реш. № 1144 от 20 юни 2003 г. по гр. д. № 904/2002 г., IV г. о. на ВКС).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

44. The applicant made several complaints under Article 5 of the Convention, the relevant part of which provides:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

4. 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.

5. 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."

45. The applicant also complained under Article 13 of the Convention that he did not have at his disposal effective domestic remedies for his Convention complaints.

In the admissibility decision of 9 May 2006 the Court decided to examine this complaint under Article 5 §§ 4 and 5 of the Convention which constitute *lex specialis* in relation to the more general requirements of Article 13 (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 69, ECHR 1999-II; and *Tsirlis and Kouloumpas v. Greece*, judgment of 29 May 1997, *Reports of Judgments and Decisions* 1997-III, p. 927, § 73).

A. Complaint under Article 5 § 1 of the Convention

46. The applicant complained under Article 5 § 1 of the Convention that he had unlawfully been deprived of his liberty between 12 May 1999 and 4 February 2000 because he had already served all the sentences that had been imposed by the domestic courts.

47. The applicant further argued that in spite of the explicit statements of the Plovdiv District Court, both in its judgment of 16 February 1999 and its decision of 26 July 1999, to deduct the whole period from 7 June 1996 to 27 December 1998 from the sentence to be served in case no. 50/97, the authorities had unlawfully attempted to interpret the intention of the said court in a different manner. He submitted that only the Plovdiv District Court had the right to interpret its judgment of 16 February 1999 and all other attempts to do so, either by the public prosecutor's office in its attempts to execute the said judgment or the domestic courts in the proceedings under the SMRDA, were unlawful, not binding and erroneous.

Moreover, the public prosecutor's office had failed to appeal against the Plovdiv District Court's judgment of 16 February 1999 so it had become final and binding on all State authorities.

48. The applicant also submitted that there was no provision in domestic law requiring the automatic suspension of an order for a detainee's remand in custody when he started to serve a sentence during the same period. Nor was there any explicit restriction on such periods running concurrently. The normal practice in similar cases was for the public prosecutor's office to request the court which had ordered the remand in custody to revoke or suspend that order while the detainee was serving his sentence. This had not been done in his case and the order remanding him in custody in case no. 50/97 had only been revoked by the Plovdiv District Court on 17 December 1998, when it released him on bail.

49. The Government did not challenge the applicant's assertions.

50. The Court considers that the main issue to be determined in the present case is whether the disputed detention after 12 May 1999 was "lawful" and whether it complied with "a procedure prescribed by law".

51. The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5 of the Convention, namely to protect individuals from arbitrariness (see *Quinn v. France*, judgment of 22 March 1995, Series A no. 311, p. 18, § 47). On this last point, the Court has previously stressed that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX; and *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

52. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 of the Convention failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports* 1996-III, § 41).

53. In the present case, the applicant argued that the decision of the public prosecutor's office to recall him to prison on 12 May 1999 to serve an allegedly outstanding part of the sentence in case no. 50/97 was unlawful and not based on a conviction by a competent court, namely the judgment in

case no. 50/97, because he had allegedly served the whole sentence imposed by that court. If this was indeed the case, then the applicant's deprivation of liberty after 12 May 1999 was in violation of Article 5 § 1 of the Convention, which refers back to the position under national law.

54. In view of the above, the Court notes that the applicant was remanded in custody on 7 June 1996 in connection with case no. 50/97 (see paragraph 12 above). His detention was formally revoked on 17 December 1998 (see paragraph 15 above) and he was released on 28 December 1998 (see paragraph 16 above). On that basis, the trial court in case no. 50/97 ordered that the whole period of the applicant's detention be deducted from the sentence that he had to serve (see paragraph 10 above).

55. However, the Plovdiv Prison in its reports to the trial court of 16 December 1998 and to the applicant of 7 April 1999 considered that the remand in custody in connection with case no. 50/97 had been suspended on 1 August 1997 when they reported that the applicant had started service prison sentences (see paragraphs 14 and 17 above). The Plovdiv district public prosecutor's office took the same view and ordered the applicant's recall to prison on 29 April 1999 to serve an outstanding part of the sentence in case no. 50/97 (see paragraph 18 above).

56. The Court recognises, however, that Bulgarian law does not provide for the automatic suspension of a remand in custody when a detainee starts serving a prison sentence. Neither does it specify how conflicts between periods of detention that appear to have run concurrently are to be resolved in cases where the public prosecutor's office failed to request and obtain a suspension of a remand in custody when a detainee did start serving a prison sentence. Furthermore, the Government failed to submit arguments on the merits of the applicant's complaint and no relevant reported domestic cases have been identified which may assist in the Court's analysis.

57. The Court notes that it could be considered that the trial court in case no. 50/97 should have taken into account the information provided to it by the Plovdiv Prison in its report of 16 December 1998 concerning the different sentences served by the applicant (see paragraph 14 above). However, it did not and deducted the whole period of the applicant's remand in custody in case no. 50/97 without taking into account the fact that that period coincided with the serving of the sentence in case no. 88/96, which the trial court expressly combined so that it would run concurrently, and the sentence in case no. 14/95, which it did not (see paragraphs 9 and 10 above). The appropriate reaction in this situation would have been for the prosecuting authorities to appeal against the judgment. In so far as they did not do so and the judgment became final (see paragraph 11 above), it is questionable whether the prosecuting authorities, relying on their own interpretation that the remand in custody had been suspended on 1 August 1997, had the power under domestic law to order the applicant's recall to prison to serve an alleged remainder of his sentence in case no. 50/97.

58. Moreover, in response to the applicant's request for interpretation of the judgment in case no. 50/97 the trial court expressly stated that its ruling was clear and that its intention had been to deduct the whole period of the remand in custody between 7 June 1996 and 27 December 1998 from the sentence to be served (see paragraph 25 above). However, this confirmation by the trial court of its intention had no impact on the prosecuting authorities' position. In these circumstances, the Court considers even more doubtful the prosecuting authorities' insistence on requiring the applicant to serve an alleged remainder of his sentence in case no. 50/97 and their power under domestic law to impose, to the applicant's detriment and in spite of the quite explicit rulings by the trial court, their own interpretation on how the seemingly concurrently running periods of detention should be calculated.

59. The subsequent proceedings under the SMRDA confirm this lack of clarity, at all domestic court levels, as to how to treat and resolve conflicts between seemingly concurrently running periods of detention (see paragraphs 28-34 above). Although the applicant's action was dismissed by all three levels of jurisdiction, each relied on different reasons for their decisions and the first-instance court even found that the applicant's detention was unlawful during the stated period. In addition, in order to justify their conclusions in the context of these proceedings, the courts attempted to interpret the intention of the trial court in spite of the clear wording used by that court, both in its judgment of 16 February 1999 and in its decision of 26 July 1999, to deduct the whole period from 7 June 1996 to 27 December 1998 from the sentence to be served in case no. 50/97.

60. In view of the above, the Court considers that in the present case the general principle of legal certainty was not satisfied because the conditions for the applicant's deprivation of liberty under domestic law were not clearly defined and the law itself was not sufficiently foreseeable in its application to meet the standard of “lawfulness” set by the Convention. The applicant was detained for a period of eight months and twenty-four days (between 12 May 1999 and 4 February 2000) directly as a result of the lack of sufficiently precise provisions in domestic law on how to reconcile the running of periods of detention served for different reasons, so as to avoid, or at least resolve, disagreements between different State organs on such matters.

61. There has, therefore, been a violation of Article 5 § 1 of the Convention in respect of the applicant's detention from 12 May 1999 to 4 February 2000.

B. Complaint under Article 5 § 4 of the Convention

62. The applicant complained under Article 5 § 4 of the Convention that domestic law did not afford him the right to challenge the lawfulness and grounds for his detention after 12 May 1999 before a court of law.

63. The Government did not challenge the applicant's assertion.

64. The applicant reiterated his complaint.

65. The Court reiterates that Article 5 § 4 of the Convention requires that everyone who is deprived of his liberty, lawfully or not, is entitled to a supervision of lawfulness by a court and that a violation of this provision may be found if there is an absence of any proceedings satisfying its requirements (see *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, pp. 39-40, § 73). For the purposes of Article 5 § 4, the "lawfulness" of an "arrest or detention" has to be determined in the light not only of domestic law but also of the text of the Convention, the general principles embodied therein and the aim of the restriction permitted by Article 5 § 1 of the Convention (see, among other authorities, *Van Droogenbroeck v. Belgium*, judgment of 24 June 1982, Series A no. 50, p. 26, § 48).

66. The Court further reiterates that the Court has previously found that "the wording of Article 5 § 4 of the Convention might make one think that it guarantees the right of the detainee always to have supervised by a court the lawfulness of a previous decision which has deprived him of his liberty ... Where [this] decision ... is one taken by an administrative body, there is no doubt that Article 5 § 4 of the Convention obliges the Contracting States to make available to the person detained a right of recourse to a court; but there is nothing to indicate that the same applies when the decision is made by a court at the close of judicial proceedings. In the latter case the supervision required by Article 5 § 4 of the Convention is incorporated in the decision; this is so, for example, where a sentence of imprisonment is pronounced after 'conviction by a competent court' (Article 5 § 1 (a) of the Convention)" (see, *De Wilde, Ooms and Versyp*, cited above, pp. 41-42, § 76).

67. As has been pointed out in subsequent judgments, this passage speaks only of the initial decision depriving a person of his liberty; it does not purport to deal with an ensuing period of detention in which new issues affecting the lawfulness of the detention might arise (see, for example, *Van Droogenbroeck*, cited above, § 45).

68. In this context, it needs to be determined what new issues of lawfulness, if any, were capable of arising in relation to the applicant's recall to prison to serve an allegedly outstanding part of his sentence in case no. 50/97 and whether the proceedings available complied with paragraph 4 of Article 5 of the Convention.

69. The Court notes that in the present case the question that arose was whether or not the applicant had effectively served the prison sentences imposed by the courts and whether he should have been recalled to prison to serve any outstanding part of the sentence in case no. 50/97. In the light of the above cited case-law of the Court, it should be considered that the issue of whether the applicant had effectively served all the sentences represented a "new issue affecting the lawfulness of the detention" as it questioned the legal basis for the applicant's continued deprivation of liberty. It was an issue related not to the applicant's culpability in relation to the offences he committed, but to the effective execution of the sentences imposed by the courts. Thus, the supervision required by Article 5 § 4 of the Convention cannot be considered to have been carried out by the domestic court in its judgment in case no. 50/97.

70. It follows, by virtue of paragraph 4 of Article 5 of the Convention, that the applicant was entitled to apply to a "court" having jurisdiction to decide "speedily" whether or not his deprivation of liberty had become "unlawful" in this sense.

71. In the circumstances of the present case, the only court procedure available to the applicant under domestic law was to request the trial court to interpret its judgment under Article 373 § 1 (1) of the CCP, which it refused to do. In addition, the trial court expressly noted that it was not competent to rule on whether the actions of the public prosecutor's office were lawful or not. This procedure therefore does not adhere to the standards required under Article 5 § 4 of the Convention. In addition, the applicant unsuccessfully challenged the actions of the Plovdiv district public prosecutor's office before a higher ranking public prosecutor's office, but this procedure too fails to meet the requirement for a court review contained in Article 5 § 4 of the Convention. In the present context, the Court notes that domestic law did not contain a general *habeas corpus* procedure which the applicant could have used, but rather had specialised procedures applicable to different types of detention.

72. In view of the above, the Court considers that in the specific circumstances of the present case the applicant did not have available a procedure under domestic law which would have allowed him to apply to a "court" having jurisdiction to decide "speedily" whether or not his deprivation of liberty after 12 May 1999 was lawful.

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

C. Complaint under Article 5 § 5 of the Convention

73. The applicant complained that he did not have an enforceable right to compensation for an arrest or detention in breach of Article 5 of the Convention.

74. The Government did not challenge the applicant's assertion.

75. The applicant restated his complaint.

76. The Court reiterates that Article 5 § 5 of the Convention is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (see *Wassink v. the Netherlands*, judgment of 27 September 1990, Series A no. 185-A, p. 14, § 38; and *Vachev v. Bulgaria*, no. 42987/98, § 79, ECHR 2004-... (extracts)). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court.

77. In so far as the Court has found that there have been violations of Article 5 §§ 1 and 4 of the Convention, Article 5 § 5 of the Convention is also applicable (see *Steel and Others v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2740, § 81). The Court must therefore establish whether or not Bulgarian law afforded the applicant an enforceable right to compensation for the breaches of Article 5 of the Convention.

78. The Court notes that the applicant brought an action under the SMRDA, which was dismissed by a final judgment of the Supreme Court of Cassation on 20 October 2003 on the grounds that the applicant's detention between 12 May 1999 and 4 February 2000 was not in breach of domestic law.

79. It follows that in the applicant's case the SMRDA did not afford the applicant an enforceable right to compensation for his deprivation of liberty in breach of Article 5 §§ 1 and 4 of the Convention, as required by Article 5 § 5 of the Convention.

Thus, there has been a violation of Article 5 § 5 of the Convention on that account.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed 3,000 euros (EUR) in respect of the pecuniary damage and EUR 5,000 for the non-pecuniary damage suffered as a result of the violation of Article 5 § 1 of the Convention. He also claimed

EUR 6,000 in respect of the non-pecuniary damage suffered as a result of the violation of Article 5 § 4 of the Convention, arguing that his inability to challenge the lawfulness of his detention had filled him with a sense of despair and hopelessness. Lastly, the applicant claimed EUR 2,000 in respect of the non-pecuniary damage suffered as a result of the violation of Article 5 § 5 of the Convention.

In respect of the amounts claimed, the applicant invited the Court to take into account the positive economic changes in Bulgaria and the improved living standards of Bulgarian citizens. He referred to Government publications and statistical analyses which allegedly confirmed this, as well as to reports in the national media. However, he did not submit any such documents in support of his claim. The applicant indicated that between 1999 and 2006 the minimum monthly wage in Bulgaria had increased threefold – from 61 Bulgarian levs (BGL - approximately EUR 31) to BGL 160 (approximately EUR 80) – and claimed that the purchasing power of Bulgarian citizens had increased to a level which allowed many of them to begin investing in real estate, a market which had developed dramatically over the stated period. Thus, the applicant argued, these positive changes meant that the economic indicators and the standard of living in Bulgaria had improved considerably.

Lastly, the applicant noted that the Court had recognized in its case-law that different standards of living existed in Contracting States and that a differentiation of awards should be made on that basis (see *Assanidze v. Georgia* [GC], no. 71503/01, § 206, ECHR 2004-II). Accordingly, he invited the Court to take into account the positive economic changes in Bulgaria when making its award in the present case.

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

83. Concerning the pecuniary damage claimed in respect of the violation of Article 5 § 1 of the Convention the Court finds that no arguments or documentation have been presented by the applicant which may convince it that a causal link exists between the violation found and the damage claimed. Thus, no award is made in respect of the pecuniary damage claimed.

84. In respect of the claims for non-pecuniary damage, the Court notes that the violations it found related to the applicant unlawfully having been detained for a period of almost nine months, that he could not challenge the lawfulness of his detention before a court of law and that he did not have an enforceable right to compensation for his deprivation of liberty (see paragraphs 61, 72 and 79 above). It further notes the applicant's arguments in respect of the claimed positive changes in the economic indicators of Bulgaria and the improvement in the standard of living of its citizens, which the Court finds unquantifiable on the basis of the information presented but at the same time relevant to the assessment of its award under Article 41 of

the Convention. In view of the foregoing, the specific circumstances of the present case, its case-law in similar cases and deciding on an equitable basis, the Court awards EUR 5,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

85. The applicant claimed EUR 4,205 for 88.5 hours of legal work by one of his lawyers, Ms E. Nedeva, in the domestic proceedings and before the Court at an average hourly rate of EUR 47. He also claimed EUR 60 for translation costs and other general office expenses. In support of his claim, the applicant presented a legal fees agreement, an approved timesheet and a receipt for translation costs. He also requested that the costs and expenses incurred should be paid directly to his lawyer, Ms E. Nedeva.

86. The applicant did not claim any costs and expenses in respect of the legal work performed by his second lawyer, Mr I. Dimov.

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

88. The Court reiterates that according to its case-law, an applicant is entitled to the 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 show that any general office expenses have actually been incurred. In respect of the remainder, 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 2,000 in respect of costs and expenses in the domestic proceedings and before the Court, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

89. 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 § 1 of the Convention on account of the lack of lawfulness, within the meaning of the aforesaid provision, of the applicant's detention from 12 May 1999 to 4 February 2000;

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention because the domestic legislation did not afford the applicant the right to challenge before a court of law the lawfulness of his detention from 12 May 1999 to 4 February 2000;

3. *Holds* that there has been a violation of Article 5 § 5 of the Convention on account of the lack of an enforceable right to compensation under the domestic legislation for the applicant's deprivation of liberty in breach of Article 5 §§ 1 and 4 of the Convention;

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 5,000 (five thousand euros) in respect of non-pecuniary damage, payable into the applicant's bank account;

(ii) EUR 2,000 (two thousand euros) in respect of costs and expenses, payable into the bank account of the applicant's lawyer in Bulgaria, Ms E. Nedeva;

(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 7 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President